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 Interim Executive Director

December 18, 2003

No. 2003/077

TO COUNTY ASSESSORS:

EXPLANATION OF CHANGES TO
 PROPERTY TAX RULES 462.040 AND 462.240

The Board recently approved amendments to Property Tax Rules 462.040, *Change in Ownership—Joint Tenancies*, and 462.240, *The Following Transfers do not Constitute a Change in Ownership* (Title 18, sections 462.040 and 462.240, California Code of Regulations). The Office of Administrative Law approved the amendments on October 14, 2003 and filed the amended rules with the Secretary of State on that date. In general, regulatory changes such as property tax rule amendments interpret, implement, and make specific statutory law and, thus, are declaratory of existing law. The changes to Rule 462.240 are retroactive and applicable to intestate transfers between registered domestic partners as of July 1, 2003, since that is the effective date of Assembly Bill 2216 (Stats. 2002, Ch. 477) which authorized such transfers. The amendments to Rule 462.040 are not retroactive prior to the November 13 effective date, except to the extent that they are declaratory of existing law with regard to transfers involving rebutting the deed presumption in subsection (d).

RULE 462.040, CHANGE IN OWNERSHIP—JOINT TENANCY

The amendments to Rule 462.040 clarify existing statutory provisions¹ governing creation of "original transferors" by providing that co-owners may become original transferors by transferring to themselves in joint tenancy without requiring a third person among the transferees, and that joint tenants may become original transferors by transferring to a trust for the benefit of the other joint tenant. Additionally, under these amendments, the assessor would have authority (1) to presume that a joint tenant is an "original transferor," if the assessor has reasonable cause based on specific types of evidence demonstrating that the necessary steps were taken, and (2) to apply the step transaction doctrine to transfers made solely for the purpose of avoiding a change in ownership and not for estate planning purposes.

Joint tenancy is characterized by (1) the four "unities" of interest, title, time, and possession, and (2) the right of survivorship. Civil Code section 683 defines a joint tenancy as an estate in property owned by two or more people in equal shares (unity of interest) that is expressly declared (unity of title) by the same grant, agreement, or devise (unity of time) for the benefit and possession of each other (unity of possession). By the right of survivorship, each surviving joint tenant succeeds by operation of law to the interest of a deceased joint tenant. Under Civil

¹ Revenue and Taxation Code section 65.

Code section 683.2, a joint tenancy may be severed by (1) a deed transferring the joint tenant's interest to a third person (except a spouse), (2) a recorded instrument (i.e., a trust or partnership agreement) that expresses the intent to sever the joint tenancy, (3) a written agreement or instrument agreeing to severance, or (4) a deed from a joint tenant to a remaining joint tenant. The severance of a joint tenancy interest results in the creation of a tenancy-in-common as to the severed interest. The original transferor concept, although not included in these joint tenancy statutes, was added to the Revenue and Taxation Code section 65 in 1980, for the exclusive purpose of delaying change in ownership and reappraisal until the severance or termination of a joint tenancy.

The amendments to Rule 462.040 in ~~strikeout~~ and underline format, followed by a discussion of each, are set forth below.

CREATION OF "ORIGINAL TRANSFERORS"

(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, ~~all the transferor(s) are among~~ is one of the joint tenants. Such a transferor(s) who are ~~is~~ also a transferee(s) ~~in this situation are~~ 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. 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."

The first amendment to subsection (b)(1) specifies that original transferor status may be created when a person (the transferor) transfers to himself/herself (the transferee) in joint tenancy. There is *no* requirement that the transferees include at least one other person who is not a transferor.

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

The amendments to Example 4 illustrate that a third person is not required in order to create an original transferor status.

CREATION OF "ORIGINAL TRANSFERORS" – TRANSFER TO TRUST

The second amendment to subsection (b)(1) specifies that any joint tenant may become an original transferor by transferring his or her joint tenancy interest to his or her trust for the

benefit of the other joint tenant(s). Such a transaction keeps the four unities of joint tenancy intact and retains the right of survivorship. This is demonstrated by Example 4-1.

Example 4-1: A and B purchase property as joint tenants. Later 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."

