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No. 2012/021

May 22, 2012

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

PROPERTY TAX RULE 462.040
CHANGE IN OWNERSHIP – JOINT TENANCIES

In 2006, the California Assessors' Association (CAA) requested that the Board of Equalization (Board) initiate a rulemaking process to amend Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*. The Board initially commenced an abbreviated interested parties process in response to the CAA's request, but, in December 2006, the Board instructed staff to begin a more in-depth interested parties process to review all of the CAA's concerns regarding the current rule. At the request of Board staff, the CAA resubmitted its request to amend Rule 462.040 on February 8, 2007, to commence the interested parties process. However, on May 8, 2007, the CAA requested that the interested parties process be delayed.

On February 22, 2012, the Board received a new petition from the CAA requesting that the Board make amendments to Property Tax Rule 462.040. At the March 21, 2012, Board meeting, staff was directed to discuss the CAA's requested rule amendments with interested parties. The CAA is requesting the following amendments to the rule:

- Provide that a transfer of a joint tenancy interest to a trust meeting certain requirements creates original transferor status only if made between November 13, 2003 and the effective date of the requested regulatory change;
- Reinstate the requirement that an additional person be added as a joint tenant in order to create original transferor status; and
- Require a grantor to also be a grantee in order to accord original transferor status to the grantor's spouse.

The CAA also requested that examples be added to clarify the change in ownership consequence of severances of certain joint tenancies under Rule 462.040, subdivision (b)(4)(C). However, due to current litigation, any changes to this subdivision will be deferred until the court case is finally resolved.

Enclosed is a copy of Rule 462.040 with the CAA's requested amendments in strike-out and underscore format. Interested parties may provide comments regarding the proposed amendments, and may include suggestions for alternative language. Please submit your comments by July 6, 2012 to Ms. Glenna Schultz in the Property and Special Taxes Department.

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You may email your submissions to glenna.schultz@boe.ca.gov or mail them to the above address.

After the July 6, 2012 deadline has passed, staff will schedule a meeting to discuss the CAA's requested amendments with interested parties.

The petition submitted by the California Assessors' Association and other relevant documents regarding the requested amendments to Rule 462.040 are posted on the Board's website at www.boe.ca.gov/proptaxes/rule462040.htm. If you have questions regarding this project, you may contact Ms. Schultz at 916-274-3362.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

RULE 462.040. CHANGE IN OWNERSHIP – JOINT TENANCIES.

Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 63, 63.1, 65, 65.1, and 67, Revenue and Taxation Code.
Section 662, Evidence Code.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust~~, and after such creation or transfer, the ~~transferors-transferor(s)~~ is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an "original ~~transferors-transferor(s)~~" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property ~~either~~ during the period that the original transferor holds an interest ~~or by means of a transfer from the original transferor~~, such spouse shall also be considered to be an original transferor. For the transfer of a joint tenancy interest into trust from November 13, 2003 to [the date before the effective date of the proposed regulatory change], any Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be "other than original transferors."

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B do not become ~~are both~~ "original transferors." For A and B to become "original transferors," the transfer must be to A and B and at least one other person.

Example 4~~(a)~~-1: A and B purchase property as joint tenants. ~~Later~~ On December 12, 2004, A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors." If A and B had transferred their interests into trust before November 13, 2003 or after [one day before the effective date of the proposed regulatory change], neither A's Trust nor B's Trust would be considered a joint tenant and neither A nor B would be considered an "original transferor" as a result of the transfer into trust.

Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors."-

Example 6: A and B, as joint tenants, transfer to A, B, C, D, and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E is also an "original transferor." (C and D are "other than original transferors.")

Example 7-1: A, B, and C are joint tenants and A is an "original transferor." A dies. B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy.

~~Example 7-2: A and B, as joint tenants, transfer to B and C, as joint tenants, and C is A's spouse. C is an original transferor because he was the spouse of an original transferor and he acquired an interest by means of a transfer from A.~~

Example 7-3: A and B are joint tenants and A is an "original transferor." C is A's spouse. A and B as joint tenants transfer to A, B, and C. C is an original transferor.

Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3% change in ownership of the transferred interests because A is not one of the transferees.

Example 9: A and B purchase property as joint tenants ~~and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors".~~ On August 13, 2003, A and B sell a 50% interest to C and D, with the deed showing A, B, C, and D as joint tenants. A and B become "original transferors." On December 13, 2003, C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors." On January 13, 2004, A and B then sell their remaining 50% to C and D, and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, ~~A, B,~~ C and D do not become "original transferors" as the result of their transfers to each other.

(2) The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining original ~~transferors~~ transferor(s); except that, upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant.

Example 11: Following the example set forth in Example 10 (above), B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal and B was the last surviving original transferor.

(3) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy described in (b)(1) and the interest is transferred either to an original transferor, or to all the remaining joint tenants, provided that one of the remaining joint tenants is an original transferor. The original transferor status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an original transferor.

Example 13: ~~A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become "original transferors". Following the example set forth in Example 12 above, D A dies and AD's joint tenancy interest passes to B by operation of law without a change in ownership because B is an "original transferor." Upon AD's death, the joint tenancy is terminated and B ceases to be an "original transferor."~~

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) ~~a~~A transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) ~~a~~A transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) ~~a~~A transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.)

Example 14-1: A and B purchased property as joint tenants, and transfer to X Corporation, each taking back 50% of the stock. No change in ownership.

Example 14-2: A and B own property as joint tenants, and A is an original transferor. A and B transfer to X Corporation, each taking back 50% of the stock. 100% change in ownership, since this was a joint tenancy described in (b)(1) above.

(5) The transfer is one to which the interspousal exclusion applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, exclusive of any interest to a spouse or other exempt transfer, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

(c) Rebuttable Presumption. For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, ~~is~~ shall be an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) Reasonable Cause. For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and "original transferors" if there is "reasonable cause" to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. "Reasonable cause" means a deed, Affidavit of Death of Joint

Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 1415: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract and trust instruments establishes that A and B intended to hold title as joint tenants upon purchase, ~~and that each subsequently became an "original transferor."~~

History: Adopted June 29, 1978, effective July 3, 1978.

Amended September 26, 1978, effective October 2, 1978.

Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.

Amended November 13, 1979, effective December 6, 1979.

Amended May 5, 1981, effective August 12, 1981.

Amended March 31, 1982, effective June 10, 1982.

Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(c).

Amended October 15, 1998, effective January 29, 1999.

Amended and effective April 3, 2001. Made grammatical change to subsection B(1), Example 5, and Example 8.

Amended July 9, 2003, effective November 13, 2003.