

COMMERCIAL LOAN CORPORATION

HELPING MAXIMIZE FAMILY TRUST DISTRIBUTIONS

June 21st, 2021

Mr. Henry Nanjo, Chief Counsel
Board of Equalization Legal Department
450 N Street, MIC 121
Sacramento, CA 94279

Re. Proposed Property Tax Rule 462.520, Exclusion from Change in Ownership -Intergenerational Transfers

Dear Mr. Nanjo,

Assembly Constitutional Amendment Number 11 (ACA 11) was presented to and approved by voters at the November 3, 2020, general election as Proposition 19 (Prop 19). Prop 19 is entitled, "The Home Protection for Seniors, Severely Disabled, Families, and Victims of Wildfire or Natural Disasters Act" and, relevant to the BOE rulemaking, changed the rules of intergenerational transfers that had been established by Propositions 58 and 193 in 1986 and 1996, respectively, and implemented by Revenue and Taxation Code section 63.1

Prop 19 makes changes in the rules governing how the exclusion for reassessment of property taxes on transfers between parents and children as well as grandparents and grandchildren is administered in the counties. In response to these changes, The BOE and County Assessors made changes to the BOE 58-AH "claim for reassessment exclusion for transfer between parent and child" and now require use of the BOE-19-P when exclusion for reassessment is being requested under the intergenerational transfer provisions of Prop-19.

We have done quite a bit of research on requests for exclusion from reassessment under the intergenerational property transfer rules historically under Proposition's 58 & 193, as well as the current rules contained in Prop 19. Our objective in this research is to find ways to help create more consistency in the processing of Claims for Reassessment Exclusions between parents and children throughout the state. Many counties have different requirements when there is a trust or estate that has multiple heirs / beneficiaries, and a 3rd party loan is needed to equalize the distribution. The differing requirements have resulted in very different treatment of these requests depending on which county the property resides in, and the procedures that exist in that county's assessor's office.

The culprit seems to be how parent to child transfers are handled by county assessors when real property is held in a family trust and one of the child-beneficiaries wants to keep the family property. Our research has shown a number of techniques being used around the state to get around or subvert the requirements in Revenue and Taxation Code section 63.1. The methods used to circumvent the requirement of trusts to get third party loans to equalize the distributions of these trusts in order to qualify for exclusions from reassessments include:

- **Taking the property out of the trust to secure conventional financing by the acquiring beneficiary and returning the property to the trust before distribution.** *This is considered a*

sibling buying out other siblings as opposed to a parent to child transfer. The act of taking the property out of the trust once the trust is irrevocable might be considered a distribution.

- **Structuring a loan as a purchase money transaction where the acquiring beneficiary buys the property from the trust.** *This should be considered as a sibling buying the property from himself/herself and the other siblings as opposed to a parent to child transfer.*
- **Inflate assets of the trust to show an equalized distribution.** *This is probably fraud, but at the least a circumvention technique.*
- **Faking a third-party loan.** *A note and deed of trust are created to appear that a third-party loan was obtained, but no money changes hands.*
- **Creation of an LLC or corporation to provide the third-party loan.** *This is a circumvention technique used frequently. The creation of these entities is specifically for the purpose of deception and are not entities that typically provide financing.*

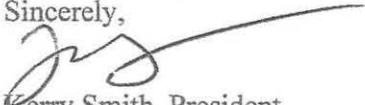
After researching the techniques being used and thoroughly understanding these methods to deceive county assessors, we completed the BOE-58-AH form for all the above scenarios as well as for a normal parent to child transfer that did not require a third-party loan. We found that the BOE-58-AH looked IDENTICAL in each instance. It makes it unclear how an assessor would know what additional information or documents to ask for in order to make sure the law is being followed and requests for exclusion from reassessment are legitimate.

Our research has identified a number of counties that do an exceptionally good job at requiring proof of legitimate third-party loans. But we also found that over the last three years, there were 33 California counties that processed more than 55,245 exclusions and we did not receive an inquiry on any transaction in those counties. This statistic is highly unusual because there are only three known estate trust lenders in California who make loans for the share equalization required under Rev&Tax code 63.1. My company is the most visible in this space, and that leads us to conclude that not all counties are following the same procedures.

We believe that there needs to be uniformity from county to county in the state. It should not matter where a request for exclusion from reassessment under the intergenerational transfer rules takes place. Los Angeles County should follow similar procedures as Monterey, or San Diego, or Colusa. To that end, we are asking the BOE and County Assessors Association to adopt a couple of minor changes to the new BOE-19-P that we believe will help weed out quite a bit of the questionable transactions and promote more uniformity in how these requests are processed around the state. In Section C, we recommend asking two additional questions to help assessors determine if they are dealing with a trust. We recommend some documentation requests be added to page three to help assessors understand the underlying transaction and help assessors determine if the transaction is a proper parent to child transfer. ***Please see our attached sample mockup of the form BOE-19-P – attachment “A”.***

Finally, we have received feedback from some that say additional changes to the form BOE-19-P is not necessary because taxpayers sign the form under penalty of perjury. We note that all Internal Revenue Service (IRS) tax returns must be signed under penalty of perjury as well. However, that does NOT seem to be a deterrent against false, misleading, and inaccurate information and figures being included in taxpayer submittals. For example, in 2018 (please see **attachment “B”**), the most current year data is available, the IRS levied over \$29 billions in civil penalties for taxpayer violations on their returns which were either misleading, inaccurate, or fraudulent. The penalty under perjury requirement does not stop those who intentionally decide to break the rules in order to enrich themselves at the cost to other taxpayers, governments, and citizens.

