STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
POLICY, PLANNING, AND STANDARDS DIVISION
450 N STREET, MIC 64, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064)
TELEPHONE (916) 445-4982
FAX (916) 323-8765

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TO COUNTY ASSESSORS:

REVENUE AND TAXATION CODE §63.1:
PARENT-CHILD EXCLUSION (PROPOSITION 58)
GRANDPARENT-GRANDCHILD EXCLUSION (PROPOSITION 193)

Shortly after Proposition 58 was adopted in 1986, the Board issued two letters to assessors containing questions and answers on Proposition 58 (LTAs No. 87/72, dated September 11, 1987, and No. 88/10, dated February 11, 1988). These questions and answers are being reissued with updated information as changes have occurred in the last ten years.

HISTORY. On November 4, 1986, the voters of California adopted Proposition 58, which added section 2(h) to article XIII A of the California Constitution to provide that the terms "purchased" and "change in ownership" do not include the purchase or transfer of (1) principal residences between parents and children and (2) the first $1 million of real property other than principal residences between parents and children. Section 63.1 was added to the Revenue and Taxation Code[1] to implement the parent-child exclusion provisions of Proposition 58 and applies to any purchases or transfers between parents and children which occur on or after November 6, 1986.

On March 26, 1996, the voters of California adopted Proposition 193, which amended section 2(h) of article XIII A to exclude from the definition of "change in ownership" certain transfers from grandparents to their grandchildren. Section 63.1 was amended to reflect the grandparent-grandchild provisions. See Letter to Assessors No. 97/32 (dated June 5, 1997) for details.

DEFINITIONS. Section 63.1 provides various definitions which are described briefly as follows:

1. "Principal residence"--a dwelling for which a homeowners' exemption or a disabled veterans' exemption has been *granted* in the name of the eligible transferor. This dwelling shall include 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.

2. "Purchase or transfer between parents and their children"--any transfer of real property from parent(s) to child/children or from child/children to parent(s).

[1] All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

3. "Children"
    - Any child born of the parent(s)
    - Any stepchild or spouse of that stepchild while the relationship of stepparent and stepchild exists.
    - Any son-in-law or daughter-in-law of the parent(s).
    - Any statutorily adopted child, who was adopted by the age of 18.

4. "Full Cash Value"--Full cash value as defined by Section 110.1 and section 2 of article XIII A of the California Constitution just prior to the date of transfer; basically the taxable value on the roll just prior to the date of transfer. However, in the case of property assessed under the provisions of the *Williamson Land Conservation Act*, the excluded value will be the base year value properly factored by the appropriate consumer price index.

5. "Eligible Transferor"--Grandparent, parent or child of an eligible transferee.

6. "Eligible Transferee"--Parent, child or grandchild of an eligible transferor.

7. "Real Property"--As defined in Section 104; it does *not* include any interest in a legal entity.

In order to receive this exclusion, the county assessor must receive a timely claim that contains the following statements:

- A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate made under penalty of perjury that the transferee is a parent, child or grandchild of the transferor.
- A copy of a written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate made under penalty of perjury that the transferor is a grandparent, parent or child of the transferee.

Claim forms are available from the county assessor.

SUPPLEMENTAL ASSESSMENT. Since the exclusion provided for in this section is from change in ownership, any property granted this exclusion is not subject to supplemental assessment. However, the sale or transfer of any real property between an eligible transferor and an eligible transferee that has not received this exclusion is considered to have undergone a change in ownership and, therefore, is subject to supplemental assessment. This means that if the amount transferred exceeds the exclusion limit, then any excess would be subject to supplemental assessment.

$1 MILLION LIMIT. Please note that this exclusion is limited to the first $1 million of real property, other than the principal residence, transferred between an eligible transferor and an eligible transferee. Our opinion is that the $1 million exclusion applies only to the first $1 million of the full cash value of "other real property" for which a claim has been filed and the exclusion granted. Section 63.1 provides, in pertinent part:

> "(a) Notwithstanding any other provision of this chapter, a change in ownership shall not include the following purchases or transfers for which a claim is filed pursuant to this section...
>
> "(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children."

