

Memorandum

To: Honorable Judy Chu, Ph.D., Chair
Honorable Betty T. Yee, Vice-Chairwoman
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

Date: March 7, 2008

From: Kristine Cazadd 
Chief Counsel

Subject: **Petition for Amendment of Property Tax Rule 462.001**
Change in Ownership – General
March 19, 2008 Board Meeting – Chief Counsel Matters

By letter received on February 29, 2008, Mr. Stephen Bennett submitted a rulemaking petition to 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 upon a transfer of a real property interest, an assessor must calculate the value of that interest and compare it to the property's fee value to determine whether or not a change in ownership occurred upon the transfer. This matter is scheduled for the Board's consideration at the March 19, 2008 meeting² on the Chief Counsel Matters Agenda.

On March 19, 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; (3) direct staff to commence an interested parties process to consider the requested amendment in part or in whole; or (4) take any other action as it may determine to be warranted by the petition. Staff recommends that the petition be denied because it is in conflict with existing law.

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

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 declined to waive the 30-day deadline.

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.

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.

II. Discussion of Petition

The petition requests that the Board amend Rule 462.001 by retaining the existing provisions as subdivision (a), and adding the following underlined text as subdivision (b):

(b) In determining whether the value of the transferred beneficial interest in real property is substantially equal to the value of the fee interest, the assessor shall calculate the value of the transferred beneficial interest and

(1) The assessor shall compare the value of the transferred beneficial interest to the value of the entire fee interest, or

(2) if the assessor finds by clear and convincing evidence the transferred beneficial interest is the legally enforceable equivalent of a tenants-in-common interest, the assessor shall compare the value of the transferred beneficial interest to the value of a tenants-in-common interest.

Mr. Bennett contends in his petition that Rule 462.001 should be amended as indicated above because assessors are confused over their responsibilities with respect to the third prong – the

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

value equivalence test – of section 60. Mr. Bennett, however, has provided no evidence to support this claim.

Petitioner's amendment, if granted, appears to require county assessors to perform a value equivalence analysis on every transfer of a less-than-fee or partial interest.⁴ This would likely conflict with other statutory provisions defining as changes in ownership several types of transfers of less-than-fee or partial interests in property, including, but not limited to, the following:

- (1) Section 61, subdivision (a) (creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals regardless of the period during which the right may be exercised);
- (2) Section 61, subdivisions (b) and (d) (creation, renewal, extension, sublease, or assignment of a taxable possessory interests in government-owned real property);
- (3) Section 61, subdivision (c) (creation, transfer or termination of a leasehold interest for 35 years or more and the creation, transfer or termination of a leasehold interest in property qualifying for the homeowners' exemption);
- (4) Section 61, subdivision (e) and section 65, subdivision (a) (creation, transfer, or termination of a joint tenancy interest);
- (5) Section 61, subdivision (f) (creation, transfer, or termination of a tenancy in common interest); and
- (6) Section 61, subdivision (g) and section 62, subdivision (e) (vesting of a remainder or reversionary interest that occurs on the termination of a life estate).

By enacting these statutory provisions, the Legislature has determined that the creation, transfer, or termination of the described less-than-fee or partial interests in real property constitute changes in ownership, and therefore meet the value equivalence prong of section 60's three-part test, regardless of what the results of a comparison of the less-than-fee value with fee value would reveal in an individual case.⁵

Under the apparent intent of the requested amendments to Rule 462.001, however, transfers of less-than-fee or partial interests in real property would only constitute changes in ownership if

⁴ We are not entirely certain of the intended purpose of petitioner's proposed subdivision (b)(2). It is possible that petitioner is attempting to formulate a rule applying to the transfer of undivided fractional interests (e.g., tenancy in common and joint tenancy interests), or that he is attempting to create an exception for tenancy-in-common interests. For purposes of this memorandum, we assume that petitioner intends that the proposed amendments apply to all transfers of real property, including fractional interests.

⁵ Concurrent with the Legislature's enactment of sections 60, 61, and 62, the Board promulgated a regulatory scheme of Property Tax Rules that further interpret these legislative determinations. (See, e.g., Rules 462.020 (tenancies in common), 462.040 (joint tenancies), 462.060 (life estates and estates for years), 462.080 (possessory interests), 462.100 (leases), 462.160 (trusts), 462.220 (interspousal transfers), and 462.240 (transfers that do not constitute a change in ownership).)

the county assessor made an independent determination in each individual case that the value of the transferred interest was found to be substantially equivalent to the value of the appropriate fraction of the fee interest. Thus, the proposed regulation contradicts state statutes and regulations. Furthermore, the proposed amendments would defeat the intent of the Task Force on Property Tax Administration, which in its January 22, 1979 report to the Assembly Committee on Revenue and Taxation⁷ recommended to the Legislature:

[T]he use of statutory ‘examples’ to elaborate on common transactions. Lay assessors and taxpayers would otherwise have difficulty applying legal concepts such as ‘beneficial use’ and ‘*substantially equivalent*.’ Thus, common types of transfers were identified and *concrete rules* for them were set forth in proposed Sections 61 and 62.

(*Task Force Report*, p. 40.) (Emphasis added.)

In summary, to require a comparative value analysis where the Legislature has made determinations of value equivalency would contradict long-standing state law.

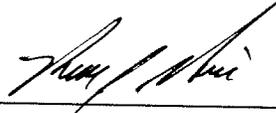
In addition, in staff’s opinion, the requested amendments to Rule 462.001 are unnecessary as applied to cases not specifically covered by Legislative determinations, since the three-prong test of section 60 – including the value equivalence test – is already a fixture of state law. (Rev. & Tax. Code, § 60; Rule 462.001.) There are, of course, instances in which the value of a less-than-fee or partial interest in real property – such as certain valuable easements or rights-of-way – may need to be compared with fee value to determine the primary owner under the value equivalency test. For such instances that have not been made the subject of statutory or regulatory determination of value equivalency, the existing rule does not preclude assessors from performing such a comparative value analysis if they determine that such an analysis would be helpful in carrying out their assessment duties. Thus, even in cases where the proposed rule amendments might be relevant, they are superfluous and unnecessary.

III. Staff’s Recommendation

Staff recommends that the Board deny the petition because Rule 462.001 in its present form correctly interprets the value equivalence test of section 60 and is consistent with the legislative intent indicated by the Task Force Report in determining change in ownership. In summary, the proposed amendment as applied to some transfers is in conflict with long-standing statutes and regulations, and as applied to other transfers is superfluous and unnecessary. For these reasons, staff recommends that the petition be denied.

⁷ “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.

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

Approved: 

Ramon J. Hirsig
Executive Director

KEC:RL:pb

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