



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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**April 26, 2013**

**To Interested Parties:**

**Notice of Proposed Regulatory Action  
by the  
State Board of Equalization**

**Proposes to Amendments to California Code of Regulations, Title 18,  
Section 462.040, *Change in Ownership - Joint Tenancies***

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*. The proposed amendments to Property Tax Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (RTC) section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners, and RTC section 62.3 regarding transfers between cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create “original transferor” status (within the meaning of RTC § 65) in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

**PUBLIC HEARING**

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on June 11, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on June 11, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rule 462.040.

## **AUTHORITY**

Government Code section 15606

## **REFERENCE**

RTC sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1, and 67  
Evidence Code section 662

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of "change in ownership" in RTC section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the Board is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted Property Tax Rule 462.040, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to transactions that create, transfer, or terminate joint tenancy interests.

In particular, Property Tax Rule 462.040 implements, interprets, and makes specific RTC section 65, subdivisions (a) through (d), which provide that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) 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 of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that “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.”

In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of RTC section 62, subdivision (p), regarding transfers between registered domestic partners and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the RTC to provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

#### Effects, Objectives, and Benefits of the Proposed Amendments

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of RTC § 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA’s requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

The Board considered the CAA’s petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA’s requested

amendments. Therefore, Board staff met with interested parties on August 27, 2012, and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently prepared Formal Issue Paper 13-004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

In the formal issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civ. Code, § 683.2, subd. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Address county assessors' additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Provide in subdivision (b)(1) that "spouse" includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with RTC section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of RTC section 62.3, which provide that "change in ownership" does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are "original transferors" or "other than original transferors"; and
- Make other minor grammatical changes, such as deleting the word "subsequent" from example 3, and replacing the "%" symbol with the word "percent" and consistently using quotation marks around the phrases "original transferor" and "other than original transferor" throughout the rule.

The recommendations were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

At the conclusion of the March 12, 2013, Property Tax Committee meeting, the Board agreed with staff's recommendations and unanimously voted to propose the adoption of staff's

recommended amendments to Property Tax Rule 462.040. The effects and objectives of the amendments are to:

- Address the CAA’s petition by making the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Make the rule consistent with RTC section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with RTC section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

The Board anticipates that the proposed amendments will promote fairness throughout California’s 58 counties by clarifying the types of transfers that create “original transferor” status within the meaning of RTC section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 462.040 are inconsistent or incompatible with existing state regulations. The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because division 1 of title 18 of the California Code of Regulations contains the only state regulations that implement, interpret, and make specific the change in ownership provisions in article XIII A of the California Constitution and the RTC, including Property Tax Rule 462.040, and the proposed amendments are not inconsistent or incompatible with any of the provisions in division 1. In addition, there are no comparable federal regulations or statutes to Property Tax Rule 462.040.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with

section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

**NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Property Tax Rule 462.040 may affect small business.

**NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not affect the health and welfare of California residents, worker safety, or the state's environment.

**NO SIGNIFICANT EFFECT ON HOUSING COSTS**

Adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant effect on housing costs.

**DETERMINATION REGARDING ALTERNATIVES**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

## **CONTACT PERSONS**

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

## **WRITTEN COMMENT PERIOD**

The written comment period ends at 10:00 a.m. on June 11, 2013, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rule 462.040 during the June 11, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rule 462.040. The Board will only consider written comments received by that time.

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared an underline and strikeout version of the text of Property Tax Rule 462.040 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's website at [www.boe.ca.gov](http://www.boe.ca.gov).

## **SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8**

The Board may adopt the proposed amendments to Property Tax Rule 462.040 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the

April 26, 2013

originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Property Tax Rule 462.040, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's website at [www.boe.ca.gov](http://www.boe.ca.gov).

Sincerely,



Joann Richmond, Chief  
Board Proceedings Division

JR:reb

**Initial Statement of Reasons**  
**Adoption of Proposed Amendments to**  
**California Code of Regulations, Title 18, Section 462.040,**  
***Change in Ownership - Joint Tenancies***

SPECIFIC PURPOSE AND NECESSITY

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of "change in ownership" in Revenue and Taxation Code (RTC) section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the State Board of Equalization (Board) is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to transactions that create, transfer, or terminate joint tenancy interests.

In particular, Property Tax Rule 462.040 implements, interprets, and makes specific RTC section 65, subdivisions (a) through (d), which provide that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) 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 of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that “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.”

In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of RTC section 62, subdivision (p), regarding transfers between registered domestic partners and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the RTC to provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

#### Specific Purpose, Necessity, and Benefits of the Proposed Amendments

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of RTC § 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA’s requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

The Board considered the CAA's petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA's requested amendments. Therefore, Board staff met with interested parties on August 27, 2012, and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently prepared Formal Issue Paper 13-004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

In the formal issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civ. Code, § 683.2, subd. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Address county assessors' additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Provide in subdivision (b)(1) that "spouse" includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with RTC section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of RTC section 62.3, which provide that "change in ownership" does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are "original transferors" or "other than original transferors"; and
- Make other minor grammatical changes, such as deleting the word "subsequent" from example 3, and replacing the "%" symbol with the word "percent" and consistently using quotation marks around the phrases "original transferor" and "other than original transferor" throughout the rule.

