



STATE BOARD OF EQUALIZATION  
PROPERTY AND SPECIAL TAXES DEPARTMENT  
450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064  
916 445-4982 • FAX 916 323-8765  
www.boe.ca.gov

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No. 2006/038

September 5, 2006

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

AMENDMENT OF PROPERTY TAX RULE 462.040,  
CHANGE IN OWNERSHIP—JOINT TENANCIES

The Board staff has initiated a project to amend Property Tax Rule 462.040, *Change in Ownership—Joint Tenancies*. Board staff's proposed revisions concern acquisition of original transferor status by means of transfer of joint tenancy interests into trust. Enclosed is a draft of the proposed amendments to the rule.

Interested parties may submit comments and/or proposed changes to the rule in the form of alternative text by September 18, 2006. Proposed changes should be submitted to Ms. Sherrie Kinkle at [sherrie.kinkle@boe.ca.gov](mailto:sherrie.kinkle@boe.ca.gov), or mailed to:

Sherrie Kinkle  
State Board of Equalization  
Assessment Policy and Standards Division  
P. O. Box 942879, MIC: 64  
Sacramento, CA 94279-0064

Staff will meet with interested parties on September 22, 2006 to discuss proposed changes to the rule. The meeting will be held at the Board's headquarters in Sacramento, 450 N Street, Room 122, from 9:30 a.m. to 12:00 noon. This project is scheduled for the October 11, 2006 Property Tax Committee meeting to hear presentations on any unresolved issues regarding the wording of the rule.

This letter and all document regarding this project will be posted to the Board's website at [www.boe.ca.gov/proptaxes/rule462040.htm](http://www.boe.ca.gov/proptaxes/rule462040.htm). If you have any questions regarding this project, please contact Carole Ruwart, Senior Tax Counsel, at 916-322-3682.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:sk  
Enclosures

**Property Tax Rule 462.040 Change in Ownership – Joint Tenancies  
Proposed Changes (9/5/2006)**

Proposed Changes	Notes
<p><b>(a)</b> The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.</p> <p>Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.</p> <p>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.</p> <p>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.</p> <p>Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both “original transferors.”</p>	<p>No change.</p>
<p>Example 4.1: A and B purchase property as joint tenants. <del>Later</del> <u>On December 12, 2004, A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be “original transferors.” If A and B had transferred their interests into trust before November 13, 2003 or on or after [the effective date of the proposed regulatory change], neither A nor B would be considered “original transfers” as a result of the transfer into trust.</u></p>	<p>Example 4.1 is modified to demonstrate the application of the rule amendments over time.</p>
<p>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</p>	<p>No change.</p>

Proposed Changes	Notes
<p>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”.</p> <p>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.”)</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	
<p>Example 9: A and B purchase property as joint tenants and transfer their joint tenancy interests to each other through their respective trusts <u>on December 12, 2004</u>. A and B become “original transferors.” A and B sell a 50% interest to C and D, with the deed showing A, B, C and D as joint tenants. C and D then transfer their joint tenancy interests to each other through their trusts, so that both become “original transferors.” A and B then sell their remaining 50% to C and D, and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a</p>	<p>Example 9 is modified to clarify that the transfer into trust must have occurred within the specified time span in order for A and B to obtain original transferor status.</p>

Proposed Changes	Notes
<p>change in ownership, A, B, C, and D do not become “original transferors” as a result of their transfers to each other.</p>	
<p>(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 transferor(s); 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.</p> <p>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.</p> <p>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.</p> <p>(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. The original transferor status of any remaining joint tenants ceases when a joint tenancy is terminated.</p> <p>Example 12: Following the example set forth 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.</p> <p>Example 13: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become “original transferors.” A dies and A’s joint tenancy interest passes to B by operation of law without a change in ownership because B is an “original transferor.” Upon A’s death, the joint tenancy is terminated and B ceases to be</p>	<p>No change.</p>

Proposed Changes	Notes
<p>an “original transferor.”</p> <p>(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:</p> <p>(A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.</p> <p>(B) a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.</p> <p>(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.)</p> <p>(5) The transfer is one to which the interspousal exclusion applies.</p> <p>(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 accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, exclusive of any interest to a spouse or other exempt transfer, 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.</p> <p>(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.</p>	

Proposed Changes	Notes
<p>(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, shall be an “original transferor.” This presumption is not applicable to joint tenancies created after March 1, 1975.</p>	
<p>(d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and “original transferors” if there is “reasonable cause” to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title.</p> <p>Example 14: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. <del>Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.</del> The assessor may determine that the sales contract <u>and trust instruments</u> establishes that A and B intended to hold title as joint tenants upon purchase. <del>and that each subsequently became an “original transferor.”</del></p>	<p>Subdivision (d) was added in 2003 to provide a clarify that the “rebutting the deed presumption” rule, set forth in subdivision (b) of Property Tax Rule 462.200, applies to determination of the existence of a joint tenancy and, where applicable, original transferor status. In the proposed regulation, references to specific documents constituting “reasonable cause” were removed as they did not track the provisions of Rule 462.200(b) or Example 14, and so could cause confusion.</p> <p>Example 14 was modified to apply to a generic joint tenancy, rather than one that involved a transfer into trust.</p>