APPLICATION OF THE STEP TRANSACTION DOCTRINE

~~Example 9: A and B transfer to A, B and C as joint tenants and, thereafter, C transfers his or her interest to 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." 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 change in ownership, A, B, C, and D do not become "original transferors" as a result of the their transfers to A, B and C each other.

The changes to Example 9 show that the step transaction doctrine is applicable when circumstances exist to indicate that transfers of joint tenancy interests have no estate planning purpose and have been made in order to avoid change in ownership. The legal principle illustrated by this example shows that an assessor is required to collapse the steps and reappraise for a 100 percent change in ownership, disregarding the original transferor status of A, B, C, and D, if the intent from the beginning was to avoid a change in ownership for purposes unrelated to the estate planning objectives of joint tenancy.

However, the step transaction doctrine does not apply to circumstances involving death. Death is not a step because it is not a deliberate attempt to transfer property.

TERMINATION OF JOINT TENANCY ELIMINATES ORIGINAL TRANSFEROR STATUS

(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.

This amendment clarifies that the termination of a joint tenancy terminates the original transferor status of the joint tenants. Example 13 was added to show that the original transferor status ceases when the joint tenancy terminates.

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."

REASONABLE CAUSE TO REBUT THE DEED PRESUMPTION

(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.

The addition of subsection (d) is declaratory of existing law regarding the deed presumption in Evidence Code section 662 and Rule 462.200(b). Subsection (d) allows an assessor to presume that persons holding joint title to property are joint tenants and original transferors if an assessor has reasonable cause to believe, based on the evidence provided, that they intended to create a joint tenancy and original transferor status. It is the taxpayer's responsibility to submit proof (sales contracts, mortgage documents, trust documents, etc.) that they hold title as joint tenants and that the legal title on the deed was incorrect.

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 establish that A and B intended to hold title as joint tenants upon purchase and that each subsequently became an "original transferor."

Example 14 was added to provide an example of the type of evidence needed to rebut the presumption that parties who hold joint title are not joint tenants and original transferors.

RULE 462.240, CHANGE IN OWNERSHIP—DOMESTIC PARTNERS

The amendment to Rule 462.240 adds subsection (k), which provides that change in ownership does not include "[a]ny transfer of separate property inherited by a surviving domestic partner, as defined in subdivision (b) of section 37 of the Probate Code, by intestate succession upon the death of a registered domestic partner."²

² Probate Code section 37 defines "domestic partner" as one of two persons who have filed a Declaration of Domestic Partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code, provided that the domestic partnership has not been terminated pursuant to Section 299 of the Family Code.

The Board's rulemaking action recognizes recent amendments made by Assembly Bill 2216 (Stats. 2002, Ch. 447) to the Probate Code provisions governing transfers of separate property. AB 2216 amended Probate Code sections 6401 and 6402 to provide that a deceased domestic partner's separate property transfers upon death to the surviving registered domestic partner in the same manner as a transfer between spouses. AB 2216 was drafted to ensure that a surviving registered domestic partner does not face any financial burden from the death of the other partner in the same manner as a surviving spouse. Because a surviving spouse benefits from an exclusion from property tax reassessment under these circumstances, AB 2216 was intended to apply the same exclusion from property tax reassessment to surviving domestic partners as one of the means of preventing undue economic hardship and, thereby, placing surviving registered domestic partners on equal terms with surviving spouses.

RETROACTIVITY OF SUBSECTION (K)

AB 2216 went into effect on July 1, 2003, and constituted a change in existing law regarding intestate transfers between domestic partners. Newly added subsection (k) is declaratory of the amendments to sections 6401 and 6402 that became effective on July 1, 2003. Thus, subsection (k) applies to all intestate transfers between domestic partners occurring on July 1, 2003, and thereafter.

For your information, the amended versions of Rules 462.040 and 462.240 are enclosed. In addition, they are posted on the Board's Web site at www.boe.ca.gov/proptaxes/ptrules.htm. After this letter is issued, we will be preparing another letter discussing implementation questions and answers. If you have any questions regarding these two rule changes, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

State of California
BOARD OF EQUALIZATION
PROPERTY TAX RULES

Chapter 1. State Board of Equalization—Property Tax
Subchapter 4. Equalization by State Board
Article 4. Change in Ownership and New Construction

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. 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 are both "original transferors."

Example 4-1: A and B purchase property as joint tenants. Later 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."

