



STATE BOARD OF EQUALIZATION  
450 N STREET, SACRAMENTO, CALIFORNIA  
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
TELEPHONE (916) 445-5580  
FAX (916) 323-3387

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APR 15 1997

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Executive Director

April 14, 1997

Dear Mr. . . .

This letter is in response to our telephone conversation and your subsequent faxed letter dated March 4, 1997 concerning the application of section 63.1 of the Revenue and Taxation Code which provides for the exclusion from change in ownership of transfers of real property between parents and children. You have married clients who wish to transfer to their children interests in real property with an assessed value in excess of \$2,500,000. You request an opinion as to whether section 63.1 excludes from change in ownership the first one million dollars of real property transferred, other than transfers of principal residences, between parents and children (or, as in this case, the first two million dollars of real property transferred by two eligible transferors to eligible transferees regardless of whether the exclusion is claimed. As further explained below, our opinion is that the one million dollar exclusion limitation provided for in section 63.1 applies only to the first one million dollars of the full cash value of real property for which a claim for the parent-child exclusion is filed.

**Law and Analysis**

Section 60 of the Revenue and Taxation Code sets forth the general definition of 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." Notwithstanding section 60, subject to certain conditions and limitations, transfers of real property interests between parents and children are not changes in ownership. Section 63.1 of the Revenue and Taxation Code provides, in pertinent part

(a) Notwithstanding any other provision of this chapter, a change in ownership shall not include the following purchases or transfers for which a claim is filed pursuant to this section:

(2) The purchase or transfer of the first one million dollars (\$1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

The first sentence of subdivision (a) states that change in ownership shall not include transfers for which a parent-child claim is filed. Paragraph (2) defines one of the types of transfers to which section 63.1 applies. The construction of subdivision (a) requires that its subordinate paragraphs be read in conjunction with its first sentence which modifies those subparagraphs. When read together, as they must be, the plain meaning of subdivision (a), subparagraph (2) is that change in ownership shall not include transfers of the first one million dollars of full cash value of real property *for which parent-child exclusion claims are filed*. The clear inference is that when real property is transferred between a parent and child and a claim for exclusion is not filed, then such a transfer is a change in ownership and will not be counted or cumulated for purposes of the one million dollar exclusion limitation.

The foregoing interpretation of subdivision (a)(2) comports with the requirements for reporting purchases or transfers imposed on assessors by Section 63.1. The reporting provision is set forth in subdivision (f) which provides:

The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to subdivision (d). Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the Social Security number of each eligible transferor, and any other information the board shall require in order to monitor the one million dollar (\$1,000,000) limitation in paragraph (2) of subdivision (a).

Subdivision (f) provides a means of monitoring and cumulating the value of transfers to determine whether the one million dollar limit of subdivision (a)(2) has been reached or exceeded. Subdivision (f) requires the assessor to report only purchases or transfers for which a claim is filed. Purchases or transfers for which a claim is not filed are not reported because they are not relevant to the one million dollar exclusion limit applicable in those instances in which claims for exclusion are made.

As you are aware, two or more eligible transferors jointly transferring real property may combine their separate one million dollar (\$1,000,000) exclusions to exclude from change in ownership the value of the transferred property equal to the total of their separate exclusions. In this regard, subdivision (b)(2) provides:

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar (\$1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor. With limited exception, the exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either subdivision (f) of Section 62 or subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar (\$1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

As far as subdivision (a)(2) is concerned, subdivision (b)(2) simply allows eligible transferors to combine their separate one million dollar exclusions as defined by subdivision (a)(2). Subdivision (b)(2) has no effect on the application of the one million dollar limitation to exclude only those transfers for which a claim is filed, and the interpretation of subdivision (a)(2) as set forth above is controlling.

As you may have noted, Letter to Assessors No. 87/72, Proposition 58 Chapter 48, Statutes of 1987 (Assembly Bill 47), dated September 11, 1987, which I faxed to you on March 4, 1997, suggests that the one million dollar exclusion applies only to the first one million dollars of real property transferred from an eligible transferor to an eligible transferee, regardless of whether a claim is being filed. Being inconsistent with the analysis and conclusions above, in our view, that suggestion should be ignored.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the San Diego County Assessor or the assessor of any county. You may wish to consult the San Diego County Assessor and/or other appropriate assessor(s) in order to confirm that the one million dollar (\$1,000,000) exclusion provided by Section 63.1 will be administered in a manner consistent with the conclusions stated herein.

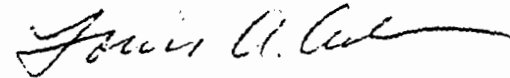
Mr.

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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.

Very truly yours,



Louis A. Ambrose  
Tax Counsel

LA:ba

cc: Honorable Gregory Smith, Assessor of San Diego County  
Mr. James Speed, MIC:63  
Mr. Dick Johnson, MIC:64  
Ms. Glenna Schultz, MIC:64  
Ms. Jennifer Willis, MIC:70

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