

625.0000 PARENT-CHILD TRANSFER

See Change in Ownership

Grandparent-Grandchild Transfer

625.0010 Adoption. The parent/child exclusion contained in Revenue and Taxation Code section 63.1 does not apply to those persons adopted after they reach the age of 18 years, whether the adoption occurred before or after the enactment of the section, the language of which is clear and unambiguous. C 8/11/89.

625.0012 Appraisal Unit Allocation. A mother died and upon her death a number of parcels transferred to her son that make up a family ranch, a portion of which is also zoned as Timberland Production Zone (TPZ). The taxpayer is requesting the assessor to allocate the exclusion first to all 'Prop 13' assets (grazing land, sites and improvements) and second to TPZ only as to the amount of the available exclusion not needed to avoid reassessment on the 'Prop 13' assets. Revenue and Taxation Code section 63.1(d)(2) provides that within any appraisal unit, the \$1 million limit shall be applied only on a pro rata basis, and shall not be applied to a selected portion or portions of the appraisal unit. In order to allocate the \$1 million dollar exclusion separately to non-TPZ land within a single parcel, the assessor must find that each parcel is a separate appraisal unit and that each portion of a single parcel, consisting of TPZ land and non-TPZ land, also constitutes separate appraisal units. C 10/15/2009.

625.0015 Business Organization. Arrangements whereby property is conveyed to an individual or individuals in accordance with an instrument that provides that the property is to be held and managed for the benefit of the transferor(s) or their assign(s) as may from time to time be holder(s) of transferable certificate(s) issued by the transferee(s) are denominated in law as Massachusetts Trusts. These organizations should be treated as trusts if the transferee(s) has/have control in the management of the property or as a partnership(s) if the certificate holder(s) and the transferee(s) are associated in the control of the property with the latter acting only as a managing agent(s).

Whether a Massachusetts Trust is a trust or a partnership, it is a legal entity just as is a corporation or a partnership. A transfer of real property to the entity may be excluded from change in ownership if the transfer results only in a change in the manner of holding title. Additionally, since a Massachusetts Trust is a legal entity, transfers of certificates result in changes in ownership only when there is a change in control. Transfers of property from the entity to children or parents of certificate holders and transfer(s) of certificates between children and parents are not within the parent/child exclusion contained in Revenue and Taxation Code section 63.1. C 5/3/94.

625.0019 California Department of Veterans Affairs. A purchase by the Department of Veterans Affairs of residential property for sale to a veteran creates a situation that is analogous to a transfer to a trust for the benefit of the purchasing veteran. The Department takes legal title to the property only to secure payment of the purchase price. When the person(s) selling the property to the Department is the parent(s) of the purchaser of the property from the Department, the parent-child exclusion is available, provided the transfers are completed on or after November 6, 1986, and all other requirements for the exclusion are met. C 9/19/88.

625.0020 Certification. C 10/28/88. (Deleted 2002)

625.0021 Certification. Claims for exclusion from change in ownership by incapacitated transferees of properties received from parents or children may be filed by the transferees'

legal representatives. Assessor personnel should verify a transferee's representative's authorization to file a claim. LTA 3/29/91 (No. 91/23).

625.0030 Claims. Parent-child transfers are excluded from the definition of change in ownership provided a claim for exclusion is filed within three years of the date of any transfer made on or after November 6, 1986.

A change in ownership of property held in a revocable trust occurs when the trust becomes irrevocable, not when the trustee executes or records a deed to the property. The fact that this filing requirement limitation was enacted into law after a given transfer took place is not a basis for an assessor, a local board of equalization, or the State Board of Equalization refusing to enforce the requirement on the grounds that the statute requiring the filing is unconstitutional. C 8/9/91.

625.0035 Claims. Revenue and Taxation Code section 63.1(f), the claim reporting provision for the parent-child exclusion, requires that the transferor of property report his or her social security number or taxpayer identification number on the claim form for each transfer of non-principal residence property qualifying for the parent-child exclusion under Revenue and Taxation Code section 63.1(a)(2). The requirement for the social security or taxpayer identification number on the claim form is to provide the Board with a means of monitoring and cumulating the value of transfers between parents and children to determine whether the one million dollar limitation of section 63.1(a)(2) has been reached or exceeded. Thus, for non-principal residence property, if the transferor has a social security or tax identification number but refuses to disclose it on the claim form, the parent-child exclusion should be denied. C 6/19/2007.

625.0036 Claims. As of September 30, 1990, and thereafter, a claim for exclusion of a parent/child transfer from change in ownership must be filed within three years after the date of the transfer for which the claim is being filed or prior to the transfer of the real property to a third party, whichever is earlier. A claim for exclusion is "timely filed" only if the minimum information required by Revenue and Taxation Code section 63.1(d) is provided before the appropriate deadline. LTA 10/29/91 (No. 91/76); LTA 2/28/92 (No. 92/15).

625.0037 Claims. The period for filing a claim for the exclusion begins *on* the date of purchase or transfer, or *on* the date of mailing of the notice of supplemental or escape assessment. The phrase "within three years" in Revenue and Taxation Code section 63.1(e)(2) means the claim must be filed *no later than* three years for a purchase or transfer; and in section 63.1(e)(3), the phrase "within six months after" means the claim must be filed *within* six months of the date of mailing the notice. For a transfer that occurred on October 23, 1992, the three-year period ended October 23, 1995; a claim filed on October 24, 1995, was late. And if the notice of supplemental assessment was mailed on December 20, 1994, the six-month filing period would have ended no later than June 20, 1994. C 3/22/96.

