State of California

Board of Equalization
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Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: August 22, 2013

From: Randy Ferris
Chief Counsel

Subject: **Board Meeting, September 10, 2013**
Item J, Chief Counsel's Rulemaking Calendar
Property Tax Rules 263, 462.020, 462.060, 462.160, 462.180, 462.220, 462.240

We request your approval to place proposed changes to Property Tax Rules 263, *Roll Corrections*, 462.020, *Change in Ownership – Tenancies in Common*; 462.060, *Change in Ownership –Life Estates and Estates for Years*; 462.160, *Change in Ownership – Trusts*, 462.180, *Change in Ownership – Legal Entities*; 462.220, *Change in Ownership – Interspousal Transfers*; and 462.240, *The Following Transfers Do Not Constitute a Change in Ownership*, on the Chief Counsel's Rulemaking Calendar for the September 10, 2013, Board meeting. The proposed changes make Property Tax Rules 462.020, 462.060, 462.160, 462.180, 462.220, and 462.240 consistent with recent legislative enactments.

Revenue and Taxation Code (RTC) section 62, subdivision (p) was enacted by Senate Bill No. 565 (Stats. 2005, ch. 416, § 2) and provides that a change in ownership does not include certain transfers between registered domestic partners. The excluded transfers are identical to the interspousal transfers that are excluded from change in ownership under RTC section 63.

Property Tax Rules 462.020, 462.060, 462.160, 462.180, and 462.220 all refer to the interspousal transfer exclusion from change in ownership. Therefore, to be consistent, these rules should be amended to include the exclusion from change in ownership for transfers between registered domestic partners in RTC section 62, subdivision (p).

In addition, RTC section 62.3 was enacted by Assembly Bill No. (AB) 1700 (Stats. 2012, ch. 781, § 1) to provide an exclusion from change in ownership for certain transfers between cotenants that occur upon death. Property Tax Rule 462.020 addresses transfers of tenancy in common interests. Therefore, Rule 462.020 should be amended to include the new exclusion provided by RTC section 62.3 for transfers of cotenancy interests between cotenants.

Further, Property Tax Rule 462.240 addresses transfers that are not considered changes in ownership. Effective September 30, 2012, AB 2046 (Stats. 2012, ch. 817, § 1) added section 62.5 to the RTC to create a change in ownership exclusion for the transfer of a floating home

marina to an entity formed by the tenants of the marina. Therefore, Property Tax Rule 462.240 should be amended to include the exclusion from change in ownership for transfers of floating homes created by the enactment of RTC section 62.5 and the previously discussed exclusion from change in ownership for transfers between registered domestic partners provided in RTC section 62, subdivision (p).

Finally, the proposed changes add an inadvertently omitted period to the end of Property Tax Rule 263, subdivision (h)(2). The proposed changes make the citations to the Revenue and Taxation Code and Property Tax Rules consistent throughout Property Tax Rules 263, 462.160, 462.180, 462.220, 462.240, and generally make the citations in these regulations consistent with the format prescribed in the California Style Manual. The proposed changes replace the word "law" with a reference to the law being referred to, RTC section 63.1, in Property Tax Rules 462.020, subdivision (b)(4), and 462.160, subdivisions (b)(4) and (d)(5). The proposed changes replace the word "co-tenancy" with the word "cotenancy" in Property Tax Rule 462.020, subdivision (b)(1)(B) and (C), replace the word "coowners" with the word "co-owners" in Property Tax Rule 462.160, example 4 and Property Tax Rule 462.220, subdivision (c) and example 2, and replace the "%" symbol with the word "percent" in Property Tax Rules 462.020, 462.160, and 462.180. The proposed changes also correct a typographical error by changing the word "owed" to the word "owned" in Property Tax Rule 462.180, example 1, and correct the placement of quotations marks in Property Tax Rules 462.160, example 2, 462.180, example 5, and 462.220, example 3. Attached are strikeout and underline versions of the Property Tax Rules illustrating all of the proposed changes.

