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No. 2021/008

February 16, 2021

TO COUNTY ASSESSORS:

**PROPOSITION 19
INTERGENERATIONAL TRANSFER EXCLUSION GUIDANCE
QUESTIONS AND ANSWERS**

Assembly Constitutional Amendment Number 11 (ACA 11) was presented to and approved by voters at the November 3, 2020 general election as Proposition 19 (Proposition 19 or Prop 19).¹ Proposition 19 is entitled, "The Home Protection for Seniors, Severely Disabled, Families, and Victims of Wildfire or Natural Disasters Act." Proposition 19 created a new exclusion from change in ownership for transfers of family homes between parents and children and grandparents and grandchildren. (This new exclusion is referred to as the "intergenerational transfer exclusion" throughout this Letter To Assessors (LTA).) These provisions are contained in article XIII A, section 2.1, subdivisions (c), (d), and (e) of the California Constitution (in this LTA, these provisions will be referred to as Section 2.1 with its corresponding subdivision for convenience).²

Proposition 19 also repealed the former parent-child and grandparent-grandchild exclusions by making inoperative provisions to the Constitution that were added by Propositions 58 and 193 in 1986 and 1996, respectively, as implemented by Revenue and Taxation Code³ section 63.1 (for convenience, the former parent-child and grandparent-grandchild exclusion is referred to as the "Prop 58/193 exclusion" throughout this LTA). Generally, the Prop 58/193 exclusion allows transfers of principal residences and \$1,000,000 of other real property to occur between parents and children and from grandparents to grandchildren without property tax reassessment and corresponding increases in property taxes.

Proposition 19, however, only allows transfers of a family home between parents and children and grandparents and grandchildren up to an "excluded amount."⁴ If the fair market value of the family home at the time of transfer is greater than the "excluded amount" the amount in excess must be added to the taxable value (which is referred to in this LTA as the "excess amount"). There is no exclusion for any other type of real property, even if it is less than \$1,000,000.

Unfortunately, the text of Proposition 19 left a number of significant questions unanswered that are critical to its proper implementation and administration. This LTA addresses a number of these questions. In answering these questions, we attempt to ascertain the intent of the Legislature in

¹ The full text of ACA 11 is at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200ACA11 [as of December 2, 2020].

² ACA 11 also added sections 2.2 and 2.3 to article XIII A of the California Constitution. Section 2.2 instructs how the funds derived from Section 2.1 are to be used. Section 2.3 directs the California Department of Tax and Fee Administration to track the effects of Section 2.1.

³ All statutory references are to the Revenue and Taxation Code, unless otherwise indicated.

⁴ The "excluded amount" is calculated by adding \$1,000,000 to the current taxable value of the family home.

proposing and the people in adopting Proposition 19 to effectuate the purpose of the law. Proposition 19's explicit, stated intent related to the intergenerational transfer exclusion is to:

Limit property tax increases on family homes used as a primary residence by protecting the right of parents and grandparents to pass on their family home to their children and grandchildren for continued use as a primary residence, while eliminating unfair tax loopholes used by East Coast investors, celebrities, wealthy non-California residents, and trust fund heirs to avoid paying a fair share of property taxes on vacation homes, income properties, and beachfront rentals they own in California.

(Cal. Const., art. XIII A, § 2.1, subd. (a)(2).)

This LTA should be read in conjunction with LTA No. [2020/061](#), which describes Proposition 19 and its provisions in more detail. However, to the extent LTA No. 2020/061 is inconsistent with this LTA, this more recent LTA supersedes LTA No. 2020/061.

DEFINITIONS

Section 2.1(e) provides various definitions. The definitions related to intergenerational transfers are as follows:

1. "Disabled veteran's exemption" means the exemption authorized by subdivision (a) of Section 4 of Article XIII.
2. "Family farm" means any real property which is under cultivation or which is being used for pasture or grazing, or that is used to produce any agricultural commodity, as that term is defined in Section 51201 of the Government Code as that section read on January 1, 2020.
3. "Family home" has the same meaning as "principal residence," as that term is used in subdivision (k) of Section 3 of Article XIII.
4. "Homeowner's exemption" means the exemption provided by subdivision (k) of Section 3 of Article XIII.
5. "Taxable value" means the base year value determined in accordance with subdivision (a) of Section 2 plus any adjustment authorized by subdivision (b) of Section 2.