The first sentence of subdivision (a) states that change in ownership shall not include transfers for which a parent-child claim is filed. Paragraph (2) defines one of the types of transfers to which section 63.1 applies. The construction of subdivision (a) requires that its subordinate paragraphs be read in conjunction with its first sentence which modifies those subparagraphs. When read together, the plain meaning of subdivision (a)(2) is that change in ownership shall not include transfers of the first $1 million dollars of full cash value of real property *for which parent-child exclusion claims are filed*. The clear inference is that when real property is transferred between a parent and child and a claim for exclusion is *not* filed, then such a transfer is a change in ownership and will not be counted or cumulated for purposes of the $1 million exclusion limitation.

However, if parent-child claims are filed for multiple properties of which the full cash values cumulatively exceed the $1 million limit, then the *transfer date* becomes the determining factor for which properties are to receive the property tax exclusion. In other words, the first properties transferred shall receive the $1 million exclusion in this situation. If the transfer date is the same for all properties (e.g., a date of death), the transferees must decide which properties are to receive the $1 million exclusion.

Example 1
In addition to his principal residence, a father has $2,000,000 in other real property. The father grants $1,000,000 of real property to son A in 1988 and in 1990 the father grants the remaining $1,000,000 of real property to son B. Which son will receive the exclusion?

- If both sons file for the exclusion on the $2,000,000, only the $1,000,000 to son A will qualify because it transferred first.
- However, if only son B files for the exclusion, his $1,000,000 will be excluded because son A did not claim the exclusion for the property he received.

Example 2
In addition to his principal residence, a father has $2,000,000 in other real property. The father dies in 1992. His will bequeaths $1,000,000 of real property to son A and $1,000,000 of real property to son B. Both sons file parent-child claims on the real property. Since the transfer date is the same for all the properties, sons A and B must decide which properties are to receive the $1 million exclusion.

Example 3
In addition to his principal residence, a father has $2,000,000 in other real property. The father sells one parcel (taxable value of $500,000) to his daughter in 1990. She files a parent-child claim on this property. The father dies in 1992. His will bequeaths the remaining $1,500,000 of

real property to his children. Since only $500,000 of the father's $1 million exclusion is remaining, the children must decide among the properties that transferred upon the father's death which ones are to receive the remainder of the exclusion.

QUESTIONS AND ANSWERS

PRINCIPAL RESIDENCES

1. Question: How many principal residences can be transferred by the eligible transferor under Section 63.1?

Answer: If the eligible transferor is a *parent or child,* there is no limit to this portion of the exclusion. However, each principal residence must be qualified as defined in this section. For example, a parent sells the large family house to a child and purchases a smaller home which becomes the parent's principal residence. After a few years, this home is still too large, and the parent sells this residence to another child. Parent buys a condo which becomes the principal place of residence. As long as both children file timely claims, both transfers qualify for the principal residence portion of the parent-child exclusion.

If the eligible transferee is a *grandchild,* that grandchild may only receive one principal residence. If the grandchild received a principal residence from a parent that was excludable under section 63.1, then any principal residence received from a grandparent must be considered as "other real property" and counted against whatever is available from the grandchild's *parent's* $1 million exclusion.

2. Question: Must the principal residence of the transferor become the principal residence of the transferee after the transfer?

Answer: No. The residence need only be the principal residence of the transferor.

3. Question: A parent owns an apartment complex and lives in one of the units as his principal place of residence. Parent wants to transfer this complex to son. Does entire complex qualify as a principal place of residence?

Answer: No. Only the unit used as the principal place of residence qualifies for the principal residence portion of the parent-child exclusion. The remainder of the apartment complex would qualify as "other property" and apply towards the parent's $1 million exclusion.

WITHIN CALIFORNIA

4. Question: Does the transfer of real property outside California between an eligible transferor and an eligible transferee enter into the $1 million exclusion limit?

Answer: No. This exclusion applies only to real property located in California because of the unique definition of "full cash value" contained in this section and the fact that change in ownership definitions only apply to California property.

