F3
Howard Kato

terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in -law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(E) Any foster child of a state-licensed foster parent, if that child was not, because of a legal barrier, adopted by the foster parent or foster parents before the child aged out of the foster care system. For purposes of this paragraph, the relationship between a foster child and foster parent shall be deemed to exist until terminated by death. However, for purposes of a transfer that occurs on the date of death, the relationship shall be deemed to exist on the date of death.

(4) "Grandchild" or "grandchildren" means any child or children of the child or children of the grandparent or grandparents.

(5) "Full cash value" means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(6) "Eligible transferor" means a grandparent, parent, or child of an eligible transferee.

(7) "Eligible transferee" means a parent, child, or grandchild of an eligible transferor.

(8) "Real property" means real property as defined in Section 104. Real property does not include any interest in a legal entity. For purposes of this section, real property includes an interest in a unit or lot within a cooperative housing corporation, as defined in subdivision (i) of Section 61.

(9) "Transfer" includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(10) "Social security number" also includes a taxpayer identification number issued by the Internal Revenue Service in the case in which the taxpayer is a foreign national who cannot obtain a social security number.

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible ransferee, the transferee's legal representative, the trustee of the transferee's trust, or the executor or ıdministrator of the transferee's estate files a claim with the assessor for the exclusion sought and urnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, the trustee of the transferee's trust, or the executor or administrator of the transferee's estate, signed and made under penalty of perjury that the transferee is a parent, child, or grandchild of the transferor and that the transferor is his or her parent, child, or grandparent. In the case of a grandparent-grandchild transfer, the written certification shall also include a certification that all the parents of the grandchild or grandchildren who qualify as children of the grandparents were deceased as of the date of the purchase or transfer and that the grandchild or grandchildren did or did not

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Appeal Name: Property Taxpayers Bill of Rights
Case ID: Howard Kato ITEM #: F3
Date: 5/24/16 Exhibit No: 5.10
TP FTB DEPT PUBLIC COMMENT

added subparagraph (C) to paragraph (1) of subdivision (d). Stats. 2002, Ch. 775 (SB 2092), in effect January 1, 2003, added a comma after "terminated by divorce" in the second sentence of subparagraph (C) of paragraph (3) of subdivision (c), and added new subparagraph (B) to paragraph (1) of subdivision (d) and relettered former subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, therein. Stats. 2004, Ch. 227 (SB 1102), in effect August 16, 2004, and Stats. 2004, Ch. 889 (AB 2853), in effect September 29, 2004, substituted "may" for "shall" after "The assessor" in the first sentence, substituted "may" for "shall" after "the board" in the second sentence, and added the third sentence in subdivision (f). Stats. 2005, Ch. 264 (SB 555), in effect January 1, 2006, added the second sentence to subparagraph (A) of paragraph (3) of subdivision (a), added the third sentence to paragraph (2) of subdivision (c), and added subdivision (i). Stats. 2006, Ch. 224 (SB 1607), in effect January 1, 2007, amended the uncodified legislative intent language of Section 2 of the Stats. 1987, Ch. 48 to create new subdivision (a) with the former first sentence of the first paragraph and added "both of the following:" after "the intent of" therein, created new paragraph (1) with the balance of the former first sentence commencing with "Proposition 58" and added paragraph (2) thereto; created new subdivision (b) with the former second and third sentences; and created new subdivision (c) with the former fourth sentence, deleted "nothing in" after "provided herein," and added "not" after "this section shall" therein. Stats. 2007, Ch. 450 (AB 402), in effect January 1, 2008, designated former paragraph (1) of subdivision (a) as subparagraph (A) and added subparagraph (B) thereto; substituted "that is eligible for a homeowners' exemption or a disabled veterans' exemption as a result of the transferor's ownership and occupation of the eligible dwelling" for "for which a homeowners' exemption or a disabled veterans' residence exemption has been granted in the name of the transferor's ownership" after "means a dwelling" and deleted "eligible" after "occupation of the" in the first sentence and deleted "principal" after "'and underlying the" in the second sentence of paragraph (1) and substituted "one-million-dollar" for "one million dollar" twice in the first and third sentences of paragraph (2) of subdivision (b); added subparagraph (E) to paragraph (3) of subdivision (c); and deleted "grandparent," after "transferee is a" in the first sentence of subparagraph (A) of paragraph (1) of subdivision (d) and added subparagraph (E) thereto. Stats. 2008, Ch. 349 (SB 1233), in effect January 1, 2009, added subdivision (j). Stats. 2010, Ch. 654 (SB 1494), in effect January 1, 2011, added "the trustee of the transferee's trust," after "legal representative," three times in the first sentences of paragraph (1), subparagraph (A), and subparagraph (B) of subdivision (d) and added "the trustee of the transferee's trust, the trustee of the transferor's trust," after "legal representative," in the first sentence of subdivision (i). Stats. 2011, Ch. 351 (SB 947), in effect January 1, 2012, added the second sentence to paragraph (8) of subdivision (c) commencing with "For purposes of" and substituted "transferor's" for "transferee's" after "trustee of the" in the first sentence of subparagraph (B) of paragraph (1) of subdivision (d).

