

M e m o r a n d u m

To: Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Vice-Chair
Honorable Bill Leonard, Second District
Honorable Michelle Steel, Third District
Honorable John Chiang, Controller

Date: January 10, 2008

From: Kristine Cazadd
Chief Counsel 

Subject: **Petition for Amendment of Property Tax Rule 462.001**
Change in Ownership – General
February 1, 2008 Board Meeting – Chief Counsel Matters – Item __ – Rulemaking

By a letter received on January 2, 2008, Mr. Stephen Bennett petitioned the Board, pursuant to Government Code section 11340.6, to amend Property Tax Rule¹ 462.001, *Change in Ownership – General*, to add a requirement that only transfers by a “primary owner” result in changes in ownership. This matter is scheduled for the Board’s consideration at the February 1, 2008 meeting² on the Chief Counsel Matters Agenda. On February 1, the Board may: (1) deny the petition; (2) grant the petition in part or in whole and commence the official rulemaking process by ordering publication of the notice pursuant to Government Code section 11346.5; or (3) direct staff to commence an interested parties process to consider the requested amendment in part or in whole. Staff recommends that the petition be denied because Rule 462.001 is consistent with Revenue and Taxation Code section 60.

This memorandum will set forth: (1) general background information on change in ownership law; (2) a discussion of the petition and the requested amendment; and (3) a discussion of the staff’s recommendation to deny the petition.

I. General Background Information on Rule 462.001

Revenue and Taxation Code³ section 60 defines “change in ownership” as single test with three elements: “a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.” The third element, known as the “value equivalence” element, ensures that only transfers of property interests that represent the primary value of the real property are considered changes in ownership.

¹ All “Property Tax Rule” or “Rule” references are to title 18 of the California Code of Regulations.

² Under Government Code section 11340.7, the Board has 30 days from receipt to deny the petition in whole or in part, indicating the reasons why, or to initiate the rulemaking process. Mr. Bennett has not waived the 30-day deadline.

³ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

To interpret section 60, the Board concurrently promulgated Property Tax Rule 462.001, which provides that:

A 'change in ownership' in real property occurs when there is a transfer of a present interest in the property, including the transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a 'change in ownership' shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement, or any other means. A change in the name of an owner of property not involving a change in the right to beneficial use is excluded from the term 'transfer' as used in this section.

Thus, as stated above, Rule 462.001 applies the plain language of section 60 that a change in ownership occurs upon the transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Report of the Task Force on Property Tax Administration

The interpretation of Revenue and Taxation Code section 60, as set forth in Rule 462.001 is consistent with the recommendations of the "Report of the Task Force on Property Tax Administration" (Task Force Report), submitted to the Assembly Committee on Revenue and Taxation on January 22, 1979. In interpreting the change in ownership provisions of Revenue and Taxation Code section 60 et seq., courts have long relied on the explanations and rationales set forth in Task Force Report. (*See Pacific Southwest Realty v. County of Los Angeles* (1991) 1 Cal.4th 155, at 161-162.) The following is the Task Force Report discussion of the concept of the primary owner of an interest in property for the purposes of the "change in ownership" test ultimately enacted as section 60:

Value Equivalence. The 'value equivalence' test is necessary to determine who is the primary owner of the property at any given time. Often two or more people have interest in a single parcel of real property. . . . [I]n determining whether a change in ownership has occurred it is necessary to identify but one primary owner . . . so that only a transfer by him will be a change in ownership and when it occurs the whole property will be reappraised.
(Task Force Report, pp. 39-40 (emphasis in original).)

Accordingly, when two or more persons have an interest in a single parcel of real property, it is necessary to identify the one "primary owner" of the real property. The value equivalency test is used to determine who has the interest in the property the value of which is substantially equal to the value of the fee interest, and thus the primary owner. In the case of life estates, for example, the Task Force recommended, and the Legislature decided, that the life tenant is that primary owner and that the creation of a life estate is a change in ownership unless reserved for the transferor or the transferor's spouse. (Task Force Report, p. 44; Rev. & Tax. Code, §§ 60 and 62 subd. (e).)

II. Discussion of Petition

The petition requests that the Board amend subdivision (a) of Rule 462.001 to add the following underlined text:

(b) When the primary owner of real property causes the transfer of an interest in that property to occur, the transfer is a change in ownership of the entire property under paragraph (a) if either of the conditions in paragraphs (b)(1) or (2) is satisfied:

(1) The primary owner transfers, or by operation of law is deemed to transfer the fee interest of the property.

(2) The primary owner transfers, or by operation of law is deemed to transfer, a non fee present interest in the property including the transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest of the property.

(c) When a non-primary owner of real property causes the transfer, or by operation of law is deemed to cause the transfer, of a beneficial interest in real property to occur, the transfer is not a change in ownership under paragraph.

