

## Memorandum

To: Mr. James Speed - MIC: 73  
Executive Director

Date: March 14, 2003

From: Timothy W. Boyer  
Chief Counsel



Subject: **Petition for Rule Amendments from *Frayda L. Bruton, Esq.*, California Trust & Estate Counselors LLP, Certified Specialist in Estate Planning, Trust and Probate Law, Sacramento, California.**

**RE: Property Tax Rule 462.040, *Change in Ownership - Joint Tenancies* and Rule 462.240, *The Following Transfers Do Not Constitute A Change in Ownership* - Wednesday, March 26, 2002 – Chief Counsel Matters**

On March 13, 2003, Honorable Chairwoman Carole Migden received the attached petition from *Frayda L. Bruton, Esq.*, California Trust & Estate Counselors LLP, Certified Specialist in Estate Planning, Trust and Probate Law, to amend two property tax regulations, pursuant to Government Code section 11340.6. Ms. Bruton is proposing to amend Rule 462.040 *Change in Ownership - Joint Tenancies* and Rule 462.240 *The Following Transfers Do Not Constitute A Change in Ownership*.

First, Ms. Bruton states that Rule 462.040 *Change in Ownership - Joint Tenancies*, subdivision (b)(1) should be amended to change the definition of "original transferors" in conformity with the statutory language in section 65(b), which requires merely that the *original transferor* must be "*among the joint tenants.*" She also proposes to amend Example 4 and to add Example 4(a), demonstrating that one may become an "original transferor" by transferring a joint tenancy interest into a trust or will for the benefit of the other joint tenant. The supporting authority cited is section 62(d) which recognizes a trustor who transfers property into a trust as a "transferor." She further requests an amendment to Example 9, authorizing the assessor's application of the step transaction doctrine to transfers undertaken for business purposes in which business partners utilize the steps to obtain "original transferor" status solely for the purpose of avoiding reappraisal rather than for estate planning purposes. Lastly, Ms. Bruton proposes an amendment to subdivision (d) and the addition of Example 13 to authorize the assessor to examine evidence submitted by a taxpayer and conclude that he/she is a joint tenant and an "original transferor." Supporting authority cited is Evidence Code section 662 that sets forth the rebuttable deed presumption.

Second, the Petition proposes to amend Rule 462.240 - *The Following Transfers Do Not Constitute A Change in Ownership*, in order to add a specific exclusion from change in ownership for transfers occurring on the death of a domestic partner. As supporting authority, Ms. Bruton cites AB 2216 (Keeley) adopted last year, which authorizes transfers of separate property under the laws of intestate succession on the death of a registered domestic

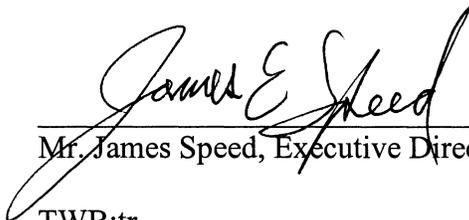
Mr. James Speed  
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partner to the surviving domestic partner, pursuant to Probate Code section 6402. The Board staff notes that the proposed application of this statutory language could require an amendment to the California Constitution (art. XIII A); nevertheless the Board is required to apply statutory law once it is adopted. (art. III, § 3.5.)

Pursuant to Government Code section 11340.7(a), the Board has 30 days from receipt of the Petition to deny the Petition in whole or in part (indicating the reasons why) or to schedule the Petition for public hearing. In compliance with the 30-day requirement, this matter is scheduled for consideration by the Board at its meeting on Wednesday, March 26, 2003, as part of the Chief Counsel Matters Agenda.

Staff has reviewed the request and if the Board decides to order publication of the proposed amendments pursuant to Government Code section 11346.2, staff could prepare, if directed, an Issue Paper on the matter, for consideration by the Board at the public hearing, scheduled after the 45-day public comment period is over, at the Board's meeting on Wednesday, June 25, 2003.

APPROVED



Mr. James Speed, Executive Director

TWB:tr  
prop/rules/462.040&240PetForRule

Attachments

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Date: March 13, 2003

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TO: Honorable Carole Migden, Chairwoman ATTN: Betty E.  
FIRM/CITY: State Board of Equalization  
FACSIMILE NO.: (916) 3242087 PHONE NO.:  
FROM: Frayda L. Bruton NUMBER OF PAGES SENT: 10

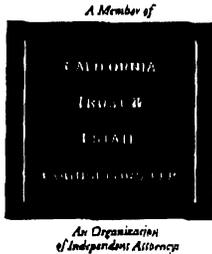
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*Re: Petition to Amend Rule 462.040*

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Certified Specialist  
Estate Planning, Trust & Probate Law  
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Board of Legal Specialization

March 12, 2003

Honorable Carole Migden, Chairwoman  
State Board of Equalization, MIC: 71  
450 N Street  
Sacramento, CA 95814

**RE: Petition to Amend Rule 462.040, *Change in Ownership - Joint Tenancies* and  
Rule 462.240, *The Following Transfers Do Not Constitute A Change in  
Ownership***

Dear Chairwoman Carole Migden:

As a member of the State Bar of California, a founding member of California Trust & Estate Counselors LLP, an organization of independent attorneys, and certified as a specialist in Estate Planning, Trust and Probate Law by the Board of Legal Specialization of the State Bar of California, I request your assistance in modifying some of the current language in the Board's regulations on change in ownership of joint tenancies and transfers on the death of a co-owner. Attached to this Petition are the specific amendments I am requesting be made to Rule 462.040 *Change in Ownership - Joint Tenancies* and Rule 462.240 *The Following Transfers Do Not Constitute A Change in Ownership*.

The language proposed for amending the joint tenancy rule is necessary to eliminate the steps that our elderly clients must currently undertake in order to become "original transferors" and thereby delay reappraisal until the survivor dies. The language proposed to be an amendment to Rule 462.240 would add a specific exclusion for transfers occurring on the death of a domestic partner - reflecting the needs of many elderly clients who co-own property but are not married. Both rule amendments as proposed are intended to simplify and clarify the rights of property owners to be excluded from change in ownership in conformity with existing law, pursuant to Revenue and Taxation Code section 65(b) [defining "original transferors"] and Probate Code section 6402 [authorizing intestate succession between registered domestic partners].

Since the Board's amendment of Rule 462.040 - *Joint Tenancy* in 1999, three problems have developed that seriously inhibit and even injure numerous elderly persons in this State from holding their property in joint tenancy for estate planning purposes. First, the definition of "original transferors" in the current subdivision (b)(1) requires that

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*Offices throughout California*

*California Trust & Estate Counselors LLP neither represents clients nor provides legal services.*

Honorable Carole Migden, Chairwoman

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a third person must be on title -- contrary to the language in section 65(b) of the statute which requires the *original transferor* must be "*among the joint tenants.*" The result is that if widower A ("Mr. A") owns a home and grants widow B ("Mrs. B") a joint tenancy interest, and they do not marry (for reasons such as loss of social security benefits, pensions, or other reasons), Mrs. B would have significantly increased property taxes on Mr. A's death, due to the reappraisal of his 50% joint tenancy interest. Under the current rule, Mr. A would be an "original transferor" (as he transferred to himself and at least one other joint tenant), but Mrs. B would not. If Mr. A dies first, there is no "original transferor" remaining in the joint tenancy -- resulting in a 50% reappraisal of the property. In order for Mrs. B to become an "original transferor:" 1) Mr. A and Mrs. B would need to transfer to themselves and at least one other person as joint tenants, e.g., A and B (joint tenants) - to - A, B & C (joint tenants); and 2) at some undefined time later, C would transfer his/her interest back to Mr. A and Mrs. B - since C was really a "strawman" to accomplish the first transfer; and 3) Mr. A, Mrs. B, and C would need to live long enough between the first and second step, so that the assessor would not apply the step transaction doctrine (stated in Example 9 of the rule), collapsing the steps and disregarding their "original transferor" status. This renders the acquisition of "original transferor" status for both joint tenants a virtual impossibility and the exclusion useless for all but the most sophisticated taxpayers.

Second, the rule does not state that joint tenants can become "original transferors" when they transfer their interests to each other through their respective trusts or wills, even though section 62(d) clearly states that a trustor is a transferor. Many clients, including those who hold title to a home in joint tenancy, ask us to draft an estate plan transferring their respective property interests to each other through a trust. Their intent is - as indicated in the example above - to provide their co-owner (partner) with survivorship rights in their home so that the expenses for their shelter do not increase after their death. The proposed amendments are necessary in order to encourage and protect individuals' estate planning efforts in this respect. Providing an exclusion that delays reappraisal until the death of the surviving joint tenant is simply sound tax policy.

Third, the rule does not provide that the assessor may consider the deed presumption rebutted when the taxpayer produces evidence that the persons on title are actually joint tenants and "original transferors," - despite the fact that the taxpayer has the right to rebut any deed presumption under Rule 462.200(b). Pursuant to the authority of Evidence Code section 662, all property owners have the right to submit information to the assessor or recorder indicating that their deed is not correct and that they (or other persons) actually held title in a manner different from that indicated on the deed -- for example, as joint tenants and "original transferors." The joint tenancy rule should make clear that the assessor has full authority to consider the credibility of the information, consider the deed presumption rebutted, and re-interpret the deed and how title was held, based on the evidence submitted.

Honorable Carole Migden, Chairwoman  
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Therefore, the joint tenancy rule amendments would modify the definition of "original transferors" and eliminate the "third-person-on-title" requirement, and include trustors as "original transferors" when they transfer their interests to each other through their respective trusts or wills. The results would be:

**A & B -- to -- A & B joint tenants**  
 Both become "*original transferors*" because both are "*among the joint tenants.*"

**A & B -- purchase as joint tenants.**  
**A & B -- to -- A & B -- through their trusts or wills.**  
 Both become "*original transferors.*"

**A -- to -- A & B joint tenants**  
**B -- to -- A -- through trust or will. B becomes an "*original transferor.*"**

The proposed amendment of Rule 462.240 - *The Following Transfers Do Not Constitute A Change in Ownership*, is necessary in order to add a specific exclusion for transfers occurring on the death of a domestic partner. As noted above, many of our clients are seniors who purchase a home together and care for each other for the remainder of their lives, but do not marry. Family Code sections 297 et seq. now provide that when heterosexual couples are over the age of 62, they may register with the Secretary of State as domestic partners. Last year AB 2216 enacted section 3(a), paragraph 4 which interprets Probate Code section 6402 and states, in part:

"Under the law to take effect July 1, 2003, if a domestic partner dies without a will, trust, or other estate plan, the surviving domestic partner will inherit the deceased partner's separate property in the same manner as a surviving spouse. . . ."

This statutory change authorized transfers of separate property under the laws of intestate succession on the death of a registered domestic partner to the surviving domestic partner, in the same manner as surviving spouses. The Board should implement the new statutory language in a rule amendment – by creating the type of exclusion proposed in the new subdivision (k) to be added to Rule 462.240.

For the reasons stated above, the Board adopt regulatory amendments to Rule 462.040, specifying that the definition of an "original transferor" does not require a third person among the joint tenant transferees, that one may become an "original transferor" by transferring one's joint tenancy interest into a trust or will for the benefit of the other joint tenant, and that the assessor may conclude that one is a joint tenant and "original transferor" when there is sufficient evidence to rebut the deed presumption. The Board should also adopt an amendment to Rule 462.240, specifying that in conformity with Probate Code section 6204, property transferred by trust, will or intestate to the surviving

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domestic partner of a registered domestic partnership, is excluded from change in ownership.

Please consider this a petition for a rule change, pursuant to Government Code section 11340.6, requesting the Board to exercise its rulemaking authority under Government Code section 15606 to amend or adopt a regulation. Thank you for your consideration of this important matter.

Sincerely,



Frayda L. Bruton

FLB:tr

Attachments

cc: Honorable Claude Parrish, Vice Chairman  
Honorable Bill Leonard  
Honorable John Chiang  
Honorable Steve Westly

Mr. Timothy Boyer, MIC:83  
Ms. Kristine Cazadd, MIC:82

State of California  
**BOARD OF EQUALIZATION**  
**PROPERTY TAX RULES**

Chapter 1. State Board of Equalization—Property Tax  
 Subchapter 4. Equalization by State Board  
 Article 3. Taxable Property of a County, City or Municipal Corporation

**Rule 462.040 CHANGE IN OWNERSHIP - JOINT TENANCIES.**

*Authority Cited:* Section 15606, Government Code.  
*Reference:* Sections 60, 61, 62, 63, 63.1, 65, 65.1 and 67, Revenue and Taxation 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, including an interest in a trust or will, interest and after such creation or transfer, all the transferor(s) are amongs one of the joint tenants.

Such a transferor(s) who areis also a transferee(s) in this situation areand is, therefore, considered to be an "original 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. All other initial and subsequent joint tenants are considered to be "other than original transferors".

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

Example 4(a): A and B purchase property as joint tenants. Later A and B transfer their property interests to each other as joint tenants through their respective trusts or wills. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors."

