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No. 91/76

October 29, 1991

TO COUNTY ASSESSORS:

FILING REQUIREMENTS FOR CLAIMS FOR SECTION 63.1 EXCLUSION
(PARENT/CHILD TRANSFER EXCLUSION)

This letter discusses changes in the filing requirements for claims for the exclusion of parent/child transfers from the definition of change in ownership (Section 63.1 exclusion). It also addresses whether a valid claim has been filed when all the information requested on the claim form is not provided.

TRANSFERS TO A THIRD PARTY (Assembly Bill 3843 (Cannella))

Section 1.5 of Chapter 1494 of the Statutes of 1990 (Assembly Bill 3843, Cannella) amends Section 63.1(d)(2)(C) of the Revenue and Taxation Code to require that:

" . . . Any claim under this section shall be filed within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier. . . ." (Emphasized portion added by Assembly Bill 3843.)

This bill was urgency legislation effective on September 30, 1990. The legislative history of Section 63.1 in current editions of West's Code and Deering's California Codes lists incorrect effective dates for the amendments made by Section 1.5 of Chapter 1494. West's states the effective date was January 1, 1991; Deering's states the effective date was September 28, 1990. The correct effective date of this amending legislation was September 30, 1990.

While the amending legislation does not define "third party," it logically follows that a third party is any person or entity that is not a transferee or transferor in the transfer for which the claim is being filed. Accordingly, transfers to and from the transferees and transferors would not be considered third party transfers. Transfers occurring between the transferees or between the transferors would also not be considered third party transfers.

For filing purposes, "a transfer of the real property" to a third party occurs when all of the real property received (whether the property received is the full interest in the property or only a partial interest in the property) is transferred to someone other than a transferee or transferor in the original transfer. A transfer of a partial interest in the property received is not considered a transfer of the real property to a third party for the purpose of filing the claim. Accordingly, a transfer may qualify for an exclusion from the meaning of change in ownership when a partial interest in the real property received is transferred to a third party prior to a claim being filed.

For instance, where a parent transfers property to a child and the child then transfers half of the interest received in the property to his/her spouse prior to filing a claim for the Section 63.1 exclusion, the transfer of half of the interest received to the spouse is not a transfer of the real property to a third party. Please note that when all of the interest received is transferred to a spouse who was not a transferee or transferor in the transfer for which the claim is being filed, the transfer would be considered a third party transfer even though the spouse could have qualified as a transferee or transferor had he or she participated in the original transfer. This is because all of the real property received has been transferred to a third party (the spouse) prior to filing the claim.

In the situation where a parent transfers property to a child and the child then transfers the property into a trust prior to filing a claim for the Section 63.1 exclusion, the transfer to the trust is not a third party transfer as long as the child is a present beneficiary of the trust. By contrast, a third party transfer of the real property in the above example does occur when the child transfers all of the real property received from the parent to a legal entity, wholly owned by the child, prior to filing a claim for the Section 63.1 exclusion. This is because a legal entity has a separate and distinct identity. The filing requirements for claiming the Section 63.1 exclusion cannot be met if a claim has not been filed prior to the transfer to the legal entity, even though the subsequent transfer of the property to the legal entity may be excluded from change in ownership because proportional interests are maintained (Section 62(a)(2)).

This amendment requires a correction to question number 10 of letter to assessors 87/72, which states:

"Can an unrestricted transfer from grandparent to parent immediately followed by a transfer from parent to child qualify for this exclusion?"

"Yes, Chapter 48 states that it is the intent of the Legislature to liberally construe Section 63.1 to carry out the purpose of Proposition 58. Therefore, as long as each transfer is between parents and children, the exclusion is applicable."

When deeds are recorded concurrently "grandparents to parents to children," the claim for excluding the first transfer (grandparent to parent) from

reappraisal must be filed on the same date that the deed is recorded in order to meet the requirement that the claim be filed prior to transfer to a third party. A claim filed after the recording date of the first transfer is ineligible since the claim has been filed after a transfer to a third party. The claim for excluding the second transfer (parent to child) from reappraisal must be filed within three years of the date of that transfer or prior to the transfer to a third party in order to meet the filing requirements.

It is important to note, however, that deeds recorded concurrently raise the question of whether there has been an unrestricted transfer from a grandparent to a parent or whether the transfer is restricted so that, in substance, the transfer is from a grandparent to a grandchild. For purposes of the Section 63.1 exclusion, a transfer must convey the present beneficial ownership in the property between parent and child (Section 63.1(c)(7)). If there is a restriction, however, which requires the parent after receiving title to the property from the grandparent to reconvey to a grandchild, there has been no transfer of a present interest in the property between parent and child. Rather, the present interest passes from grandparent to grandchild.

Accordingly, in order to exclude from reappraisal multiple transfers of property which are recorded concurrently, the intermediate transfer must be an unrestricted transfer. In other words, the intermediate transfer cannot be subject to any conditions or agreements to re-transfer the property. If the aim of the grandparent is to transfer property to the grandchild and the intermediate transfer to the parent is restricted so as to carry out this purpose, then the intermediate step should be ignored. The transaction should be viewed as a direct transfer from grandparent to grandchild which is subject to reappraisal. The same analysis applies to situations where property transfers from sibling to parent to sibling. If the aim is to transfer property from one sibling to another sibling and the intermediate transfer to the parent is restricted to carry out this purpose, then the intermediate transfer should be disregarded.

Remaining unresolved is the issue of when the third-party transfer condition takes effect. That is, while we know that the effective date of Chapter 1494 is September 30, 1990, it is not clear that a claim is timely where it is filed after the effective date of the legislation, and after a third-party transfer which occurred prior to September 30, 1990. As soon as this issue is resolved, we will notify assessors of the Board's position.

INCOMPLETE CLAIM FORMS

A claim for the Section 63.1 exclusion that is incomplete or is in some way deficient is "timely filed" only if the minimum information required by Section 63.1(d) is provided before the statutory three-year filing period expires or prior to a transfer to a third party. An incomplete claim that fails to provide the minimum information required by subdivision (d) is

not a valid claim for purposes of the filing requirements. The Section 63.1 exclusion cannot be allowed unless the eligible transferee files a claim which furnishes the following information:

1. A written certification that the transferee is the parent or child of the transferor.
2. A written certification that the transferor is the parent or child of the transferee.
3. A certification that any residential property transferred is or is not the transferor's principal residence.
4. A certification that real property, other than a principal residence, owned by the transferor which was eligible for the Section 63.1 exclusion has or has not previously transferred to an eligible transferee, along with the total amount of full cash value of the real property previously transferred, the location of the real property, the Social Security number of each eligible transferor, and the names of the eligible transferees.
5. If the full cash value of the property transferred exceeds the permissible exclusion amount, the transferee must specify the amount and the allocation of the exclusion sought.

Situations may occur where the filing requirements necessitate that the claim be filed before all the information required by subdivision (d) is known. This may occur, for example, where an executor has discretion in distributing the real estate holdings of an estate or where an estate will be subject to prolonged administration. In situations where all of the details have not been determined, we advise that the parties file a protective claim with as much information as possible. It is difficult to conclude that a court would deny the Section 63.1 exclusion where a reasonable effort was made to provide as much information as possible when the claim was filed. Therefore, there may be exceptional cases where the assessor will need to use discretion in determining whether a valid claim has been filed timely.

If you have questions concerning claim filing requirements for transfers between parents and children, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

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