625.0038 Claims. Revenue and Taxation Code section 63.1 as amended by the Statutes of 1988 provides that the filing requirement applicable to the parent/child exclusion from change in ownership applies to all transfers, including those accomplished through the medium of a trust, which occurred on or after November 6, 1986.

Chapter 709 of the Statutes of 1993 provides that notwithstanding the previous time limits, a claim under section 63.1 shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental assessment or escape assessment issued as a result of the transfer for which the claim is filed. This provision is also applicable to all transfers occurring after November 6, 1986. C 10/7/93.

[625.0039](#) **Claims.** Under Revenue and Taxation Code section 63.1, the statute of limitations for filing a claim for the parent-child exclusion commences on the date of the purchase or transfer of the real property. Accordingly, a claim for the parent-child exclusion is invalid where it is filed prior to the date of the purchase or transfer. C 12/13/2005.

[625.0050](#) **Corporation.** If a person owns all of the stock in a corporation and leaves it to his children in equal shares, they become owners on the death of the parent. A liquidation of the corporation and distribution of corporate assets would not qualify as an excluded transfer between the decedent and the children. It would be a transfer from the corporation to its shareholders and constitute a change in ownership unless title was taken by the children in such a way as to result only in a change in the manner of holding title and excluded under Revenue and Taxation Code section 62(a)(2). C 6/10/88.

[625.0055](#) **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.

[625.0060](#) **Date of Death.** The parent-child exclusion from change in ownership does not apply in situations that involve the vesting of title to property on the death of a trustor that occurs prior to November 6, 1986, even if the trustee delays transferring legal title to the child-beneficiary until after that date. C 5/11/89.

[625.0061](#) **Date of Death.** When real property is devised by a parent directly to a child or children, a change in ownership normally occurs on the date of death of the parent. When, however, the parent died prior to November 6, 1986, but his/her estate was probated and distributed pursuant to court decree after that date, the court of appeal in *Larson v. Duca* (1989) 213 Cal.App.3d 324, held that the date of distribution is the date of change in ownership, and therefore, the parent/child exclusion applies. The court narrowly limited its holding to cases involving identical facts and, therefore, its decision does not apply to distributions from testamentary trusts, in instances in which the parent died prior to November 6, 1986, but the property was distributed to the child-beneficiary after that date. The change in ownership occurs on the date of death of the parent. C 6/1/90.

[625.0075](#) **Disabled Child.** The legislative history of this exclusion appears to warrant the conclusion that the \$20,000 income limitation should be applied only to a parent(s) and a disabled child who reside in the same house in the year that the house is transferred to the child. C 10/29/85.

[625.0080](#) **Disclaimer.** If a survivor spouse disclaims all interest in property left by a deceased spouse and such property passes to a trust for the benefit of the decedent's children, the Revenue and Taxation Code section 63.1 exclusion is applicable even though the trustee has the authority to delay distribution to the beneficiaries. C 2/8/88.

[625.0081](#) **Disclaimer.** A beneficiary may disclaim any interest in any property, including an interest created under a will, by meeting the requirements set forth in the Probate Code. A properly executed and filed disclaimer results in the interest disclaimed descending and being distributed as though the disclaimant had predeceased the creator of the interest. Thus, the creation of a life estate in a friend and a remainder interest in the children of the creator of the interest would, on disclaimer by the life tenant, qualify as a parent-child transfer. C 5/23/89.

[625.0082](#) **Disclaimer.** The parent-child exclusion may apply in a distribution of property from a father's trust estate to his three children where two children quitclaim their interests. However, an agreement between the children in which the two children receive consideration for disclaiming their interests is not a valid disclaimer and would result in a reassessment of the interests transferred from the two children to the third child. C 10/1/2004.

[625.0083](#) **Domestic Partner.** Family Code section 297.5 provides that registered domestic partners have the same rights, protections, and benefits as are granted to spouses. Because "child" is statutorily defined in Revenue and Taxation Code section 63.1(c) and is not defined by the California Constitution, a child's registered domestic partner is accorded the same treatment as a son-in-law or daughter-in-law under section 63.1(c)(3)(C). Thus, a transfer of real property from a parent to his daughter and her registered domestic partner is eligible for the parent-child exclusion under Revenue and Taxation Code section 63.1. C 3/15/2006.

[625.0084](#) **Estate for Years.** The creation of an estate for years giving Beneficiary X (who is not a spouse or a registered domestic partner, or otherwise eligible for an exclusion) the right to use and occupy the transferor's residence for a period of 34 years is not a change in ownership under Property Tax Rule 462.060(b) since the term is less than 35 years. The termination of the estate for years and the vesting of ownership in someone other than the transferor or the transferor's spouse is a change in ownership, absent an applicable exclusion. If the ownership vests in the children of the transferor, then the parent-child exclusion may be available if a claim is filed. C 3/15/2006.

[625.0085](#) **Foreclosure.** If a child's primary residence was in foreclosure and the child's parents purchased the residence at a foreclosure sale, such a purchase would constitute a "purchase or transfer between parents and their child" under Revenue and Taxation Code section 63.1(c)(1) if, in fact, the sale was made by the child himself or herself and not by an intermediary such as a trustee in the course of a foreclosure sale. C 11/19/2002.

[625.0090](#) **Inheritance.** A testamentary transfer to a child by a parent was held by the court in *Larson v. Duca* (1989) 213 Cal.App.3d. 324 to have occurred on the date of distribution of the estate rather than on the date of death for purposes of applying the parent/child exclusion from change in ownership. This was contrary to an opinion issued by Board staff based upon Probate Code section 300. Subsequently, Revenue and Taxation Code section

63.1(c)(1) was amended to provide that as of January 1, 1993, transfers between parents and their children under will or by intestate succession are, for change in ownership purposes, made as of the date of the decedent's death, if the decedent died on or after November 6, 1986. C 7/10/87.