Because much of Section 2.1's language mirrors the language of the Prop 58/193 exclusions, in the absence of specific definitions in statute or regulations, definitions used in section 63.1 serve as the basis for the following definitions when interpreting Section 2.1(c):

1. *Children* –
 - A child born of the parent(s).
 - A stepchild or spouse of that stepchild while the relationship of stepparent and stepchild exists.
 - A son-in-law or daughter-in-law of the parent(s).
 - A statutorily adopted child, who was adopted by the age of 18.
 - A foster child of a state-licensed foster parent.
2. *Grandchildren* – any children of a child of the grandparent.
3. *Eligible Transferor* – grandparent, grandchild, parent, or child of an eligible transferee.

4. *Eligible Transferee* – parent, child, grandparent, or grandchild of an eligible transferor.
5. *Real Property* – land and improvements as defined in section 104; it does not include any interest in a legal entity.

FILING PERIODS. In addition to filing for either the homeowners' exemption or the disabled veterans' exemption, as required by Proposition 19, a person seeking to take advantage of an intergenerational transfer exclusion must file a claim. Claim forms are developed by the State Board of Equalization (Board) and are available from the County Assessor. Consistent with those filing periods that applied for Prop 58/193, an exclusion may be granted as of the date of transfer if the claim form is received prior to the following dates:

- Within three years of the date of transfer or before a transfer to a third party.
- If a notice of supplemental or escape assessment is mailed *after* either of the above deadlines, within six months of the date of notice.
- If the notice of supplemental or escape assessment is mailed *before* the end of the three-year period, the transferee still has until the end of the three-year period to file a timely claim.

If all deadlines have expired and the transferee still owns the property, the transferee may file a claim and receive prospective relief only. Prospective relief applies to the lien date of the assessment year in which the claim is filed. The assessment year is the period between lien dates (that is, a calendar year). For example, prospective relief for a claim filed in 2026 will be applied as of the January 1, 2026 lien date for the 2026-27 fiscal year.

\$1 MILLION EXCLUSION. Proposition 19 contains no exclusion for the transfer of any property other than a family home or family farm. Therefore, the \$1 million exclusion for non-principal residence properties available under Prop 58/193 is no longer available for transfers that occur after February 15, 2021.

GRANDPARENT-GRANDCHILD EXCLUSION. A transfer of a family home or family farm may be made between grandparents and grandchildren. However, as of the date of transfer, the parents of the grandchild or grandchildren who qualify as the children of the grandparents, as defined above, must be deceased.

Enclosed is a series of frequently asked questions and answers. We hope this information is helpful. If you have any questions, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

DY:rm
Enclosure

**INTERGENERATIONAL TRANSFER EXCLUSION GUIDANCE
QUESTIONS AND ANSWERS**

Validity/Timing

1. **Question:** Isn't Proposition 19 unfair and didn't the Legislature mislead the public? The Board of Equalization and the County Assessors should not enforce it.

Answer: The Board of Equalization and the 58 County Assessors are required to implement and administer any law passed by the Legislature or the voters whether or not they agree with its provisions. Since Proposition 19 was approved by the voters on November 3, 2020, its provisions are now law and the new intergenerational transfer exclusion provisions become operative on February 16, 2021. Neither the Board of Equalization nor the County Assessors have the authority to declare Proposition 19 invalid.

2. **Question:** Is Proposition 19 retroactive and would it cause property transfers that have already received the benefit of Prop 58/193 to be reassessed?

Answer: No. Proposition 19 is clear that Prop 58/193 applies to transfers that occur on or before February 15, 2021, and that Proposition 19 applies to transfers that occur on or after February 16, 2021.

3. **Question:** When is the operative date of Section 2.1(c), the new intergenerational transfer exclusion?

