STATE OF CALIFORNIA

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August 2, 2006

Honorable Warren Slocum
Assessor-County Clerk-Recorder
San Mateo County
555 County Center, 1st Floor
Redwood City, CA 94063-1665

Attn: Mr.

Re: ***Revenue and Taxation Code Section 63.1 – Principal Residence***

Dear Mr. :

This is in response to your e-mail of April 18, 2006 addressed to Chief Counsel Kristine Cazadd inquiring whether three parcels of property qualify as a "principal residence" for the purposes of the parent-child exclusion under Revenue and Taxation Code section 63.1. Your e-mail indicates that the "homeowners' exemption" was transferred from the decedent's residence to property in San Mateo County. At issue now is whether all three parcels of property, a 9-acre parcel that has the main residence, a 1.785-acre parcel and a .985-acre parcel come within the parent-child exclusion for "principal residence" under Revenue and Taxation Code section 63.1.

Section 63.1 provides an exclusion from change in ownership for transfers between parents and their children of a principal residence, and up to $1 million of "other real property." Subdivision (b)(1) of section 63.1 defines a "principal residence" as a dwelling for which a homeowners' exemption has been granted in the name of the eligible transferor, and includes "only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence." The phrase, "area of a reasonable size that is used as a site for the residence" indicates an intent to limit the amount of land underlying a principal residence to which the section 63.1 exclusion applies. This limitation is a question of fact, to be determined by the assessor, on a case-by-case basis.

In making this determination, the assessor should consider the lot or parcel designation, minimum zoning requirements, physical terrain, access, actual use, and comparable properties. (For your reference, I have attached a letter previously issued by the Board's Legal Department, which addresses the issue of determining reasonable size site for the principal residence for the purposes of section 63.1.) The aerial photo you forwarded to us shows a smaller residential-type structure, which appears to straddle all three parcels, and a larger residential-type structure in

close proximity on an adjacent parcel. You state that your visual inspection confirmed that the smaller structure rests on a portion of all three parcels.

Further, information regarding the three parcel property has been provided by claimant's attorney, Ms. , in a letter dated February 10, 2005, sent to the San Mateo County Assessor County Clerk- Recorder's Office, and later provided to the Board of Equalization. This letter provides the following additional information regarding the three parcels:

> (1) Land: The property is zoned for single-family residential use. The parcels are contiguous and the outside boundary of the entire property is fenced as one property. There is no boundary or other visible distinction between the parcels. The grounds are landscaped continuously throughout both parcels with, extensive walking paths connecting all portions of the property.
>
> (2) Improvements: The improvements consist of a main residence, a cottage, a tennis court, a swimming pool with pool house, a child's playhouse, three greenhouses, a workshop, a barn, chicken coops, an extensive vegetable and flower garden, fruit trees, and berry bushes. The gardens provide food and flowers for the family and live-in caretakers, only. Nothing from the gardens was sold.
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> (3) Situs Layout: The physical layout of the improvements was designed to be, and was used as, an integrated single family dwelling unit. A single garage services both the main residence and the cottage. The main residence and the cottage are connected by common landscaping. While the main house is large, the number and size of the bedrooms is relatively limited. As a result the cottage was used as an overflow space for the main house. The cottage was never rented.
>
> (4) Access: The main entrance to the property is on A Avenue, through one of the parcels, which is secured with an automatic gate. On M Avenue, there is a separate entrance and driveway that does not connect with the main driveway. It is secured with a locked metal gate, and is used primarily as a service entrance. There is another driveway at the extreme rear of the property, but this driveway ends on a private road owned by a neighbor. The property does not have an easement through the private road, therefore, the rear driveway is unavailable as a means of separate ingress and egress, and is kept chained at all times.

After reviewing these facts, it is our opinion that they support a conclusion that all three parcels together are an area of reasonable size that is used as a site for the residence. The three parcels are all part of an economic unit, and are not readily severable. There is only one main driveway to access the three parcels. The improvements, landscaping and gardens on the three parcels, as described above, are contiguous and were regularly used as part of the residence. Thus, your office may properly conclude that all three parcels qualify as a "principal residence" for the purposes of the parent-child exclusion.

However, if your office determines that all of the three parcels do not qualify as part of the principal residence, the other parcels may be excludable, up to $1 million of full cash value, as "other real property of an eligible transferor" under section 63.1, subdivision (a)(1).

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law ad the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Nancy Vedera

Nancy Vedera
Senior Tax Counsel

Enclosure

NV:eb
Prec/Parent/Child/06/306.nv

cc: Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70