Note.—Section 2 of Stats. 1987, Ch. 48 (AB 47), as amended by Section 6 of Stats. 2006, Ch. 224 (SB 1607), provided that:

(a) It is the intent of the Legislature that the provisions of Section 63.1 of the Revenue and Taxation Code shall be liberally construed in order to carry out the intent of both of the following:

(1) Proposition 58 on the November 4, 1986, general election ballot to exclude from change in ownership purchases or transfers between parents and their children described therein.

(2) Proposition 193 on the March 26, 1996, primary election ballot to exclude from change in ownership purchases or transfers between grandparents and their grandchildren described therein.

(b) Specifically, transfers of real property from a corporation, partnership, trust, or other legal entity to an eligible transferor or transferors, where the latter are the sole owner or owners of the entity or are the sole beneficial owner or owners of the property, shall be fully recognized and shall not be ignored or given less than full recognition under a substance-over-form or step-transaction doctrine, where the sole purpose of the transfer is to permit an immediate retransfer from an eligible transferor or transferors to an eligible transferee or transferees which qualifies for the exclusion from change in ownership provided by Section 63.1. Further, transfers of real property between eligible transferors and eligible transferees shall also be fully recognized when the transfers are immediately followed by a transfer from the eligible transferee or eligible transferees to a corporation, partnership, trust, or other legal entity where the transferee or transferees are the sole owner or owners of the entity or are the sole beneficial owner or owners of the property, if the transfer between eligible transferors and eligible transferees satisfies the requirements of Section 63.1.

STATE OF CALIFORNIA

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January 23, 1991

No. 91/08
CORRECTION

TO COUNTY ASSESSORS:

CHANGE IN OWNERSHIP CONSEQUENCES OF REAL PROPERTY
IN AN ESTATE OR TRUST
DISTRIBUTED ON A "SHARE AND SHARE ALIKE" BASIS

This letter sets forth the change in ownership consequences of transfers of property from parents to children when property is distributed according to a will or trust and the language of the document directs that the assets of the estate or trust be distributed to the children on a "share and share alike" basis.

Currently, when an estate or trust is to be distributed on a share and share alike basis many assessors presume, for property tax purposes, that the beneficiaries of a trust or the heirs of a will have an equal interest in each and every property owned by the decedent. Consequently, in these counties a change in ownership occurs if any heir or beneficiary obtains an interest in any real property greater than his/her proportional interest in the estate or trust. For example, if property is left to four children and one child is granted a 100 percent interest in the parent's residence, the assessor would have determined that 75 percent of the property interests transferred. Using this policy, the percentage of interests transferred is the amount that the interest in the real property exceeds the proportional interest in the estate.

Our recommendations for the change in ownership consequences of property distributed on a share and share alike basis depend on the provisions of the trust instrument or the will.

TRUSTS

The key to whether a change in ownership occurs when property is distributed according to a trust on a share and share alike basis is whether the trust instrument limits the trustee's powers to distribute property.

Probate Code Section 16200 provides, in part, that a trustee has not only the powers conferred by the trust instrument but also, except as limited in the trust instrument, the powers conferred by statute. Following Probate Code Section 16200 are a number of provisions conferring express statutory powers on trustees. Among those provisions is Section 16246 which provides:

> "The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non-pro rata." (Added by Chapter 820 of the Statutes of 1986.)