Answer: Section 2.1(c) is operative as of February 16, 2021. The former parent-child and grandparent-grandchild exclusions, including the exclusion for the first \$1 million of property that is not a principal residence, are no longer available after this date. In order to apply the former exclusion rules, the transfer must occur by February 15, 2021. However, because February 15, 2021 is a state holiday and statutes extend for one day the deadline to perform any act that is due on a state holiday, transfers evidenced by recorded deed and transfers accomplished by an unrecorded deed may be accomplished by February 16, 2021 and still be eligible for the former exclusion rules. However, since the change in ownership of inherited property does not involve an act that is required to be performed or the filing of any instrument, property must be inherited on or before February 15, 2021 for the former exclusion rules to apply.

4. **Question:** I have my deed signed and notarized, and have submitted it for recording at my local County Recorder's office prior to the February 15, 2021 deadline. What if my deed does not record by the February 15, 2021 deadline? Must my deed be recorded prior to that date in order to still be under the Prop 58/193 provisions?

Answer: No. As long as the date of *transfer* is on or before February 15, 2021, the transfer will qualify for the Prop 58/193 exclusion. Property Tax Rule 462.260 makes clear that the recordation date of a deed is *rebuttably presumed* to be the transfer date. This means that if evidence is shown that the transfer occurred prior to the recordation date, the assessor should accept that earlier date. Such evidence could be, for example, the date of a notarized document of transfer, such as a deed.

5. **Question: Why can't we still transfer \$1,000,000 of real property to our children without a tax increase? Proposition 19 does not state that this provision is removed.**

Answer: Although Proposition 19 does not contain a provision specifically stating \$1,000,000 of any real property cannot be transferred to children without an increase in the property's base year value, Section 2.1(d) states explicitly that subdivision (h) of section 2 of article XIII A of the California Constitution shall only apply to transfers that occur on or before February 15, 2021. Since section 2, subdivision (h) is the provision that contains the exclusion for \$1,000,000 of other real property, that provision may only be applied on or before February 15, 2021. After that date, that provision can no longer be applied.

6. **Question: Do we need to submit our application for the parent/child exclusion prior to the February 16, 2021 operative date to qualify for the former exclusion under Prop 58/193?**

Answer: No. The claim form does not determine the date of transfer. Therefore, the claim form does not need to be filed by February 16, 2021.

Family Home/Family Farm

7. **Question: What properties can I transfer to my children or grandchildren without incurring a reassessment of the property?**

Answer: Beginning on and after February 16, 2021, parents may transfer their family home or family farm to their children, and the family home will not be reassessed if at least one of the children live in the property as his or her family home. The family farm will not be reassessed as long as one of the children maintains the property as a family farm. (See Questions and Answers 30-38 for determination of taxable value of qualifying transferred property.) These provisions also apply to a transfer of a family home between grandparents and their grandchildren, as long as all of the parents of those grandchildren, who qualify as children of the grandparents, are deceased as of the date of the transfer.

8. **Question: What is a family home?**

Answer: Proposition 19 defines "family home" as having the same meaning as "principal residence," as that term is used in subdivision (k) of section 3 of article XIII of the California Constitution. Subdivision (k) of section 3 of article XIII is known as the homeowners' exemption, and is described further in section 218. We have interpreted the term "principal residence" to be synonymous with "domicile;" that place where a person has their true, fixed, and permanent home and principal establishment, and to which whenever that person is absent, they have the intention of returning. Therefore, a period of temporary absence alone, for example, long-term hospitalization, military service, or temporary job transfer, does not affect the status of the family home as the owner's principal residence.

9. **Question: What is a family farm?**

Answer: Proposition 19 defines "family farm" as "any real property which is under cultivation or which is being used for pasture or grazing, or that is used to produce any agricultural commodity, as that term is defined in Section 51201 of the Government Code as that section read on January 1, 2020."