The recommendations were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

At the conclusion of the March 12, 2013, Property Tax Committee meeting, the Board agreed with staff's recommendations and unanimously voted to propose the adoption of staff's recommended amendments to Property Tax Rule 462.040 because the Board determined that the amendments were reasonably necessary to:

- Make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Make the rule consistent with RTC section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with RTC section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

The Board also determined that the proposed amendments to Property Tax Rule 462.040 are reasonably necessary to specifically address the CAA's petition, the problems created by the rule's lack of clear guidance regarding the need for all transferor(s) to be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create original transferor status, the problems created by the rule's lack of guidance regarding RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5, and eliminate any confusion that may have been created by the rule's current examples.

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties by clarifying the types of transfers that create "original transferor" status within the meaning of RTC section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

The proposed amendments to Property Tax Rule 462.040 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rule 462.040.

#### DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 13-004, the attachments to the issue paper, and the comments made during the Board's discussion of the issue paper during its March 12, 2013, Property Tax Committee meeting in deciding to propose the amendments to Property Tax Rule 462.040 described above.

## ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rule 462.040 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Property Tax Rule 462.040 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

## INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(6) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The proposed amendments to Property Tax Rule 462.040 make the rule consistent with and clarify current law regarding the affect of transfers that create joint tenancies, transfers of interests in property held in joint tenancy, and transfers that terminate joint tenancies for property tax purposes, and make minor grammatical changes. As such, the Board anticipates that the proposed amendments will provide more clarity regarding current law and the affect of such transfers, but the Board does not anticipate that the proposed amendments will have a significant effect on the state's economy. Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 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.

In addition, Property Tax Rule 462.040 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Rule 462.040 will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant adverse economic impact on business.

The proposed amendments may affect small business.

**Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section  
462.040, *Change in Ownership - Joint Tenancies***

**462.040. Change in Ownership - Joint Tenancies.**

(a) General Rule. 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% percent of the property.

(b) Exceptions. 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 transferors is one of all transferor(s) are among the joint tenants. Such a transferor(s) who is also a transferee(s) and is, therefore, considered to be an “original transferors” 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.” “Spouse” includes a registered domestic partner who shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities and obligations as granted to and imposed upon spouses pursuant to section 297.5 of the Family Code. For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, any~~ 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.” To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title. The elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants.

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 ~~5~~4(a): A and B purchase property as joint tenants. On December 12, 2004, 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.” If A and B had transferred their

interests into trust on any date after October 1, 2013, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an "original transferor" as a result of the transfer into trust.

Example 65: A and B purchase property as joint tenants. 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 76: A and B acquire property as joint tenants. 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, the wife of an "original transferor," is also an "original transferor." (C and D are "other than original transferors.")

Example 87-1: A is the sole owner of property. A grants to A, B, and C as joint tenants. A is an "original transferor." B and C are "other than original transferors." A, B, and C are joint tenants and A is an "original transferor." A dies. A's interest passes by operation of law to B and C, resulting in a 100 percent change in ownership. Subsequently, 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 from A during the period that A held an interest in the initial joint tenancy.

Example 97-2: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." C is A's registered domestic partner. A and B, as joint tenants, transfer to A, B, and C, as joint tenants, and C is A's spouse. C is an "original transferor" because he is the registered domestic partner was the spouse of an "original transferor and he acquired an interest by means of a transfer from A." B becomes an "original transferor" because he is a transferor who is among the transferees.

Example 107-3: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." 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 as joint tenants. B becomes an "original transferor." C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A.

Example 118: A and B acquire real property as joint tenants. A and B, as joint tenants, transfer to B, C, and D, as joint tenants. 66 2/3% percent change in ownership of the transferred interests because A is not one of the transferees.

Example 129: 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% percent interest to C and D, with the deed showing A, B, C and D as joint tenants. A and B become “original transferors.” C and D become “other than original transferors.” On December 13, 2003, C and D then transfer their joint tenancy interests to their respective trusts for the benefit of the remaining joint tenants. ~~each other through their trusts, so that both C and D~~ become “original transferors.” On January 13, 2004, A and B then sell their remaining 50% percent 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 transferors”; 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 1340: A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” 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 1411: ~~Following the example set forth in Example 10 (above),~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” 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. Subsequently, 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 1512: ~~Following the example set forth in Example 10 (above),~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” 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. 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 1613: 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~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” 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. 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.” D dies and D’s joint tenancy interest passes to B by operation of law, ~~without a~~ Since B is an “original transferor,” there is no change in ownership, because B is an “original transferor.” Upon D’s 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 a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

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

(C) A 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.)

(5) The transfer is one to which the interspousal exclusion, pursuant to the provisions of section 63 of the Revenue and Taxation Code, or the registered domestic partner exclusion, pursuant to the provisions of section 62(p) of the Revenue and Taxation Code, 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 value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then 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 lawsection 63.1 of the Revenue and Taxation Code.

(8) The transfer is one to which the cotenancy exclusion applies pursuant to section 62.3 of the Revenue and Taxation Code.

(c) Rebuttable Presumption. 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, is an “original transferor.” This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) Reasonable Cause. 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 1714: 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.”

Note: Authority cited: Section 15606, Government Code. Reference: Sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1 and 67, Revenue and Taxation Code; and Section 662, Evidence Code.

## Regulation History

**Type of Regulation:** Property Tax

Rule: 462.040

Title: *Change in Ownership - Joint Tenancies*

**Preparation:** Bradley Heller

**Legal Contact:** Bradley Heller

The proposed amendments to Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (RTC) section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners, and RTC section 62.3 regarding transfers between cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create "original transferor" status (within the meaning of RTC § 65) in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

### History of Proposed Regulation:

June 11, 2013	Public Hearing
April 26, 2013	OAL publication date; 45-day public comment period begins; Interested Parties mailing
April 15, 2013	Notice to OAL
March 12, 2013	Property Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA