

**Amend Section 63.1 of the Revenue and Taxation Code to clarify that a property need only be *eligible* for the homeowners' exemption, and not actually receiving the exemption, to qualify for the change in ownership exclusion for principal residences between parents and children.**

**Source: Property and Special Taxes Department**

### **Existing Law**

Under existing property tax law, real property is reassessed to its current fair market value whenever there is a "change in ownership." (Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.7)

Proposition 58, which was passed by the voters of California on November 4, 1986, added subdivision (h) to section 2 of Article XIII A of the California Constitution, and provides, in part, that the term "change in ownership" shall not include the purchase or transfer between parents and their children of:

- a principal residence,
- or the first \$1 million of the full cash value of all other real property.

Proposition 193 on the March 1996 ballot amended this section to apply the exclusion to transfers of real property from grandparents to grandchildren when all the parents of the grandchildren who qualify as children of the grandparents are deceased as of the date of transfer. By avoiding reassessment to current market value, children or grandchildren can preserve the Proposition 13 protected value of property acquired from their parents (or vice versa) and the property taxes on the property will remain the same.

**Principal Residence.** Revenue and Taxation Code Section 63.1 provides the statutory implementation for Propositions 58 and 193. There is no value limitation on a property that qualifies as a principal residence and its value does not count towards the \$1 million cap on the amount of the exclusion available to properties transferred between parents and children. Any property transferred after the \$1 million assessed value ceiling is reached is subject to reassessment at current market value.

Relevant to this proposal, subdivision (b) of Section 63.1 defines a "principal residence" as a dwelling for which a homeowners' exemption (or a disabled veterans' residence exemption) has been *granted* in the name of the eligible transferor. To get the exemption, the homeowner files a claim with the county assessor. Circumstances occur, however, where a homeowner may never have filed a claim for the homeowners' exemption even if the property was their principal residence. This can occur because the homeowner is unaware of the exemption, misses a deadline, or moves from one home to another home that they previously owned without changing the homeowners' exemption to the new home. In some instances, a homeowner may choose not to file

for the exemption as the benefit is relatively minimal at \$70 per year and requires the disclosure of social security numbers.

Generally, the current administrative practice is that if the transferor, which is typically the parent, was not receiving the homeowners' exemption on their principal residence, but the taxpayer provides proper documentation that the property was nonetheless the transferor's principal place of residence, the assessor will grant the parent-child exclusion on the property as a principal residence. The benefit of receiving the exemption as the basis of it being a principal residence is that its value is not counted towards the \$1 million limitation, in the event that there are other real property holdings to be transferred between the parents and children.

Furthermore, Section 69.5, which provides the statutory implementation for Proposition 60 (passed by the voters at the same time as the parent-child exclusion) and was enacted in the same year as Section 63.1, requires that the original and replacement properties be *eligible* for the homeowners' or disabled veterans' exemption based on the ownership and occupation by the claimant as their principal residence. It is inconsistent to require that the homeowners' exemption to be granted in Section 63.1 yet only require "eligibility" for the exemption in Section 69.5, which is a similar statute.

**Technical Change.** Under the terms of Section 2(h)(2)(B) of Article XIII A of the California Constitution, the grandparent-grandchild exclusion is a one-way exclusion—from grandparents to grandchildren. Therefore, a grandparent is not an eligible transferee. (Also see definition of "eligible transferee" in Section 63.1(c)(7).)

### **This Proposal**

This proposal changes the definition of "principal residence" to reflect eligibility for the homeowners' exemption (i.e., ownership and occupation) rather than the actual granting of the exemption. Requiring that the property be "eligible" for the homeowners' exemption ensures that property owners receive the full benefit of the parent-child change in ownership exclusion to which they are entitled, makes the statute consistent with current administrative practice, and makes the provisions of Section 63.1 consistent with those of Section 69.5.

This proposal also strikes the first "grandparent" from Section 63.1(d)(1)(A) for technical precision.

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

(b) (1) For purposes of paragraph (1) of subdivision (a), "principal residence" means a dwelling ~~for which that is eligible for a homeowners' exemption or a disabled veterans' residence exemption has been granted in the name of the eligible transferor as a result of the transferor's ownership and occupation of the dwelling as a principal residence.~~ "Principal residence" 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.

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(d)(1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, 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, or the executor or administrator of the transferee's estate, signed and made under penalty of perjury that the transferee is a ~~grandparent~~, 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.