

493.0000 GRANDPARENT-GRANDCHILD TRANSFER

*See Change in Ownership
Parent-Child Transfer*

493.0010 Adoption. Mother gave birth to a daughter (granddaughter) in 1970 and passed away soon after the birth. Father remarried in 1972 or 1973. A few years later, while the daughter was still a minor, she was adopted by her aunt, her mother's sister. The adoptive mother (aunt) is still living. Maternal grandmother passed away in 2006. Her trust provided that the granddaughter inherit the grandmother's personal residence. Since the aunt/adoptive mother is the granddaughter's parent and qualifies as a child of the grandmother and is still living, the transfer to the granddaughter is not eligible for the grandparent-grandchild exclusion. C 11/13/2009.

493.0020 Custodianship. Under California law, a minor may own real property or an interest therein, but a minor may not convey or make contracts relating to real property. Since a minor cannot sell or purchase property held directly in his or her own name, transactions involving a minor's interests in real property are usually conducted indirectly through a guardianship or trust. The California Uniform Transfers to Minors Act (CUTMA) provides a statutory mechanism for transferring property to an adult "custodian" for the benefit of a minor. A CUTMA custodian holds, controls, manages, and invests the custodial property. When the custodianship terminates, title to the custodial property is transferred to the minor or the minor's estate.

When property is transferred to a minor's custodian under the CUTMA, a minor has beneficial ownership of the property, and the custodian only has legal title with powers and limitations similar to that of a trustee. Therefore, for property tax purposes, an assessor should treat a CUTMA custodianship in the same manner as a trust and "look through" to identify the transferor and the present beneficiary. A CUTMA custodian is not considered the beneficial owner.

Thus, there is no exclusion from change in ownership for a transfer of real property from a grandmother to her daughter as a custodian for her grandson under the CUTMA. Such a transfer is considered a transfer from a grandmother to the grandson, and not from the grandmother to the daughter that qualifies for the parent-child exclusion. Neither is the grandparent-grandchild exclusion available since the mother of the grandchild is still living. C 9/14/2007.

493.0030 Daughter-In-Law. The grandparent-grandchild exclusion does not apply to a transfer from a grandmother to her grandchildren when the daughter-in-law to the grandparent (and mother to the grandchildren) was separated but not divorced from her now-deceased husband. Revenue and Taxation Code section 63.1(c)(3)(C) provides that a son- or daughter-in-law qualifies as a child of a mother-in-law or father-in-law until remarriage if the marriage on which the in-law relationship is based is "terminated" by death, or until divorce. The use of the word "terminated" expresses the Legislature's intent that the in-law relationship exists until the marriage no longer legally exists. Legally separated spouses are still married. A legal separation, even that of many years, is not equivalent to a divorce for purposes of this exclusion. Unless the daughter-in-law has remarried, the exclusion is unavailable if the daughter-in-law to the grandmother is still living and was only separated and not divorced from her now-deceased husband. C 2/3/09.

493.0075 Life Estate. Grandparents propose to create a revocable trust that is funded with real property. Upon the death of the last settlor, the trust will become irrevocable and the

settlers' children will become the income beneficiaries for their lifetime. Upon the death of a child, that child's share will go to that child's issue, if any, and so on.

Where a life estate terminates as a result of the death of a life tenant, the transfer to the remainderperson is from the creator of the remainder interest, not from the life tenant. Thus, if the beneficiaries of the life estate (the life tenants) are the children of the transferor and the remainderpersons are the grandchildren of the transferor, then both the parent-child and the grandparent-grandchild exclusions may apply to the change in ownership that occurs upon the creation and termination of each life estate. C 2/25/09.

[493.0080](#) **Limited Liability Company.** A transfer from grandparents to a limited liability company owned by their grandchildren does not qualify for the grandparent/grandchild exclusion from change in ownership. While legislation does look to the beneficial ownership of property held in trust to determine ownership and eligibility for exclusion, a different approach is taken with respect to transfers by and to limited liability companies. The latter are treated as separate and apart from their owners, and transfers between or among them are excluded only when the transfers result solely in changes in the manner of holding title to the properties transferred. C 2/26/97.

