



CALIFORNIA ASSESSORS' ASSOCIATION

February 22, 2012

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RE: Request for Revision to Property Tax Rule 462.040 – Joint Tenancy

The California Assessor's Association has been approached with a request that we re-submit a request for revisions to the Joint Tenancy Property Tax Rule.

We reviewed the request submitted back in 2007, and we would like to streamline our suggested changes. We request three changes, and additional clarifying examples for one section.

Our requests, in order of priority, are as follows.

1. Our first and most immediate problem/concern is that of trusts in joint tenancies. We understand the intent behind the rule change in 2003 was to allow registered domestic partners to take advantage of the original transferor exclusion, and that it was attempting to broaden the original intent of a 'family' joint tenancy.

Understanding the joint tenancy exclusions was already confusing for most people. Unfortunately, the addition of trusts to joint tenancy has created additional chaos for both property owners and various administrators, including assessors, title companies, and attorneys. We believe that because of the complexities involved, there is also an increase in inconsistent application and understanding of the rule within assessment offices throughout the state. The real and potential problems that can occur when trusts are considered a joint tenant were both unanticipated and unintended by the Board.

We understand that this change, if agreed to, will be prospective only. We do not intend for anyone to be harmed who has relied on the rule as currently written.

2. Clarifying examples need to be added for section (b)(4)(C). There is currently a court case in Marin County, because an attorney and an appeals board and a Superior Court judge did not understand how this section of the rule was meant to be interpreted.

3. Our third concern is the interpretation that allows a change in vesting to create original transferors. Until 2003, a change in vesting only (e.g. A and B as tenants in common to A and B as joint tenants) would not create original transferors. This is consistent with the original Legislative intent. If parents

were on title and added a child or children as joint tenants, or if two individuals were on title and they added the spouse of one of the individuals, then original transferors would be created. However, a deed that only changed the method of holding title was never intended to result in this exclusion.

4. Finally, we would like to reverse a 1999 amendment to the rule. We do not believe this change follows the requirements of the statute under Revenue and Taxation Code section 65(b).

The amendment was stated as follows: "If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest *or by means of a transfer from the original transferor*, such spouse shall also be considered to be an original transferor." (Emphasis added.) In addition, Example 7-2 was added to the rule.

Revenue and Taxation Code section 65(b) states:

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 or original transferors shall also be considered original transferors within the meaning of this section. (Emphasis added.)

The code requires that the transferor be among the joint tenants "after such creation or transfer." We believe the rule broadens what is allowed by code.

To summarize, we would like four changes/additions, and in the following priority of urgency.

- First, remove any mention of trusts within a joint tenancy, other than between November 13, 2003 and the date of the proposed regulatory change.
- Second, add examples to clarify the intent of (b)(4)(C).
- Third, return the requirement for an additional person to be added before an original transferor can be created.
- Fourth, require a grantor who is an original transferor to remain on title as a grantee in order for a spouse to acquire original transferor status.

Attached is the Property Tax Rule with suggested revisions in the standard underline/strikeout format.

Thank you for your assistance in this endeavor. Should you have any questions, please call me at (805) 781-5636.

Sincerely,



Tom J. Bordonaro, Jr.
California Assessor's Association, President
San Luis Obispo County, Assessor

Attachment

Rule 462.040 CHANGE IN OWNERSHIP – JOINT TENANCIES.

Authority Cited: Section 15606, Government Code.

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

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

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

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.

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.

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

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust,~~ and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest ~~or by means of a transfer from the original transferor,~~ such spouse shall also be considered to be an original transferor. For the transfer of a joint tenancy interest into trust from November 13, 2003 to [the date before the effective date of the proposed regulatory change], Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be "other than original transferors."

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 do not become ~~are both~~ "original transferors." For A and B to become "original transferors," the transfer must be to A and B and at least one other person.

Example 4-1: A and B purchase property as joint tenants. ~~Later~~ 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 after [one day before the effective date of the proposed regulatory change], neither A's Trust nor B's Trust would be considered a joint tenant and neither A nor B would be considered an "original transferors" as a result of the transfer into trust.

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 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."

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.")

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.

~~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.~~

Example 7-32: 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.

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.

Example 9: A and B purchase property as joint tenants, ~~and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors." On August 13, 2003, A and B sell a 50% interest to C and D, with the deed showing A, B, C and D as joint tenants. A and B become "original transferors." On December 13, 2003, C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors." On January 13, 2004, 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 change in ownership, A, B, C, and D do not become "original transferors" as the result of their transfers to each other.~~

(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.

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.

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.

(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.

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

~~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." Following the example set forth in Example 12 above, A D dies and AD's joint tenancy interest passes to B by operation of law without a change in ownership because B is an "original transferor." Upon AD's death, the joint tenancy is terminated and B ceases to be an "original transferor."~~

(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:

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

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

(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(s) of the ownership interests in the property.)

Example 14-1: A and B purchased property as joint tenants, and transfer to X Corporation, each taking back 50% of the stock. No change in ownership.

Example 14-2: A and B own property as joint tenants, and A is an original transferor. A and B transfer to X Corporation, each taking back 50% of the stock. 100% change in ownership, since this was a joint tenancy described in (b)(1) above.

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

(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 transferred 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.

(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.

(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.

(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. "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 44 15: 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. ~~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.~~ The assessor may determine that the sales contract and trust instruments establishes that A and B intended to hold title as joint tenants upon purchase, and that each subsequently became an "original transferor."