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March 22, 1996

The Honorable Dick Frank
San Luis Obispo County Assessor
Government Center, Room 100
San Luis Obispo, CA 93408

Attn: Barbara Edginton, Supervising Property Transfer Technician

In Re: Timely Filing of the Parent/Child Exclusion.

Dear Ms. Edginton:

This is in response to your December 14, 1995 letter to Mr. Mr. Richard Ochsner, requesting answers to two questions concerning the timely filing of a claim for the parent/child exclusion. For purposes of our answer and analysis, you submit the following facts:

1. On October 23, 1992, Verne D. Hanoum, Sr. ("Verne"/transferor) died, leaving eight lots to be divided among four children and one step-child.
2. Upon receipt of a change in ownership statement, your office sent two letters to the Executor, Verne D. Hanoum, Jr., "Daniel," on June 21, 1993, and July 28, 1993, requesting a Parent/Child Exclusion claim to be filed. Your office also contacted Daniel by telephone regarding the filing of the claim at least three times in 1993, and once in 1994. Receiving no response, you sent notices of supplemental assessment, the latest being mailed on December 20, 1994.
3. On October 24, 1995, your office received a faxed Parent/Child Exclusion Claim from Daniel (original sent through regular mail on October 27, 1995). Your office denied this claim on the ground that it was untimely filed (one day late). Daniel objected by letter to your office dated November 19, 1995, arguing that the statutory language in Section 63.1(e)(2), claims shall be filed "within three years after the date of the purchase or transfer of the real property...", means that the date of the transfer itself is not counted in the computation of the three years.

You wish to know:

1) Whether a parent/child claim filed on October 24, 1995, was timely when the date of death of the parent/transferor was October 23, 1992;

2) What is the meaning/intent of the statutory language in Section 63.1(e)(2), "within three years after the date of the purchase or transfer..." and the language in 63.1(e)(3), "within six months after the date of mailing of a notice of supplemental or escape assessment..."?

For the reasons hereinafter explained, the answer to your first question is that the claim filed on October 24, 1995 was untimely, and the answer to your second question is that the claim filing period begins on the date of the purchase or transfer as expressly stated in the statute. Since the answers to these questions are interrelated, the following law and analysis are applicable to both.

LAW AND ANALYSIS

As you are aware, we have frequently stated in previous opinions that the parent/child claim must be filed within three years of the date of death of the eligible transferor. Based upon well established probate law, it has been our view since before the adoption of this exclusion, that the date of death is the date of transfer for purposes of property transferred via will or intestate succession. In addition, Property Tax Rule 462.260 (c) specifically addresses the question of the date of change in ownership of real property and states that the following dates shall be used:

(c) INHERITANCE (by will or intestate succession) The date of death of the decedent.

Since the date of death is the date of change in ownership, the three-year claim filing period for the parent/child exclusion begins on the date of death.

Revenue and Taxation Code Section 63.1(e) actually provides two opportunities for a taxpayer, eligible transferee, to timely file the parent/child claim. Subdivision (e)(2) expressly provides for the three year time period, as follows:

"(e) The State Board of Equalization shall design the form for claiming eligibility. Any claim under this section shall be filed:

* * *

(2) For transfers of real property between parents and their children occurring on or after September 30, 1990, **within three years after** the date of the purchase or transfer of real property for which the claim is filed, or prior to the transfer of the real property to a third party, whichever is earlier."

The newly enacted provisions of Chapter 709 of the Statutes of 1993 (SB 675), codified in paragraphs (3) and (4) of subdivision (e), Section 63.1, provide a second opportunity to file a claim. Under subdivision (e)(3), a claim shall be deemed timely filed, if it is filed **within 6 months after** the date of mailing of notice of supplemental or escape assessment issued as a result of the transfer.

Subdivision (d) of section 63.1 states that "The exclusions provided for...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...".

The only exception to the foregoing is embodied in the case of Larson v. Duca (1989) 213 Cal.App. 3d 324, wherein the court held that in a factual situation in which the decedent died prior to the effective date of Proposition 58 (November 6, 1986), and a decree of distribution was made after the effective date, the date of distribution (rather than the date of death) would be considered the date of change in ownership. Since the father (eligible transferor) in the instant case died on October 23, 1992, Larson v. Duca is not applicable. The three-year claim filing period would have started on October 23, 1992, because ownership of his property transferred to his heirs on that date.