10. Question: How many family homes or family farms can be transferred by an eligible transferor?

Answer: There is no limit to the number of family homes or family farms that may be transferred under the intergenerational transfer exclusion. For example, Parent sells the family home to his oldest child and purchases a smaller home, which becomes Parent's family home. After a few years, this home is too large, and Parent sells this smaller home to Parent's middle child. Subsequently, Parent buys a condominium, which becomes Parent's new family home. As long as both children meet all qualifications, both transfers qualify for the intergenerational transfer exclusion. If some years later, Parent transfers the condominium to Parent's granddaughter, who is the daughter of their youngest child who passed away prior to the transfer, that transfer can also qualify for the intergenerational transfer exclusion.

11. Question: Why must the real property be the family home of the transferor when it is transferred to an eligible transferee?

Answer: This is an explicit requirement of Section 2.1(c). For example, if Parent and Child each own 50 percent of Child's family home as tenants-in-common, and Parent maintains a different family home, when Parent goes to transfer their 50 percent interest in Child's home to Child, the 50 percent of Child's family home owned by Parent does not qualify for the exclusion. However, if Child's family home is also Parent's family home, Parent's 50 percent interest will qualify for the exclusion if transferred to Child.

12. Question: Why must the family home of the transferor become the family home of the transferee after the transfer?

Answer: This is an explicit requirement of Section 2.1(c).

13. Question: I own a family farm that I am planning to give to my children. Must my family farm also have a family home on the property to qualify for exclusion?

Answer: No. The definition of "family farm" contains no requirement that it be the principal residence of the transferor or transferee or that the family farm have a family home on the property. The requirement in Section 2.1(c)(5) that the property qualify for either the homeowners' or disabled veterans' exemption is limited to the purchase or transfer of a family *home*, not of a family *farm*.

14. Question: Can a family home or family farm consist of multiple parcels?

Answer: Multiple parcels can be considered the family home or family farm if the parcels make up a single appraisal unit. Factors that may be considered include related miscellaneous structures (for example, a detached garage), minimum zoning requirements, physical terrain, access, actual use, continuous landscaping, and fencing. For example, three one-acre parcels could be considered a principal residence if the zoning for the area is a minimum of three acres. Under these facts, the three one-acre parcels would be considered an appraisal unit because one parcel could not be sold separately without the other two parcels.

Transactions

15. Question: I am planning to transfer my family home to my two children. Must the property become the family home of both children in order to receive the exclusion?

Answer: No. As long as the property becomes the family home of one of your two children within one year of the transfer, the property can qualify for the exclusion.

16. Question: My mother transferred our family home to me and my sister after February 15, 2021. I moved in and lived there as my principal residence for the past two years. I recently got a new job out of state. If my sister moves into the property and lives there as her principal residence when I move out, will the exclusion still apply?

Answer: Yes. As long as the property is the family home of one of the eligible transferees (which in your case is you and your sister), the property can qualify for the exclusion.

17. Question: Under Proposition 19, if I inherit my parent's family home and move into it and establish it as my family home, must I live continually in the home to receive the intergenerational transfer exclusion? What happens if I move somewhere else?

Answer: The family home qualifies for the exclusion only as long as it is the family home of an eligible transferee. Thus, if you move out of the family home and the family home no longer qualifies for the homeowners' exemption, the property will no longer qualify for the exclusion.

18. Question: What if I moved out of my house only because I was in the military and was deployed out of state for two years? I always planned to live in the property again when my military service was complete.

Answer: As noted in the answer to Question 8, a period of temporary absence alone does not remove the status of the property as your family home. Thus, if your evidenced intention was to move back to the property after your military service was complete, the exclusion will remain on the family home.

19. Question: A parent owns two contiguous parcels. A house, which is their principal residence, sits on one parcel. The other parcel is a vacant lot. Parent wants to transfer both properties to son. Will both properties qualify as a family home?

Answer: No. Only the parcel with the house for which a claim for the homeowners' exemption may be filed qualifies as a family home.

20. Question: My father owns an apartment complex and lives in one of the units. He wants to transfer the complex to me, his son. Does the entire complex qualify as his family home?

Answer: No. Only the unit occupied as the family home qualifies for the exclusion. The remainder of the apartment complex would be reassessed as of the date of the transfer.

21. Question: My parents own a home and acreage that is restricted by a Williamson Act contract. They want to transfer this property to me, their daughter. Does the entire property qualify for the exclusion?

