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November 5, 2004

Mr. Albert Ramseyer
 Principal Deputy County Counsel
 Office of the County Counsel
 500 West Temple Street, Suite 648
 Los Angeles, California 90012

Re: Revenue and Taxation Code Section 63.1 – Transfer from Ineligible Transferors.

Dear Mr. Ramseyer:

This is in response to your March 25, 2004 letter to Ms. Kristine Cazadd, Assistant Chief Counsel, requesting our opinion concerning the Los Angeles County Assessor's denial of a claim for the parent-child exclusion from change in ownership filed by A and D M ("the Ms"). You have asked us to determine whether the Assessor's position and analysis is correct. The Ms maintain that they were given incorrect advice by members of the Assessor's staff and should have been advised to secure legal advice prior to entering into transactions involving the subject property. Both parties have requested the Board staff's independent review of the Assessor's and the Ms' positions. For the reasons set forth below, we find that, under the assumption that N H ("NH") resided in the property as her principal residence, the transfer of her one-half property interest would be eligible for the parent-child exclusion pursuant to Revenue and Taxation Code, section 63.1¹. In addition, it is our view that the Assessor has no statutory duty to advise taxpayers to seek legal advice as to whether a transfer qualifies for a particular change in ownership exclusion prior to entering into the transaction.

Facts Presented

The facts summarized below were presented in your correspondence with attachments, and in Mr. M's facsimile of July 9, 2004.

On January 31, 1974, R and A S ("R and A"), the grandparents of D M ("Mrs. M"), acquired the subject property, and on November 3, 1989, they transferred the property to themselves and their daughter, NH, as joint tenants. The transfer did not result in a change in ownership pursuant to section 65, subdivision (b), and R and A became "original transferors." On January 25, 1998, R passed away. The transfer of his interest to A and NH did not result in a change in ownership, pursuant to section 62, subdivision (f).

On October 9, 2001, according to the Ms' "Proposition 58 Communication History" (Communication History), the Ms contacted the Assessor's office and spoke to a staff member.

¹ All section references are to the Revenue and Taxation Code unless otherwise indicated therein.

The Ms state that they told the staff member that they were contemplating the conveyance of a home from a mother and her daughter, who held title as joint tenants, to the granddaughter, i.e., the daughter's daughter, and the granddaughter's husband. They informed the staff member that they intended to file a claim for a parent-child exclusion. The staff member purportedly advised them to transfer the property and file a claim for the exclusion. In accordance with its usual policy, the Assessor's office mailed the Ms a packet of parent-child exclusion information and the claim form. On October 26, 2001, the Ms mailed the completed claim form to the Assessor's office.

On December 27, 2001, A and NH, the mother and daughter, transferred the property to the Ms, the granddaughter and her husband. The transfer resulted in a change in ownership of 100% of the interests in the property pursuant to section 60.

On April 20, 2002, NH passed away. On May 6, 2002, the Ms' Proposition 58 claim was reviewed and denied.

On August 8, 2002, the Ms met with Mr. T, Chief of the Ownership Division, Los Angeles County Assessor's Office to discuss the denial of their claim. The Ms' position was that since the staff member advised them to transfer the property, the Assessor's office was responsible for assisting them in obtaining the exclusion. According to Mr. T's letter dated August 30, 2002, that memorializes the meeting, the Ms were advised during the meeting to seek legal assistance and that if a correction deed was recorded, their case would be re-opened.

In his communications log, Mr. T documented that the Ms provided a copy of their Communication History with the Assessor's office after the meeting, which included the information that NH had passed away on April 20, 2002. Thus, at the time of the meeting, it appears that Mr. T was unaware that NH had passed away. In addition, Mr. T's letter of August 30, 2002 indicates that he was unaware of NH's death at that time.

The Ms' Communication History also included email communications between Mr. M and Mr. T regarding the correction deed. On November 27, 2002, Mr. M asked whether his proposed transaction for a correction deed would result in an approval or denial of a Proposition 58 claim. Instead of approving or denying the proposed transaction, on December 5, 2002, Mr. T's response was to urge taxpayers to obtain legal assistance because "the fact that your mother-in-law has passed away, subsequent to the last transfer, complicates the issue even further." We understand from this statement that by that time, Mr. T had learned of NH's death.

On June 16, 2003, a Correction Grant Deed was recorded that purportedly transferred the property from A, as sole owner resulting from a right of survivorship, to Mrs. M as her sole and separate property.

The Ms' position is that the Assessor should have advised them that they should consult with an attorney before entering into the transfer from A and NH to the Ms. The Ms maintain that as a result of not seeking legal advice, the Proposition 58 application was denied and the change in ownership caused the property to be reassessed from \$58,000 to \$230,000. The Ms note that the Proposition 58 form does not advise taxpayers to seek legal advice.

