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TO COUNTY ASSESSORS:

CHANGE IN OWNERSHIP EXCLUSION – REGISTERED DOMESTIC PARTNERS

Senate Bill 565 (Chapter 416, Statutes of 2005) amends section 62 of the Revenue and Taxation Code¹ to exclude from change in ownership transfers of real property between registered domestic partners. While this bill became effective on September 29, 2005, the exclusion becomes operative on January 1, 2006, and applies to transfers occurring on or after January 1, 2006.

Chapter 416 adds subdivision (p) to section 62, incorporating transfers between registered domestic partners into that section's list of examples of transactions that do *not* result in a change in ownership. Specifically, newly added subdivision (p) excludes from change in ownership:

- (1) Transfers to a trustee for the beneficial use of a registered domestic partner, or the surviving registered domestic partner of a deceased transferor, or by a trustee of such a trust to the registered domestic partner of the trustor.
- (2) Transfers that take effect upon the death of a registered domestic partner.
- (3) Transfers to a registered domestic partner or former registered domestic partner in connection with a property settlement agreement or decree of dissolution of a registered domestic partnership or legal separation.
- (4) The creation, transfer, or termination, solely between registered domestic partners, of any coowner's interest.
- (5) The distribution of a legal entity's property to a registered domestic partner or former registered domestic partner in exchange for the interest of the registered domestic partner in the legal entity in connection with a property settlement agreement or a decree of dissolution of a registered domestic partnership or legal separation.

The list is non-exclusive: *any* transfer between registered domestic partners is excluded from the meaning of "change in ownership." This includes, for example, a transfer to a trust for the

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

benefit of a registered domestic partner, a transfer to a registered domestic partner as community property, and any transfer between registered domestic partners of a co-owned interest.

While Chapter 416 creates an exclusion that is similar to the interspousal exclusion, it does not confer spousal status to registered domestic partners. See Letter To Assessors No. 2005/017, dated March 3, 2005, for a discussion of various exemptions and exclusions that apply to registered domestic partners. While that letter opines that certain transfers between registered domestic partners are not eligible for the interspousal exclusion under section 63, such transfers may be eligible for exclusion under section 62(p) if they occur after January 1, 2006.

REGISTERED DOMESTIC PARTNERSHIP

Registered domestic partners are two persons who have filed a Declaration of Domestic Partnership with the California Secretary of State pursuant to Family Code section 297. The two persons may be either (1) members of the same sex, or (2) members of the opposite sex where at least one of the persons is over the age of 62 and meets the federal requirements for either old-age insurance benefits² or supplemental security income for aged individuals.³ Thus, domestic partners registered in another state or same-sex married persons licensed in other jurisdictions must register with the California Secretary of State in order to be eligible for this exclusion.

TERMINATION OF REGISTERED DOMESTIC PARTNERSHIP

Similar to the interspousal exclusion, section 62(p) applies to any transfer of real property to a registered domestic partner or former registered domestic partner that is in connection with a property settlement agreement, decree of dissolution of a registered domestic partnership, or legal separation. This includes situations where the courts have, through retained jurisdiction, left property disposition matters open or modifiable in the future. Thus, "in connection with" includes post-dissolution transfers provided for in the terms of a settlement agreement. Where property rights have been definitely and permanently settled and the decree of dissolution has become final, however, section 62(p) will not apply to any subsequent transfers between the former partners.

LEGAL ENTITIES

The application of section 62(p) also parallels the interspousal exclusion where transfers involving the registered domestic partners' legal entities are concerned. Thus, under section 62(p), change in ownership does not include the distribution of a legal entity's property to a registered domestic partner or former registered domestic partner in exchange for the interest of the registered domestic partner in the legal entity in connection with a property settlement agreement, decree of dissolution, or legal separation. However, a transfer from A and B as registered domestic partners to a legal entity wholly owned by one of the partners would not be excluded under section 62(p). Similarly, a transfer of separately-owned property by one partner to a legal entity in which each registered domestic partner has an ownership interest does not qualify for the exclusion.⁴

² Title II of the Social Security Act as defined in 42 U.S.C. section 402(a).

³ Title XVI of the Social Security Act as defined in 42 U.S.C. section 1381.

⁴ See Annotations 220.0274 (C 3/27/87) and 220.0278 (C 5/14/93).

DISCOVERY

Similar to the interspousal exclusion, this exclusion is to be granted automatically; section 62(p) does not require a taxpayer to file a claim in order to receive this exclusion. However, if the deed does not specify "registered domestic partners," the assessor may not be aware that the exclusion is to be applied. A question is being added to the Preliminary Change of Ownership Report and the Change in Ownership Statement to help assessors identify transfers between registered domestic partners.

The updated Preliminary Change in Ownership Report and the Change of Ownership Statement (BOE-502-A and BOE-502-AH) were mailed with Letter To Assessors No. 2005/059 (dated October 17, 2005), along with the other Board-prescribed forms that were affected by 2005 legislation.

If you have any questions regarding this change in ownership exclusion, please contact our Real Property Technical Services Unit at 916-445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

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