



STATE BOARD OF EQUALIZATION

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Executive Director

No. 94/59

October 20, 1994

**SEE AH 401 FOR A REVISED
DEFINITION OF FULL CASH
VALUE**

TO COUNTY ASSESSORS:

PROPOSITION 58 ISSUES

This letter discusses current issues relating to the Revenue and Taxation Code Section 63.1 exclusion from change in ownership of transfers of real property between parents and children. (All statutory references are to the Revenue and Taxation Code unless otherwise indicated.)

TAXPAYER IDENTIFICATION NUMBERS

Chapter 1222, Statutes of 1994 (Senate Bill 1431, Committee on Revenue and Taxation) has been signed by the Governor. Among other things, Chapter 1222 permits certain nonresident aliens the use of tax identification numbers issued by the Internal Revenue Service (IRS) for purposes of the parent/child change in ownership exclusion. Section 63.1 provides that the parent-child exclusion shall not be allowed for transfers of real property other than the principal residence unless the eligible transferee files a claim with the assessor furnishing the Social Security number of each eligible transferor. In order to monitor the \$1,000,000 limit, the Board developed a program keying on the Social Security numbers of the transferors.

A problem arose, though, in that not all eligible transferors can obtain Social Security numbers. In particular, transferors who are not citizens of the United States may have problems obtaining Social Security numbers. Transferors who are not citizens of the United States may obtain United States Social Security numbers if they have a valid reason for needing one or are considered residents of the United States. Non-United States citizens need Social Security numbers, for example, to obtain driver's licenses, to open bank accounts, or to file income tax returns in the United States. However, the Social Security Administration has stated that the property tax benefit of Section 63.1 is not a valid reason to issue Social Security numbers to non-United States citizens.

Because some non-United States citizen transferors have not been able to obtain Social Security numbers, the respective transferee cannot file a claim for the Section 63.1 exclusion. However, in the opinion of our legal staff, the California courts will not sustain the Social Security number requirement if it would preclude these transferees from receiving the benefits of Proposition 58. Therefore, we have adjusted the monitoring program so that it will now accept another identification number when the transferor cannot obtain a Social Security number. We will now accept an identification number issued by the IRS when a Social Security number cannot be obtained because the eligible transferor is a foreign national.

A non-United States citizen is subject to U.S. income tax on income from sources within the United States (e.g., gains, profits, and income from the sale or other disposition of real property located in the United States). In addition, non-United States citizens are required to file federal income tax returns if they sell real property in the United States or give a gift (including real property) of more than \$10,000 to one individual. Thus, if non-United States citizens are required to file either a U.S. Nonresident Alien Income Tax Return (Form 1040NR) or a Gift Tax Return (Form 709) with the IRS, they can obtain Social Security numbers from the Social Security Administration.

Non-United States citizens who are not required to file an income tax return or have transferred real property of less than \$10,000 to an individual may voluntarily file an income tax return; there is no minimum filing requirement. If a tax return is filed without a Social Security number, the IRS will assign an "identification number" to the taxpayer. An identification number is a Social Security number that begins with "9." These identification numbers cannot be applied for; they are assigned by the IRS when the need arises.

Forms to obtain Social Security numbers (Form #SS-5) are available at United States Embassies. These forms can be filed with the Embassy. At the time of filing, the taxpayer must present both a birth certificate and current identification.

IRS forms are available at United States Embassies or IRS Liaison Offices in foreign countries. Taxpayers can also request IRS forms from either of the two following addresses:

Internal Revenue Service
Eastern Area Distribution Center
P. O. Box 85074
Richmond, VA 23261-5074 U.S.A.

Internal Revenue Service
Western Area Distribution Center
Rancho Cordova, CA 95743-0001 U.S.A.

Completed tax returns should be mailed to the Internal Revenue Service Center, Philadelphia, Pennsylvania, 19255, U. S. A. For assistance in the United States regarding income tax returns, taxpayers can contact the local Internal Revenue Service office listed in the telephone directory. For assistance outside the United States regarding income tax returns, taxpayers must write to the Internal Revenue Service, Assistant Commissioner (International), Attn: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, U. S. A.

In summary, we will accept identification numbers issued by the IRS for the Section 63.1 monitoring program in lieu of Social Security numbers where the transferor is a foreign national who cannot obtain a Social Security number. Note that only Social Security numbers or IRS-issued identification numbers for individuals are acceptable. A business identification number, employer's number, or corporate or other legal entity identification number is not acceptable. However, in estate situations where the decedent did not have a Social Security number, we will accept the Employer Identification number issued by the IRS to the estate as the identification number of the eligible transferor.

TERMINATION OF JOINT TENANCY

We recently received a question regarding a recorded document which provided that husband and wife agree that any property presently held by them as joint tenants shall be deemed to be community property with each entitled to leave his or her one-half (1/2) interest by will. In addition, the document provided that husband and wife further agree that any property acquired by them as joint tenants after the date of the recorded document shall also be deemed to be community property unless the parties sign an agreement specifically referring to this recorded document and specifically stating that it shall not be applicable to such property acquired by the parties in joint tenancy.

The issue presented is whether in cases where a son or daughter of the couple owns the property in joint tenancy with the couple, such recorded document "breaks" the joint tenancy, thus resulting in a change in ownership and requiring the filing of a Section 63.1 claim. We assume, for purposes of this analysis, that the parents' recorded document has the effect of ending the joint tenancy between all three parties, which transforms the son's or daughter's interest into a tenancy in common. Such transformation constitutes a change in ownership of the child's tenancy in common interest resulting in reappraisal, unless the parties qualify the transfer under the parent/child exclusion.

FULL CASH VALUE

We want to clarify our advice on the definition of "full cash value" as used in Section 63.1 for purposes of applying the \$1,000,000 exclusion. Section 63.1(c)(3) defines "full cash value" and reads:

" 'Full cash value' means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section."

Article XIII A Section 2(b) provides for declines in value as well as base year factoring. This section reads as follows:

"The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value." (Emphasis added.)

Since Section 2(b) of Article XIII A provides for declines in value caused by various factors, including market forces, we want to clarify that the proper value to report to the Board is the lower of either the factored base year value or the market value. Generally, the taxable value on the roll at the time of the parent-child transfer is the full cash value to report to the Board.

INFORMATION AVAILABLE TO TAXPAYERS

The data base maintained by the Board on the \$1,000,000 portion of Section 63.1 exclusion is not confidential except for the Social Security numbers. We will provide this information verbally over the telephone to the county assessor's office, and we will provide a written response to any reasonable written request by a taxpayer providing his/her name and Social Security number. If any taxpayers are interested, they should mail their requests (include the name and Social Security number) to:

State Board of Equalization
Assessment Standards Division
Real Property Technical Services Unit
P O Box 942879, MIC: 64
Sacramento, CA 94279-0064

TO COUNTY ASSESSORS

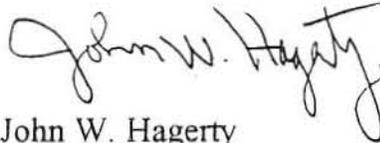
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October 20, 1994

Changes to the parent-child filing requirements enacted by Chapter 709, Statutes of 1993 (Senate Bill 675), were discussed in letter to assessors 94/21, dated March 30, 1994.

If you have any further questions or comments on the various issues contained in this letter, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

A handwritten signature in cursive script that reads "John W. Hagerty". The signature is written in dark ink and is positioned above the typed name.

John W. Hagerty
Deputy Director
Property Taxes Department

JWH:grs