(d) Definitions:

(1) "Primary owner" means the person or entity that directly and uniquely possesses the legally enforceable power whether derived under the governing instrument or by operation of law, to either cause the transfer of the fee interest in real property or to cause the transfer of a non-fee present interest in real property, including the beneficial use thereof the value of which is substantially equal to the value of the fee interest of the entire property.

(2) "Non primary" owner means any person or entity that possesses, directly or indirectly, a present or future beneficial interest in real property but does not possess the powers held by the primary owner.

(3) "Property", "real property", and "entire property" all mean the appraisal unit as described in Revenue and Taxation Code Section 51(d).

Mr. Bennett contends in his petition that Rule 462.001 should be amended as indicated above because the legislature and the Board have not defined the term "primary owner," as used in the Task Force Report. "By leaving the words 'primary owner' undefined," he claims, "deputy assessors will define 'primary owner' differently, resulting in a lack of uniformity throughout the

state.” Mr. Bennett has provided no evidence to support this claim.

Mr. Bennett’s petition fails to account for the fact that the three-element test of section 60 was taken verbatim from the Task Force Report. (*Pacific Southwest Realty v. County of Los Angeles* (1991) 1 Cal.4th 155, at 161-162.) This test was the Task Force’s effort to “distill the basic characteristics of a 'change in ownership' and embody them in a single test.” (*Id.*) That the ultimate change in ownership test does not contain the term “primary owner” suggests that the concept is either irrelevant, or subsumed within the elements of the test. In fact, as is confirmed by the Task Force Report itself, the value equivalency test of section 60 obviates the need for an inquiry into the identity of a so-called primary owner. “The ‘value equivalence’ test is necessary to determine who is the primary owner of the property at any given time.” (Task Force Report, pp. 39-40.) The test confirms that the one who has the present beneficial interest, the value of which is substantially equal to the value of the fee interest, is, for all intents and purposes, the primary owner of an interest in real property.

Mr. Bennett’s petition admits that, to the extent county assessors correctly follow section 60, the amendments to Rule 462.001 will have no effect. Thus, the proposed amendments are unnecessary as the three-part test of section 60 is adequate to determine the identity of the primary owner of an interest in real property.

Mr. Bennett’s Petition further claims that, in certain situations involving trusts, the trustee is the primary owner of trust property. This claim contradicts basic change in ownership law. A trustee only has equitable title to trust property, not beneficial ownership. Therefore, a trustee can never have the type of beneficial interest that is required in order for a change in ownership to occur pursuant to section 60. If the trust is irrevocable, the beneficiaries have beneficial ownership of the trust property. If the trust is revocable, the trustors retain the beneficial interest. These basic tenets of change in ownership law are acknowledged in section 62, subdivision (d) and in Property Tax Rule 462.160. Mr. Bennett’s contention that a beneficiary whose interest is subject to an “anti-alienation” clause is not the primary owner is similarly without merit. An anti-alienation clause merely places a condition on the beneficiary’s interest in the property. The granting of an interest subject to a condition is still a change in ownership. (Property Tax Annotation 220.0369.) Therefore, the fact that an interest is subject to a no-contest clause has no bearing on whether a change in ownership has occurred.

Under the proposed amendment, a fourth element would be added to the change in ownership test of section 60. County assessors would be required to divine the identity of the “primary owner” of an interest in real property any time a transfer occurs. The proposed amendment, however, offers little, if any, help to county assessors in performing this task. Further, since the three-part test of section 60 already addresses primary ownership, this task is redundant with respect to county assessors’ current duties.

III. Staff's Recommendation

Staff recommends that the Board deny the petition because Rule 462.001 presently correctly interprets the three-part test of section 60 and is consistent with the legislative intent indicated by the Task Force Report in determining change in ownership. The value equivalency test of section 60 adequately addresses the issue of the identity of the primary owner. The proposed amendment is therefore unnecessary, duplicative, and would only cause confusion as to how to apply the test contained in section 60. It is also staff's opinion that the proposed amendment to Rule 462.001 contradicts current law regarding changes in ownership of trust property. For these reasons, staff recommends that the petition be denied.

IV. CONCLUSION

To summarize, staff recommends that the Board deny the petition to amend Rule 462.001, which adds a requirement that only transfers by a "primary owner" result in change in ownership. It is staff's opinion that Rule 462.001 correctly interprets the three-part test of section 60 and is consistent with the legislative intent indicated by the Task Force Report in determining change in ownership. Lastly, it is staff's opinion that the requested amendment would require new legislation.

If you need more information or have any questions, please contact Acting Assistant Chief Counsel Robert Lambert at (916) 324-6593.

Approved: _____


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Executive Director

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