625.0100 Internal Revenue Code Exchange. In order to qualify a transfer of real property as a nontaxable Internal Revenue Code section 1031 exchange, Mr. Smith transfers X property to Mr. Jones in exchange for Y property. Immediately thereafter, and pursuant to prior agreement, Mr. Jones transfers X property to Mr. Smith's son. Since Mr. Jones did not have any beneficial use of property X but only the ability to transfer its title to Mr. Smith's son, the transfer to the son qualifies for the parent/child exclusion of Revenue and Taxation Code section 63.1. C 1/23/89.

625.0115 Leases. Husband and wife create a revocable living trust that became irrevocable at husband's death and was subsequently divided into four separate successor trusts. The original trust instrument provides that the wife, as the surviving spouse, becomes the present beneficiary of the successor trusts and that the four children of the husband and wife have remainder interests in the property held by the trusts. Leases of real property held by the trusts for a term of 35 years or longer result in changes in ownership of the property under Revenue and Taxation Code section 61(c)(1). However, the lease agreements constitute transfers from the wife, as sole present beneficiary of the trusts, to her children that are eligible for the exclusion from change in ownership pursuant to Revenue and Taxation Code section 63.1, provided all qualifying requirements are met. Additionally, because the lease agreements constitute transfers only from the wife, and not from the husband and wife jointly under the terms of the trust instrument, only the one million dollar limitation for all other real property attributable to the wife is available for those transfers. C 6/25/2004.

625.0120 Life Estate. Transfers to children from the predeceased spouse's (mother's) Marital Trust and surviving spouse's (father's) Survivor's Trust occur on the death of the surviving spouse (father) under Revenue and Taxation Code section 61(g), where the surviving spouse is the lifetime beneficiary of both Trusts. Though mother died before the effective date of the parent-child exclusion, the children held only a future beneficial interest (remainder interest) in the Trusts' properties, until father's life estate terminated and present interests transferred to the remainder persons (children). Since father's death was after the effective date of Proposition 58 (November 6, 1986), the exclusion is applicable to the transfer from each parent. C6/19/87; C 9/30/93; C 12/16/93.

625.0121 Life Estate. Where a life estate created for the benefit of a child terminates as a result of the death of the child life tenant, the transfer to the surviving children is from the parent/transferor of the remainder interest, not from the life tenant. Since the parent is the transferor, the parent/child exclusion and/or the grandparent/grandchild exclusion may apply to exclude the re-transfer from change in ownership provided that all of the filing requirements are met. C 3/6/2006.

625.0122 Life Estate. The transfer of fee title with a life estate reserved in the transferor is not a change in ownership because it is not the transfer of a present interest in the property. Thus, even though the remainder vests at the time of the transfer, no statutory exclusion from change in ownership is applicable until the remainder becomes possessory.

Where the remainder vests in the transferor's child and spouse, the child and spouse subsequently divorce, and the child transfers his interest to the former spouse, the former spouse may not claim the parent/child exclusion when the remainder becomes possessory because the divorce occurred prior to the remainder becoming a present interest. The

person claiming the parent/child exclusion must be a son- or daughter-in-law as of the date of change in ownership. C 8/29/95.

625.0140 One Million Dollar Exclusion Limitation. When real property other than a principal residence is transferred between a parent and a child, but a claim for exclusion pursuant to Revenue and Taxation Code section 63.1 is not filed, that transfer is not cumulated for purposes of applying the one million dollar exclusion limitation. C 4/14/97.

625.0141 One Million Dollar Exclusion Limit. When real properties are transferred between a parent and a child, the deed presumption contained in Property Tax Rule 462.200 applies to the issue of the nature of the ownership interests transferred. A child claiming that a parent owned only a portion of the properties transferred rather than 100 percent of them, as indicated by the recorded deeds, and thus, has not used the parent's entire \$1,000,000 exclusion, has the burden of proving that claim to the assessor. The evidence required by Evidence Code section 662 is evidence that is clear and convincing. C 6/17/2002.

625.0142 One Million Dollar Exclusion. Husband and wife create a revocable living trust that became irrevocable at husband's death and was subsequently divided into four separate successor trusts. The original trust instrument provides that the wife, as the surviving spouse, becomes the present beneficiary of the successor trusts and that the four children of the husband and wife have remainder interests in the property held by the trusts. Leases of real property held by the trusts for a term of 35 years or longer result in changes in ownership of the property under Revenue and Taxation Code section 61(c)(1). However, the lease agreements constitute transfers from the wife, as sole present beneficiary of the trusts, to her children that are eligible for the exclusion from change in ownership pursuant to Revenue and Taxation Code section 63.1, provided all qualifying requirements are met. Additionally, because the lease agreements constitute transfers only from the wife, and not from the husband and wife jointly under the terms of the trust instrument, only the one million dollar limitation for all other real property attributable to the wife is available for those transfers. C 6/25/2004.

625.0143 One Million Dollar Exclusion. C 10/1/2004. (Deleted 2008)

625.0144 One Million Dollar Exclusion Limitation – Transfer of Joint Tenant's Interest. Revenue and Taxation Code section 63.1(b)(2) denies the exclusion for the transfer of the first \$1 million of real property other than a principal residence, as defined by subdivision (a)(2), by any joint tenant, with the exception of original transferors, whose property interest was received through a transfer excluded from change in ownership under section 62(f) or section 65(b). Conversely, the transfer of a principal residence, as defined by subdivision (a)(1), by a joint tenant who obtained his or her interest through a transfer excluded from change in ownership under those sections does qualify for the exclusion. C 11/5/2004.