Answer: The home that is occupied as the family home and the homesite will qualify for the exclusion. The remainder of the property qualifies for the exclusion only if it is a "family farm."

- 22. Question:** A child owns a family home that the child has leased to the mother to use as a family home for a term of 99 years. Does the intergenerational transfer exclusion apply to this situation?

Answer: No. Section 61(c) provides, in part, that the creation of a leasehold interest in taxable real property for a term of 35 years or more is a change in ownership; thus, where such a leasehold is created, a change in ownership has occurred for property tax purposes. However, such transfers may not be excluded from change in ownership under the intergenerational transfer exclusion because the long-term lease does not make the lessee the property owner for exemption purposes, and section 218(b) makes the homeowners' exemption inapplicable to rented property. Accordingly, the property subject to the lease is not eligible for the intergenerational exclusion.

- 23. Question:** A mother died after February 16, 2021. In her will she granted a life estate in her family home to a friend with the remainder to the mother's children. Does the exclusion apply to the family home when it passes to the mother's children? If so, should the exclusion claim be filed upon the death of the mother or the termination of the life estate?

Answer: The claim form should be filed when the children's interest becomes possessory upon the termination of the mother's friend's life estate. A reappraisable change in ownership occurs when a life estate is created if it vests in a person other than the transferor, the transferor's spouse, or the transferor's registered domestic partner. Similarly, another change in ownership occurs when the life estate terminates and the property transfers to the remainder person, unless an exclusion applies. Thus, under these facts, a change in ownership occurred when the life estate was created because it vested in mother's friend upon mother's death. However, when the children's rights in the property become possessory (i.e., they vest), those rights are considered to have been transferred by mother, not by the holder of the life estate. Therefore, the transfer qualifies for the intergenerational transfer exclusion if the property, at the time of mother's death, was her family home. Assuming the claim form is timely filed, the property will not be reassessed upon the termination of the life estate. It will obtain a new taxable value calculated as of the date of the creation of the life estate adjusted by the inflation factor.

- 24. Question:** Are transfers of family homes through the medium of a trust eligible for the exclusion?

Answer: Yes. For property tax purposes, we look through the trust to determine who has present beneficial ownership. Therefore, if all the requirements are otherwise satisfied, transfers to and from a trust are eligible for the exclusion.

- 25. Question:** Does Proposition 19 make any changes to the ability of trustees to equalize distributions of estate property in a trust that provides that the children are to receive the trust assets on a share and share alike basis?

Answer: Proposition 19 does not change the property tax rules surrounding the operation of trusts, including trusts with share and share alike provisions. However, after February 15, 2021, only the family home and family farm may be excluded from change in ownership.

- 26. Question:** My parents own their family home in a limited liability company. Can they transfer their membership shares to me and can I take advantage of the exclusion?

Answer: No, this exclusion applies only to transfers of real property interests between eligible transferors and eligible transferees. This exclusion does not apply to transfers of ownership interests in legal entities, such as partnership interests or corporate stock. Whether or not the

family home is reassessed upon transfer to you will depend on the change in ownership rules that apply to real property held by a legal entity.

27. Question: Does the step transaction doctrine apply to transfers between parents and children when a transaction is structured in a series of steps using a legal entity in order to use the intergenerational exclusion?

Answer: An uncodified note in Chapter 48 of the Statutes of 1987 (the legislation which added section 63.1 to the Revenue and Taxation Code) prohibited the application of the step transaction doctrine to a series of certain transfers of real property between parents and children accomplished through the use of legal entities. Similar provisions are not part of Proposition 19. Therefore, the step transaction doctrine may be applied to such transfers.

Partial Transfers

28. Question: If my father transfers less than 100 percent of his family home to me, will the portion that I receive qualify for the exclusion?

Answer: Yes, as long as you meet all the other requirements. Proposition 19 does not limit its provisions to transfers of 100 percent of a family home.

29. Question: If my father transfers 75 percent of his family home to me and the remaining 25 percent to my cousin, will any portion of the transferred family home qualify for the exclusion?

