

Amend Revenue and Taxation Code Sections 63.1 and 69.5, related to (1) the parent-child change in ownership exclusion and (2) base year value transfers for those over 55, to clarify instances when the real property is held in a trust. (Housekeeping)

Source: Property and Special Taxes Department

Existing Law

Parent-Child Exclusion. Under existing property tax law, property is reassessed to its current fair market value whenever there is a “change in ownership.” However, a change in ownership exclusion is available for transfers of property between parents and children under certain conditions. Revenue and Taxation Code Section 63.1 details the terms and conditions to receive the parent-child change in ownership exclusion.

Transfers of real property between parents and children through the medium of a trust are eligible for the parent-child exclusion. Section 63.1(c)(9) provides that the term “transfer” includes any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an intervivos or testamentary trust. For change in ownership purposes, one looks through the trust to determine who has present beneficial ownership of the real property held in the trust. If the requirements of Section 63.1 are otherwise satisfied, transfers to and from a trust are eligible for the exclusion.

Relevant to this proposal, one requirement is that the parties involved must file and sign a claim form with the assessor certifying to the parent-child relationship and providing specified information before the exclusion can be granted. Section 63.1(d) lists the persons who must file a claim and does not expressly list the trustee of the transferor’s or transferor’s trust as a person that may sign the claim form. The Board has issued guidance on this issue in Letter To Assessors 2008/018, question 50, stating that a trustee can sign the claim form as the trustee has the fiduciary responsibility to carry out the terms of the trust and can sign legal documents on behalf of the trust.

However, despite the LTA guidance, because Section 63.1(d) does not expressly list trustees, this causes uncertainty and confusion for property owners and tax practitioners who address this issue infrequently. As trusts have become more popular as estate planning tools, Board staff is increasingly addressing these ongoing concerns.

Base Year Value Transfers. Revenue and Taxation Code Section 69.5 provides that persons over the age of 55 years and disabled persons may, subject to many conditions and limitations, transfer the base year value of their primary residence to a newly acquired or constructed replacement residence.

Section 69.5(d) provides that the property tax relief provided by this section shall be available to a claimant who is the coowner of the original property as a joint tenant, a tenant in common, or a community property owner. Property owned by a trust is not expressly addressed in Section 69.5¹, as a result assessors, taxpayers, and attorneys

¹ With the exception of Section 69.5(n), related to access to confidential claims for base year value transfers, which provides that the trustee of a trust in which the claimant or the claimant's spouse is a present beneficiary may have access to the claim.

have questioned whether a base year value can be transferred if either the original property or replacement dwelling is held in trust.

The Board has issued guidance on this issue in Letter To Assessors 2006/010, question B2. The Board guidance states that the taxpayer may file as a claimant if he files as the present beneficial owner of the trust (not as trustee of the trust). For property tax purposes, the property owner is the person who has the present beneficial interest of a trust (with the exception of a Massachusetts or business trust, which is regarded as a legal entity); the trustee holds legal title to the trust property, but does not have a present beneficial ownership interest unless the trustee is also a named beneficiary of the trust. Therefore, an individual who has the present beneficial interest of a trust is considered the claimant for purposes of Section 69.5 and should receive the base year value transfer benefit if all of the requirements of the section are met.

However, despite the LTA guidance, because Section 69.5 does not expressly address trusts, this causes uncertainty and confusion for property owners and tax practitioners who address this issue infrequently. As trusts have become more popular as estate planning tools, Board staff is increasingly addressing these ongoing concerns.

This Proposal

Parent-Child Exclusion. This proposal would amend Section 63.1 to add the trustee of a trust to the list of persons who can sign parent-child and grandparent-grandchild claims on behalf of eligible transferors and transferees.

Base Year Value Transfer. This proposal would amend Section 69.5 to expressly state that a base year value transfer is available to a claimant when the original property is held in a trust provided the claimant is a trustor or present beneficiary of the trust.

Section 63.1 of the Revenue and Taxation Code is amended to read:

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, the trustee of the transferee's trust, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes 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 receive a principal residence excludable under paragraph (1) of subdivision (a) from the deceased parents, and that the grandchild or grandchildren did or did not receive real property other than a principal residence excludable under paragraph (2) of subdivision (a) from the

deceased parents. The claimant shall provide legal substantiation of any matter certified pursuant to this subparagraph at the request of the county assessor.

(B) A written certification by the transferor, the transferor's legal representative, the trustee of the transferor's trust, or the executor or administrator of the transferor's estate, signed and made under penalty of perjury that the transferor is a grandparent, parent, or child of the transferee and that the transferor is seeking the exclusion under this section and will not file a claim to transfer the base year value of the property under Section 69.5.

* * *

(i) A claim filed under this section is not a public document and is not subject to public inspection, except that a claim shall be available for inspection by the transferee and the transferor or their respective spouse, the transferee's legal representative, the transferor's legal representative, the trustee of the transferee's or transferor's trust, and the executor or administrator of the transferee's or transferor's estate.

Section 69.5 of the Revenue and Taxation Code is amended to read:

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(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of the original property, as a joint tenant, a tenant in common, ~~or~~ a community property owner, or a trustor or present beneficiary of the trust holding title, subject to the following limitations:

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