Sincerely,


Kerry Smith, President

Attachment A, page 1

BOE-19-P (P1) REV. 00 (02-21)

CLAIM FOR REASSESSMENT EXCLUSION FOR TRANSFER BETWEEN PARENT AND CHILD OCCURRING ON OR AFTER FEBRUARY 16, 2021

NAME AND MAILING ADDRESS (Make necessary corrections to the printed name and mailing address.)

[Empty box for name and mailing address]

A. PROPERTY

ASSASSOR'S PARCELD NUMBER, PROPERTY ADDRESS, CITY, RECORDER'S DOCUMENT NUMBER, DATE OF PURCHASE OR TRANSFER, PROBATE NUMBER (if applicable), DATE OF DEATH (if applicable), DATE OF DECREE OF DISTRIBUTION (if applicable)

B. TRANSFEROR(S)/SELLER(S) (additional transferors please complete Section Don the reverse)

Table with 3 columns: Print full name(s) of transferor(s), Name, Name; Family relationship(s) to transferee(s), Relationship, Relationship

- 1. If child was adopted, age at time of adoption?
2. Was this property the transferor's family farm? [] Yes [] No
3. Was this property the transferor's principal residence? [] Yes [] No
If yes, please check which of the following exemptions was granted or was eligible to be granted on this property: [] Homeowners' Exemption [] Disabled Veterans' Exemption
4. Was only a partial interest in the property transferred? [] Yes [] No If yes, percentage transferred _____%
5. Was this property owned in joint tenancy? [] Yes [] No

IMPORTANT: If the transfer was through the medium of a will and/or trust, you must attach a full and complete copy of the will and/or trust and all amendments.

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true and correct to the best of my knowledge and that I am the parent or child (or transferor's legal representative) of the transferees listed in Section C.

SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE PRINTED NAME DATE

SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE PRINTED NAME DATE

MAILING ADDRESS DAYTIME PHONE NUMBER

CITY, STATE, ZIP EMAIL ADDRESS

(Please complete applicable information on reverse side.) THIS DOCUMENT IS NOT SUBJECT TO PUBLIC INSPECTION

Attachment A, page 2

BOE-19-P (P2) REV.00 (02-21)

C. TRANSFEREE(S)/BUYER(S) (additional transferees please complete Section E below)

1. Print full name(s) of transferee(s) _____
2. Family relationship(s) to transferor(s) _____
 if child was adopted, age at time of adoption _____

If stepparent/stepchild relationship is involved, was parent still married to or in a registered domestic partnership ("registered" means registered with the California Secretary of State) with stepparent on the date of purchase or transfer? Yes No

If NO, was the marriage or registered domestic partnership terminated by: Death Divorce/Termination of partnership
 If terminated by death, had the surviving stepparent remarried or entered into a registered domestic partnership as of the date of purchase or transfer? Yes No

If in-law relationship is involved, was the child-in-law still married to or in a registered domestic partnership with the child on the date of purchase or transfer? Yes No

If NO, was the marriage or registered domestic partnership terminated by: Death Divorce/Termination of partnership
 If terminated by death, had the surviving child-in-law remarried or entered into a registered domestic partnership as of the date of purchase or transfer? Yes No

Was this property distributed from a trust? Yes No

Were you the sole child beneficiary to the entire trust or estate? Yes No

3. Is this property continuing to be used as the family farm by the transferee? Yes No
 4. Is this property going to be the transferee's principal residence? Yes No
 If Yes, please check which of the following exemptions for which a claim was filed and complete a, b, and c below. (Please note that the transferee must file for one of these exemptions within one year of the date of transfer.)
 Homeowners' Exemption Disabled Veterans' Exemption Date Filed _____
- a. Name of transferee who filed exemption claim _____
 - b. Date the transferee occupied this property as a principal residence _____ (month/day/year)
 - c. Does the transferee own another property that is or was their principal residence? Yes No
 If Yes, please provide the address below and the move-out-date.

ADDRESS	COUNTY	ASSESSOR'S PARCEUID NUMBER
CITY, STATE, ZIP		MOVE-OUT-DATE (month/day/year)

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true and correct to the best of my knowledge and that I am the parent or child (or transferee's legal representative) of the transferors listed in Section B.

SIGNATURE OF TRANSFEREE OR LEGAL REPRESENTATIVE	PRINTED NAME	DATE
SIGNATURE OF TRANSFEREE OR LEGAL REPRESENTATIVE	PRINTED NAME	DATE
MAILING ADDRESS	DAYTIME PHONE NUMBER ()	
CITY, STATE, ZIP	EMAIL ADDRESS	

Note: The Assessor may contact you for additional information.

