



STATE OF CALIFORNIA

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No. 94/21

March 30, 1994

TO COUNTY ASSESSORS:

CHANGE IN FILING REQUIREMENTS FOR SECTION 63.1 EXCLUSION  
(PARENT-CHILD TRANSFER EXCLUSION)

Chapter 709 of the Statutes of 1993 (Senate Bill 675, Greene) changed the filing requirements for claims for the exclusion from the definition of change in ownership of parent/child transfers (Section 63.1 exclusion). Chapter 709 added paragraphs (3) and (4) to subdivision (e) of Section 63.1 of the Revenue and Taxation Code.<sup>1</sup> As amended, subdivision (e) reads, in part:

"Any claim under this section shall be filed:

"(1) For transfers of real property between parents and their children occurring prior to September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed.

"(2) For transfers of real property between parents and their children occurring on or after September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

"(3) Notwithstanding paragraphs (1) and (2), a claim shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental or escape assessment, issued as a result of the purchase or transfer of real property for which the claim is filed.

"(4) Unless otherwise expressly provided, the provisions of this subdivision shall apply to any purchase or transfer of real property that occurred on or after November 6, 1986." (Amended portion is underlined.)

<sup>1</sup>All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

The addition of paragraph (3) provides a safety net of sorts for some claimants who otherwise would have been ineligible under the previous requirements. Under paragraph (3), 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 Section 75.31 or the notice of escape assessment required by Section 534. If no such notice is mailed, then the first tax bill reflecting the purchase or transfer between parent and child will constitute notice, and the claim will be timely if it is filed no later than six months after the mailing of the tax bill.

Questions have been raised about how to interpret the phrase "within six months after the date of mailing of a notice of supplemental or escape assessment." Our position is that a claim is timely if it is filed no later than six months after the later of these two mailings. For example, if a taxpayer receives a notice of supplemental assessment for a Section 63.1 transfer dated January 1, 1994, and then receives a notice of escaped assessment dated April 1, 1994, the taxpayer has until six months after April 1, 1994, to file a timely claim.

Please note that this legislation is to be applied to any transfer occurring on or after November 6, 1986, and it became effective January 1, 1994. Consequently, any claims previously denied because they were filed outside of the three-year or third-party deadlines are now considered to have been timely filed if they were filed within six months after the date of mailing of a notice of supplemental or escape assessment.

Arguments have been made that the Legislature intended Chapter 709 to be prospective only. However, the language in Chapter 709 speaks to the contrary. Paragraph (4) of subdivision (e) of Section 63.1 is clear and unambiguous and reads: "Unless otherwise expressly provided, the provisions of this subdivision shall apply to any purchase or transfer of real property that occurred on or after November 6, 1986." (Emphasis added.) Since the language is plain and definite, it is not subject to interpretation. Further evidence of the Legislature's intent is contained in an August 29, 1993, letter from Senator Leroy Greene, author of SB 675, to Governor Wilson encouraging the Governor to sign the legislation. In that letter, Senator Greene stated that the intention of SB 675 is to allow the benefit to otherwise-eligible taxpayers who were previously denied the exclusion.

Other arguments have been raised regarding the administrative difficulties in implementing Chapter 709. This was one of the points made in the Board's Legislative Bill Analysis, dated March 3, 1993, which was distributed to the Legislature. Even though the Legislature was aware of the potential administrative burden, both the Legislature and the Governor approved SB 675. Despite such potential difficulties,

neither the Board of Equalization nor a county assessor has the authority to change or ignore express statutory requirements.

We recommend assessors review claims denied for lack of timeliness to determine whether they meet the revised filing requirements. Those that do should be approved. The base-year values of properties affected by the revised filing requirements should be corrected under Section 51.5. Any resulting roll corrections should be processed under Section 4831.

As we discussed in Letter to Assessors No. 89/34 (April 7, 1989), Section 51.5 does not by itself authorize roll corrections. Rather, it describes procedures which may in some cases result in roll corrections to be made under existing statutes. Further, the roll correction provisions have time limits. The statute of limitations for roll corrections is four years. Under Section 51.5, there is no time limit for correcting post-1975 non judgmental base year value errors.