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 transfer to A, B and C as joint tenants and, thereafter, C transfers his or her interest to A and B purchase property as joint tenants and shortly thereafter transfer their joint tenancy interests to each other through their respective trusts, wills and/or estate plans. A and B become "original transferors." A sells his/her interest to C, and C shortly thereafter transfers his/her joint tenancy interest to B through a trust, will and/or estate plan, so that C becomes an "original transferor." B then sells his/her interest to D, and D shortly thereafter makes a transfer similar to C in order to become an "original transferor." Under these or other tax avoidance circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate, A, B, C, and D do not become "original transferors" as a result of their transfers to A, B and C 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 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.

Example 12: Following the example set fourth in Example 10 (above), 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.

(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 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 law.

(c) 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) For purposes of this section, the assessor may presume that each joint tenant is an original transferor if there is 'reasonable cause' to believe that the joint tenant was a transferor among the joint tenants. 'Reasonable cause' means a deed, Affidavit of Death of Joint Tenant, a trust, will, estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction doctrine exist.

Example 13: A transfers the property to A and B as joint tenants. The deed establishes that A became an "original transferor." Subsequently, A and B each execute revocable living trusts transferring their respective joint tenancy interests to their trusts for the benefit of each other. The deed and or trust instruments establish that B also 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 482 (c).  
Amended October 15, 1998, effective January 29, 1999.  
Amended and effective April 3, 2001.*

State of California  
BOARD OF EQUALIZATION  
PROPERTY TAX RULES

Chapter 1. State Board of Equalization—Property Tax  
Subchapter 4. Equalization by State Board  
Article 3. Taxable Property of a County, City or Municipal Corporation

**Rule 462.240. THE FOLLOWING TRANSFERS DO NOT CONSTITUTE A  
CHANGE IN OWNERSHIP.**

Reference: Sections 60, 61, 62, 62.1, 62.2, 64, 66, and 67, Revenue and Taxation Code.  
Section 15606, Government Code.

The following transfers do not constitute a change in ownership:

(a) The transfer of bare legal title, e.g.,

(1) Any transfer to an existing assessee for the purpose of perfecting title to the property.

(2) Any transfer resulting in the creation, assignment, or reconveyance of a security interest not coupled with the right to immediate use, occupancy, possession or profits.

(b) Any transfer caused by the substitution of a trustee.

(c) Any purchase, redemption or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(d) Any contribution of real property to an employee benefit plan, any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the voting stock in the employer corporation, or the creation, vesting, transfer, distribution, or termination of a participant's or beneficiary's interest in such a plan. The terms used herein shall have the meaning ascribed to them in the Employee Retirement Income Security Act of 1974, which is codified as United States Code annotated, Title 29, Section 1002. (The term "any contribution" as used in Section 66 (b) of the Revenue and Taxation Code and this section means only those contributions of real property made to an employee benefit plan by an employer, a group of employees, or both, without any consideration.)

(e) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h of the Revenue and Taxation Code holding title for the benefit of any of the aforementioned corporations, or any combination thereof (including any transfer from one such entity to the same type of entity), provided that both the transferee and the transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(f) Any transfer, occurring on or after January 1, 1983, which results from the reformation or correction of a deed which, by mistake, inaccurately describes the property intended to be conveyed, or adds or omits some term not agreed to by the parties, or in some other manner fails to express the true intentions of the parties.

Example 1: A agrees to sell one acre to B. The deed mistakenly describes a two-acre area. Reformation of the deed to describe the original acre intended to be transferred is not a change in ownership.

(g) Any transfer, occurring on or after January 1, 1983, of an eligible dwelling unit from a parent or legal guardian to a minor child or children or among minor siblings, or to a trust for the sole benefit of such persons, resulting from a court order or judicial decree due to the death of one or both of the parents. An "eligible dwelling unit" means the dwelling which was the principal place of residence of the minor child or children prior to the transfer and remains such after the transfer.

(h) Any transfer of property to a disabled child or ward, whether minor or adult, or to a trust for the sole benefit of such person, upon the death of a parent or guardian pursuant to Section 62(n) of the Revenue and Taxation Code.

(i) Any transfer, on or after January 1, 1985, of a mobilehome park or of rental spaces in a mobilehome park pursuant to Section 62.1 of the Revenue and Taxation Code.

(j) Any transfer of a mobilehome park or of rental spaces in a mobilehome park pursuant to Section 62.2 of the Revenue and Taxation Code.

(k) Any transfer of separate property inherited by a surviving domestic partner, as defined in subdivision (b) of Section 37 of the Probate Code, whether by intestate succession, will, or trust, or other estate plan, upon the death of a registered domestic partner.

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 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 (m).  
 Amended September 10, 1997, effective February 20, 1998.