CLAIMS

5. Question: When must the claim for the exclusion be filed?

Answer: To receive property tax relief from the date of the transfer of real property, claims must be filed within three years after the date of the transfer or prior to the transfer of the real property to a third party, whichever is earlier. If a claim is not made within this filing period, a claim is considered timely if it is filed within six months after the date the assessor mails a notice of supplemental or escape assessment informing the taxpayer that the property will be reassessed. If a claim is *not* filed timely, relief will be granted prospectively only. Prospective relief is available for claims filed after January 1, 1998. Prospective relief is *not* available to properties which have been sold to third parties.

6. Question: What is meant by "prospectively?"

Answer: If a claim is filed after the conclusion of the specified filing periods described above, the exclusion may be granted as of the year that the claim is filed. Section 63.1(e)(2) provides that any exclusion granted for a claim that is filed subsequent to the expiration of the filing periods shall apply commencing with the lien date of the assessment year in which the claim is filed. For example, untimely claims filed in 1998 shall apply to the 1998 lien date, i.e., the 1998-99 fiscal year.

7. Question: Three years after the death of a parent, the county mailed a tax bill which also doubled as a notice of supplemental assessment to the attorney of the estate (the only address known to the county). A year later, the attorney gave the tax bill to the trustee. The trustee provided the county with the names and addresses of the children of the deceased. The county remailed the tax bill with the corrected address to the children. The children filed a claim stating that their claim is timely, i.e., within six months of the date they received the tax bill. Does the second tax bill start a new six-month filing period?

Answer: No. The tax bill sent to the children was not a new tax bill, simply a reissued one with a corrected address. The six month period begins from the date the notice of supplemental assessment , i.e., the original tax bill, was mailed to the attorney. The six-months statute of limitations begins to run under section 63.1(e) if the assessor has notified the assessee personally, or notified the assessee by US mail at the assessee's latest known address as contained in the official records of the county. The second tax bill constitutes notice *only if* the assessor did not provide notice, either by personal delivery or by US mail at the assessee's latest known address in the county records. If the address of the attorney handling a deceased assessee's estate is the latest known address of the assessee, the notice requirements have been met.

CLAIMS - SIGNATURE REQUIREMENTS

8. Question: Must all transferors and transferees file the claim form? What if one transferee cannot be reached to sign the form?

Answer: Yes, the law specifically requires written certification declaring the parent-child relationship under the penalty of perjury from both the transferee and the transferor or the executors of their estates or their legal representatives. (A legal representative is one who has been duly authorized and has been given appropriate power to file this type of claim.) This requires signatures from all of the eligible transferees and all of the eligible transferors.

In instances where one or more transferee(s) or transferor(s) does not provide the required certification, their interest in the real property cannot receive the exclusion. For instance, if a mother leaves her real property to her four children and one child has not provided written certification of their relationship, that child's 25 percent interest is not excluded from change in ownership and is subject to reappraisal, regardless of the documentation provided. However, the 75 percent interest owned by the children who have provided certification, along with other information specified in section 63.1(d), may be granted the exclusion from change in ownership.

However, upon proper filing of an application for changed assessment (section 1601 et seq.), the county assessment appeals board may evaluate all of the written documents and evidence to determine whether such documentation, apart from the claim itself, satisfies the provisions of section 63.1(d)(1)(B). In this regard, it is important to note that the exact language of the statute does not require the transferor's signature on the claim, but rather requires that the transferee shall submit "A copy of written certification by the transferor...made under penalty of perjury that the transferor is a parent...of the transferee." Section 63.1(d) requires the transferee to file the claim; and section 63.1(d)(1)(B) requires written certification as to parenthood and certification that the property transferred is the transferor's principal residence. The transferor's signature on the claim form is the standardized method approved by the Board for the assessor to obtain such written certification required by the statute. Although the question is not free of doubt, the lack of the transferor's signature would not preclude an assessment appeals board from determining whether there is sufficient independent evidence to satisfy the statute. If, for example, there are other forms or writings, deeds, court documents, tax returns, etc., signed under oath or penalty of perjury, which indicate the parent-child relationship, then such documentation could satisfy the requirement of "written certification by the transferor." Similarly, other documents might be used as the certification that the property was the principal residence. The weighing of such evidence, of course, and the ultimate conclusion to which it leads are questions of fact entirely within the purview of the assessment appeals board.