D. ADDITIONAL TRANSFEREE(S) / BUYER(S)

PRINT NAME	SIGNATURE	RELATIONSHIP TO TRANSFEREE

E. ADDITIONAL TRANSFEREE(S) / BUYER(S)

PRINT NAME	RELATIONSHIP TO TRANSFEREE

Attachment A, page 3

CLAIM FOR REASSESSMENT EXCLUSION FOR TRANSFER BETWEEN PARENT AND CHILD OCCURRING ON OR AFTER FEBRUARY 16, 2021

For transfers occurring on or after February 16, 2021, section 2.1(c) of article XIII A of the California Constitution provides that the terms "purchase" or "change in ownership" do not include the purchase or transfer of a family home between parents and their children, as long as the property was the family home of the transferor and continues as the family home of the transferee. A family home also includes a family farm.

For a family home, the transferee is required to file for the homeowners' or disabled veterans' exemption within one year of the date of transfer.

If the assessed value of the family home on the date of transfer exceeds the sum of the factored base year value plus \$1 million, the amount in excess of this sum will be added to the factored base year value.

A family farm is any real property that is under cultivation or being used for pasture or grazing, or that is used to produce any agricultural commodity. "Agricultural commodity" means any and all plant and animal products produced in this state for commercial purposes, including, but not limited to, plant products used for producing biofuels, and cultivated industrial hemp.

This claim form is for transfers occurring on or after February 16, 2021.

If the transfer was through the medium of a trust, please provide the following:

1. Complete copy of the trust and all amendments
2. Final accounting for the distribution of the trust
3. Copy of the appraisal for the property being transferred
4. If a 3rd party loan was made to the trust to equalize the distribution of the trust, please provide
 - I. Copy of the promissory note for the loan made to the trust
 - II. Closing statement for the loan made to the trust
 - III. Proof of funding of the loan made to the trust (one of the following)
 - a. bank statement from trust showing deposit of proceeds
 - b. cancelled check from lender
 - c. wire confirmation from lender to trust

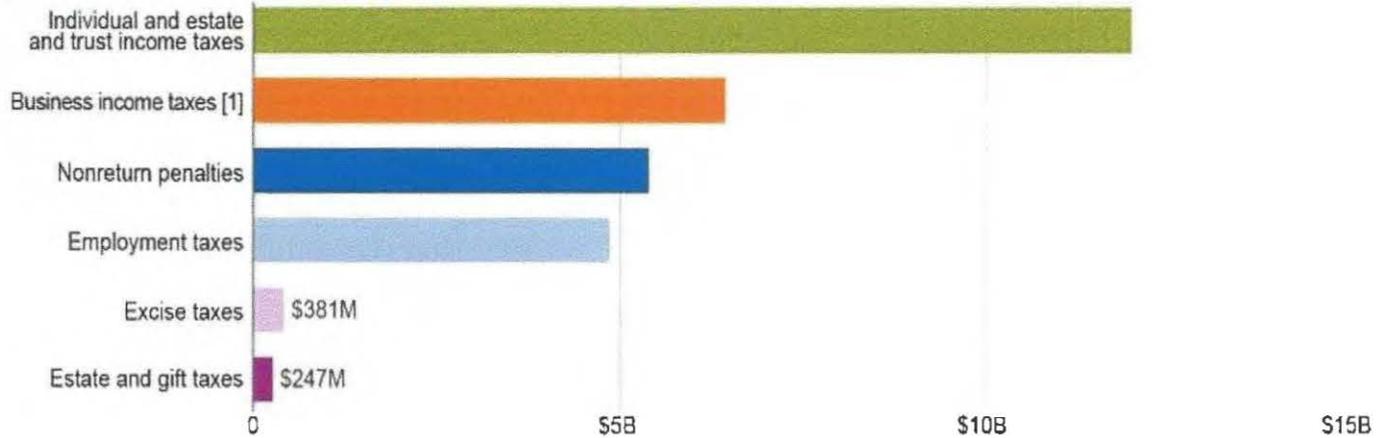
The person applying for this exclusion cannot be the lender, borrower or personal guarantor of this loan.

For transfers occurring on or before February 15, 2021, please file claim form BOE-58-AH, *Claim for Reassessment Exclusion for Transfer Between Parent and Child*.

NOTE: A county board of supervisors may authorize a one-time processing fee of not more than \$175 to recover costs incurred by the county assessor due to the failure of an eligible transferee to file a claim for the parent-child change in ownership exclusion after two written requests have been sent to an eligible transferee by the county assessor.

IRS Civil Penalties Assessed Tax Year 2018

Civil Penalties Assessed, by Type of Tax, Fiscal Year 2018



[1] Includes partnership, corporation, and S corporation income taxes

SOURCE: 2018 IRS Data Book Table 17

[View chart details \(XLS\)](#). For additional graphs from this section, download the [PDF of this year's Data Book](#).