STATE OF CALIFORNIA

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October 27, 2006

NO. 2006/044

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION

PROPOSED TO AMENDMENT RULE 462.040
CHANGE OF OWNERSHIP-JOINT TENANCIES

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606 of the Government Code, proposes to amend Rule 462.040, Change in Ownership – Joint Tenancies, in Title 18, Division 1 of the California Code of Regulations. A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on December 12, 2006. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by December 12, 2006.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Board of Equalization proposes to amend Rule 462.040 to address administrative issues experienced by county assessors in implementing certain amendments to the rule that were adopted by the Board effective November 13, 2003.

Real property is reassessed at its current fair market value upon a "change in ownership." Revenue and Taxation Code[1] sections 60 and 65 prescribe the change in ownership law applied to the creation, transfer, or termination of joint tenancy interests in property. Subdivision (b) of section 65 excludes from change in ownership, the creation or transfer of a joint tenancy interest if, after such creation or transfer, the "transferors are among the joint tenants." After such a creation or transfer of a joint tenancy interest, the transferors who are also transferees become "original transferors" – and a subsequent transfer or termination of a joint tenancy interest does not result in a change in ownership – if the interest vests entirely or in part in an original transferor. When the last original transferor's interest terminates, there is a change in ownership of the entire property.

[1] All section references are to the Revenue and Taxation Code unless otherwise indicated.

Effective November 13, 2003, Property Tax Rule 462.040, subdivision (b)(1) provides that joint tenants may become "original transferors" if they transfer their joint tenancy interest to their respective trusts for the benefit of the other joint tenant or joint tenants. The proposed amendments would eliminate the potential of obtaining "original transferor" status by transferring joint tenancy interests into trusts. To prevent those who have relied on the current version of the rule from being adversely impacted by these amendments, the proposed rule amendments will be effective on a prospective basis only.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendments to Rule 462.040 does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed amendments will not result in direct or indirect costs or savings to any state agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5, subdivision (a)(8), the Board of Equalization makes an initial determination that the amendment of Rule 462.040 will not have a significant statewide adverse economic impact directly affecting business because the proposed rule merely interprets and clarifies existing statutory provisions.

The rule will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The adoption of the rule will not be detrimental to California businesses in competing with businesses in other states.

The rule will not affect small business because the new rule only interprets and clarifies property tax assessment law statutory provisions and does not impose any additional compliance or reporting requirements on taxpayers.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

There is no cost impact on private persons or business, as the rule amendments do not impose any additional compliance or reporting requirements on private persons or businesses.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Rule 462.040 has no comparable federal regulation.

AUTHORITY

Government Code section 15606, subdivision (a).

REFERENCE

California Constitution, article XIII A, section 2, and Revenue and Taxation Code sections 60 and 65.

CONTACT

Questions regarding the substance of the proposed rule should be directed to: Ms. Carole Ruwart, Senior Tax Counsel, at P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Carole.Ruwart@boe.ca.gov . Telephone: (916) 322-3682; FAX: (916) 323-3387.

Written comments for the Board's consideration, requests to present testimony, bring witnesses to the public hearing and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, at P.O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080, email Diane.Olson@boe.ca.gov . Telephone: (916) 322-9569, FAX (916) 324-2597.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the rule. Those documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, at P.O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed regulation (rule) are available on the Internet at the Board's website http://www.boe.ca.gov.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's website following its public hearing of the adoption of the rule. It is also available for public inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the rule if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the

originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for 15 days before adoption of the regulation. The text of the modified rule will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified rule will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule for 15 days after the date on which the modified rule is made available to the public.

Sincerely,

Gary Evans, Acting Chief
Board Proceedings Division

Rule 462.040 CHANGE IN OWNERSHIP – JOINT TENANCIES.

(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], Aany 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 are both "original transferors."

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 nor B would be considered "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 7-3: 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.

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. 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." 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 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.)

(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 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. ~~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."~~

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.

INITIAL STATEMENT OF REASONS/NON-CONTROLLING SUMMARY

Property Tax Rule 462.040
Change in Ownership - Joint Tenancies

Specific Purpose

The purpose of the proposed rule amendments is to clarify existing statutory provisions governing creation of "original transferor" status by amending the regulatory language to eliminate the potential of obtaining "original transferor" status by transferring joint tenancy interests into trusts.

