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No. 2007/048

TO COUNTY ASSESSORS:

PARENT-CHILD EXCLUSION: DEFINITION OF CHILD

On November 4, 1986, the voters of California adopted Proposition 58, which added subdivision (h) to section 2 of article XIII A of the California Constitution to provide that "purchase" and "change in ownership" do not include the purchase or transfer of (1) principal residences between parents and children, and (2) the first \$1 million of real property other than principal residences between parents and children. Section 63.1 was added to the Revenue and Taxation Code¹ to implement the parent-child exclusion provisions of Proposition 58. For purposes of the parent-child exclusion, "child" includes a child born of the parent, a stepchild, a child adopted before the age of 18, or a son- or daughter-in-law.

Effective January 1, 2008, Assembly Bill 402 (Ch. 450, Stats. 2007) amends section 63.1 to extend the parent-child exclusion to transfers between foster parents and foster children. These provisions apply to transfers that occur on or after this date.

DEFINITION OF CHILD

Chapter 450 adds subparagraph (E) to section 63.1(c)(3) and provides that the definition of "child" includes any foster child of a state-licensed foster parent, if that child was not, because of a legal barrier, adopted by the foster parent before the child aged out of the foster care system. The relationship between a foster child and foster parent is deemed to exist until terminated by death. However, for purposes of a transfer that occurs on the date of death, the relationship would still be deemed to exist on the date of death.

PRINCIPAL RESIDENCE LIMITATION

Chapter 450 adds subparagraph (B) to section 63.1(a)(1) to disallow a subsequent transfer to a biological parent following a transfer from a foster parent. For example, if a foster parent transfers a principal residence to a foster child and the parent-child exclusion is granted, a subsequent transfer of that property by the foster child to that child's biological parent is not eligible for the parent-child exclusion.

CLAIM

The claim form filed to request the change in ownership exclusion between foster parents and foster children must include both of the following documents:

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

- A certified copy of the court decision regarding the foster child status of the individual.
- A certified statement from the appropriate county agency stating that the foster child was not, because of a legal barrier, adopted by the foster parent.

In addition, an assessor may request legal substantiation of these two items.

We have reviewed the *Claim for Reassessment Exclusion for Transfer Between Parent and Child* (BOE-58-AH), the *Preliminary Change of Ownership Report* (BOE-502-A), and the *Change of Ownership Statement* (BOE-502-AH) and have decided that none of the forms need to be amended as a result of these changes to section 63.1.

Enclosed is a copy of the amended portions of section 63.1 in strikeout/underline format. If you have any questions, please contact our Technical Services Unit at 916-445-4982.

Sincerely,

/s/David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

Revenue and Taxation Code section 63.1, as amended by Assembly Bill 402:

63.1. (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:

(1) (A) 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.

(B) A purchase or transfer of a principal residence from a foster child to the child's biological parent shall not be excluded under subparagraph (A) if the transferor child received that principal residence, or interest therein, from a foster parent through a purchase or transfer that was excluded under subparagraph (A).

(c) As used in this section:

(3) "Children" means any of the following:

(A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild 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 stepparent.

(C) 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.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(E) Any foster child of a state-licensed foster parent, if that child was not, because of a legal barrier, adopted by the foster parent or foster parents before the child aged out of the foster care system. For purposes of this paragraph, the relationship between a foster child and foster parent shall be deemed to exist until terminated by death. However, for purposes of a transfer that occurs on the date of death, the relationship shall be deemed to exist on the date of death.

(d) (1) The exclusions provided for in subdivision (a) 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 and furnishes to the assessor each of the following:

...(E) In the case of a transfer between a foster parent and foster child, the claim filed with the assessor shall include a certified copy of the court decision regarding the foster child status of the individual and a certified statement from the appropriate county agency stating that the foster child was not, because of a legal barrier, adopted by the foster parent or foster parents. Upon a request by the county assessor, the claimant also shall provide to the assessor legal substantiation of any matter certified under this subparagraph.