Also, the Ms are disappointed that they were incorrectly advised to execute a correction deed in an attempt to rescind the transfer. The correction deed did not rescind the original deed because NH, one of the joint tenants, had already died. Since NH was the only “eligible transferor,” the claim was denied by the Assessor’s office.

You have requested our independent review of the Assessor’s analysis and both the Assessor’s and the Ms’ position in this case. We will discuss first, the real property transfers by NH and A ; and, second, the Assessor’s responsibility to advise taxpayers and provide legal advice.

Law and Analysis

A change in ownership is defined in section 60 of the Revenue and Taxation Code 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.” Thus, the deed conveyance of the property from A and NH to the Ms, husband and wife as joint tenants resulted in a change in ownership pursuant to section 60, unless the transfer is one to which the parent-child or grandparent-grandchild exclusion applies and for which a timely claim has been filed as required by law.

Section 63.1 generally provides that certain qualifying transfers between parents and children are excluded as changes in ownership. In order for of the parent-child exclusion in section 63.1 to apply, the transfer of a principal residence must be from an *eligible transferor* to an *eligible transferee*.

Section 63.1, subdivision (b) provides, in relevant part:

- (1) For purposes of paragraph (1) of subdivision (a)², “principal residence” means a dwelling for which a homeowners’ exemption or a disabled veterans’ residence exemption has been granted in the name of the eligible transferor.
- (2) For purposes of paragraph (2) of subdivision (a)³, 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. 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, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65.

² Section 63.1, subdivision (a)(1) states “The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children.”

³ Section 63.1, subdivision (a)(2) states “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 Legislature, through Assembly Bill 3020, Stats. 1988, Ch. 769, effective January 1, 1989, added the second sentence to subdivision (b)(2) to “prevent escalation of the amount of the \$1 million exclusion through utilization of the change in ownership provisions applicable to joint tenancies.” Since the first sentence expressly states that the exclusion applies to the purchase or transfer of the first one million dollars “of all other property” under subdivision (a)(2), “this amendment is designed to deny the \$1 million exclusion to any joint tenant, with the exception of original transferors, whose property interest was received through a transfer excluded from change in ownership under the joint tenancy provisions.” Thus, the denial of the exclusion does not apply to the transfer of a principal residence under subdivision (a)(1), where a joint tenant received his or her property interest through a transfer excluded from change in ownership under the joint tenancy provisions.

Based on the forgoing provisions, NH is an eligible transferor and the transfer of her one-half interest in the residence to her daughter and son-in-law, the Ms, is excluded from change in ownership pursuant to section 63.1, subdivision (a)(1). However, at the time of the December 2001 transfer to the Ms, NH was still living; thus, as the grandparent, A did not qualify under subdivision (c)(2) of section 63.1 as an eligible transferor at that time. Subdivision (c)(2) provides that the parent-child exclusion applies to a transfer of real property between grandparents and their grandchild or grandchildren if all of the parents of that grandchild or those grandchildren who qualify as the children of the grandparents are deceased as of the date of the transfer.

Accordingly, based on the above analysis, we find that the Assessor incorrectly determined that NH was not a qualifying eligible transferor for purposes of the parent-child exclusion, but was correct that A did not qualify as an eligible transferor, for purposes of the grandparent-grandchild exclusion.

I. Assessor’s Responsibility to Provide Legal Advice

The Ms contend that they were incorrectly advised in their first contact with the Assessor’s office. They also assert that Mr. T incorrectly advised them to file a correction deed. Finally, they note that the Proposition 58 form does not advise a claimant to consult with an attorney.

(A) First Contact with the Assessor’s Office

The Ms’ position is that they were incorrectly advised in their first contact with the Assessor’s office: the staff member failed to advise them, in conjunction with being provided a Proposition 58 application, that consultation with a lawyer would be prudent, and they were incorrectly advised to transfer the property.

On October 9, 2001, according to the Ms’ Communication History, they contacted the Assessor’s office and spoke to a staff member. The conversation was noted as follows: “Told clerk that we were interested in transferring the title on the house, from mother and grandmother, to daughter and grandson without having to re-assess the house.” “Clerk instructed us to go ahead and get the property transferred, and to complete Proposition 58 form. She continued to get our information, and she would mail us a Prop 58 packet.” The packet, including the form, was mailed to the Ms shortly thereafter.

In accordance with Government Code section 27241, the assessor is the county official designated to assess property within the county for property taxation. One of the functions of an assessor's office is to assist taxpayers by providing the necessary forms to claim property tax benefits or relief. However, an assessor's office is not authorized or obligated to provide legal advice in regard to property tax or other legal matters.

