

February 23, 2007

Following receipt of comments/revisions/solutions to the proposed amendments to the rule, staff will meet with interested parties to discuss the issues. All documents regarding this project will be posted to the Board's website at www.boe.ca.gov/proptaxes/rule462040.htm.

If you have questions regarding this project, you may contact Ms. Schultz at 916-324-5836 or Ms. Sherrie Kinkle at 916-322-2921.

Sincerely,

/s/David J. Gau

David J. Gau
Deputy Director
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Enclosure

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**PROPERTY TAX RULE 462.040,
CHANGE IN OWNERSHIP – JOINT TENANCIES**

PROPOSED CHANGES BY THE CAA

6 **Rule 462.040 CHANGE IN OWNERSHIP – JOINT TENANCIES.**

7 *Authority Cited:* Section 15606, Government Code.

8 *Reference:* Sections 60, 61, 62, 63, 63.1, 65, 65.1, 67, Revenue and Taxation Code; Section 662, Evidence Code.

9 **(a)** The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest
10 transferred.

11 Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire
12 property.

13 Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of
14 the entire property.

15 Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in
16 ownership of 50% of the property.

17 **(b)** The following transfers do not constitute a change in ownership:

18 **(1)** The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust~~, and after such
19 creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is,
20 therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon
21 subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property ~~either~~
22 ~~during the period that the original transferor holds an interest or by means of a transfer from the original transferor,~~
23 such spouse shall also be considered to be an original transferor. ~~Any joint tenant may also become an original~~
24 ~~transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust~~
25 ~~instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.~~ All other initial and subsequent
26 joint tenants are considered to be "other than original transferors."

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

30 ~~Example 4-1: A and B purchase property as joint tenants. Later A and B transfer their property interests to each~~
31 ~~other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and~~
32 ~~are, therefore, considered to be "original transferors."~~

33 Example 4(a): A and B purchase property as joint tenants. A transfers his interest to his trust. No change in
34 ownership, since A's trust is revocable, and for his benefit. However, A's trust and B are now tenants in common
35 unless there is a court order specifying otherwise.

36 Example 4(b): A and B own property as tenants in common, and A has a 20% interest and B has a 80% interest.
37 A and B transfer to A, B, and C as joint tenants. 30% change in ownership, and both A and B become "original
38 transferors." A and B equally share the original transferor status. Therefore, since their interest were unequal before
39 the transfer, there is a change in ownership as to the percentage needed to equalize the interests (for A's original
40 transferor interest to equal B's original transferor interest, there is a 30% change in ownership).

41 Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership
42 because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C
43 and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as
44 joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than
45 original transferors."

1 Example 5(a): A, as sole owner, transfers to A and B as joint tenants. No change in ownership because A, the
2 transferor, is included among the transferees, and is, therefore, an "original transferor." A and B then transfer to A, B,
3 and C. No change in ownership, but only A is an "original transferor." B and C are "other than original transferors,"
4 since B is the initial joint tenant who is an "other than original transferor," and C is the subsequent joint tenant who is
5 an "other than original transferor."

6 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
7 ownership because A and B, the transferors, are included among the transferees and are, therefore, "original
8 transferors." E is also an "original transferor." (C and D are "other than original transferors.")

9 Example 7-1: A, B, and C are joint tenants and A is an ~~an~~ the "original transferor." A dies, and there is a 100%
10 change in ownership. B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an
11 original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy.
12 However, both B and C become "original transferors," since they are transferors who are among the transferees.

13 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~~
14 ~~original transferor because he was the spouse of an original transferor and he acquired an interest by means of a~~
15 ~~transfer from A. A is the original transferor, and B is other than an original transferor. C does not become an original~~
16 ~~transferor, since A is a transferor, but not a transferee among the joint tenants. 50% change in ownership, as the~~
17 ~~interest transferred from A to C is excluded from reassessment by the interspousal exclusion, but the interest that B~~
18 ~~has did not return to an original transferor, and therefore is reassessable.~~

19 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
20 tenants transfer to A, B, and C. Both A and C ~~is an~~ are original transferor transferors, and B remains an other than
21 original transferor

22 Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3% change in ownership of
23 the transferred interests because A is not one of the transferees.

