



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
1-916-274-3350 • FAX 1-916-285-0134
www.boe.ca.gov

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No. 2013/044

September 5, 2013

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

PROPERTY TAX RULE 462.040
CHANGE IN OWNERSHIP—JOINT TENANCIES

Following a public hearing on June 11, 2013, the State Board of Equalization amended Property Tax Rule 462.040, *Change in Ownership—Joint Tenancies*. The amended rule was approved by the Office of Administrative Law on July 24, 2013 and will become effective October 1, 2013.¹

The amendments to Property Tax Rule 462.040 make the rule consistent with:

- Current law which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Family Code section 297.5 and Revenue and Taxation Code² section 62(p) regarding registered domestic partners;
- Section 62.3 pertaining to transfers between cotenants; and
- Section 65(b) which provides that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, and that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants.

Enclosed is a copy of the amended rule. In addition, the rule will be posted on the Board of Equalization website at www.boe.ca.gov/lawguides/property/current/ptlg/rule/462-040.html. If you have any questions regarding the content of this rule, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

¹ Government Code section 11343.4 provides that amendments to rules approved between June 1 and August 31 will become effective on October 1.

² All statutory references are to the Revenue and Taxation Code unless otherwise provided.

State of California

BOARD OF EQUALIZATION

PROPERTY TAX RULES

Chapter 1. State Board of Equalization – Property Tax
Subchapter 4. Equalization by State Board
Article 4. Change in Ownership and New Construction

Rule 462.040. Change in Ownership—Joint Tenancies.

Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1, and 67, Revenue and Taxation Code; and 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 transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50 percent 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 and after such creation or transfer all transferor(s) are among the joint tenants. Such a transferor who is also a transferee is, therefore, considered to be an "original transferor" 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." "Spouse" includes a registered domestic partner who shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities and obligations as granted to and imposed upon spouses pursuant to section 297.5 of the Family Code. For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, 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." To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title. The elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants.

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 are both "original transferors."

Example 5: A and B purchase property as joint tenants. 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 on any date after October 1, 2013, 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 6: A and B purchase property as joint tenants. A and B 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 7: A and B acquire property as joint tenants. A and B 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,

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therefore, "original transferors." E, the wife of an "original transferor," is also an "original transferor." C and D are "other than original transferors."

Example 8: A is the sole owner of property. A grants to A, B, and C as joint tenants. A is an "original transferor." B and C are "other than original transferors." A dies. A's interest passes by operation of law to B and C, resulting in a 100 percent change in ownership. Subsequently, 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 from A during the period that A held an interest in the initial joint tenancy.

Example 9: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." C is A's registered domestic partner. A and B, as joint tenants, transfer to A, B, and C as joint tenants. C is an "original transferor" because he is the registered domestic partner of an "original transferor." B becomes an "original transferor" because he is a transferor who is among the transferees.

Example 10: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." A and B, as joint tenants, transfer to B and C as joint tenants. B becomes an "original transferor." C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A.

Example 11: A and B acquire real property as joint tenants. A and B transfer to B, C, and D, as joint tenants. 66 2/3 percent change in ownership of the transferred interests because A is not one of the transferees.

Example 12: A and B purchase property as joint tenants. On August 13, 2003, A and B sell a 50 percent interest to C and D, with the deed showing A, B, C and D as joint tenants. A and B become "original transferors." C and D become "other than original transferors." On December 13, 2003, C and D then transfer their joint tenancy interests to their respective trusts for the benefit of the remaining joint tenants. C and D become "original transferors." On January 13, 2004, A and B then sell their remaining 50 percent 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"; 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 13: A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors," and C and D are "other than original transferors." 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 14: A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors," and C and D are "other than original transferors." 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. Subsequently, B dies or grants his interest to C and D. 100 percent change in ownership because 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 15: A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors," and C and D are "other than original transferors." 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. C, not an "original transferor," grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an "original transferor."

Example 16: A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors," and C and D are "other than original transferors." 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. 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." D dies and D's joint tenancy interest passes to B by operation of

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law. Since B is an "original transferor," there is no change in ownership. Upon D'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 transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

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

(C) 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.

(5) The transfer is one to which the interspousal exclusion, pursuant to the provisions of section 63 of the Revenue and Taxation Code, or the registered domestic partner exclusion, pursuant to the provisions of section 62(p) of the Revenue and Taxation Code, 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, 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 section 63.1 of the Revenue and Taxation Code.

(8) The transfer is one to which the cotenancy exclusion applies pursuant to section 62.3 of the Revenue and Taxation Code.

(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 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 17: 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. The assessor may determine that the sales contract establishes that A and B intended to hold title as joint tenants upon purchase.

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.
Amended June 11, 2013, effective October 1, 2013.