It seems obvious that virtually all base-year value corrections resulting from the revised filing requirements of Chapter 709 will mean decreased base-year values. Section 51.5 provides that, if the correction to the base-year value results in a decreased base-year value, "appropriate cancellations or refunds of tax shall be granted . . ."

While there is no statute of limitations for cancellations of uncollected taxes (Section 4986), refunds of taxes already paid are subject to the limitations of Sections 5097 and 5097.2. Under these sections the statute of limitations for claiming refunds is, generally, four years after the making of the payment sought to be refunded.

Following are several situations illustrating the proper application of the revised filing requirements.

#### SITUATION NO. 1

Facts:

- \* Mother died on 7-5-90.
- \* Notice of supplemental assessment for the 1990-91 fiscal year was mailed on 6-1-93.
- \* Notices of escape assessment for the 1991-92 and 1992-93 fiscal years were mailed on 6-1-93.

- \* Supplemental assessment was enrolled on 7-1-93.
- \* Proposition 58 claim was filed and denied in August 1993 because it was not filed within three years after the date of the transfer.

Action as of 1-1-94: The claim is now considered timely because it was filed within six months of the date of the mailing of the supplemental assessment and escaped assessment. The assessor's office should approve the claim, correct the base year value under Section 51.5, and correct the roll values under Section 4831 for years 1991-92, 1992-93, and 1993-94. These roll corrections may result in refunds for those years. Also, a correction should be processed for the 7-5-90 event for the 1990-91 supplemental roll. This should result in a refund. Refunds of taxes paid for prior years are available if a claim for refund is filed within four years of payment (Section 5097).

## SITUATION NO. 2

### Facts:

- \* Mother died on 11-5-87.
- \* Notice of supplemental assessment for the 1987-88 fiscal year was mailed on 4-23-92.
- \* Notices of escaped assessment for the 1988-89, 1989-90, 1990-91, and 1991-92 fiscal years were mailed on 4-23-92.
- \* Supplemental assessment was enrolled on 6-1-92. {This is a valid supplemental assessment since the statute of limitations for supplemental assessment was not effective until 9-14-92.}
- \* Proposition 58 claim was filed and denied in June 1992 because it was not filed within three years after the date of the transfer.

Action as of 1-1-94: The claim is now considered timely. The assessor's office should approve the claim, correct the base year value under Section 51.5, and

process roll corrections under Section 4831 for years 1990-91, 1991-92, 1992-93, and 1993-94. These roll corrections may result in refunds for those years. No correction can be made for the 11-5-87 event on the supplemental roll since the statute of limitations for making supplemental assessments has lapsed. However, refunds of taxes paid on escaped assessments should be granted if a claim for refund is made within four years of payment (Section 5097).

### SITUATION NO. 3

Facts:

- \* Father died on 1-15-88.
- \* Notice of supplemental assessment for the 1987-88 fiscal year was mailed on 8-30-92.
- \* Notices of escaped assessment for the 1989-90, 1990-91, 1991-92, and 1992-93 fiscal years were mailed on 8-30-92.
- \* Proposition 58 claim filed on 1-15-94.

Action as of 1-15-94: The claim should be denied. The claim does not qualify because it was not filed within any of the three prescribed time limits.

### SITUATION NO. 4

Facts:

- \* Mother died on 4-10-89.
- \* Notices of supplemental assessment for the 1988-89 and 1989-90 fiscal years were mailed on 6-30-92.
- \* Notices of escaped assessment for the 1990-91 and 1991-92 fiscal years were mailed on 6-30-92.
- \* Proposition 58 claim was filed and denied on 12-2-92.

Action as of 1-1-94: This claim is now considered timely. The assessor's office should approve the claim, correct the base year value under Section 51.5, and process roll corrections under Section 4831 for the years 1990-91, 1991-92, 1992-93, 1993-94. These roll corrections may result in refunds. No correction can be made for the 4-10-89 event on the supplemental roll since the statute of limitations for making supplemental assessments has lapsed. However, refunds of taxes paid on escaped assessments or supplemental assessment should be granted if a claim for refund is made within four years of payment (Section 5097).