625.0145 One Million Dollar Exclusion. Wife dies and her interest in certain properties is transferred to an irrevocable trust. The trust provides for her husband to receive benefits for life, and their children hold the remainder interests. Upon the husband's death, the wife is deemed the grantor of the remainder estate. Since the wife is considered an eligible transferor of the property, her \$1 million exclusion is available when the irrevocable trust terminates. C 3/29/2006.

625.0150 Partnership. A transfer from a parent to a partnership owned by the parent and his or her children does not qualify for the parent/child exclusion from change in ownership. The exclusion only applies to transfers to and by natural persons related as required by law. 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 corporations and partnerships. 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 10/23/92.

625.0151 Partnership. Section 2, Chapter 48 of the Statutes of 1987 expressly provided that transfers of real property between eligible transferors (parents) and eligible transferees (children) are excluded from change in ownership when the transfers are immediately followed by a transfer from the eligible transferee(s) to a partnership or other legal entity where the transferee(s) are the sole owner(s) of the entity or are the beneficial owner(s) of the property, if the transfer satisfies the requirements of section 63.1.

Following a parent-child transfer of real property and a subsequent transfer to a legal entity composed of transferee children and parents, such a transfer to the legal entity may fall within the protection of section 2 from application of the step-transaction doctrine, but the conclusion is not free of doubt. C 3/3/95.

625.0152 Partnership. A transfer of partnership property by the partnership to one or more of the partners usually constitutes a change of ownership that requires a reappraisal. However, if the purpose of the transfer is to facilitate a subsequent transfer qualified for the parent/child exclusion contained in Revenue and Taxation Code section 63.1, no reappraisal occurs. C 3/10/92.

625.0153 Partnership. Mother owned real property in which she gave a 10 percent interest to her daughter. Such transfer qualified for the parent/child exclusion under Revenue and Taxation Code section 63.1. Subsequently, mother and daughter transfer their respective interests in the real property to a partnership in exchange for the same proportional ownership interests in the partnership. Such transfer was excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). Thereafter, mother transferred a 50 percent interest in the partnership to her daughter. Since the daughter obtained a majority interest (60 percent) in the partnership as a result of the transfer, the partnership underwent a change in control under Revenue and Taxation Code section 64(c)(1). The transfer of interests in a legal entity does not qualify for the parent/child exclusion because section 63.1 excludes only certain transfers of *real property* between parents and children. Pursuant to section 63.1(c)(3), real property does not include legal entity interests. C 6/22/2007.

625.0155 Partnership Dissolution—Transfer to Heirs.

1. The dissolution of a partnership due to the death of the partners and the winding up of the partnership by the sole surviving partner does not constitute a change in control/ownership of the partnership under section 64(c).
2. The parent-child exclusion in section 63.1 is not applicable to the transfer of partnership interests to deceased partners' heirs.
3. Partnership's distribution of interests in real property to deceased partners' heirs may be excluded from change in ownership under section 62(a)(2), providing that the percentages of the property interests transferred are exactly proportionate to the partnership interests held by each heir. C 3/10/94.

625.0156 Partnership Dissolution. Husband (H) and Wife (W) owned a principal residence as community property. H and W transferred the property to a general partnership in which the partnership interests were held by H and W as partners. The partnership agreement did not provide for a continuation of the partnership on the death of a partner. Subsequently, H

and W created a revocable living trust. H and W then transferred their respective partnership interests to the trust. Later, W died. Following W's death, the revocable trust became irrevocable (irrevocable trust). H became the sole present beneficiary of the irrevocable trust during his lifetime, and the children of H and W (children) became the remainder beneficiaries. H died. The trust corpus was then distributed to the children.

When W died, the partnership dissolved 90 days after the date of death by operation of law because there was no agreement between H and W that provided for the continuation of the partnership. At that time, H held the real property in the trust indirectly as an individual, not as an interest in a legal entity. Thus, any transfers from the trust that occurred 90 days after W's death were transfers of real property, not partnership interests. When H died, the children became the present beneficial owners of the property held by the irrevocable trust. Since the children were the remainder beneficiaries of the irrevocable trust, the transfers should be treated as coming from H and W (as trustors of the trust). The transfer of the property from the irrevocable trust to the children will qualify for the parent-child exclusion under section 63.1, if all the filing requirements have been met, since it was a transfer of a principal residence from H and W to their children. C 5/16/2007.

[625.0158](#) **Possessory Interest.** The transfer of a recreation residence, but not the possessory interest in Forest Service land, may qualify as a parent-child transfer. A change in ownership of the possessory interest in the Forest Service land occurs when a new special use permit is issued to the children. C 11/1/96.

[625.0160](#) **Principal Residence.** The transfer of a principal residence is excluded from the definition of change in ownership if the homeowners' or veterans' exemption has been granted on the property but not if the renters' credit has been allowed. However, the property could be excluded if it is part of the transferred property valued at \$1,000,000 or less. C 10/10/87.

[625.0161](#) **Principal Residence.** Revenue and Taxation Code section 63.1(b)(1) defines a "principal residence" as including "only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence." The limitation on the portion of underlying land, "an area of reasonable size that is used as a site for the residence," is a question of fact in each instance to be determined by the assessor. Any portion of the land that does not qualify for exclusion as part of the principal residence may be excluded as "other real property of an eligible transferor" under section 63.1(a)(1). C 9/21/2001.

[625.0163](#) **Principal Residence.** Revenue and Taxation Code section 63.1(b)(1) provides that a "principal residence" includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence. An area of reasonable size can include multiple contiguous parcels as long as all parcels are part of an economic unit and are not readily severable. Other factors that may be considered include minimum zoning requirements, physical terrain, access, and actual use. C 8/2/2006.