Answer: Proposition 19 does not require that 100 percent of the family home be transferred to an eligible transferee. Therefore, if you meet all the other requirements, the 75 percent of the family home transferred to you can qualify for the exclusion. The 25 percent transferred to your cousin cannot qualify because your cousin is not an eligible transferee of your father.

Valuation

30. Question: I moved back into the house I grew up in to live with my aging mother who needs care. She wants to give the house to me on my next birthday, which is May 1, 2021. The current taxable value of the house on which my mother pays property tax is \$200,000. When she transfers the house to me, will the taxable value on which I have to pay property tax change?

Answer: It depends. If the fair market value of the house on May 1, 2021, is less than or equal to \$1,200,000 (\$200,000 taxable value + \$1,000,000), your taxable value will not change. If the fair market value of the house on that date is an amount greater than \$1,200,000, your new taxable value will be \$200,000 plus that excess amount above \$1,200,000. For example, if the fair market value of the house on May 1, 2021, is \$1,500,000, your new taxable value will be \$500,000 (\$200,000 taxable value + \$300,000 excess amount).

31. Question: Why is the extra \$300,000 added to the taxable value in the previous example? I thought my property taxes would not increase at all.

Answer: Proposition 19 states explicitly that the new taxable value will not change only if the old taxable value plus \$1,000,000 is less than the fair market value of the family home on the date of transfer. Since the fair market value of your house was \$1,500,000, which is \$300,000 more than the old taxable value of the home (\$200,000) plus \$1,000,000 (\$1,200,000), \$300,000 must be added to the old taxable value. This is one significant change made by Proposition 19.

- 32. Question: Why \$1,000,000? This number is so random. California housing is expensive and \$1,000,000 doesn't go very far.**

Answer: We are uncertain as to why legislators chose \$1,000,000. However, the \$1,000,000 amount is stated explicitly in Proposition 19, so we must follow that law.

- 33. Question: Assume I inherit my parent's family home after February 15, 2021, and have lived there as my family home. After three years, I move out and rent it to someone else. What will happen to my property taxes?**

Answer: Your property taxes will change to reflect the removal of the exclusion. This means that because the change in ownership that was excluded when you inherited the family home no longer applies, the base year value of the property will be set at the fair market value of the property when you inherited it. The base year value will be adjusted for inflation for each year you owned the property as your family home. For example, if when you inherited your parent's family home the taxable value of the family home was \$150,000 and its fair market value was \$800,000, for the three years the property was your family home your taxable value was \$150,000 adjusted by the inflation factor. When you no longer qualify for the homeowners' exemption, your new taxable value will be \$800,000 adjusted for the inflation factor for each year you owned the property. If the inflation factor was 2 percent for each of the three years, your new taxable value would be \$848,966 ($\$800,000 \times 1.02 \times 1.02 \times 1.02$).

- 34. Question: I moved in with my mother into her family home. She is planning to transfer 25 percent of the family home to me on Christmas, December 25, 2021. Will my 25 percent of the family home be reassessed?**

Answer: No, your 25 percent will not be reassessed. However, the taxable value of the family home may increase. A calculation must be performed to determine whether the value of the interest you received is greater than the "excluded amount." If it is less, there will be no increase. If it is more, 25 percent of the "excluded amount" will be added to the taxable value attributable to your 25 percent interest.

For example, if the taxable value of your mother's family home is \$600,000 and its fair market value is \$800,000 when 25 percent is transferred to you, the fair market value (\$800,000) is less than the excluded amount of \$1,600,000 ($\$600,000 + \$1,000,000$). Thus, the taxable value of your 25 percent interest is not increased and remains at \$150,000 ($\$600,000 \times 25\%$). However, if the fair market value of the family home is \$2,000,000 when 25 percent is transferred to you, the fair market value (\$2,000,000) is greater than the excluded amount (\$1,600,000) by \$400,000. Therefore, 25 percent of \$400,000, or \$100,000, will be added to the taxable value of your 25 percent interest (\$150,000) to arrive at a new taxable value of \$250,000 for your 25 percent interest, which results in a new taxable value for the entire family home of \$700,000 (your 25 percent interest of \$250,000 + your mother's remaining 75 percent interest of \$450,000).