Factual Basis

Revenue and Taxation Code section 65 is the statutory authority that interprets and applies the elements of a change in ownership as set forth in section 60 to the creation, transfer and termination of joint tenancy interests. Subdivision (b) of section 65 provides, in relevant part, that the creation of a joint tenancy in which the transferors are among the transferees is excluded from change in ownership. In such a transfer, the transferors become "original transferors" and a subsequent transfer or termination of a joint tenancy interest does not result in a change in ownership if the interest vests entirely or in part in an original transferor. When the last original transferor's interest terminates then there is a change in ownership of the entire property.

Effective November 13, 2003, Property Tax Rule 462.040, subdivision (b)(1) provides that joint tenants may become "original transferors" if they transfer their joint tenancy interest to their respective trusts for the benefit of the other joint tenant or joint tenants. For purposes of the rule, such conveyances are considered to be a transfer of the joint tenancy interests within the meaning of section 65, subdivision (b) discussed above. In other words, the rule recognizes that trustors transferring their joint tenancy interests into their respective trusts are "transferors among the joint tenants," and thus, obtain "original transferor" status.

The California Assessors Association (CAA) states that unanticipated and unintended administrative problems have resulted from the creation of original transferor status by the transfer of joint tenancy interests into trusts. Significant problems include: (1) difficulty in determining whether the trust document substantiates the creation of original transferor status; (2) trust provisions could be amended after the joint tenancy interest transfer is recorded; and (3) difficulty in determining, on the death of a property owner, which document substantiates the transfer of the property to an original transferor. To prevent those who have relied on the current version of the rule from being adversely impacted by these amendments, the proposed rule amendments will be effective on a prospective basis only.

In the first sentence of subdivision (b)(1), the reference to transferring joint tenancy interests "including an interest in a trust" is deleted to reinforce the general rule

that transfers of joint tenancy interests into trusts will not obtain original transferor status. The third sentence of subdivision (b)(1) is amended to make specific that original transferor status is attained by transfer into trust only from the November 13, 2003 effective date of the previous rule amendment until the day immediately prior to the effective date of the proposed amendment.

Subdivision (b)(1), Example 4-1, second sentence, is amended by addition of the date "December 12, 2004," a date after November 12, 2003 and before the effective date of the proposed rule amendments, to provide an example of a transfer into trust whereby the transferors obtain original transferor status by means of the transfer. A fourth sentence was added to Example 4-1 to clearly explain how the prospective application of the rule should be understood.

Subdivision (b)(1), Example 9, is amended to clarify that the step transaction doctrine may also apply to situations where original transferor status is not obtained by transfer into trust.

Subdivision (d), Example 14, is amended to clarify that the assessor's consideration of evidence to rebut a deed presumption is not limited to situations where original transferor status is obtained by transfer into trust.

Rules/462.040/2006/ISR

REGULATION HISTORY

TYPE OF REGULATION:	Property Tax
REGULATION:	Amend 462.040, *Change in Ownership-Joint Tenancies*
PREPARATION:	Sherrie Kinkle
LEGAL CONTACT:	Carole Ruwart

SUMMARY OF REGULATORY CHANGE

The amendments to Rule 462.040 clarify the requirements under article XIII A, section 2, of the California Constitution and sections 60 and 65 of the Revenue and Taxation Code for exclusion from change in ownership those transfers involving joint tenancies by eliminating the potential of obtaining "original transferor" status by transferring joint tenancy interests into trusts.

CURRENT REGULATIONS HISTORY

December 12, 2006:	Public Hearing
October 28, 2006:	45-Day public comment begins.
October 27, 2006:	Notice of public hearing published in California Regulatory Notice Register, Register 2006, No. 43-Z, e-mailed and US mail to interested parties.
October 11, 2006:	Property Tax Committee, Board authorized publication. (Vote 5-0)
September 22, 2006:	Interested Parties Meeting
August 10, 2006:	Petition

Sponsor:	California Assessors' Association
Support:	Santa Clara County Assessor, San Luis Obispo County Assessor, and Los Angeles County Assessor
Oppose:	None