STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY TAXES DEPARTMENT
450 N STREET, MIC: 63, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0063)
TELEPHONE (916) 445-1516
FAX (916) 323-8765

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

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No. 99/25

TO COUNTY ASSESSORS:

PARENT-CHILD EXCLUSION (PROPOSITION 58): *LARSON* V. *DUCA* AND NON-PROBATED ESTATES

We recently received several inquiries regarding the applicability of *Larson* v. *Duca* (1989) 213 Cal. App. 3d 324 (hereinafter *Larson*) where the property of the transferor decedent's estate is distributed according to a statutory procedure in lieu of probate because the value of estate property is below the specified statutory amount. For the reasons set forth below, it is our opinion that *Larson* does not apply in this instance and is strictly limited to the facts before the court in that case.

LEGAL BACKGROUND

In *Larson* the taxpayer had inherited real property by will from his mother. The death occurred one month prior to the passage of Proposition 58, which enacted the provisions for excluding from change in ownership transfers between parents and children. After the proposition passed, the mother's will was admitted to probate and the subject real property was distributed to the taxpayer. The taxpayer timely filed a claim for the parent-child exclusion. The assessor denied the claim on the ground that such relief was unavailable because the mother had died prior to the passage of Proposition 58.

The trial court ruled that the exclusion was inapplicable as a matter of law because the date of change in ownership for a transfer resulting from an inheritance is the transferor's date of death, and Proposition 58 was not effective on the date of the mother's death. The court of appeal reversed the trial court, holding that, under these narrow circumstances, a change in ownership did not occur on the date of death, but instead resulted from the "order or judicial decree" of distribution of the court in which the mother's estate was probated. Consequently, the exclusion was applicable because the decree of distribution was issued after Proposition 58 became effective. The court of appeal characterized the issue on page 328 as follows: "Here we must decide whether [Proposition 58] applies to real property which passed by inheritance to the children of decedents who died before the passage of the proposition, and whose estates were probated and whose property was distributed after the proposition became effective."

The court's holding turned on its finding that the taxpayer received only "bare legal title" upon his mother's death, whereas a change in ownership pursuant to Revenue and Taxation Code section 60 requires a transfer of the present beneficial interest in the property. According to the court, the possessory rights and beneficial use were deferred until the property was decreed to the taxpayer from the estate. The court reasoned on page 330 that, as with any transfer of bare legal title, such as a transfer from a mortgagor to mortgagee:

> "the 'technical' transfer of property title to a child devisee of a parent, without the same right of possession and use on the date of, and solely by reason of, the parent's death while the estate awaits probate, is equally insufficient to constitute a 'change in ownership' under the amendatory provisions of Proposition 58. This is particularly true where the people's purpose in enacting both propositions was to provide tax relief, and where the triggering event of Proposition 58 for change in ownership under the circumstances of this case (in apparent recognition of the limiting statutory conditions attached to the receipt of title to and use of real property because of an intervening probate administration) was expressly stated by the people to be something other than such demise of the transferring parent, i.e., a transfer of title 'resulting from a court order'."

The court emphasized that the holding was narrowly limited to the facts, stating as follows on page 334: "However, we emphasize the narrowness of our holding which is simply this: When a decedent dies before November 5, 1986, and his child acquires decedent's real property on probate of that decedent's estate through a decree of distribution in those probate proceedings which is issued after November 5, 1986, Proposition 58 proscribes reassessment of that real property by reason of such transfer and change in ownership. We emphasize also that we do not address or decide any other questions beyond the facts of this case."

APPLICABILITY OF *LARSON*

Since almost the inception of change in ownership law, the Board has considered the effective date of a change in ownership resulting from inheritance to be the date of death of the decedent. In September of 1978, the Board promulgated Property Tax Rule 462(i)(3), which provided that the date of change in ownership for inheritance, by will or intestate succession, is the date of death of the decedent. Property Tax Rule 462.260(c) still so provides. Contrary to the rule, *Larson* created an exception to this interpretation because, according to the court's characterization, mere legal title passes at death and the beneficial interest is not transferred until the transferee receives the right to possession when the court issues an order or judicial decree.

Given the Board's long-standing rule as to the date of change in ownership resulting from inheritance, and in accordance with the court's clear statement of intent as to the scope of its decision, Board staff have taken the position that *Larson* is strictly limited to the facts before the court in that case. We have so advised in Letter To Assessors 89/79 (dated October 16, 1989) wherein we quoted the court's statement of intent and in Letter To Assessors 90/03 (dated January 10, 1990) in which we emphasized that assessors should not view the decision as a change in the rule that change in ownership occurs on the date of death. In the latter Letter To Assessors, we also recommended to assessors that they apply the holding only to transfers falling within the described facts of the case.

Similarly, in opinion letters addressing the application of the decision, Board staff have consistently taken the position that in view of the Board's long-standing rule and the narrowness of the holding in *Larson* except for cases factually identical to *Larson*, the date of a transfer by will or intestate succession is the date of the decedent's death rather than the date of the decree of distribution. Thus, with respect to a transfer from a testamentary trust, Board staff have advised that *Larson* is not applicable, pointing out that *Larson* applies only when there is a decree of distribution from a probate estate. Similarly, *Larson* does not apply in this instance, which also does not involve a decree of distribution from a probate estate.

If you have any questions regarding the parent-child exclusion, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ Richard C. Johnson

Richard C. Johnson
Deputy Director
Property Taxes Department

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