- 35. Question: My mother is planning to transfer 75 percent of the family home to me on Christmas, December 25, 2021. That same day, she will also transfer 25 percent of the family home to my cousin. Will any portion of the family home be reassessed?**

Answer: Yes, the 25 percent interest transferred to your cousin will be reassessed. The taxable value of the 75 percent transferred to you may or may not be increased consistent with the answer to Question 32 above.

For example, if the taxable value of your mother's family home is \$600,000 and its fair market value is \$800,000 when the transfers are made, the 25 percent that is transferred to your cousin will be reassessed. The taxable value of the 75 percent transferred to you will not increase, since the fair market value (\$800,000) is less than the excluded amount (\$1,600,000). Therefore, the taxable value of the family home will be increased to \$650,000 (\$450,000 for the taxable value of your 75 percent interest + \$200,000 for the reassessed 25 percent interest transferred to your cousin).

However, if the fair market value of the family home is \$2,000,000 when the transfers are made, your cousin's 25 percent reassessed interest is now \$500,000 (\$2,000,000 x 25%). Since the fair market value (\$2,000,000) is greater than the excluded amount (\$1,600,000) by \$400,000, the taxable value of your 75 percent interest must be increased by \$300,000 (\$400,000 x 75%) and added to the current taxable value attributable to your 75 percent interest, which is \$450,000 (\$600,000 x 75%). Therefore, the new taxable value of your 75 percent interest is \$750,000 (\$450,000 for the taxable value of your 75 percent interest + \$300,000 for the excess amount attributable to your 75 percent interest). This yields a total new taxable value of \$1,250,000 (\$500,000 + \$750,000).

Date of Change in Ownership

36. Question: Mother and Father set up a revocable living trust in 2015. When Mother passed away in 2019, an irrevocable bypass trust was created to hold title to the family home for the benefit of Father, with the remainder to Child. Father passed away in 2022. Upon Father's death, the family home held in the bypass trust was distributed to Child. What is the date of change in ownership for purposes of this exclusion?

Answer: The date of transfer of the family home to Father is Mother's date of death, since he gained the beneficial ownership of the family home on Mother's death. Since this transfer is between spouses, it is excluded from change in ownership. The family home is transferred again on the date of Father's death, since that is the day the family home was distributed to Child. Since the property was transferred to Child in 2022, Proposition 19 intergenerational transfer exclusion provisions will apply to the transfer and not Prop 58/193.

37. Question: My parents set up an irrevocable trust in 2020 for my benefit, and transferred some property, including their family home, into the irrevocable trust. The property will be distributed to me outright when I turn 25, which is in 2023. Will Prop 58/193 or Proposition 19 parent-child exclusion provisions apply to the transfer of the real property?

Answer: Since the family home was transferred to an irrevocable trust in 2020 of which you are the beneficiary, the beneficial ownership interest of the property transferred and a change in ownership of the property occurred at that time. Therefore, the real property may qualify for the exclusion provided by Propositions 58/193. When the real property is distributed to you in 2023, there is no change in ownership, since you received the beneficial ownership interest of the property when it was transferred into the trust in 2020. We caution, however, that the date a change in ownership occurs when property is transferred to a trust depends ultimately on the specific terms of the trust.

38. Question: My parents set up a revocable trust in 2020 for my benefit, and transferred real property, not including their family home, into the revocable trust. The trust will become irrevocable when I turn 25, which is in 2023. Will Prop 58/193 or Proposition 19 parent-child exclusion provisions apply to the transfer of the real property?

Answer: Since the real property was transferred to a revocable trust in 2020, the beneficial ownership interest of the property remained with your parents and a change in ownership of the property did not occur at that time. When the trust becomes irrevocable in 2023, the beneficial ownership interest of the property will be considered to have been transferred to you, and a change in ownership will occur. Since the change in ownership will occur after February 15, 2021, the parent-child exclusion provided by Prop 58/193 is not available to you. Since the property is not your parents' home, the parent-child exclusion provided by Proposition 19 is also not available to you. We caution, however, that the date a change in ownership occurs when property is transferred to a trust depends ultimately on the specific terms of the trust.