Questions have been raised in the past about how to interpret the phrases, "within three years after," in subdivision (e)(2), and "within six months after," in subdivision (e)(3) of Section 63.1. Our position has been and is that a claim is timely filed if it is filed **no later than** either three years after the date of purchase or transfer of the property, or within six months after the later of the either the notice of supplemental assessment or the notice of escape assessment issued as a result of the purchase or transfer of the property. This view is also consistent with other statutory and case law which defines with the preceding months or years. (See Augusta memorandum 6-12-91, copy attached.) Thus, the language in both paragraphs of subdivision (e) of the statute means that a claim is timely **only** if it is filed within the three-year or the six-month filing period as the case may be.

It is clear in the instant case that the three-year filing period began on October 23, 1992, the date of death of the eligible transferor. Thus, the three-year filing period would have ended three years after that date, on October 23, 1995.

Since the last notice of supplemental assessment was mailed on December 20, 1994, the six-month filing period would have ended no later than June 20, 1994. Not only did the eligible transferee, Daniel, have two opportunities provided by statute to file the claim, but based on the facts submitted, he was given additional notice during 1993 and 1994 by means of letters and telephone calls from your office concerning his need to file the claim. As such, this is not a case where the eligible transferee was unaware of the parent/child exclusion or of his need to timely file the claim.

Finally, statutory time provisions are considered mandatory where the designation of time is intended as a limitation of power, authority, or right, where time is of the essence of the thing to be done, or where legislative words are employed to preclude the performance of the act except at or within the time specified. (58 Cal. Jur. 3d, Statutes Sec. 150.) The parent/child exclusion is based upon California Constitution, subdivision (h) of Section 2 of Article XIII, which states that change in ownership does not include certain transfers between parents and their children "as defined by the Legislature." The specific provisions concerning the time for filing the parent/child claim in subdivision (e) of Section 63.1 is the result of the Legislature's plenary power derived from the Constitution to prescribe the terms and conditions, including the time for filing a claim, on which the exclusion will be granted.

It is a well established principle in tax matters that statutory filing and timing requirements are to be strictly construed. Where the taxpayer is seeking a particular tax benefit, privilege, or exclusion, the burden is on the taxpayer to establish full and complete compliance with such requirements in order to qualify for the benefit. This principle was restated in the recent case of Sea World, Inc. v. County of San Diego, (1994) 27 Cal App.4th 1390, where the court held that the taxpayer was not entitled to any relief on an assessment appeal because the application and the claim were filed untimely. Sea World had 60 days from "the date of the notice" to file an appeal or for equalization of a new base year value as provided under Section 1605, by filing an application for such appeal under Section 1603. To be timely under the limitations period, the application had to be filed no later than August 22, 1990. Sea World filed its application on September 24, 1990. The court found that even though the assessment appeals board had determined that Sea World's opinion of the new base year value was "correct," Sea World had failed to meet the filing deadline and therefore, was not entitled to a refund. There was no excuse for missing a statutory deadline. There was no excuse for missing a statutory deadline. Thus, in interpreting statutes which assess and levy taxes, a court "may not extend the statutory provisions, by implication, beyond the clear import of the language used, nor enlarge upon their operation so as to

embrace matters not specifically included." (Cal. Motor etc. Co. v. State Bd. of Equalization (1947) 31 Cal.2d 217, 223.)

In order for Daniel to qualify for the parent/child exclusion in the instant case, he was required, among other things, to timely file the claim no later than either three years after the date of death of his father or no later than six months after the date of mailing of the supplemental assessment. (Section 63.1, subdivision (e)(2) and (3).) Since neither of these requirements was met, the October 24, 1995 claim was not timely.'

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor or the assessment appeals board of any county.

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

Sincerely yours,



Kristine Cazadd
Tax Counsel

KEC

Attachment

cc: Mr. Lawrence Augusta, MIC:82
Mr. James Speed, MIC:63
Mr. Richard Johnson, MIC:64
Ms. Jennifer Willis, MIC:70