[493.0081](#) **Limited Liability Company.** Certain real property is owned by a grandparent's trust, which became irrevocable upon the grandparent's death. Under the terms of the trust, grandparent's child is the present lifetime beneficiary of the trust with the remainder to the grandchildren. It is proposed that the property be transferred to a limited liability company (LLC) of which the trust would be the sole member. Upon the death of the child, the LLC would be dissolved and the property would be transferred from the LLC to the trust and then distributed to the grandchildren. However, the proposed transfer of real property from the trust to an LLC will result in the grandchildren receiving interests in the LLC upon child's death, rather than real property. The transfer of interests in an LLC from a grandparent to a grandchild is not eligible for the grandparent-grandchild exclusion. C 10/1/2007.

[493.0090](#) **Middle Generation Limitation.** Grandfather had three children, two sons and one daughter; however, one son predeceased him. The predeceased son was survived by his wife, who is grandfather's daughter-in-law (daughter-in-law/mother) and two children (grandchildren). The daughter-in-law/mother had not remarried at the time of grandfather's death in December 2007. The property passed under the laws of intestate succession to the grandfather's surviving son and daughter and the grandchildren. The grandparent-grandchild exclusion from change in ownership is available when all of the parents of the grandchildren who qualify as the "children" of the grandparents have died or no longer qualify as "children." In this situation, the exclusion is not available because all of the persons who qualify as children of the grandfather and parents of the grandchildren are not deceased. Since the daughter-in-law/mother qualifies as a child of the grandfather because she did not remarry after her husband's death and she is not a stepparent to the grandchildren, the transfer to the grandchildren is not eligible for the grandparent-grandchild exclusion. C 11/16/2009.

[493.0115](#) **Re-Affirmation of Deed.** A "re-affirmation" of deed recorded after the effective date of the grandparent-grandchild exclusion does not negate an earlier transfer evidenced by a deed recorded before the effective date of the exclusion; nor does it constitute a transfer under Revenue and Taxation Code section 60. Apart from a valid rescission or a rebuttal of the deed presumption, the date of a change in ownership cannot be "undone" or "invalidated." C 10/27/98.

493.0120 **Son-in-Law.** C 2/26/97. Deleted 2009.

493.0123 **Step Transaction Doctrine.** C 3/10/2000. Deleted 2009.

493.0125 **Surviving Son- or Daughter-in-Law.** C 8/16/99. Deleted 2009.

[493.0130](#) **Trusts.** As with transfers of property from a parent to a child, transfers from a grandparent to a grandchild can be excluded from change in ownership when accomplished through a trust and subtrusts, provided that the transfers are not made to a legal entity, such as a LLC, even if it is owned by the grandchild. The grandchild is an eligible transferee, if on the date of transfer both parents are deceased or one parent is deceased and the other no longer qualifies as a "child of the grandparents" because of a divorce. C 2/26/97.

[493.0131](#) **Trusts.** Grandmother died and left various assets in trust to Grandmother's daughter (Parent), as trustee and income beneficiary for her lifetime. Parent, as trustee of the trust, used trust assets to purchase the subject real property, which was then held in the trust. Parent died in 2007 and was survived by two living children (grandchildren), and living children of her two predeceased children (great-grandchildren).

Generally, trustors are considered to be the transferors of real property that passes to beneficiaries, including remaindermen, under the terms of their trust instruments. In this case, Grandparent is the creator of the remainder interests pursuant to the terms of the trust. Parent, as life beneficiary, only has the right to enjoy the property during her lifetime, and never has the power to direct the disposition of the property either during her life or upon her death. Because Parent is not the transferor, the parent-child exclusion is not available. While Grandmother could be considered an "eligible transferor" with respect to all of the *qualifying* property transferred to the remaindermen under the terms of her trust, this does not apply with respect to property acquired by the trust after her death. Property that was never owned by a transferor cannot ever be property of that transferor within the meaning of subdivision of section 63.1(a)(2).

Thus, later acquired property does not qualify for either the parent-child or grandparent-grandchild exclusion when the beneficial ownership vests in the trust's remainder beneficiaries. C 12/22/2008.