

## Memorandum

Date: April 18, 2006

**To:** Mr. Dean Kinnee, Chief (MIC:64)  
Assessment Policy and Standards Division

**From:** Sophia Chung, MIC:82  
Tax Counsel IV

**Subject:** **Application of Revenue and Taxation Code Section 63.1 to Registered Domestic Partners**

This is in response to your memorandum dated February 23, 2006, to Mr. Robert Lambert, Acting Assistant Chief Counsel, requesting our opinion as to whether Revenue and Taxation Code<sup>1</sup> section 63.1 applies to the entire value of real property transferred on November 15, 2005, from a parent to his daughter and her registered domestic partner, or whether only 50 percent of the real property transferred to the child qualifies for the exclusion. Assuming that all the other requirements under section 63.1 are met, we are of the opinion that a child's registered domestic partner qualifies as a "child" under section 63.1, and thus, the transaction qualifies for the parent-child exclusion in its entirety.

### Legal Analysis

Proposition 58 added subdivision (h) to section 2 of article XIII A of the California Constitution. As you know, subdivision (h) provides that the terms "purchased" and "change in ownership" exclude the purchase or transfer of: (1) a principal residence between parents and their children; and (2) the first \$1 million of the full cash value of all real property other than a principal residence between parents and children. Subdivision (h) of section 2, article XIII A delegated to the Legislature the task of defining "children." When the Legislature enacted section 63.1 to implement Proposition 58, it defined "children" to include:

Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law. (Rev. & Tax. Code, § 63.1, subd. (c)(3)(C).)

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<sup>1</sup> All further statutory references are to the Revenue and Taxation Code unless otherwise specified.

In 2003, Assembly Bill No. 205 (2002-2003 Reg. Sess.) was enacted as The California Domestic Partner Rights and Responsibilities Act of 2003 and became operative on January 1, 2004, with some provisions becoming operative on January 1, 2005. Section 297.5 of the Family Code, which defines the rights and responsibilities of registered domestic partners, was added by AB 205 and became operative January 1, 2005. Subdivision (a) of section 297.5 of the Family Code provides that:

Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.

Subdivision (j) of Family Code section 297.5 provides that, "This section does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative."

Thus, as explained in Letters To Assessors No. 2005/017 (March 3, 2005), registered domestic partners are not eligible for any property tax exclusion based on an aspect of a spousal or marital relationship for which the terms "spouse" and "marriage" are defined by constitutional provision or by statute adopted by initiative. However, since section 63.1 was enacted by the Legislature and not by ballot initiative, AB 205 controls the definition of "children" in terms of the rights of registered domestic partners. Thus, beginning January 1, 2005, any relationship between parents and "children" established by a registered domestic partnership is accorded the same treatment as if established by marriage.

As a result, for transfers of real property from parents to their child and that child's registered domestic partner on or after January 1, 2005, the child's registered domestic partner is accorded the same treatment as a son-in-law or daughter-in-law of the parents in accordance with section 63.1, subdivision (c)(3)(C). Since the transaction about which you write occurred on November 15, 2005, the child's registered domestic partner is considered a child within the meaning of section 63.1, subdivision (c)(3)(C), and if the other statutory requirements are met, the entire value of the property transferred qualifies for the section 63.1 parent-child exclusion.

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cc: Mr. David Gau (MIC:63)  
Ms. Mickie Stuckey (MIC:62)  
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