### **SITUATION NO. 5**

Facts:

- \* Parents died on February 15, 1993.
- \* Supplemental assessment notice mailed on August 1, 1993.
- \* Notice of escaped assessment for the 1993-94 fiscal year was mailed on **8-1-93**.
- \* Children filed Proposition 58 claim on 3-1-94.

Action as of 3-1-94: The assessor's office should approve the claim. Even though the claim was filed more than six months after the supplemental notice, the claim is still considered timely because it was filed within the three-year deadline.

### **Third Party Supplemental Assessments**

The application of Chapter 709 to previously denied claims presents special problems in cases where the property has been sold to a third party. Specifically, any supplemental assessment(s) issued to the third party may have been understated by an amount (ignoring inflation factoring) equal to the supplemental assessment originally issued for the parent-child transfer.

Section 75.11 (b) states that "the supplemental assessment placed on the supplemental roll shall be the difference between the new base year value and the taxable value on the current roll." If the current value on the roll at the time the supplemental assessment was issued to the third party was the base year value established as of the date of the parent/child transfer, then that supplemental assessment is incorrect. When the base year value and subsequent rolls are corrected under Chapter 709, then a corrective supplemental assessment may need to be processed to the third party when the base year value is restored.

Arguments have been made that corrective supplemental assessments cannot be processed. We do not agree. Section 4831 clearly allows the assessor to correct errors on the roll. Under the provisions of Chapter 709, any claims previously denied for timeliness are now considered to be timely if they were filed no later than six months after the date of mailing of a notice of supplemental or escape assessment. Since these claims are now timely, the reassessment due to the parent/child transfer is not valid. The assessor must now correct the taxable value on the roll. The authority for correcting this error is Section 4831.

Additionally, the Legislature clearly envisioned such an action when it enacted Section 5096.8 in 1990. That section sets forth a procedure for satisfying a supplemental assessment issued to a subsequent owner of real property "where a reduction in a base year value . . . results in [such] a supplemental assessment . . ."

Although the specific procedure set forth in Section 5096.8 applies only in counties whose boards of supervisors have adopted a resolution making its provisions effective, the general concept of a corrective supplemental assessment being levied against a subsequent owner after a reduction in a previous base-year value is well supported by this section. The only restriction on making such a supplemental assessment would be the statute of limitations provided in Section 75.11. Generally, this is four years after July 1 of the assessment year in which the event giving rise to the original supplemental assessment to the third party occurred.

Following are two situations involving third party transfers that illustrate the proper application of the revised filing requirements.

**SITUATION NO. 6**

Facts:

- \* Mother died on 7-9-91.
- \* Property sold to third party on 1-7-92.
- \* Supplemental assessment notice for the 7-9-91 transfer for the 1991-92 fiscal year was mailed on 2-2-92 to children.
- \* The tax bill for the 7-9-91 supplemental assessment is prorated between the children and the third party (Pursuant to Section 75.54(c)).
- \* Proposition 58 claim was filed and denied on 3-1-92 because it was not filed before the third party transfer.

Action as of 1-1-94: This claim is now considered timely. The assessor's office should correct the base year value under Section 51.5. The taxes paid on the supplemental tax bill issued to the children should be refunded. Since the third party received a portion of the supplemental assessment for the 7-9-91 event, no additional supplemental assessment is needed.

**SITUATION NO. 7**

Facts:

- \* Mother died on 2-9-91.
- \* Notice of supplemental assessment mailed to children on 3-10-92.
- \* Notice of escaped assessment for the 1991-92 fiscal year was mailed on 3-10-92.
- \* Property sold to third party on 8-7-92.
- \* Proposition 58 claim filed on 9-1-92 and denied because it was filed after the sale to a third party.