Based on the foregoing, Board staff will request the Board's authorization to change Property Tax Rules 263, 462.020, 462.060, 462.160, 462.180, 462.220, and 462.240 under California Code of Regulations, title 1, section (Rule) 100 without the normal notice and public hearing process. These changes to the California Code of Regulations are appropriate for processing under Rule 100 because they make the code consistent with recent legislative enactments, make minor grammatical and formatting edits, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-323-3091.

Recommendation by:

Randy Ferris, Chief Counsel

Approved:

Cynthia Bridges, Executive Director

Approved:

David Gau, Deputy Director
Property and Special Taxes Department

BOARD APPROVED
At the 9/10/13 Board Meeting

for Joann Richmond, Chief
Board Proceedings Division

RF:bmh;yg

Attachment

cc:	Mr. Robert Tucker	MIC:82
	Mr. David Gau	MIC:63
	Ms. Joann Richmond	MIC:80
	Mr. Dean Kinnee	MIC:64
	Mr. Bradley Heller	MIC:82
	Mr. Richard Moon	MIC:82
	Mr. Daniel Paul	MIC:82
	Ms. Glenna Schultz	MIC:64

RULE 263. ROLL CORRECTIONS.

Authority: Section 15606, Government Code.

Reference: Sections 4831, 4831.5, 4834, 4835, 4836, 4838 and 4840, Revenue and Taxation Code.

(a) Any error or omission not involving the exercise of value judgment which results in an incorrect entry or entries on the roll may be corrected after the roll is delivered to the auditor, provided that the correction is made within four years after the making of the assessment that is being corrected.

If an error or omission not involving the exercise of value judgment is discovered as the result of an audit of a taxpayer's books and records, that error or omission may be corrected at any time prior to the expiration of six months after the completion of the audit.

(b) Any error or omission involving the exercise of value judgment that arises solely from a failure to reflect a decline in the taxable value of real property, floating homes subject to taxation pursuant to Revenue and Taxation Code section 229, and manufactured homes subject to taxation under ~~P~~part 13 (commencing with section 5800) of ~~D~~division 1 of the Revenue and Taxation Code, as required by paragraph (2) of subdivision (a) of Revenue and Taxation Code section 51, shall be corrected within one year after the making of the assessment that is being corrected.

(c) Any incorrect entry on the roll resulting from a defect of description or clerical error, as determined by the assessor upon audit, made by the assessee in the property statement or in other information or records which causes the assessor to assess taxable tangible property which was not subject to assessment or to assess taxable tangible property at a substantially higher value may be corrected under this article. The correction shall be made after the roll is delivered to the auditor within the time period for making escape assessments as provided in Revenue and Taxation Code sections 532 and 532.1. The change to be made on the roll shall be certified to the auditor by the assessor.

(d) If a correction will increase the amount of unpaid taxes, the assessor shall notify the assessee of the procedure for obtaining review by the county board under Revenue and Taxation Code section 1605 and the procedure for applying for cancellation under Revenue and Taxation Code section 4986.

(e) If a correction will decrease the amount of unpaid taxes, the consent of the board of supervisors is necessary to make the correction.

(f) Corrections authorized under this rule shall be made by the auditor upon delivery of the relevant information by the assessor.

(g) The provisions of this rule do not apply to escape assessments caused by the assessee's failure to report the information required by ~~A~~article 2 (commencing with section 441) of ~~C~~chapter 3 of ~~P~~part 2 of ~~D~~division 1 of the Revenue and Taxation Code, and roll corrections are not a prerequisite for escape assessments or base year value corrections.

(h) If the roll of any taxing agency in the course of preparation is lost or destroyed because of public calamity and is reconstructed from available data, at any time before the declaration of default, the assessor may correct any erroneous assessment. The assessor shall:

(1) Send certified notices of the correction to the tax collector, the auditor, and the Controller.

(2) Enter the date and nature of the correction with reference to the property for which the correction is being made.