Claims

39. Question: When must a claim for exclusion be filed?

Answer: To receive property tax relief as of the date of the transfer of real property, claims must be filed within three years after the date of the transfer or prior to the transfer of the real property to a third party, whichever is earlier. If the assessor mails a notice of supplemental or escape assessment after the expiration of either of these filing periods, a claim is considered timely if it is filed no later than six months after the date of mailing of the notice of supplemental or escape assessment. If a claim is not filed timely, relief can be granted prospectively only if the property is still owned by the transferee.

40. Question: What is a transfer to a third party?

Answer: A transfer to a third party is a transfer that is subject to reassessment and not otherwise excluded by the intergenerational transfer exclusion. For example, a mother bequeathed her home to her adult daughter. The daughter did not know of the intergenerational transfer exclusion and had, in turn, transferred the property to her own child (the mother's grandchild). The filing period for the first transaction is not foreclosed by the subsequent transfer to the grandchild, since this transfer is not considered a transfer to a third party. However, until the daughter files a claim, the base year value that is set as of the date the daughter acquired the property would remain intact. Meanwhile, in order to receive retroactive relief, the grandchild's filing period is within three years of the second transfer or before a transfer to a third party, whichever is earlier, or within six months of a notice of supplemental or escape assessment on the second transfer. If both the parent and the grandchild file claims, then both transfers may be excluded from change in ownership, as long as the grandchild has not transferred the property to a third party who is not eligible for the intergenerational transfer exclusion. Finally, the grandchild may file for prospective relief on the transfer from the parent at any time, provided the grandchild has not transferred the property to a third party who is not eligible for the exclusion.

- 41. Question:** A mother's real property was held in a trust when she died in 2022. More than three years have passed and the trustee has not yet distributed the property to the mother's son, the sole beneficiary. Thus, the three-year statutory period in which to apply for the intergenerational transfer exclusion has passed. Does the son have to wait to file the claim until after he receives a notice of supplemental or escape assessment (i.e., the beginning of the six-month filing period)? Or can the Assessor's office accept a filing of the intergenerational transfer exclusion form as being timely before processing corrections and opening the six-month window for filing?

Answer: The Assessor can accept a completed form as being timely before officially beginning the six-month filing period. A claim filed after either the transfer-to-a-third-party deadline or the three-year deadline, as applicable, will nevertheless be timely if the filing is made no later than six months after the mailing of a notice of supplemental assessment required by Revenue and Taxation Code section 75.31 or the notice of escape assessment required by Revenue and Taxation Code section 534.

- 42. Question:** What is meant by "prospective relief"?

Answer: If a claim is filed after the conclusion of the specified filing periods described previously, the exclusion may be granted as of the year that the claim is filed, but will not be backdated to the date the transfer actually occurred. For example, untimely claims filed in 2022 shall apply as of the 2022 lien date (January 1, 2022) for the 2022-23 fiscal year, but not for any prior years.

- 43. Question:** The claim form for the intergenerational transfer exclusion is a Board-prescribed form. Why isn't it on the Board's website?

Answer: If a form is prescribed by the Board, this means the Board sets the language to be used by all 58 counties; however, we do not create the form for each individual county. Rather, the County Assessor adds the county name and address to the Board-prescribed form, and creates the claim form for use by taxpayers within their own county. The claim form may be available from a County Assessor's website. A list of County Assessors and links to their websites (if available) is contained on the Board's website at www.boe.ca.gov/proptaxes/assessors.htm.

- 44. Question:** Who can sign the claim form?

Answer: A written certification attesting to the relationship that serves as the basis for the exclusion, signed under penalty of perjury, is required from both the transferee and the transferor, or the executors of their estates or their legal representatives. (A legal representative is one who has been duly authorized and has been given appropriate power.)

If the property is in a trust, the trustee can sign on behalf of the transferor because the trustee has the legal obligation to carry out the terms of the trust. If the property is in bankruptcy, the trustee assigned by the bankruptcy court may sign the form on behalf of the transferor.