Action as of 1-1-94: The claim is now considered timely. The assessor should correct the base year value under Section 51.5 and process roll corrections under Section 4831 for years 1991-92 and 1992-93. The assessor should process a correction on the supplemental roll to the children. If payments have been made for the earlier escaped assessments, then refunds or roll corrections for years 1991-92 and 1992-93 may be in order. Additionally, a corrective supplemental assessment should be issued to the third party. This assessment is the difference between the full cash value of the property at the time of the sale to the third party, and the taxable value on the current roll as corrected by Section 4831. If the county has adopted an ordinance under Section 5096.8 then the county can offset the supplemental assessment against any refunds to the children. If the county does not have such an ordinance, one recourse for the buyer would be to attempt to obtain a portion of the seller's refund according to the tax proration terms of the escrow agreement.

#### Clarifying Amendments

Chapter 709 also amended Section 63.1 to allow the transferee's legal representative or the executor or administrator of the transferee's estate to file a claim and to furnish the assessor with the written certification that the transferee was a parent or child of the transferor. This amendment is consistent with advice previously issued in Letter to Assessors No. 91/23 (dated March 29, 1991.)

A second clarifying amendment was made to subdivision (g). Essentially, this amendment clarifies that the existing provision making Section 63.1 applicable to transfers resulting from a court order or judicial decree is not in conflict with the general principle that transfers by reason of death occur at the time of death. While this change should settle any doubt about whether the Larson v. Duca (213 Cal.App.3d 324) decision applies to any transfer resulting from a death on or after November 6, 1986, the amendment also leaves intact the proper application of that very narrow decision.

Enclosed is the revised claim form PT-58. Note that our prior approval of a revised prescribed form is not necessary if you use a copy of our prototype. If you use a rearranged version of the form, two draft copies must be submitted to the State Board of Equalization for approval.

TO COUNTY ASSESSORS

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March 30, 1994

Please send us one copy of your final printed form when received from your printer. Questions pertaining to form design or approval should be directed to Bill Minor. If you have questions regarding the content of this letter, please call our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,



Verne Walton, Chief  
Assessment Standards Division

VW:kmc  
Enclosure

**CLAIM FOR REASSESSMENT EXCLUSION FOR  
TRANSFER BETWEEN PARENT AND CHILD**  
(Section 63.1 of the Revenue and Taxation Code)

CALIFORNIA LAW PROVIDES, WITH CERTAIN LIMITATIONS, THAT A "CHANGE IN OWNERSHIP" DOES NOT INCLUDE THE PURCHASE OR TRANSFER OF:

1. The principal residence between parents and children, and/or
2. The first \$1,000,000.00 of other real property between parents and children.

IN ORDER TO QUALIFY FOR THIS EXCLUSION, A CLAIM FORM MUST BE COMPLETED AND SIGNED BY ALL ELIGIBLE TRANSFERORS AND TRANSFEREES AND FILED WITH THE COUNTY ASSESSOR WITHIN THREE YEARS AFTER THE DATE OF PURCHASE OR TRANSFER, OR PRIOR TO THE TRANSFER OF THE REAL PROPERTY TO A THIRD PARTY, WHICHEVER IS EARLIER, OR WITHIN SIX MONTHS AFTER THE DATE OF MAILING OF A NOTICE OF SUPPLEMENTAL OR ESCAPE ASSESSMENT FOR THIS PROPERTY. COMPLETE ALL OF SECTIONS A, B, AND C AND ANSWER EACH QUESTION OR YOUR CLAIM MAY BE DENIED. PROOF OF ELIGIBILITY MAY BE REQUIRED.

Please note:

- a. This exclusion only applies to transfers that occur on or after November 6, 1986.
- b. In order to qualify, the real property must be transferred from parents to their children or children to their parents.

**A. PROPERTY**

1. Assessor's Parcel Number \_\_\_\_\_
2. Property Address \_\_\_\_\_ City \_\_\_\_\_
3. Recorder's Document No. \_\_\_\_\_ Date of Purchase or Transfer \_\_\_\_\_
4. Probate No. (If Applicable) \_\_\_\_\_ Date of Death (If Applicable) \_\_\_\_\_
5. Date of Decree of Distribution (If Applicable) \_\_\_\_\_

The disclosure of social security numbers is required by Revenue and Taxation Code, Section 63.1. The numbers are used by the assessor and the state to monitor the exclusion limit. This claim is not subject to public inspection.