In this case, the Assessor's staff member acted appropriately by taking down relevant information and providing the appropriate form. Although the Ms described the transaction, the staff member had no authority to provide legal advice as to the application of the law to their intended transaction. Rather, the staff member simply advised them of the steps for claiming the only exclusion from change in ownership that might be available.

Accordingly, the Ms were not incorrectly advised during their first contact with the Assessor's office.

(B) Mr. T's Advice to File a Correction Deed

The Ms contend that Mr. T incorrectly advised them to file a correction deed. However, at the time that he gave the advice, Mr. T was unaware that NH had died.

Generally, a deed may be corrected or reformed to express the true intentions of the parties to the deed. The sole purpose of the reformation doctrine is to correct a written instrument in order to effectuate a common intention of the parties, which was incorrectly reduced to writing. *Getty v. Getty* (1986) 187 Cal.App.3d 1159.

In this case, Mr. T advised the Ms to file a correction deed for the purpose of qualifying the transfer for the parent-child exclusion. However, the correction deed did not rescind the original deed because one of the parties, NH, had already died. Moreover, the correction deed was not necessary, assuming NH was an eligible transferor who previously transferred her one-half of the residence to her daughter and son-in-law as eligible transferees, for purposes of qualifying for the parent-child exclusion.

In reviewing the Ms' Communication History, there is a notation of NH's death, but no entry as to when the Assessor's office was notified. On July 8, 2004, in a telephone conversation with Mr. M, he stated that he was uncertain of the date on which he notified the Assessor's office about NH's death. However, he did state in a handwritten note that he notified the Assessor's office in May 2002, but provided no evidence.

According to the facts presented and documentary evidence provided, it appears that the Assessor's office was not notified about NH's death until after Mr. T wrote the August 30, 2002 letter. It was not until the December 5, 2002 email that there was any indication that Mr. T had knowledge of NH's death. Thus, we infer that sometime between August 30, 2002, the date of his letter and his December 5, 2002 email response to Mr. M, Mr. T learned that NH had passed away. Therefore, Mr. T was unaware that NH had passed away when advising the Ms to file a correction deed, and was also unaware that such deed was unnecessary for purposes of obtaining the parent-child exclusion.

Furthermore, Mr. T , in the December 5, 2002 email message, urged Mr. M to seek legal advice instead of offering an opinion on Mr. M's proposed transaction for a correction deed, because NH's death had changed the circumstances of the case.

Section 5909

In addition to the above, we note that section 5909 provides for relief from penalties and interest if a taxpayer places reasonable reliance on a written ruling by an assessor. That section provides, in relevant part, as follows:

“5909. Written rulings. (a) County assessors may respond to a taxpayer's written request for a written ruling as to property tax consequences of an actual or planned particular transaction, or as to the property taxes liability of a specified property. . . .

“(b) Where a taxpayer's failure to timely report information or pay amounts of tax directly results from the taxpayer's reasonable reliance on the county assessor's written ruling under subdivision (a), the taxpayer shall be relieved of any penalties, or interest assessed or accrued, with respect to property taxes not timely paid as a direct result of the taxpayer's reasonable reliance. A taxpayer's failure to timely report property values or to make a timely payment of property taxes shall be considered to directly result from the taxpayer's reasonable reliance on a written ruling from the assessor under subdivision (a) only if all of the following conditions are met:

- (1) The taxpayer has requested in writing that the assessor advise as to the property tax consequences of a particular transaction or as to the property taxes with respect to a particular property, and fully described all relevant facts and circumstances pertaining to that transaction or property.
- (2) The assessor has responded in writing and specifically stated the property tax consequences of the transaction or the property taxes with respect to the property.

In this case, section 5909 would not apply because the Ms did not request a written ruling. Even if the assessor had provided a written ruling, the change in ownership resulting from the transfer would not be nullified by erroneous advice. As provided in section 5909, a taxpayer's relief is limited to relief from penalties and interest resulting from property taxes not timely paid as a direct result of the taxpayer's reasonable reliance.

(C) Proposition 58 Form (BOE 58-AH)

Finally, the Ms complain that the Proposition 58 BOE-58-AH form does not advise a taxpayer to seek legal advice. Government Code section 15606, subdivision (d) provides that the Board shall prescribe and enforce the use of all forms for the assessment of property for taxation. The Board's authority is, thus, limited to prescribing the contents of forms necessary to gather information to enable the assessor to properly assess property. The statutory requirement does not authorize or require the Board to provide guidance to seek legal advice before entering into a property transaction.

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.

Very truly yours,

/s/ Shirley Johnson

Shirley Johnson
Tax Counsel

SJJ:jlh

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cc: Honorable Rick Auerbach
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