RESCISSION

9. Question: May an assessor allow a claimant to rescind a parent-child or grandparent-grandchild claim for exclusion?

Answer: Yes, even though there is no express statutory authorization. Under the basic principles of tax law, the taxpayer has the right to elect whether to claim a tax benefit or not, and if the benefit is voluntary, the taxpayer is not forced to take it. If the taxpayer chooses whether to accept the benefit or not initially, then it follows logically that the taxpayer should be able it withdraw his acceptance of the benefit as well, particularly if it results in an increase in tax rather than the reduction (benefit) intended by the Legislature.

ALLOCATION

10. Question: How is the allocation of the exclusion to be made where the full cash value of real property exceeds the permissible exclusion?

Answer: Within any appraisal unit, as determined in accordance with subdivision (d) of section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis and shall not be applied to a selected portion or portions of the appraisal unit.

11. Question: If more than one eligible transferee claims the $1,000,000 exclusion of a transferor, which transferee receives the exclusion?

Answer: Since both section 2(b) of article XIII A of the California Constitution and section 63.1 use the term "the first one million dollars," it suggests that priority should be based on the time of the transfer of the property. Where simultaneous transfers are made to two or more qualifying transferees, there is no express guidance in the statute. The transferees must agree on an allocation of the exclusion.

LEGAL ENTITIES

12. Question: What part do legal entities play in this exclusion?

Answer: None. This exclusion applies only to transfers of real property interests between eligible parents and children. This exclusion does *not* apply to transfers, between parents and children, of ownership interests in legal entities, such as partnership interests or corporate stock.

STEP TRANSACTION DOCTRINE

13. Question: Does the step transaction doctrine apply to legal entity transfers between parents and children when they structure a transaction in a series of steps in order to utilize the parent-child exclusion?

Answer: No, provided the transaction is consistent with the statement of legislative intent contained in Chapter 48 of the Statutes of 1987 (the legislation which added section 63.1 to the Revenue and Taxation Code) which allows the parent-child exclusion for certain step transactions involving legal entities.

For example, Corporation A (wholly owned by parents) transfers real property to parents who then transfer the same real property to their child who transfers the same real property to Corporation B (wholly owned by child). The step transaction doctrine treats a series of nominally separate transactional steps as a single transaction if the steps are, in substance, interdependent and focused toward a particular result. In such circumstances, however, the step transaction doctrine would not apply, and the property may be excluded under the parent-child exclusion pursuant to the note of legislative intent. Please note that the child must file the parent/child claim form *before* the property is transferred to Corporation B (a third party transfer).

14. Question: A mother transferred real property interests into a partnership, and subsequently granted partnership interests to her children. The end result is the same as if multiple steps

had been taken and treated as a single transaction under the step transaction doctrine, i.e., the transfer of real property interests from a parent to her children. Does this qualify for the parent-child exclusion?

Answer: No. In *Penner* v. *Santa Barbara County* (1995) 37 Cal. App. 4th 1672, the court of appeals held that the definition of "children" as set forth in section 63.1(c)(3) "includes only natural persons with a familial relationship to one another." The court acknowledged that if the mother had first transferred the real property interests to herself and the children and, thereafter, they had transferred the same proportional interests in the partnership, the first transfer would have been excluded from change in ownership as a transfer between a parent and her children and the second transfer would have been excluded under section 62(a)(2). In response to the taxpayer's argument that the parent-child exclusion should apply because the end result was the same, the court refused to depart from the plain meaning of the language of the statute. The step transaction doctrine allows certain steps actually taken to be ignored; however, it does not allow a taxpayer to invent steps that never existed.

15. Question: Can an unrestricted transfer from grandparent to parent immediately followed by a transfer from parent to child qualify for the parent-child exclusion?

Answer: Yes. Chapter 48 of the Statutes of 1987 states that it is the intent of the Legislature to liberally construe section 63.1 to carry out the purpose of Proposition 58. Therefore, as long as each transfer is *unrestricted* and is otherwise eligible (e.g., between parents and children), the exclusion is applicable. If the parents are *restricted* to transferring the property to their child, then the step transaction doctrine would apply and these steps would be collapsed into one transaction, i.e., a transfer from grandparent to grandchild. Since the parents are living, the grandparent-grandchild exclusion would not apply, and this transaction would not be excluded from change in ownership.

