STATE OF CALIFORNIA

220.0713

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
916-323-3135 • FAX 916-323-3387
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Orange County

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

December 24, 2013

Re: Joint Tenancy to Tenancy in Common
Assignment No. 13-128

Dear Mr. :

This is in response to your letter requesting our opinion as to whether the real property owned by two brothers as joint tenants should be reassessed when title to that property was subsequently transferred to tenancy in common interests. For the reasons explained below, it is our opinion that the termination of the joint tenancy interest resulted in a 50 percent change in ownership of the property.

Facts

Prior to March 31, 1987 Husband, Wife, and Son 1 owned a parcel of California real property (Property) as joint tenants. On March 31, 1987 Husband, Wife, and Son 1 recorded a deed conveying title to the Property to Husband, Wife, Son 1, and Son 2, all as joint tenants (1987 Transfer). Husband died in 2007 (2007 Transfer), and Wife died in 2010 (2010 Transfer), leaving Son 1 and Son 2 as the surviving joint tenants. On May 22, 2012, Son 1 and Son 2 recorded a deed granting to Son 1 an undivided one-half tenancy in common interest in the Property as an unmarried man and to Son 2 an undivided one-half tenancy in common interest as a married man (2012 Transfer). The Assessor believes a 50 percent change in ownership resulted from the 2012 transfer, while you assert there was *no* change in ownership, arguing that Son 2 acquired his interest in the Property from Husband and Wife, his parents, thus qualifying the 2012 Transfer for the parent-child exclusion.[1]

Law & Analysis

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership." A change in ownership is defined in section 60 of the Revenue and Taxation Code[2] as "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."

[1] You state in your letter that a timely Claim for Reassessment Exclusion for Transfer between Parent and Child (claim form) was filed on June 20, 2011 with the Assessor's Office without indicating the specific transfer or transfers to which the claim form applies. However, in our view the parent-child exclusion is inapplicable under the facts before us since the 2012 Transfer involved *two brothers as the surviving joint tenants* who sever the joint tenancy by transferring their interests to themselves as tenants in common. Since the 2012 Transfer did not involve a transfer from parent to child but from Son 1 to himself as a tenant in common with Son 2 and from Son 2 to himself as a tenant in common with Son 1, the parent-child exclusion would not apply.

[2] All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Section 61, subdivision (e) provides for a change in ownership upon the "[t]he creation, transfer, or termination of any joint tenancy interest, except as provided in subdivision (f) of Section 62, and in Section 63[3] and Section 65." (See also Property Tax Rule[4] 462.040, subd. (a).) Section 62, subdivision (f) excludes from change in ownership the creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of section 65 (hereafter Section 65(b).).

Section 65 provides in relevant part:

> (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.
>
> (c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section. (Hereafter Section 65(c).)
>
> (d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), *there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants*, provided that one of the remaining joint tenants is an original transferor. (Hereafter Section 65(d).) (Italics added.) [¶ . . . ¶]

In this case, the 1987 Transfer falls within the Section 65(b) exclusion from change in ownership since Husband, Wife, and Son 1 were transferors who were also among the joint tenants after the transfer. Additionally, upon the creation of the joint tenancy interest with Son 2 as a result of the 1987 Transfer, Husband, Wife, and Son 1 became "original transferors" for purposes of determining the property to be reappraised on subsequent transfers, and Son 2 became an "other than original transferor." (Rule 462.040, subd. (b)(1)).

The 2007 Transfer was excluded from change in ownership and reassessment since Husband's interest vested, in part, in two remaining original transferors (Wife and Son 1). (Rev. & Tax. Code, § 65, subds. (c), (d).)) The same is true for the 2010 Transfer where Wife's interest vested, in part, in the sole remaining original transferor, Son 1. (*Ibid*.)

---

[3] Section 63 excludes transfers between spouses and therefore is not applicable to the 2012 Transfer.

[4] All subsequent references to "Rules" are to the Property Tax Rules promulgated under title 18 of the California Code of Regulations.

However, the 2012 Transfer terminated the joint tenancy and created a tenancy in common with Son 1 and Son 2. Generally, the termination of a joint tenancy is a change in ownership. (Rev. &. Tax. Code, § 65, subd. (a); Rule 462.040, subd. (a).) The termination of a joint tenancy that previously escaped reassessment under Section 65(b) must be analyzed using Sections 65(c) and 65(d). Pursuant to Section 65(c), any interest that vests in an original transferor is not reassessed. Pursuant to Section 65(d), any interest that vests in an other than original transferor is reassessed. The rationale is that the other than original transferor received his interest in the property with no reassessment. Thus, since Son 2 was an other than original transferor, the property that transferred to him as a result of the termination must be reassessed. (Rev. & Tax. Code, § 65, subd. (d).)

We have previously opined that a mother's transfer of property to herself and to her son as joint tenants does not constitute a change in ownership because the transferor creates a joint tenancy in which she is one of the joint tenants, but where mother and son later take title to the property as tenants in common, there is a change in ownership of the 50 percent undivided interest in the property acquired by the son. (Property Tax Annotation[5] 220.0298 (September 11, 1985).)

Likewise, in facts similar to yours, two brothers owned property as joint tenants, one as an original transferor (Peter) and the other as an other than original transferor (James). James severed the joint tenancy when he recorded a grant deed granting to himself an interest as a tenant in common, resulting in a 50 percent reassessment of the property. (*Benson v. Marin County Assessment Appeals Board* (2013) 219 Cal.App.4th 1445.) The court noted that James received the advantage of the exclusion when Peter created the joint tenancy since no change in ownership was deemed to have occurred at that time: "The price for that property tax break, so to speak, was a change in ownership when the family joint tenancy was terminated." (*Id.* at p. 1448.)

Thus, because Son 2's interest in the Property benefitted from the exclusion when original transferor status was created in 1987 and again when Husband and Wife died, only that portion of the Property received by Son 2 would be reassessed upon termination of the joint tenancy. Accordingly, we conclude that Son 2's 50 percent tenancy in common interest in the Property would be subject to reappraisal as a result of the 2012 Transfer.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal department based on present law and the facts set forth herein. Therefore, they are not binding on any person or public entity.

Sincerely,

/s/ Susan Galbraith

Susan Galbraith
Tax Counsel

SG:yg
J:/Prop/Prec/Changeownshp & Joint Tenancy/2013/13-128.doc

---

[5] Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)