(i) On receipt of satisfactory, verified, written evidence that taxes have been entered on the secured roll as a lien on real property on which they are not legally a lien, the assessor shall transmit the evidence and his or her cancellation to the auditor. On direction of the board of supervisors, the auditor shall cancel the entry as a lien on that real property and reenter such taxes as follows:

(1) If the assessee has real property sufficient, in the assessor's opinion, to secure the payment of the taxes, as a lien on real property.

(2) Where there is not sufficient real property to secure the taxes on locally-assessed property, the taxes shall be placed on the unsecured roll. In the case of state-assessed property, the taxes shall be placed on the secured roll.

RULE 462.020. CHANGE IN OWNERSHIP—TENANCIES IN COMMON.

Authority: Section 15606, Government Code.

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

(a) GENERAL RULE. The creation, transfer, or termination of a tenancy in common interest is a change in ownership of the undivided interest transferred.

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

(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 partition,

(B) a transfer from a ~~co-tenancy~~cotenancy to a joint tenancy, or

(C) a transfer from a ~~co-tenancy~~cotenancy to a legal entity which results solely in a change in the method of holding title and in which the proportional ownership interests in the property remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" of the property for purposes of determining whether a change in ownership has occurred upon the subsequent transfers of the ownership interests in the property.)

Example 1: A and B own a parcel of real property as tenants in common each owning a 50~~%~~ percent interest. They transfer the property to a newly formed corporation each receiving 50~~%~~ percent of the stock. Such a transfer would not be regarded as a change in ownership.

(2) The transfer is of an undivided 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 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.

Example 2: At the end of the assessment year the value of the accumulated interests transferred equals 3 percent of the value of the total property and the dollar value of these interests is $12,000. There will be a reappraisal of the transferred accumulated interests because their value exceeds $10,000.

Example 3: At the end of the assessment year the value of the accumulated interests transferred equal 7 percent of the value of the total property and the dollar value of these

interests is $9,000. There will be a reappraisal of the transferred accumulated interests because they exceed 5 percent of the value of the total property.

(3) The transfer is one to which the interspousal exclusion, pursuant to Revenue and Taxation Code section 63, or the registered domestic partner exclusion, pursuant to Revenue and Taxation Code section 62, subdivision (p), applies.

(4) 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~~Revenue and Taxation Code section 63.1.

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

RULE 462.060. CHANGE IN OWNERSHIP—LIFE ESTATES AND ESTATES FOR YEARS.

Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 63 and 67, Revenue and Taxation Code.

(a) LIFE ESTATES. The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse, pursuant to Revenue and Taxation Code section 63, or registered domestic partner, pursuant to Revenue and Taxation Code section 62, subdivision (p). However, the subsequent transfer of such a life estate by the transferor or the transferor's spouse or registered domestic partner to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse or registered domestic partner) is a change in ownership.

(b) ESTATE FOR YEARS. The creation of an estate for years for a term of 35 years or more in real property is a change in ownership at the time of transfer unless the instrument creating the estate for years reserves such estate in the transferor or the transferor's spouse, pursuant to Revenue and Taxation Code section 63, or registered domestic partner, pursuant to Revenue and Taxation Code section 62, subdivision (p). However, the subsequent transfer of such an estate for years by the transferor or the transferor's spouse or registered domestic partner to a third party is a change in ownership. Upon the termination of a reserved estate for years for any term, the vesting of the right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse or

registered domestic partner) is a change in ownership. The creation or transfer of an estate for years for less than 35 years is not a change in ownership.

RULE 462.160. CHANGE IN OWNERSHIP—TRUSTS.

Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 63, 63.1, 63.1 note and 64, Revenue and Taxation Code.

(a) CREATION. General Rule. The transfer by the trustor, or any other person, of real property into a trust is a change in ownership of such property at the time of the transfer.

(b) EXCEPTIONS. The following transfers do not constitute changes in ownership:

(1) Irrevocable Trusts.

(A) Trustor-Transferor Beneficiary Trusts. The transfer of real property by the trustor to a trust in which the trustor-transferor is the sole present beneficiary of the trust. However, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor are or become present beneficiaries of the trust unless otherwise excluded from change in ownership.