[625.0180](#) **Real Property.** The parent/child exclusion contained in Revenue and Taxation Code section 63.1 applies only to transfers of real property. It does not apply to transfers of corporate stock, even though such a transfer might result in the indirect ownership/control of corporate real property by the stockholder children. C 10/6/87.

[625.0190](#) **Step Transaction.** A parent transfers an interest in real property owned by the parent to the parent's child and, thereafter, they jointly transfer their real property interests to a partnership and acquire the same proportionate interests in the partnership as they held in

the real property. The transfer of the real property interest from parent to child qualifies for the parent-child exclusion under Revenue and Taxation Code section 63.1, and the transfers of the real property interests to the partnership would be excluded as proportional interest transfers under Revenue and Taxation Code section 62(a)(2). The transaction is not subject to the step transaction doctrine, based upon the legislative intent language that accompanied the enactment of Revenue and Taxation Code section 63.1. C 11/21/90; C 1/3/91.

625.0191 Step Transaction. Pursuant to specific legislative intent expressed in Chapter 48 of the Statutes of 1987, the step transaction or substance-over-form doctrine shall not be applied to prevent the application of the parent/child exclusion of Revenue and Taxation Code section 63.1 to any transfer that is otherwise eligible for that exclusion. C 7/10/89; C 1/3/91.

625.0192 Step Transaction. Transfers of interests in legal entities, e.g., limited partnerships, by "original co-owners" into revocable trusts, irrevocable trustor-transferor beneficiary trusts, or trustor reversion trusts should not be "counted" for Revenue and Taxation Code section 64(d) purposes. The trust exclusion in Revenue and Taxation Code section 62(d) takes precedence over transfers by "original co-owners" under section 64(d). If the "original co-owners" take the extra steps described in the note of legislative intent following Revenue and Taxation Code section 63.1 in order to use the parent/child exclusion, the step transaction doctrine may not be applied to collapse the steps and trigger a change in ownership under section 64(d). C 10/30/96; C 9/29/97.

625.0193 Step Transaction. Judicial decisions have indicated that it is proper to apply the substance-over-form or step transaction doctrine to property transfers that accomplish a change in ownership in multiple steps in an attempt to avoid reappraisal. The doctrine is applicable even if the various steps accomplish a business purpose other than avoidance of increased taxes.

The exception to the general rule is found in the legislative intent language of section 2 of Chapter 48 of the Statutes of 1987 (Revenue and Taxation Code section 63.1), which provides, in substance, that the parent/child exclusion applies to transfers by eligible transferors to eligible transferees even if such transfers are immediately followed by a transfer to a corporation, partnership, trust or other legal entity if the transferee(s) is/are the sole owner(s) of the entity. The Board's legal staff is of the opinion the same result should follow when an eligible transferor's parents or children also own interests in the entity. Subsequent transfers of ownership interests among the children or to non-eligible transferees would constitute a change in ownership if one person or entity obtained a majority interest in the entity or if more than 50 percent of the total ownership interests were transferred. C 4/5/88.

625.0194 Step Transaction. If evidence establishes that beneficial ownership of property transfers to children under a written unrecorded contract and only legal title transfers by deed to the partnership, then the deed presumption that the parent is transferring property to the partnership is rebutted. In such case, the transfer may be excluded under Revenue and Taxation Code section 63.1, and the step transaction doctrine would not apply. C 8/22/2000.

625.0195 Step Transaction. C 3/28/2001. (Deleted 2004)

625.0196 Step Transaction. The step transaction doctrine is applied when a series of transfers are made merely to avoid reappraisal. However, the step transaction doctrine does not apply to multiple transfers of real property and legal entity interests between parents and children consistent with the legislative intent, expressed in the uncodified note

in the bill that enacted Revenue and Taxation Code section 63.1 (section 2 of Chapter 48, Statutes of 1987), that its provisions be liberally construed. C 12/8/2005.

625.0199 Trust Certification. A certification of trust is not sufficient evidence upon which to make a determination of eligibility for the parent-child exclusion if it does not identify the beneficiaries or their interests in the property held in trust. An assessor may require a claimant for the exclusion to either submit the trust instrument or copies of portions of the instrument that identify the beneficiaries and their interests enumerate, the powers of the trustee, and other relevant terms regarding the disposition of the trust property and assets, as a condition of processing and granting the exclusion. C 5/7/2004.

625.0200 Trusts. Revenue and Taxation Code section 63.1 excludes from reappraisal transfers between parents and children, whether outright or by the use of an inter vivos or testamentary trust and whether for or without consideration. Each eligible transferor may exclude a principal residence (no value limits) and \$1,000,000 of other property. C 4/5/88; C 12/14/90.

625.0201 Trusts. A trust distribution is within the parent-child exclusion where a trustee's statutory powers are not limited by the trust instrument, the trust instrument requires distribution to children in equal shares, and the trustee encumbers the trust real property after the trustor's death for purposes of distributing the real property to one child subject to the encumbrance and cash in an amount equal to the equity in the real property to the other child. C 9/10/96; C 3/14/2000.

625.0202 Trusts. A married person owning separate property may make his/her spouse a joint owner and thereafter, both spouses may transfer the property to a trust for the benefit of the children of the original owner and thereby qualify the transfer to the children for the parent/child exclusion, regardless of the fact that one of the trustors is a stepparent. This enables the parent and stepparent to combine their separate \$1,000,000 exclusions and jointly transfer the property to the trust without reappraisal. C 2/8/88.

625.0203 Trusts. The parent-child exclusion applies to transfers of real property interests into irrevocable trusts that are for the sole benefit of one or more children of the eligible transferor parent, even though the trustee has the discretion to accumulate trust income and principal. C 11/21/90; C 1/3/91.