24 Example 9: ~~A and B purchase property as joint tenants and transfer their joint tenancy interests to each other~~
25 ~~through their respective trusts. A and B become "original transferors." A and B sell a 50% interest to C and D, with~~
26 ~~the deed showing A, B, C and D as joint tenants. C and D then transfer their joint tenancy interests to each other~~
27 ~~through their trusts, so that both become "original transferors." A and B then sell their remaining 50% to C and D,~~
28 ~~and go off title. Under circumstances where application of the step transaction doctrine to disregard the form of the~~
29 ~~transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C, and D do not become~~
30 ~~"original transferors" as the result of their transfers to each other. A, B, C and D transfer to A, B, C, D, and E as joint~~
31 ~~tenants. A and B remain original transferors, and C, D, and E are other than original transferors. A, B, and E then~~
32 ~~transfer to C and D. 100% change in ownership, since both original transferors come off title.~~

33 **(2)** The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest
34 vests in whole or in part in the remaining original transferor(s); except that, upon the termination of the interest of the
35 last surviving original transferor, there shall be a reappraisal of the property as if it had undergone a 100 percent
36 change in ownership.

37 Example 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining
38 joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant.
39 However, if A grants his interest to B, or to B, C, and D as joint tenants, under circumstances where application of the
40 step-transaction doctrine to disregard the form of the transaction would be appropriate due to the intent to avoid a
41 change in ownership, there would be a 50% change in ownership (A's original interest was 50%).

42 Example 11: Following the example set forth in Example 10 (above), B dies or grants his interest to C and D.
43 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal
44 and B was the last surviving original transferor.

45 **(3)** The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy
46 described in (b)(1) and the interest is transferred either to an original transferor, or to all the remaining joint tenants,
47 provided that one of the remaining joint tenants is an original transferor. The original transferor status of any
48 remaining joint tenants ceases when a joint tenancy is terminated.

1 Example 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his
2 interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an
3 original transferor.

4 Example 13: ~~A owns real property and transfers a 50% interest to B as a tenant in common resulting in a~~
5 ~~change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result,~~
6 ~~become "original transferors." A dies and A's joint tenancy interest passes to B by operation of law without a change~~
7 ~~in ownership because B is an "original transferor." Upon A's death, the joint tenancy is terminated and B ceases to~~
8 ~~be an "original transferor." Following the example set forth in Example 10 (above), C, not an original transferor, grants~~
9 ~~his interest to D. 33.333% change in ownership because the interest does not transfer to an original transferor. D now~~
10 ~~holds 33.333% as a tenant in common, and 33.333% in a joint tenancy with B. B remains an original transferor in the~~
11 ~~joint tenancy.~~

12 (4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in
13 a change in the method of holding title but does not result in a change in the proportional interests of the co-owners,
14 such as:

15 (A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal
16 interests.

17 (B) a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

18 (C) a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of
19 the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the
20 "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent
21 transfer(s) of the ownership interests in the property.)

22 (5) The transfer is one to which the interspousal exclusion applies.

23 (6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a
24 value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the
25 period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage
26 interest and value transferred. When the accumulated interests transferred during any assessment year equals or
27 exceeds five percent of the value of the total property or \$10,000, exclusive of any interest transferred to a spouse or
28 other exempt transfer, only that percentage of the property represented by the transferred accumulated interests shall
29 be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any
30 transfer of an interest that is otherwise excluded from change in ownership.

31 (7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a
32 timely claim has been filed as required by law.

33 (c) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably
34 presumed that each joint tenant holding an interest in property as of March 1, 1975, shall be an "original transferor."
35 This presumption is not applicable to joint tenancies created after March 1, 1975.

36 (d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in
37 common, to be joint tenants ~~and "original transferors"~~ if there is "reasonable cause" to believe that the parties
38 intended to create a joint tenancy ~~and each person was a transferor among the persons holding title.~~ "Reasonable
39 cause" means a deed, Affidavit of Death of Joint Tenant, ~~a trust,~~ will, or estate plan ~~indicating that a joint tenant was a~~
40 ~~transferor among the joint tenants,~~ unless circumstances causing the application of the step transaction exist.

41 **Example 14:** A and B jointly purchase their primary residence and title is recorded as tenants in common. The
42 sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute~~
43 ~~revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~
44 The assessor may determine that the sales contract ~~and trust instruments~~ establish that A and B intended to hold title
45 as joint tenants upon purchase, ~~and that each subsequently became an "original transferor."~~