Example 1: M transfers income-producing real property to revocable living Trust A, in which M is the sole present beneficiary. Trust A provides that upon M's death, Trust A becomes irrevocable, M's brother B becomes a present beneficiary, and income from the trust property is to be distributed to B for his lifetime. Upon M's death, 100~~%~~ percent of the property in Trust A, representing B's present beneficial interest, undergoes a change in ownership.

Where a trustee of an irrevocable trust has total discretion ("sprinkle power") to distribute trust income or property to a number of potential beneficiaries, the property is subject to change in ownership, because the trustee could potentially distribute it to a non-excludable beneficiary, unless all of the potential beneficiaries have an available exclusion from change in ownership.

Example 2: H and W transfer real property interests to the HW Revocable Trust. No change in ownership. HW Trust provides that upon the death of the first spouse the assets of the deceased spouse shall be distributed to "A Trust," and the assets of the surviving spouse shall be distributed to "B Trust," of which surviving spouse is the sole present beneficiary. H dies and under the terms of A Trust, W has a "sprinkle" power for the benefit of herself, her two children and her nephew. When H dies, A Trust becomes irrevocable.

There is a change in ownership with respect to the interests transferred to the A Trust because the sprinkle power may be exercised so as to omit the spouse and children as present beneficiaries for whom exclusions from change in ownership may apply, and there are no exclusions applicable to the nephew. However, if the sprinkle power could be exercised only for the benefit of W and her children for whom exclusions are available, the interspousal exclusion and the parent/child exclusion would exclude the interests transferred from change in ownership, provided that all qualifying requirements for those exclusions are met.

Example 3: Same as Example 2 above, except that "A Trust" is without any sprinkle power. When H dies, A Trust becomes irrevocable. Since A Trust holds the assets for the benefit of W, the two children, and the nephew in equal shares, with any of W's share remaining at her death to be distributed to the two children and the nephew in equal shares, there is a change in ownership only to the extent of the interests transferred to the nephew, providing that the parent/child exclusion of Revenue and Taxation Code ~~S~~section 63.1 and the interspousal exclusion of Revenue and Taxation Code ~~S~~section 63 apply to the interests transferred to the two children and to W respectively. Upon the death of W, there is a change in ownership to the extent of the interests transferred to the nephew, although the parent/child exclusion of Revenue and Taxation Code ~~S~~section 63.1 may exclude from change in ownership the interests transferred to the two children. If A Trust had included a sprinkle power, instead of specifying the beneficiaries of the trust income and principal, then as in Example 2, none of the exclusions would apply.

(B) 12 Year Trustor Reversion Trusts. The transfer of real property or ownership interests in a legal entity holding interests in real property by the trustor to a trust in which the trustor-transferor retains the reversion, and the beneficial interest of any person other than the trustor-transferor does not exceed 12 years in duration.

(C) Irrevocable Trusts Holding Interests in Legal Entities. The transfer of an ownership interest in a legal entity holding an interest in real property by the trustor into a trust in which the trustor-transferor is the sole present beneficiary or to a trust in which the trustor-transferor retains the reversion as defined in subdivision (b)(1)(B) of this rule. However, a change in ownership of the real property held by the legal entity does occur if Revenue and Taxation Code section 61, subdivision (i), 64, subdivision (c), or 64, subdivision (d) applies because the change in ownership laws governing interests in legal entities are applicable regardless of whether such interests are held by a trust.

Example 4: Husband and Wife, partners in HW Partnership who are not original ~~coowners~~ co-owners, transfer 70 percent of their partnership interests to HW Irrevocable Trust and

name their four children as the present beneficiaries of the trust with equal shares. Husband and Wife do not retain the reversion. Under Revenue and Taxation Code section 64, subdivision (a) the transfer of the partnership interests to HW Irrevocable Trust is excluded from change in ownership because no person or entity obtains a majority ownership interest in the HW Partnership.