625.0204 Trusts. The transfer of real property to a trust with directions that the trustee withhold distribution of the property and any income it earns until the happening of a specified event, such as the death of the trustor or the reaching of a particular age by the beneficiary, constitutes a transfer of a present interest in the property, and as such, does not prevent the application of the parent-child exclusion, provided that no other person has any intervening right, title, or interest in the property or income of the trust. C 3/23/92.

625.0205 Trusts. The transfer date for the application of the parent/child exclusion to property held in a husband/wife revocable trust is the date that the trust becomes irrevocable because of the death of the last parent-trustor. The value to be used in determining whether the \$1,000,000 exclusion amount has been reached is the taxable value of the property shown on the roll for the assessment year in which the transfer occurred. C 7/30/96.

625.0206 Trusts. The transfer by a decedent spouse to an irrevocable trust in which the survivor spouse (Wife) is the sole present beneficiary with a limited or special power of appointment of the trust assets enables the children receiving the remainder interests to claim the exclusion on the basis that both parents were transferors (via the trust) upon Wife's death. If the children timely file claims, Husband's \$1 million exclusion could be applied to his property, and Wife's \$1 million exclusion could be applied to her property, with

neither exclusion amount being reduced because of the special power of appointment held by Wife. C 2/4/88; C 8/22/96.

625.0207 Trusts. A transfer of property to an irrevocable trust or to a revocable trust followed by a transfer to a beneficiary who is the child of the trustor(s) can qualify for the parent/child exclusion of Revenue and Taxation Code section 63.1. C 9/4/87.

625.0208 Trusts.

1. A transfer of a vacation residence to an irrevocable trust by a parent trustor for a term of ten years is excluded from change in ownership where the parent trustor retains the present beneficial enjoyment of the vacation residence.
2. The outright transfer to parent's child when the trust terminates after ten years is excluded from change in ownership if child files a timely claim under Revenue and Taxation Code section 63.1.
3. If, alternatively, the property is transferred to a successor trust for the sole benefit of the child until he reaches age 21 instead of outright to the child, such transfer is excluded from change in ownership if child files a timely claim under Revenue and Taxation Code section 63.1. When the child attains the age of 21 and the trustee transfers the property outright to the child there is no change in ownership.
4. Under the terms of the foregoing trust, the property is transferred to parent's estate by the trustee if parent dies prior to the expiration of the ten year term. Although there would be a change in ownership at parent's death unless an exclusion applied, the subsequent transfer to parent's estate by the trustee would not be a change in ownership.
5. If the trustee sells the property to the child during the ten year term, there would be no change in ownership if child files a timely claim under Revenue and Taxation Code section 63.1. C 1/10/96.

625.0209 Trusts. The transfer of property to an irrevocable trust is not a change in ownership if the transferor/settlor is the sole beneficiary of the trust. On termination of the trust, either because of the death of the sole beneficiary or the passage of a time period specified in the trust instrument, a transfer to an "eligible transferee" son or daughter is excluded from change in ownership under Revenue and Taxation Code section 63.1 if all the other requirements for exclusion are met. If the contingent beneficiary son or daughter does not survive the expiration of the trust and the trust assets transfer to the child's estate, the parent/child exclusion is inapplicable. C 9/28/90.

625.0210 Trusts. Husband and wife create a living trust the assets of which are on the death of either transferred to (A) a second living trust (survivors separate property and share of community property), and to (B) an irrevocable trust (deceased spouse's separate property and share of community property). The latter trust declares the survivor to be the income beneficiary for life with the right to have principal used, if necessary, for the reasonable support on maintenance of the survivor spouse. The survivor is named a co-trustee of the B trust along with a daughter who is the ultimate beneficiary of both trusts.

Since the power to invade the principal of the trust can be exercised only with the concurrence of the co-trustee daughter who has a substantial interest adverse to the exercise of the power, it is classified by Civil Code section 1381.2 as a special rather than a general power of appointment. If not exercised or if disclaimed by the holder of the special power, such a power is ineffective and the property subject to appointment passes from the creator of the power to the beneficiary. When a general power of appointment is not

exercised, the property passes from the holder of the power to the beneficiary. The difference can be meaningful because of the relationship required and the value limitations of the parent/child exclusion. C 1/21/92.

[625.0211](#) **Trusts.** The case of *Larson v. Duca* (1989), 213 Cal.App.3d 324, applies only to probated estates, not to trusts that become irrevocable because of the death of the trustor. When a trust becomes irrevocable, title to the trust property vests in the beneficiaries, who must satisfy the requirements of Revenue and Taxation Code section 63.1, including the timely filing of the claim within three years of the date of death, in order to receive the benefit of the parent-child exclusion. C 1/14/91.

625.0212 **Trusts.** C 10/24/88. (Deleted June 2007)

625.0213 **Trusts.** C 8/5/91. (Deleted January 2006)

[625.0214](#) **Trusts.** When parents transfer their property into a trust for the benefit of their children, reserving to themselves the present use of the property for a term of years, there is no reassessable transfer until the trust terminates and the property is distributed to the children as the remainderpersons. The three-year period for filing the parent-child claim commences at the expiration of the parents' estate for years. C 2/28/92; C 12/12/94.

[625.0215](#) **Trusts.** Joint tenants, father and daughter, propose to transfer their interests in a residence to a pre-existing testamentary trust, in which father is the sole income beneficiary for his life and daughter and son are equal remainderpersons. The transfer of father's interest would be excluded from change in ownership under Revenue and Taxation Code section 62(d), and the transfer of daughter's interest would be excluded under Revenue and Taxation Code section 63.1, providing the parent-child claim is timely filed and all requirements are met. Upon father's death, his life estate will terminate, resulting in a change in ownership. The transfer of his 50 percent interest in the trust property to daughter and son could be excludable under section 63.1, the transfer of daughter's 50 percent interest in the trust property to her brother and herself would not be excludable.