The statement "a distribution in kind may be made pro rata or non-pro rata," means that the trustee has a choice in how he/she distributes non-cash assets, such as real property. The trustee can either give the beneficiaries common ownership in all the assets of the trust estate (pro rata) or can allocate specific assets to individual beneficiaries (non-pro rata).

California trust law recognizes that the administration of a trust is governed by the trust instrument. Union Bank and Trust Co. v. McColgan (1948) 84 Cal. App. 2d 208. Thus, where the trust instrument conflicts with statutory power, the instrument controls unless a court, pursuant to Probate Code Section 1620.1, relieves the trustee of the restriction in the instrument. Absent a restriction in the trust instrument, the trustee enjoys both the powers conferred by the trust instrument and those conferred by the provisions of the Probate Code, including Section 16246.

Unless the trust instrument specifically states otherwise, the trustee has the power to distribute the trust assets in kind on either a pro rata or non-pro rata basis. Consequently, property in a trust, where the trustee has the power to distribute trust assets on a share and share alike basis can be treated as a direct transfer from parent to child to the extent that the value of the property does not exceed the value of the stipulated share of trust assets. This is because both statutory and case law recognize that, unless the trust instrument specifically states how the beneficiaries are to share the trust's assets, the trustee has the power to distribute property as he/she wishes. Accordingly, the assessor should recognize these transfers of property as a parent to child transfer, which may qualify for the parent/child exclusion under Section 63.1.

Example:

A parent leaves a trust estate with a net worth of $500,000 to his four children on a share and share alike basis. Each child is to receive $125,000 net worth of assets. The trust document does not limit the trustee's power to distribute the trust assets. Accordingly, as provided by Probate Code Section 16246, the trustee has the power to distribute sole ownership of any asset or a fractional interest in any asset to any of the children.

In distributing the trust, the trustee decides to deed the principal residence, worth $112,500 and no outstanding loans, to one child. In our view, this would be considered a 100 percent transfer from parent to child which may be excluded from change in ownership under Section 63.1 if a proper claim form is filed. This is because the net worth of the property is under the child's $125,000 share in the estate. If the property had a net worth which was more than $125,000, a partial change in ownership

would have occurred. The following example outlines the procedures for such a situation.

If the trustee deeds another child an investment property, with a market value of $225,000 and an outstanding mortgage balance of $50,000 (encumbrances in the property should be considered), then a 28.57 percent reappraisable change in ownership would occur. This is calculated as follows: equity in the property minus child's share of the trust estate divided by the equity in the property ($175,000 - $125,000/$175,000). In this case, the equity in the property that the child receives exceeds his/her proportional share of the trust estate by 28.57 percent. In effect, this 28.57 percent interest in the property is a transfer of property between siblings. It does not qualify as a transfer from parent to child since it exceeds the direction that the children share and share alike. Therefore, a 28.57 percent change in ownership of the property has occurred while the remaining 71.43 percent may be excluded from change in ownership according to the provisions of Section 63.1 of the Revenue and Taxation Code.

In practice, assuming a 1975 factored base year value of $75,000, the new base year value of the property would be calculated as follows:

1975	Factored base year value	$ 75,000 x 71.43% =	$ 53,572
1990	Market value	$225,000 x 28.57% =	64,282
Value to be enrolled for current roll			$117,854

WILLS

Whether a change in ownership occurs when a child receives a 100 percent interest in real property from a parent's estate when the estate is distributed according to a will on a share and share alike basis depends on whether the will gives the executor a clear grant of broad discretion to distribute property in kind on a pro rata or non-pro rata basis.

Under the Probate Code provisions applicable to wills, the general rule is that a devise of property to more than one person vests the property in them as owners in common. Probate Code Section 6143 provides that unless a contrary intention is indicated in the will, "a devise of property to more than one person vests the property in them as owners in common." See also Estate of Pence (1931) 117 Cal. App. 323, at 331, holding that a devise to more than one person to share and share alike indicates a gift in common. See also Noble v. Beach (1942) 21 Cal. 2d 91, 94; and Estate of Russell (1968) 69 Cal. 2d 200, 214-215.

