



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>08/26/03</b>	Bill No:	<b>AB 23</b>
Tax:	<b>Property</b>	Author:	<b>Nation</b>
Board Position:		Related Bills:	

## BILL SUMMARY

This bill would clarify that the creation of “original transferor” status for joint tenants as set forth in Section 65 of the Revenue and Taxation Code means that co-owners may become “original transferors” by transferring to themselves in joint tenancy without requiring a third person among the transferees or by transferring to a trust or will for the benefit of the other joint tenant, and would codify a regulation to that effect.

## ANALYSIS

### Current Law

Under existing property tax law, real property is reassessed to its current fair market value whenever there is a “change in ownership.” Revenue and Taxation Code Section 60 defines “change in ownership” generally, and Section 65 details change in ownership law as it applies to the creation, transfer, or termination of joint tenancy interests in property. Subdivision (b) of Section 65 excludes from change in ownership the creation of a joint tenancy or the transfer of joint tenancy interests if, after such creation or transfer, the transferors are among the joint tenants. In such a creation or transfer, the transferees become “original transferors” and a subsequent transfer or termination of a joint tenancy interest does not result in a change in ownership if the interest vests entirely or in part in an original transferor. When the last original transferor’s interest terminates, then there is a change in ownership of the entire property upon a subsequent transfer.

### Proposed Law

This measure would amend subdivision (b) of Section 65 of the Revenue and Taxation Code to state more clearly the manner in which one may become an original transferor. It would provide that a transfer from co-tenants to only themselves as joint tenants results in the joint tenants becoming “original transferors”. It would also provide that a “transfer” in which a joint tenant becomes an “original transferor” includes a transfer of the joint tenant's interest into a trust or will for the benefit of the other joint tenants. “Original transferor” status determines the change in ownership consequences of future transfers of the joint tenants’ interests in the property. It would also provide that transfers of a joint tenant's interest into a trust or will pursuant to this provision may not be construed for purposes of this part to be a severance of the joint tenancy, as described in Section 683.2 of the Civil Code.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.*

## Background

**Recent Board Amendments to Property Tax Rule 462.040.** Subsection (b)(1) of Rule 462.040 currently provides that a transfer that creates "original transferors" must include at least one person who is not a transferor, i.e., was not on title prior to the transfer. The requirement of an additional person among the transferees, i.e., the "third person requirement," was added to the rule in 1999. The recent rule revision eliminated this requirement as inconsistent with the statutory language that requires only that the transferors be "among" the transferees. The other amendment proposed for subsection (b)(1) of Rule 462.040 provides that joint tenants become "original transferors" if they transfer to their respective trusts or wills for the benefit of the other joint tenant or joint tenants. Such conveyances are considered a transfer of the joint tenancy interests within the meaning of Section 60, subdivision (d) of Section 62, and subdivision (b)(1) of Section 65. Section 62, subdivision (d) recognizes a trustor transferring property into a trust as a "transferor," thereby qualifying such person as a "transferor among the joint tenants". The Assembly Revenue and Taxation Committee's 1979 Report of the Task Force on Change in Ownership recognizes trusts as "will substitutes." If the trust or will names the other joint tenant as the beneficiary, the joint tenancy remains intact because the transfer is not evidence of an intent to sever the joint tenancy.

## COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by Equality California. According to the sponsor, its purpose is to codify the Board of Equalization's recent decision clarifying the existing statute governing the creation of "original transferor" status for joint tenants, by providing that co-owners of real property may become "original transferors."
2. **The Board of Equalization has adopted an amendment to existing Rule 462.040, subject to approval by the Office of Administrative Law (OAL).** If approved by OAL, the amendment would be substantively identical to the provisions of this bill.
3. **The pending regulation and this bill would provide that co-owners of real property may become "original transferors" in the following ways:**
  - A & B take title to property as tenants in common -- then transfer to A & B as joint tenants; A & B become original transferors.
  - A transfers title to A & B as joint tenants -- A becomes an original transferor but not B. B transfers to his revocable trust for the benefit of A -- B becomes an original transferor.
  - A & B take title to property as joint tenants -- then A & B transfer to their revocable trusts for the benefit of each other, as joint tenants; A & B become original transferors.

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**COST ESTIMATE**

With respect to property taxes, the Board would incur some minor costs in informing and advising local county assessors, the public, and staff of the law changes.

**REVENUE ESTIMATE**

**Revenue Summary**

Property Tax Rule 462.040, which this bill would codify, is currently under review by the Office of Administrative Law. The estimated revenue impact of the proposed amendments to Property Tax Rule 462.040, at the basic one percent property tax rate over the first five years, is:

Year 1	\$736,590
Year 2	\$1,421,619
Year 3	\$2,058,695
Year 4	\$2,651,177
Year 5	\$3,202,184

A detailed revenue estimate is available at <http://www.boe.ca.gov/regs/reg462-revest.pdf>.

However, provided that the regulation adopted by the Board is approved by the Office of Administrative Law prior to the enactment of this bill, the revenue impact associated with this bill may be attributable to the regulatory action taken by the Board rather than this bill. The Office of Administrative Law will have until October 25, 2003 to approve or reject the regulation.

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