STATE OF CALIFORNIA

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August 11, 1989

Mr. Thomas P. Conroy
Deputy County Counsel
County of San Luis Obispo
County Government Center, Room 386
San Luis Obispo, CA 93408

Dear Mr. Conroy:

This is in response to your letter of July 26, 1989, regarding the applicability of the change in ownership exclusion provisions of Revenue and Taxation Code section 63.1 to a person adopted as an adult prior to November 6, 1986.

Your letter indicates that a case now pending before the San Luis Obispo County Assessment Appeals Board raises the question of whether the 1988 transfer of the decedent's residence to her adopted daughter qualifies for exclusion from change in ownership under the provisions of subdivision (h) of section 2, article XIII A of the California Constitution, and Revenue and Taxation Code section 63.1, which implements subdivision (h). The critical facts seem to be that the daughter was adopted at age 34 by her step-mother following the death of her natural father in 1964. The step-mother remarried in 1983 and passed away on January 25, 1988. Under the terms of an inter vivos trust, the decedent's residence passed to her adopted daughter on date of death.

You ask whether it was the intention of the Legislature to preclude adult adoptees who succeed to the real property of the parent from qualifying for the change in ownership exclusion when the adult adoption occurred prior to November 6, 1986, the effective date of the provisions section 63.1. Your letter states that prior to the effective date of this legislation there could be no possible "fraudulent intent" on the part of adopting parties since the statute was not then in existence. You further ask whether there is any other legislative intent applicable which might be a basis for excluding all adult adoptees from gaining the benefits of the exclusion when the adult adoption occurred years prior to the effective date of the statute and there was a long history of a step-parent relationship. The attached letter from Mr. Roderick A. Rodewald, attorney for the adopted daughter, urges that section 63.1 be interpreted in such a way as to permit the adopted daughter to be treated as the decedent's child for purposes of the exclusion.

As you know, subdivision (h) of section 2 of article XIII A, excludes from change in ownership the purchase or transfer of the principal residence of the transferor in the case of a transfer between "parents and their children, as defined by the Legislature." It is clear, therefore, that the Constitution gives full authority to the Legislature to define the terms of subdivision (h), such as "children." The Legislature has exercised that authority in subdivision (c)(2) of section 63.1 which defines the term "children" for purposes of the exclusion.

Paragraph (D) of section (2) includes within the definition of "children" any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years. The Board's staff worked closely with the staff of the author of this legislation and, for that reason, we believe we are familiar of the intent of the quoted language. That intent is reflected by the plain and unambiguous terms of the definition. First, the defined term includes any child adopted pursuant to statute. It was precisely because the courts have adopted the rather nebulous concept of equitable adoption that the term is expressly limited to adoptions pursuant to statute. Thus, an equitable adoption would not qualify under the terms of this provision. Further, the definition expressly excludes an individual adopted after reaching the age of 18 years. This language is straightforward, unqualified and without ambiguity. It means what it says. Persons adopted after age 18 do not qualify within the definition of children. We find no basis for adding qualifications to this limitation. Further, we are not aware of anything which would lead us to believe that the Legislature intended such qualification. The answer to your question is that the Legislature intended to exclude adult adoptees from the definition of "children" without regard to when that adoption occurred.

Your letter suggests that since the apparent purpose of the exclusion of adult adoptees was to prevent manipulation of the exclusion, the adult-adoptee limitation should be construed to apply only to adoptions occurring after the enactment of the legislation since adoptions prior to enactment could not have been entered into for the purpose of manipulating the statute. The short answer is that had the Legislature intended to restrict the adult-adoptee limitation in this manner it could easily have so said. The fact is that the legislation does not contain any language which suggests such an intention on the part of the Legislature.

I would also observe that had the Legislature qualified the adult-adoptee limitation for the reason you have suggested it would have had to select some date prior to enactment if it wished to fully accomplish that purpose. Since the legislation enacting

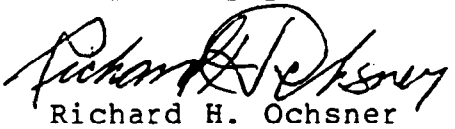
Proposition 58 was a matter of public knowledge for many months prior to its adoption at the November 1986 general election, it is quite possible that manipulative adoptions anticipating the final enactment of this legislation could have been entered into at earlier dates. Thus, in order to fully carry out the suggested purpose, the Legislature would have found it necessary to expressly include an earlier adult-adoptee cutoff date. It should also be recognized that the Legislature's adoption of an unqualified adult-adoptee limitation treats all person who were adopted over age 18 alike. Since it cannot be assumed that all post-1986 adult adoptions are entered into solely for the purposes of manipulating the provisions of section 63.1, it can be argued that a rule which treats all adult adoptees alike is more equitable than one which discriminates among them depending upon the date of their adoption.

Finally, I would like to address one of the arguments raised in Mr. Rodewald's letter relating to the intent language found in section 2 of Chapter 48 of the Statues of 1987, the legislation which enacted section 63.1. Mr. Rodewald takes the statement that section 63.1 is to be liberally construed out of context. A reading of the Legislature's complete intent statement in section 2 makes clear that the Legislature was focusing on an entirely different problem relating to step-transactions.

In conclusion, let me say that while I understand the reasons why the interpretation you have suggested is attractive I cannot agree that it is legally supportable. Like all other persons in this State who have been adopted after age 18, the claimant simply does not qualify under the section 63.1 definition of "children."

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Richard H. Ochsner
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cc: The Honorable Dick Frank
San Luis Obispo Assessor
Mr. John W. Hagerty
Mr. Verne Walton
Mr. Robert W. Lambert