ACQUISITION BY INHERITANCE

16. Question: If an owner dies and the child received the property by will, intestate succession, or joint tenancy survivorship, does this transfer qualify for the exclusion?

Answer: If the child meets the family relationship requirements of section 63.1, timely files a claim, and the value of the property is within the limit of the exclusion, then the transfer qualifies for the exclusion. This exclusion applies to both voluntary transfers and transfers resulting from a court order or judicial decree.

17. Question: An owner dies and her will left her properties jointly to her two sons. The court ordered the properties distributed jointly to the two sons. However, the two sons did not wish to jointly own property with each other. Thus, son A conveyed his interest in parcel 1 to son B and son B conveyed his interest in parcel 2 to son A, resulting in son B owning parcel 1 and son A owning parcel 2. These deeds were recorded simultaneously after distribution. Does this still fall within the parent-child exclusion?

Answer: The transfer of parcels 1 and 2 jointly to the two sons upon the death of their mother is excludable from change in ownership under section 63.1. However, subsequent transfers between siblings are not excluded and considered to be reappraisable changes in ownership.

Thus, the transfer of son A's interest in parcel 1 to son B and the transfer of son B's interest in parcel 2 to son A would trigger a 50 percent reappraisal of each parcel.

JOINT TENANCY

18. Question: A and B (husband and wife) own real property as joint tenants. A and B transfer the property to A, B, C, and D all as joint tenants (C and D are the children of A and B). Several years later, A and B transfer their interest to the "A and B Revocable Trust" (A and B are the beneficiaries of this trust). When should C and D file a parent-child claim?

Answer: A parent-child claim should be filed when the change in ownership occurs. When A and B added C and D as joint tenants, no change in ownership occurred because of the manner in which the joint tenancy was created. A and B became "original transferors" and a change in ownership results only when A's and B's interests terminate. However, when A and B transferred their interests to the trust, they severed the joint tenancy with respect to C and D and became tenants-in-common with C and D. At this point, the transfer of the interests in the tenancy-in-common resulted in a change in ownership of the interests of C and D. This is a change in ownership to which the parent-child exclusion may be applied.

TRUSTS

19. Question: Are transfers of real property through the medium of a trust eligible for this exclusion?

Answer: Yes. Since the creation of a trust involving real property places the legal title in the trustee and the equitable or beneficial title in the beneficiaries, it is the Board staffs' opinion that transfers through the medium of a trust are between individuals and not between an individual and an entity. Thus, if the requirements of section 63.1 are otherwise satisfied, transfers to and from a trust are eligible for the exclusion.

20. Question: Parents own property held in a trust. Upon the husband's death in 1985, his interest in real property transfers to an irrevocable trust in which his wife is the sole income beneficiary for life and has the power to invade the principal for reasonable health, education, and support. Their children hold the remainder interests. Upon Wife's death in 1995, can the children file for the $1 million exclusion from both mother and father?

Answer: Yes. We have taken the position that both the language and intent of section 63.1(b)(2) allow a full $1 million exclusion to each eligible transferor who has an ownership interest in property. Thus, even though the husband predeceased wife, husband and wife each retain a separate $1 million exclusion. Since husband becomes an eligible transferor relative to his property interests when he dies, the remainder interests become possessory (i.e., present beneficial interests vest in his children) upon wife's death, making his $1 million exclusion available when the irrevocable trust for her benefit terminates.

LEASES

21. Question: A child has leased property owned by his mother and his uncle for a term of 99 years. Does the parent-child exclusion apply to this situation?

Answer: Such transfers may be excluded from change in ownership under the parent-child exclusion. Section 61(c)(1) provides in part that the creation of a leasehold interest in taxable real property for a term of 35 years or more is a change in ownership; thus, where such a leasehold is created, a change in ownership has occurred for property tax purposes. Accordingly, it is our opinion that the property subject to the lease may be excluded from change in ownership to the extent of the mother's ownership in the property within the limitations of section 63.1.

