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November 16, 2007

No. 2007/043

TO COUNTY ASSESSORS:

CHANGE IN OWNERSHIP EXCLUSION—REGISTERED DOMESTIC PARTNERS

Since January 1, 2006, Revenue and Taxation Code<sup>1</sup> section 62(p) has provided that change in ownership does not include any transfer of real property between persons registered as domestic partners with the California Secretary of State.<sup>2</sup> Effective October 12, 2007, Senate Bill 559 (Stats. 2007, Ch. 555) amends section 62 to provide additional relief for registered domestic partners.

Chapter 555 amends section 62(d) to provide that a transfer into a trust by a trustor or a trustor's registered domestic partner is not a change in ownership as long as the trustor is the present beneficiary of the trust or the trust is revocable. This change was made to be consistent with section 62(p)(1)(A), which provides that change in ownership does not include any transfer to a trustee for the beneficial use of a registered domestic partner, or the surviving registered domestic partner of a deceased transferor, or by a trustee of such a trust to the registered domestic partner of the trustor.

In addition, Chapter 555 amends section 62(p) to provide retrospective relief for any transfer of real property between registered domestic partners that occurred between January 1, 2000, and January 1, 2006. This means that a reassessment that occurred between these dates may now be reversed on a prospective basis beginning with the lien date of the assessment year in which the claim is filed.

**History.** On January 1, 2000, Assembly Bill 26 (Stats. 1999, Ch. 588) established a statewide domestic partner registry, granted hospital visitation rights to registered domestic partners, and provided for health benefit coverage for the registered domestic partners of state employees. On January 1, 2002, Assembly Bill 25 (Stats. 2001, Ch. 893) granted additional rights to registered domestic partners, including the rights to make medical decisions for a partner, to use statutory will forms, to be appointed as conservator for an incapacitated partner, and to act as administrator of a deceased partner's estate.

In 2003, Assembly Bill 205 (Stats. 2003, Ch. 421) was enacted as the California Domestic Partner Rights and Responsibilities Act of 2003. AB 205 provides that registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same

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

<sup>2</sup> See Letter To Assessors 2005/062.

responsibilities, obligations, and duties under law as are granted to and imposed upon spouses. However, AB 205 also provides that it "does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative."

For property tax purposes, subdivision (g) of section 2 of article XIII A of the California Constitution provides that the terms "purchase" and "change in ownership" do not include the purchase or transfer of real property between "spouses." As stated above, the Act does not amend or modify any constitutional provision and, thus, a "spouse" within the meaning of subdivision (g) of section 2 of article XIII A does not include a registered domestic partner. Accordingly, transfers of real property between registered domestic partners were not eligible for the interspousal exclusion.<sup>3</sup> To counteract this, operative on January 1, 2006, Senate Bill 565 (Stats. 2005, Ch. 416) added subdivision (p) to section 62 to exclude from change in ownership transfers of real property between registered domestic partners.

**Eligibility Requirements.** To be eligible for a reassessment reversal, the property owner must have been in a registered domestic partnership as of the date of the transfer that caused the reassessment. "Registered" means a registered domestic partnership as defined in Family Code section 297, which provides that a domestic partnership is established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State. Thus, domestic partners registered in another state, or same-sex married persons licensed in other jurisdictions, must have registered with the California Secretary of State prior to the date of transfer in order to be eligible for this reversal.

**Claim Must be Filed by June 30, 2009.** To receive a reversal of a reassessment, a property owner must file a claim form with the assessor by June 30, 2009. Claims must include a copy of the *Certificate of Registered Domestic Partnership* issued by the Secretary of State. Additionally, the claimant must attest that the information provided on the form is true, correct, and complete to the best of his or her knowledge and belief. The Board of Equalization will prescribe the claim form, entitled "Claim for Reassessment Reversal for Registered Domestic Partners." After the form is approved, it will be sent to county assessors.

**Effective Date of Reversal.** The reassessment reversal granted pursuant to a claim applies commencing with the lien date of the assessment year<sup>4</sup> in which the claim is filed. This means that the reversal is applied as of the lien date preceding the filing. In other words, when a claim for reassessment reversal is filed, the reversal is applied to the fiscal year which begins on July 1 of the calendar year in which the claim is filed.

**Calculation of Prospective Relief Value.** Under section 62(p)(2)(F), the value to be enrolled for any claim granted pursuant to these provisions should be the adjusted base year value in the assessment year in which the purchase or transfer took place, factored forward for inflation to the current year. The factored base year value of any new construction which occurred between the date of transfer and the date the reversal is being applied should also be added.

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<sup>3</sup> See Letter To Assessors 2005/017.

<sup>4</sup> Assessment year, as defined in section 118, is the period between lien dates.

*Example:* A owned a property. A and B registered as domestic partners with the California Secretary of State in July 2000. When A died in November 2000, the property transferred to B pursuant to A's will. The county assessor reassessed the property as of the date of death. In December 2007, B files a claim for reassessment reversal. Since A and B were registered with the California Secretary of State, the factored base year value may be reinstated as of the January 1, 2007, lien date for the 2007-08 roll. The factored base year value of the property on the 2000-01 roll at the time of the transfer was \$78,452. A pool and spa were completed in August 2003; a base year value of \$20,000 was established for the new construction.