If, as an alternative, father purchases daughter's 50 percent interest in the residence, files a parent-child claim, and then transfers that interest together with his own 50 percent interest into the trust, each step would be excludable under section 63.1 and Revenue and Taxation Code section 62(d) respectively. The step transaction doctrine would not be applicable, despite the extra steps, because of the uncodified statement of legislative intent at the end of section 63.1. C 5/27/93.

[625.0216](#) **Trusts.** Transfers of real property from parents' irrevocable trusts to their children pursuant to the terms of the trusts can qualify for the exclusion of Revenue and Taxation Code section 63.1. When, however, a child elects to receive trust assets other than his or her interest in the property and has that interest distributed to siblings, the interest is transferred from the child, not the parents, and the exclusion is not available. C 2/21/89.

[625.0218](#) **Trusts.** Mother transferred her properties into a testamentary trust, which directed that after her death all income from the properties would be distributed semi-annually to her five sons in equal shares, and that upon each son's death, his beneficial interest would be re-allocated in equal shares to the surviving sons, until only one son remained. Upon the death of the fourth son, the trust ceased, and the trust properties would be distributed one-half to the surviving son and one-half in equal shares to Mother's grandchildren.

Upon the death of each son, his lifetime interest in the trust property terminates and transfers by prior directive of the transferor/Mother to the other surviving sons and, ultimately, to her grandchildren. Since Mother is the transferor, either the parent/child

exclusion or the grandparent/grandchild exclusion may apply to exclude each of the transfers from change in ownership provided that all of the requirements of Revenue and Taxation Code section 63.1 are met. C 2/8/99.

625.0220 Trusts. A transfer of property to an irrevocable trust which grants a defeasible life estate to some of the trustors' children and a defeasible remainder interest to others qualifies for the parent/child exclusion contained in Revenue and Taxation Code section 63.1. The transfer to the trust may be gratuitous or for consideration and the life estate may be measured by the life of the trustor or one or more of the beneficiaries. C 4/18/88.

625.0230 Trusts. Husband and wife create a testamentary "A/B" trust. Each trust is funded with 1/2 of the community property and with 1/2 of the wife's separate property. Upon the death of the first spouse the survivor becomes entitled to all the income from both trusts with a general power of appointment of all the assets in one trust and an annual, non-cumulative, right to receive payment of \$5,000 or 5 percent of the aggregate value of the other. Upon the death of the second spouse all assets are to be administered together and all are to be transferred to their son.

In determining the amount of the \$1,000,000 parent/child exclusion available to each trust, it is necessary to ascertain the parent responsible for the son obtaining a particular property. Since the survivor had a general power appointment in both trusts, that person is considered owner of all property subject to the power. To the extent the power was not exercised and property transferred to the son, said transfer must be regarded as from the holder of the power. Likewise, any property placed in either trust after the death of the first spouse cannot be considered a transfer by that spouse since he/she never owned an interest in the property. C 4/6/92.

625.0231 Trusts. The case of *Larson v. Duca*, 213 Cal.App.3d 324, does not apply to transfers of properties made by trustors or trustees in the course of setting up, administering, or extinguishing trusts. It applies only to probate distributions occurring after November 5, 1986 of properties of persons who died prior to November 5, 1986. LTA 1/10/90 (No. 90/03).

625.0234 Trusts—Powers of Appointment. A general power of appointment authorizes the holder to transfer trust assets to himself, his estate, or any person. A special power of appointment limits the persons or entities to whom assets may be transferred.

The transfer of trust property by a parent, who is the sole income beneficiary, pursuant to a general power of appointment to the parent's living trust, in which he is the sole income beneficiary, results in no change in the present beneficial interest in the property. Upon the parent's death, the transfer of the trust property to his children qualifies for the parent-child exclusion as a transfer by the parent, providing a timely claim is filed.

In the case of a related trust in which the parent has a limited power of appointment, a transfer of trust property pursuant to that power to his children would be considered a transfer from the trustor, not the parent; and the parent-child exclusion would apply or not, depending upon the relationship between the trustor and the children. C 12/14/90.

625.0235 Trusts-Share and Share Alike. When a parent transfers property to a trust which provides that the children are to receive the trust assets on a share and share alike basis, unless the trust instrument specifies otherwise, the trustee has the power to distribute the property on a pro rata or non-pro rata basis. The distribution of sole ownership of a single asset to one child would qualify for the parent-child exclusion, except to the extent the value of the asset exceeds the value of that child's interest in the total trust estate. Such excess

must be considered a non-excludable transfer from the other beneficiaries pursuant to a sale of their interests to the recipient. C 8/6/90; C 9/10/96; C 10/28/99; C 3/14/2000.

[625.0235.005](#) **Trusts—Share and Share Alike.** A trustee who elects to make a non pro rata distribution of trust real property to one beneficiary may equalize the value of the other beneficiaries' interests in the trust assets by encumbering the real property with a loan and distributing the loan proceeds to the other beneficiaries. If the beneficiary of the real property is the trustor's child, then the parent-child exclusion would be applicable to the full extent of the value of the real property provided all other statutory requirements are met. However, a loan made by the beneficiary of the real property rather than the trustee in order to equalize the trust interests would be considered payment for the other beneficiaries' interests in the real property resulting in a transfer between beneficiaries. In that event, the parent-child exclusion would not apply to the interests transferred between beneficiaries. C 8/4/2003; C 9/5/2007; C 2/19/2009.