LIFE ESTATE

22. Question: A mother died. In her will she granted a life estate in real property to a friend with the remainder to her children. Should the parent-child claim be filed upon the death of the mother or the termination of the life estate?

Answer: A reappraisable change in ownership occurred when the life estate was created because it vested in a person other than the transferor or the transferor's spouse. Similarly, a change in ownership occurs when the life estate terminates and the property passes to the remainder person. However, upon the termination of the life estate, the remainderman rights of the children become possessory. The filing period for the parent-child exclusion begins to run when their interest becomes possessory--upon the termination of the life estate. Assuming the parent-child claim is timely filed, the property will retain the base year value determined when the life estate was created.

23. Question: An owner of property died testate. In her will she left a residence to her sister-in-law for her life with the remainder interest to her nephew, her sister-in-law's son. Eight years later, the sister-in-law transfers her life estate to her son by quitclaim deed. Is the sister-in-law's transfer to her son excluded from change in ownership by the parent-child exclusion?

Answer: The transfer of a life estate is a change in ownership to which the parent-child exclusion may be applied. However, under California law, the ownership of a life estate and a remainder interest by the same person results in a *merger* of the two interests, and the life estate terminates. In this situation, the vesting of the nephew's remainder interest as the result of the termination of the life estate constitutes a change in ownership under section 61(g). Thus, while the change in ownership occurs at a date sooner than it would have if the sister-in-law had retained her life estate, the result is essentially the same. The effect of the sister-in-law's transfer of her life estate to her son is to accelerate the date of the change in ownership arising from the vesting of the remainder interest rather than to avoid it. Had the sister-in-law transferred her life estate to her child who was not the remainderperson, the transfer would have been excludable from change in ownership under the parent-child exclusion. However, since the sister-in-law transferred her life estate to her son who is the remainderman, the resultant vesting of his remainder interest is *not* so excluded and, therefore, constitutes a change in ownership because his remainder interest is coming from his aunt and not from his mother.

STEP OR IN-LAW RELATIONSHIP

24. Question: How long does a step or in-law relationship exist?

Answer: Once the marriage on which the relationship is based is terminated by divorce, then the relationship of stepparent/stepchild or in-laws ceases to exist. However, if the relationship is terminated by death, then the relationship of stepparent and stepchild or in-law relationship continues to exist until the remarriage of the surviving spouse.

For example, Husband marries Wife A and has two children. Wife A dies. Husband marries Wife B who already has a child. This child becomes a stepchild of husband. Wife B dies. Husband marries Wife C. Husband dies and leaves a separately-owned property to his two natural children and Wife B's child. However, upon the marriage to wife C, the step relationship between Husband and Wife B's child ceased to exist. The parent-child exclusion is available only to Husband's two natural children and not the stepchild because the step relationship had ceased to exist before the death of Husband.

25. Question: Father owned real property. In 1988 father sold property to son and daughter-in-law, reserving a life estate for himself. In 1991 the son and daughter-in-law divorced. In 1992, son deeded his remainder interest to his ex-wife. Father died in 1994. This terminated the life estate, and caused the ex-daughter-in-law's interest to become possessory. Is she eligible for the parent-child exclusion?

Answer: No. It is the relationship as of the date of the change in ownership for property tax purposes that is relevant to the exclusion. Section 63.1(c) is specific in defining son-in-law or daughter-in-law of the parent and states that the relationship shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce. Since the ex-daughter-in-law is not considered a "child" of the parent at the time of the termination of the life estate, the parent-child exclusion is not applicable.

GRANDPARENT-GRANDCHILD TRANSFERS

26. Question: Can a transfer of real property between grandparent and grandchild qualify for exclusion from change in ownership?

Answer: The grandparent-grandchild exclusion from change in ownership is available when all of the parents of the eligible transferees who qualify as "children" of the grandparents have died or, in the case of an in-law, divorced or remarried. Thus, the exclusion applies where the parent of the grandchild has predeceased the grandparents and the in-law either remarried after the death of the spouse or was divorced from the deceased prior to death. If the deceased parent of the grandchildren had remarried after the divorce, then the new spouse, a stepparent of the grandchild, becomes the new in-law and, therefore, a "child" of the grandparents. In this case, the exclusion would not apply unless the stepparent was also deceased at the time of the transfer between grandparents and grandchildren or had remarried after the death of the spouse.