The value to be enrolled for the January 1, 2007, lien date is \$111,616 (the \$78,452 base year value plus the \$20,000 base year value of the new construction factored forward by the inflation factor for each of the intervening years).

<i>Year</i>	<i>Factor</i>	<i>Factored Base Year Value</i>
2000-01		\$78,452
2001-02	x 1.02	\$80,021
2002-03	x 1.02	\$81,621
2003-04	x 1.02	\$83,253 + \$20,000 NC
2004-05	x 1.01867	\$105,180
2005-06	x 1.02	\$107,283
2006-07	x 1.02	\$109,428
2007-08	x 1.02	\$111,616

**Roll Corrections/Refunds.** Section 62(p)(2)(E) expressly provides that property tax refunds will not be made for any prior assessment year. The reversal is applied to the fiscal year which begins on July 1 of the calendar year in which the claim is filed. A claim that is filed after July 1 (after the roll has closed) will require a roll correction and a refund if the first installment of property taxes for that fiscal year was paid.

**Application Fee.** The county may charge a fee to recoup its costs related to processing the application and reversing the prior reassessment. The fee may not exceed the actual costs incurred.

Enclosed is a copy of amended section 62 in ~~strikeout~~/underline format. If you have any questions, please contact our Technical Services Unit at 916-445-4982.

Sincerely,

/s/Mickie Stuckey

Mickie Stuckey  
Acting Deputy Director  
Property and Special Taxes Department

MS:grs  
Enclosure

Section 62 of the Revenue and Taxation Code is amended to read:

62. Change in ownership shall not include:

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(d) Any transfer by the trustor, or by the trustor's spouse or registered domestic partner, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

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(p) ~~(1) Commencing with the lien date for the 2006-07 fiscal year~~ on January 1, 2000, any transfer between registered domestic partners, as defined in Section 297 of the Family Code, including, but not limited to:

~~(1) (A)~~ Transfers to a trustee for the beneficial use of a registered domestic partner, or the surviving registered domestic partner of a deceased transferor, or by a trustee of such a trust to the registered domestic partner of the trustor.

~~(2) (B)~~ Transfers that take effect upon the death of a registered domestic partner.

~~(3) (C)~~ Transfers to a registered domestic partner or former registered domestic partner in connection with a property settlement agreement or decree of dissolution of a registered domestic partnership or legal separation.

~~(4) (D)~~ The creation, transfer, or termination, solely between registered domestic partners, of any coowner's interest.

~~(5) (E)~~ The distribution of a legal entity's property to a registered domestic partner or former registered domestic partner in exchange for the interest of the registered domestic partner in the legal entity in connection with a property settlement agreement or a decree of dissolution of a registered domestic partnership or legal separation.

(2) Any transferee whose property was reassessed in contravention of the provisions of this subdivision for a transfer occurring between January 1, 2000, and January 1, 2006, shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than June 30, 2009. A county may charge a fee for its costs related to the application and reassessment reversal in an amount that does not exceed the actual costs incurred. This paragraph shall be liberally construed to provide the benefits of this subdivision and Article XIII A of the California Constitution to registered domestic partners.

(A) After consultation with the California Assessors' Association, the State Board of Equalization shall prescribe the form for claiming the reassessment reversal described in paragraph (2). The claim form shall be entitled "Claim for Reassessment Reversal for Registered Domestic Partners." The claim shall state on its face that a "certificate of registered domestic partnership" is available upon request from the California Secretary of State.

(B) The information on the claim shall include a description of the property, the parties to the transfer of interest in the property, the date of the transfer of interest in the property, and a statement that the transferee registered domestic partner and the transferor registered domestic partner were, on the date of transfer, in a registered domestic partnership as defined in Section 297 of the Family Code.

(C) The claimant shall declare that the information provided on the form is true, correct, and complete to the best of his or her knowledge and belief.

(D) The claimant shall provide with the completed claim the "Certificate of Registered Domestic Partnership," or photocopy thereof, naming the transferee and transferor as registered domestic partners and reflecting the creation of the registered domestic partnership on a date prior to, or concurrent with, the date of the transfer for which a reassessment reversal is requested.

(E) Any reassessment reversal granted pursuant to a claim shall apply commencing with the lien date of the assessment year, as defined in Section 118, in which the claim is filed. No refunds shall be made under this paragraph for any prior assessment year.

(F) Under any reassessment reversal granted pursuant to that claim, the adjusted full cash value of the subject real property in the assessment year described in subparagraph (E) shall be the adjusted base year value of the subject real property in the assessment year in which the excluded purchase or transfer took place, factored to the assessment year described in subparagraph (E) for both of the following:

(i) Inflation as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(ii) Any subsequent new construction occurring with respect to the subject real property.