Of course, many wills contain provisions which grant discretion to distribute property in kind on a pro rata or non-pro rata basis or something equivalent. Probate Code Section 6140(a) states that the intention of the testator as expressed in the will controls the legal effect of the dispositions made in the will. In light of this general principle, a clear grant of discretion to distribute the property in kind on a pro rata or non-pro

rata basis must be given due recognition. In the absence of such a clear grant of broad discretion in the will, however, or an appropriate judicial determination of the meaning of the provisions of the will, assessors are entitled to rely on the general rule set forth in Section 6143 of the Probate Code.

Therefore, if it is determined that the will clearly grants the executor broad discretion in distributing property in kind on a pro rata or non-pro rata basis, the change in ownership consequences are identical to those in the example illustrated for trusts above. If it is not certain or it has not been proved that the executor has this power, then the assessor is correct in allocating an equal fractional interest in each and every property owned by the parent to each child for property tax purposes. It follows that a partial change in ownership will occur if any child acquires an interest in any real property owned by the parent greater than the proportional interest in the estate. It is important to note that the taxpayer carries the burden of proving, to the assessor's satisfaction, that the will in fact grants the requisite discretionary power in distributing the property.

If you have any further questions, please feel free to contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:sk

23. I am an attorney. Can I find out how much of the $1 million exclusion my client has used? Do I need written authorization from my client to request this information? (#40)

24. I am a CPA and have authorization to file tax documents on behalf of my clients. Can I find out how much of the $1 million exclusion my client has used? Do I need written authorization from my client to request this information? (#41)

1. **What are Propositions 58 and 193?**

   Proposition 58, effective November 6, 1986, is a constitutional amendment approved by the voters of California which excludes from reassessment transfers of real property between parents and children. Proposition 58 is codified by section 63.1 of the Revenue and Taxation Code.

   Proposition 193, effective March 27, 1996, is a constitutional amendment approved by the voters of California which excludes from reassessment transfers of real property from grandparents to grandchildren, providing that all the parents of the grandchildren who qualify as children of the grandparents are deceased as of the date of transfer. Proposition 193 is also codified by section 63.1 of the Revenue and Taxation Code.

   In the State of California, real property is reassessed at market value if it is sold or transferred and property taxes can sometimes increase dramatically as a result. However, if the sale or transfer is between parents and their children, or from grandparents to their grandchildren, under limited circumstances, the property will **not** be reassessed if certain conditions are met and the proper application is timely filed.

   These propositions allow the new property owners to avoid property tax increases when acquiring property from their parents or children or from their grandparents. The new owner's taxes are calculated on the established Proposition 13 factored base year value, instead of the current market value when the property is acquired.

2. **Which transfers of real property are excluded from reassessment by Propositions 58 and 193?**

   Transfers of primary residences (no value limit)

   Transfers of the first $1 million of real property other than the primary residences. The $1 million exclusion applies separately to each eligible transferor.

   Transfers may be result of a sale, gift, or inheritance. A transfer via a trust also qualifies for this exclusion. For property tax purposes, we look through the trust to the present beneficial owner. When the present beneficial ownership passes from a parent to a child, this is a change in ownership that is eligible for the parent-child exclusion.

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3. **What value of the transferred property is counted toward the $1 million exclusion limit?**

   The Proposition 13 value (factored base year value) just prior to the date of transfer. Usually, this is the taxable value on the assessment roll. If a property is under a Williamson Act (open space) or Mills Act (historical property) contract, it is the factored base year value that is counted, not the restricted value.

4. **Is it always beneficial to claim this exclusion?**

   No. In cases where the transferred property was being assessed at its current market value under Proposition 8 at time of transfer (that is, its market value had fallen below the transferor's original Proposition 13 factored base year value), it may be beneficial for the new owner **not** to claim the exemption and instead accept a new Proposition 13 base year reassessment. By doing so in this circumstance, the reassessment can result in lower property taxes over time by locking in the lower market value as the property's new base year value as of the date of transfer.

   Otherwise, the higher original Proposition 13 base year value set under the transferor's ownership would someday be reinstated as market conditions improve over time and at a level higher than they would be if the property had received a new Proposition 13 base year value as of the date the property was transferred.