GRANDPARENT-GRANDCHILD TRANSFERS - MISSING PARENT

27. Question: Can a transfer of real property between grandparent and grandchild qualify for exclusion from change in ownership if the whereabouts of the parent of the grandchild is unknown?

Answer: Date of death of parent must be established. When a person has been missing for over seven years, the estate may be administered as that of a decedent by invoking the presumption of death from seven years' absence created by Evidence Code section 667. A person may file a petition in court pursuant to Probate Code sections 1804 et seq., which provide a procedure for the final distribution of the property of an absent person without recourse by him if he has been missing for the requisite period.

GRANDPARENT-GRANDCHILD TRANSFERS - DISCLAIMER

28. Question: Can a transfer of real property between grandparent and grandchild qualify for exclusion from change in ownership if the parent disclaims any interest in the grandparent's property?

Answer: No. For purposes of the grandparent-grandchild exclusion, the parent must actually be deceased prior to the transfer.

GRANDPARENT-GRANDCHILD TRANSFERS - LIFE ESTATE

29. Question: Does the grandparent-grandchild exclusion apply when grandchild receives the remainder interest upon the termination of a life estate granted to his/her parent who qualified as the "child" of the grandparent/trustor?

Answer: Yes, as long as the limitations of the grandparent-grandchild exclusion are met. If the facts indicate that the grandparent is the grantor of lifetime interests, and she designates that the remainder interest in the trust property shall transfer to her grandchildren upon the death of the lifetime beneficiaries, she is presumably the "eligible transferor" to her grandchildren for purposes of this exclusion. Whether the grandchildren qualify as "eligible transferees" under the exclusion depends in each case on whether all of their parents who qualify as "children" of the grandparent are deceased at the time of the transfer. This requires a factual determination to be made by the assessor based on the facts submitted by the taxpayer on the claim form (and other documentation).

GRANDPARENT-GRANDCHILD TRANSFERS - LARSON V. DUCA

30. Question: My grandmother died in 1985. After a lengthy probate, her estate was distributed to her surviving children and grandchildren in 1997. Since my only parent predeceased my grandmother, will the property that I inherited from my grandmother qualify for the exclusion under *Larson* v. *Duca*, 213 Cal. App. 3d 324 (1989)?

Answer: No; this is a grandparent-grandchild exclusion and not a parent-child exclusion. The *Larson* v. *Duca* court case is a very narrow decision which limits itself to the facts of the case. The court stressed that it intended only to deal with parent-child benefits (Proposition 58). Thus, we recommend that assessors apply the holding of this case only to parent-child cases which fall within the described facts of this case--the decedent parent or child died prior to November 6, 1986, and the judicial decree of distribution of the court in which the decedent's estate was probated occurred after November 6, 1986. *Only* under these

circumstances will the change in ownership occur on the date of distribution of the property in probate proceedings rather than on the date of death. *Larson* does not apply to properties held in trust because trusts avoid probate upon the date of death.

IN GENERAL

31. Question: I have used a portion of my $1 million exclusion in several counties. How do I find out how much of the exclusion I have left?

Answer: You may *write* to the Policy, Planning, and Standards Division of the State Board of Equalization requesting this information. You must provide your name and Social Security number. This information will not be given out over the telephone except in the case of an inquiry from a county assessor's office.

32. Question: If I think that a transfer of real property to me qualifies for the exclusion, how may I apply?

Answer: As a possible eligible transferee, you must file a claim with the county assessor who will then determine if the transfer qualifies. Claim forms are available at the assessor's office. If properties are located in multiple counties, claims must be filed in each county to receive relief. If you still own the property, file a claim even if your claim will not be timely (i.e., within three years or within six months of the mailing of a notice of supplemental or escape assessment); relief will be granted prospectively rather than retroactively back to date of transfer.

I hope this information proves helpful. If you have any additional questions, please feel free to contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Richard C. Johnson

Richard C. Johnson
Deputy Director
Property Taxes Department

RCJ/grs