[625.0235.010](#) **Trusts—Share and Share Alike.** Upon a distribution of real property under the terms of an irrevocable trust, a key in determining if a change in ownership occurs is whether the trust instrument limits the trustee's power to distribute property. If the trust instrument allows one child to purchase real property interests from his/her siblings, this option restricts the trustee's power to distribute on a non pro-rata basis. Such purchase from the other beneficiaries does not qualify for the parent-child exclusion. C 7/25/2006.

[625.0235.015](#) **Trusts—Share and Share Alike.** If a trustee of a trust has the discretion to make non-pro rata distributions of trust property, the trustee is not legally required to distribute equal interest in a residence to each beneficiary so long as the trustee adjusts the distributions that are made so that each beneficiary receives property of equal value. However, the parent-child exclusion will not apply to the percentage ownership interest in the property in excess of a beneficiary's pro rata interest because it was received as a result of a transfer between siblings, not a transfer from a parent to children. Thus, it will be subject to reassessment. C 5/16/2007.

[625.0235.020](#) **Trusts—Share and Share Alike.** Husband and wife held title to their real property via their revocable trust. Upon the death of the first spouse, two trusts were established (Trust A and Trust B). The real property was transferred to the surviving spouse's revocable trust (Trust A). After the second spouse's death, Trust A became irrevocable. To determine if any transfer has occurred that does not qualify for the parent-child exclusion, it is necessary to compare the value of the real property received by each beneficiary to the value of that beneficiary's share of the trust estate. The value of the total residue should be determined as of the date the trust became irrevocable, not as of the date of distribution. The assets in Trust B would not be considered part of the Trust A estate. Thus, the transfer of assets from Trust B to Trust A after the second spouse's date of death cannot be used to equalize the distribution of Trust A. C 12/16/2009.

[625.0235.025](#) **Trusts—Share and Share Alike.** Parents' trust became irrevocable upon the death of the surviving parent. The trust document stipulates that, after certain specific bequests, the trust remainder is to be divided equally between their son and daughter. The trust document also gives son the option to include the property in his share of the trust remainder so long as he provides sufficient assets to his sister's share to equalize the distribution. Son has chosen to exercise this option. The trustee is given the authority to borrow funds, using the property as security, to equalize the distribution. Son will receive the property from the trust subject to the loan.

In the typical share and share alike trust, each beneficiary has a beneficial ownership interest in each of the trust's assets, including each piece of real property. In this case,

since son exercised the option to equalize distribution, daughter does not have a beneficial ownership interest in the property. Instead, her interest is in receiving an equalizing payment, which is in the nature of a security interest created by an equitable charge. The nature of the daughter's relationship to the property created by son's exercise of the option would appear to be that of an equitable encumbrancer. The effect of the equitable charge is that son receives the entire legal and beneficial ownership of the property from his parents, subject to a security interest in his sister of his payment to the trust of the equalizing amount. Thus, it is immaterial whether son as an individual acts as co-borrower or guarantor on the loan. In either case, the entire property would be eligible for the parent-child exclusion. C 2/22/2010.

625.0236 Trusts—Sprinkle or Spray Power. A "sprinkle or spray power" is a provision which gives the trustee total discretion to distribute trust income or property to a number of potential beneficiaries. When a trust contains a sprinkle or spray provision, to avoid a change in ownership and reassessment, all of the persons included as beneficiaries under that provision must have an exclusion. If even one person included as a beneficiary is not excludable, then 100 percent of the trust property is subject to change in ownership. C 7/18/01.

625.0240 Veterans. Under "The Veterans Farm and Home Purchase Act of 1974", the Department of Veteran Affairs is authorized to obtain property which it sells to veterans by contracts of sale. Although the Department obtains legal title to the property and holds it as security for payment of the contract purchase price, the vendee veteran is the owner for all purposes (*Eisley v. Mohan* (1948) 31 Cal.2d 637).

When the Department purchases property from the parent of the vendee veteran for the purpose of selling it to the veteran, the parent/child exclusion applies to the transfer to the child provided all other exclusion requirements are met. C 9/19/88.

625.0250 Wills. Where real property is transferred by will from a parent to her son provided the son pays a specified sum of money to his sister, an equitable charge is created giving the sister a security interest in the real property but not a beneficial interest. The son, therefore, receives the entire present beneficial interest in the real property from his parent for purposes of the parent/child exclusion and no ownership interest in the property is acquired from his sister. C 2/14/95.

625.0251 Wills. Mother's will granted the executor the authority to sell real property and also granted broad discretion in distributing property in kind on a pro rata or non-pro rata basis. Following the decedent's death, the Superior Court specified the method by which distribution of her assets would occur. The court ordered the executor to sell three-fourths of the real property interests to one beneficiary and to distribute the proceeds of the sale to the other three beneficiaries. Since the court ordered this method of equalizing the real property shares to be distributed among the four children, the beneficiary's purchase of the property interests was not from his siblings. Thus, the parent-child exclusion would apply to exclude the entire value of the real property. C 3/10/2005.

625.0260 Wills – Share and Share Alike. A mother bequeathed real property in her will to three children in equal shares. As such, the children held the property as tenants in common. One child contributed \$140,000 to the estate in order to receive a 100 percent interest in the real property, rather than a one-third interest. The contribution was made in order to equalize the shares of the beneficiaries for the purpose of distribution. When a beneficiary makes a money contribution in order to equalize the shares of the beneficiaries, such contribution constitutes payment for the interest of the other sibling beneficiaries and results in a purchase of that interest from the sibling beneficiaries. As such, the transfer of

the two-thirds interest in the property does not qualify for the parent-child exclusion and is subject to reassessment. C 2/19/2009.