**B. TRANSFEROR(S)/SELLER(S) (ADDITIONAL TRANSFERORS PLEASE COMPLETE "B" ON THE REVERSE)**

1. Print Full Name(s) of Transferor(s) \_\_\_\_\_
2. Social Security Number(s) \_\_\_\_\_
3. Family Relationship(s) to Transferee(s) \_\_\_\_\_  
If adopted, age at time of adoption \_\_\_\_\_
4. Was this property your principal residence?  Yes  No  
If yes, please check which one of the following exemptions was granted on this property in your name:  
Homeowners' Exemption \_\_\_\_\_ Disabled Veterans' Exemption \_\_\_\_\_
5. Are you transferring real property other than the principal residence of the transferor? (Limited to the first one million dollars of value)  Yes  No  
If yes, please attach a list of all previous transfers by you that qualify for this exclusion. [This list should include for each property: the County, Assessor's parcel number, address, date of transfer, names of all the transferees/buyers, and family relationship. Transferor's Principal Residence must be identified.]
6. Was only a partial interest in the property transferred?  Yes  No If yes, Percentage Transferred \_\_\_\_\_%
7. Do you own this property as a joint tenant?  Yes  No
8. If the transfer was through the medium of a trust, please attach a list of all the beneficiaries.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING AND ANY ACCOMPANYING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I CERTIFY THAT I AM THE PARENT OR CHILD OF THE TRANSFEREES LISTED IN SECTION C.

\_\_\_\_\_  
(SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE) (DATE)

\_\_\_\_\_  
(SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE) (DATE)

\_\_\_\_\_  
(MAILING ADDRESS) (DAYTIME PHONE)

**PLEASE COMPLETE APPLICABLE INFORMATION ON REVERSE SIDE.**

**CLAIM FOR REASSESSMENT EXCLUSION FOR  
TRANSFER BETWEEN PARENT AND CHILD**

**C. TRANSFEREE(S)/BUYER(S) (ADDITIONAL TRANSFEREES PLEASE COMPLETE "C" BELOW)**

1. Print Full Name(s) of Transferee(s) \_\_\_\_\_
2. Family Relationship(s) to Transferor(s) \_\_\_\_\_  
If adopted, age at time of adoption \_\_\_\_\_

If step-parent/step-child relationship is involved, was parent still married to step-parent on the date of purchase or transfer?

Yes  No.

If no, was the marriage terminated by: 1. Death?  or 2. Divorce?

If terminated by death, had the surviving step-parent remarried as of the date of purchase or transfer?  Yes  No.

If in-law relationship is involved, was the son-in-law or daughter-in-law still married to the daughter or son on the date of purchase or transfer?  Yes  No.

If no, was the marriage terminated by: 1. Death?  or 2. Divorce?

If terminated by death, had the surviving son-in-law or daughter-in-law remarried as of the date of purchase or transfer?

Yes  No.

3. ALLOCATION OF EXCLUSION (If the full cash value of the real property transferred exceeds the one million dollars value exclusion, the transferee must specify on an attachment to this claim the amount and allocation of the exclusion that is being sought.)

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING AND ANY ACCOMPANYING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I CERTIFY THAT I AM THE PARENT OR CHILD OF THE TRANSFERORS LISTED IN SECTION B.

\_\_\_\_\_  
(SIGNATURE OF TRANSFEREE OR LEGAL REPRESENTATIVE)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(MAILING ADDRESS)

\_\_\_\_\_  
(DAYTIME PHONE)

The Assessor may contact you for additional information.

**B. TRANSFEROR(S)/SELLER(S) (continued)**

NAME	SOCIAL SECURITY NUMBER	RELATIONSHIP	SIGNATURE	DATE

**C. TRANSFEREE(S)/BUYER(S) (continued)**

NAME	RELATIONSHIP	SIGNATURE	DATE