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January 25, 2012

**Re: Parent-Child Exclusion Claim
 Assignment No.: 11-163**

Dear Mr. _____ :

This is in response to your letter to Tax Counsel IV Richard Moon in which you request our opinion regarding whether a person legally adopted before the age of 18 in accordance with another country's laws is an eligible "child" for purposes of Revenue and Taxation Code¹ section 63.1, the parent-child exclusion. As explained below, it is our opinion that such a child is eligible.²

Facts

S _____ P _____ was legally adopted in 1964 at the age of 7 by a Lebanese parent H _____ B _____. The evidence you have provided of the Lebanese adoption includes: 1) a witness declaration by H _____ stating S _____ is her adopted daughter and sole heir, dated February 15, 2005 and 2) a verification of adoption signed by the mayor of Choyafat stating the adoption of S _____ was legally approved in accordance with the authority granted to the Choyafat District Council by the Lebanese Ministry of the Interior on December 28, 1964, dated May 10, 2009.³ S _____ and H _____ subsequently moved to the United States in 1999. H _____ transferred her interest in real property located at _____ Blvd. in _____, California (APN _____ x-002) to S _____ on June 5, 2007 and timely filed a claim for the parent-child exclusion on November 12, 2009. The Los Angeles County Assessor denied the claim and a timely appeal was filed challenging the assessor's decision and the base year value of the subject property.

¹ All further section references are to the Revenue and Taxation Code unless otherwise specified.

² It is our understanding that an appeal has been filed with the _____ County Assessment Appeals Board (AAB) and that a hearing is scheduled for February 22, 2012. As you know, we also consulted with the _____ County Assessor's Office and provided _____, Senior Property Assessment Specialist, the opportunity to confirm the facts associated with this case. While she had no further input on this issue, she informed us there may be another issue that will be discussed at the hearing. This letter only addresses the issue contained herein.

³ The signature of the mayor is attested to by the Registrar of the district. The verification is further attested to by the Lebanese Consul General located in Los Angeles, and the Ministry of Foreign Affairs.

You claim the _____ County Assessor took the position that S _____ is ineligible for the parent-child exclusion based upon Letter to Assessors (LTA) 2008/018, Question and Answer #8, which states as follows:

Question: Does an "equitable adoption" make a child eligible for the parent-child exclusion?

Answer: No. Section 63.1(c)(3)(D) requires a child be adopted pursuant to statute prior to the age of 18. A "statutory adoption" means in accordance with the adoption procedures contained in the Family Code. Pursuant to Probate Code section 6454, the criteria required for the establishment of a parent-child relationship for purposes of intestate succession (i.e., an "equitable adoption") is not considered a formal adoption for purposes of this property tax exclusion. Thus, a child who is not adopted under the Family Code prior to the age of 18 is not considered a child for purposes of the parent-child exclusion.

Law & Analysis

Section 60 defines a "change in ownership" as a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Section 63.1, which implements the parent-child and grandparent-grandchild exclusions, excludes from change in ownership the transfer, between parents and children of any number of principal residences and the first \$1 million of full cash value of other real property. (Rev. & Tax. Code, § 63.1, subd. (a)(1) and (2).) Section 63.1, subdivision (a)(3)(D) in its definition of "children," the following: "any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years."

LTA 2008/018, Question 8 addresses equitable adoptions. The doctrine of equitable adoption has been judicially developed to allow a child who was never formally adopted to inherit property in certain circumstances. (10 Witkin, Summary of Cal. Law (10th ed. 2010) Parent and Child, § 75; *Estate of Bauer* (1980) 111 Cal.App.3d 554, 560.) In an equitable adoption, the child never undergoes a formal adoption pursuant to statute, as required by section 63.1. Therefore, the answer to Question 8 properly concludes that an equitable adoption does not confer parent-child status as defined in section 63.1.

The question here is different from the one presented by Question 8 of LTA 2008/018: It is whether a child formally adopted under the laws of a foreign jurisdiction is considered adopted pursuant to statute for the purposes of section 63.1.

The status of adoption or lack of adoption as established by a foreign jurisdiction must be recognized in California under principles of comity and full faith and credit. (10 Witkin, Summary of Cal. Law (10th ed. 2010) Parent and Child, § 91(4); Rest. 2d Conf. of Laws, § 290.) In *Estate of Morris* (1943) 56 Cal.App.2d 715, a Rhode Island decree in adoption proceedings created the status of adopted child and adoptive parent between an adult and her uncle and the status thereby created was entitled to "full faith and credit" in California, notwithstanding that an adoption of an adult was contrary to California policy. (See also *Estate of Grace* (1948) 88 Cal.App.2d 956, 958-62; *Estate of Tibbetts*, (1941) 48 Cal.App.2d 177, 179; *Estate of Hebert*

(1941) 42 Cal.App.2d 664, 665-66.) Based on the foregoing, a child adopted in another state before the age of 18 is considered to be an adopted child pursuant to statute under California law and is eligible to receive property from the adopting parent that may be excluded by section 63.1.

California recognizes adoption proceedings in other countries in addition to adoption proceedings in other states. In *In re O'Dea's Estate* (1973) 29 Cal.App.3d 759, the court was faced with a Canadian adoption order in a petition to determine heirship. Citing to an earlier decision, *In re Estate of Morris* (1943) 56 Cal.App.2d 715, the court held:

Canada had jurisdiction of the matter of petitioner's adoption. There is a valid Canadian statute implemented by a Canadian court decision declaring that the petitioner is not an adopted person in Canada. These clear legislative and judicial expressions are entitled to recognition by the courts of California. (*In re O'Dea's Estate* (1973) 29 Cal.App.3d 759, 774.)

The recognition of foreign adoption proceedings is consistent with California's statutes regarding intercountry adoptions. That is, California law recognizes the adoption of a child by a California resident in a foreign country pursuant to that country's laws and will not require the child to be re-adopted in California unless required by the Department of Homeland Security. (Fam. Code, § 8919, subd. (a).)

This case deals with an adoption that purportedly occurred in Lebanon and the right of such an adopted child to the benefits of the parent-child exclusion. As set forth in the aforementioned cases, the status of the relationship of adoptor-adoptee is established by the jurisdiction where the adoption took place. Thus, a valid adoption in Lebanon confers the status of parent-child and the rights attendant to that status under California law, including the parent-child exclusion. The assessor may, of course, require that the taxpayer provide documentation proving the validity of the foreign adoption.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity. Should you have any additional questions, please feel free to contact me.

Sincerely,

/s/ Neha Duggal

Neha Duggal
Tax Counsel

ND:mcb

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cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70