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.

Rule 462.040. (Continued)

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." 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 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.

Rule 462.040. (Continued)

(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 establish that A and B intended to hold title as joint tenants upon purchase and that each subsequently became an "original transferor."

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed old rule and adopted new rule August 16, 1979, effective August 22, 1979.
Amended November 13, 1979, effective December 6, 1979.
Amended May 5, 1981, effective August 12, 1981.
Amended March 31, 1982, effective June 10, 1982.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(c).
Amended October 15, 1998, effective January 29, 1999.
Amended and effective April 3, 2001.
Amended July 9, 2003, effective November 13, 2003.

State of California
BOARD OF EQUALIZATION
PROPERTY TAX RULES

Chapter 1. State Board of Equalization—Property Tax
Subchapter 4. Equalization by State Board
Article 4. Change in Ownership and New Construction

Rule 462.240. THE FOLLOWING TRANSFERS DO NOT CONSTITUTE A CHANGE IN OWNERSHIP.

Authority Cited: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 62.1, 62.2, 64, 66 and 67, Revenue and Taxation Code; Sections 37, 6401, 6402, Probate Code.

The following transfers do not constitute a change in ownership:

(a) The transfer of bare legal title, e.g.,

(1) Any transfer to an existing assessee for the purpose of perfecting title to the property.

(2) Any transfer resulting in the creation, assignment, or reconveyance of a security interest not coupled with the right to immediate use, occupancy, possession or profits.

(b) Any transfer caused by the substitution of a trustee.

(c) Any purchase, redemption or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(d) Any contribution of real property to an employee benefit plan, any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the voting stock in the employee corporation, or the creation, vesting, transfer, distribution, or termination of a participant's or beneficiary's interest in such a plan. The terms used herein shall have the meaning ascribed to them in the Employee Retirement Income Security Act of 1974, which is codified as United States Code annotated, Title 29, Section 1002. (The term "any contribution" as used in Section 66(b) of the Revenue and Taxation Code and this section means only those contributions of real property made to an employee benefit plan by an employer, a group of employees, or both, without any consideration.)

(e) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h of the Revenue and Taxation Code holding title for the benefit of any of the aforementioned corporations, or any combination thereof (including any transfer from one such entity to the same type of entity), provided that both the transferee and the transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(f) Any transfer, occurring on or after January 1, 1983, which results from the reformation or correction of a deed which, by mistake, inaccurately describes the property intended to be conveyed, or adds or omits some term not agreed to by the parties, or in some other manner fails to express the true intentions of the parties.

Example 1: A agrees to sell one acre to B. The deed mistakenly describes a two-acre area. Reformation of the deed to describe the original acre intended to be transferred is not a change in ownership.

(g) Any transfer, occurring on or after January 1, 1983, of an eligible dwelling unit from a parent(s) or legal guardian(s) to a minor child or children or among minor siblings, or to a trust for the sole benefit of such persons, resulting from a court order or judicial decree due to the death of one or both of the parents. An "eligible dwelling unit" means the dwelling which was the principal place of residence of the minor child or children prior to the transfer and remains such after the transfer.

(h) Any transfer of property to a disabled child or ward, whether minor or adult, or to a trust for the sole benefit of such person, upon the death of a parent or guardian pursuant to Section 62(n) of the Revenue and Taxation Code.

Rule 462.240. (Continued)

(i) Any transfer, on or after January 1, 1985, of a mobilehome park or of rental spaces in a mobilehome park pursuant to Section 62.1 of the Revenue and Taxation Code.

(j) Any transfer of a mobilehome park or of rental spaces in a mobilehome park pursuant to Section 62.2 of the Revenue and Taxation Code.

(k) Any transfer of separate property inherited by a surviving domestic partner, as defined in subdivision (b) of section 37 of the Probate Code, by intestate succession upon the death of a registered domestic partner.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed old rule and adopted new rule August 16, 1979, effective August 22, 1979.
Amended November 13, 1979, effective December 6, 1979.
Amended May 5, 1981, effective August 12, 1981.
Amended March 31, 1982, effective June 10, 1982.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(m).
Amended September 10, 1997, effective February 20, 1998.
Amended August 6, 2003, effective November 13, 2003.