(2) Revocable Trusts. The transfer of real property or an ownership interest in a legal entity holding an interest in real property by the trustor to a trust which is revocable by the trustor. However, a change in ownership does occur at the time that a revocable trust becomes irrevocable unless the trustor-transferor remains or becomes the sole present beneficiary or unless otherwise excluded from change in ownership.

(3) Interspousal and Registered Domestic Partner Trusts. The transfer is one to which the interspousal exclusion, pursuant to Revenue and Taxation Code section 63, or registered domestic partner exclusion, pursuant to Revenue and Taxation Code section 62, subdivision (p), applies. However, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor's spouse or registered domestic partner are or become present beneficiaries of the trust unless otherwise excluded from change in ownership.

(4) Parent-Child or Grandparent-Grandchild Trusts. The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been made as required by ~~law~~Revenue and Taxation Code section 63.1. However, a change in ownership of trust property does occur to the extent that persons for whom the parent-child or grandparent-grandchild exclusion is not applicable are or become present beneficiaries of the trust unless otherwise excluded from change in ownership.

(5) Proportional Interests. The transfer is to a trust which results in the proportional interests of the beneficiaries in the property remaining the same before and after the transfer.

(6) Other Trusts. The transfer is from one trust to another and meets the requirements of (1), (2), (3), (4), or (5) of this subdivision.

(c) TERMINATION. General Rule. The termination of a trust, or portion thereof, constitutes a change in ownership at the time of the termination of the trust.

(d) EXCEPTIONS. The following transfers do not constitute changes in ownership:

(1) Prior Change in Ownership. Termination results in the distribution of trust property according to the terms of the trust to a person or entity who received a present interest

(either use of or income from the property) when the trust was created, when it became irrevocable, or at some other time. However, a change in ownership also occurs when the remainder or reversionary interest becomes possessory if the holder of that interest is a person or entity other than the present beneficiary unless otherwise excluded from change in ownership.

Example 5: B transfers real property to Trust A and is the sole present beneficiary. Trust A provides that when B dies, the Trust terminates and Trust property is to be distributed equally to R and S ,who are unrelated to B. B dies, Trust A terminates, and the transfers of the Trust property to R and S result in changes in ownership, allowing for reassessment of 100 percent of the real property.

(2) Revocable Trusts. Termination results from the trustor-transferor's exercise of the power of revocation and the property is transferred by the trustee back to the trustor-transferor.

(3) Trustor Reversion Trusts. The trust term did not exceed 12 years in duration and, on termination, the property reverts to the trustor-transferor.

(4) Interspousal and Registered Domestic Partner Trusts. Termination results in a transfer to which the interspousal exclusion, pursuant to Revenue and Taxation Code section 63, or the registered domestic partner exclusion, pursuant to Revenue and Taxation Code section 62, subdivision (p), applies.

(5) Parent-Child or Grandparent-Grandchild Trusts. Termination results in a transfer to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by ~~law~~Revenue and Taxation Code section 63.1.

(6) Proportional Interests. Termination results in the transfer to the beneficiaries who receive the same proportional interests in the property as they held before the termination of the trust.

(7) Other Trusts. Termination results in the transfer from one trust to another and meets the requirements of (1), (2), (3), (4), (5), or (6) of subdivision (b).

(e) For purposes of this rule, the term "trust" does not include a Massachusetts business trust or similar trust, which is taxable as a legal entity and managed for profit for the holders of transferable certificates which, like stock shares in a corporation, entitle the holders to share in the income of the property. For rules applicable to Massachusetts business trusts or similar trusts, see Revenue and Taxation Code ~~S~~section 64~~ of the Revenue and Taxation Code~~ and Rule 462.180, which address legal entities.

RULE 462.180. CHANGE IN OWNERSHIP—LEGAL ENTITIES.

Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 63, 64, and 67, Revenue and Taxation Code; Sections 16909 and 17554, Corporations Code; and Section 1351, Civil Code.

(a) TRANSFERS OF REAL PROPERTY TO AND BY LEGAL ENTITIES.

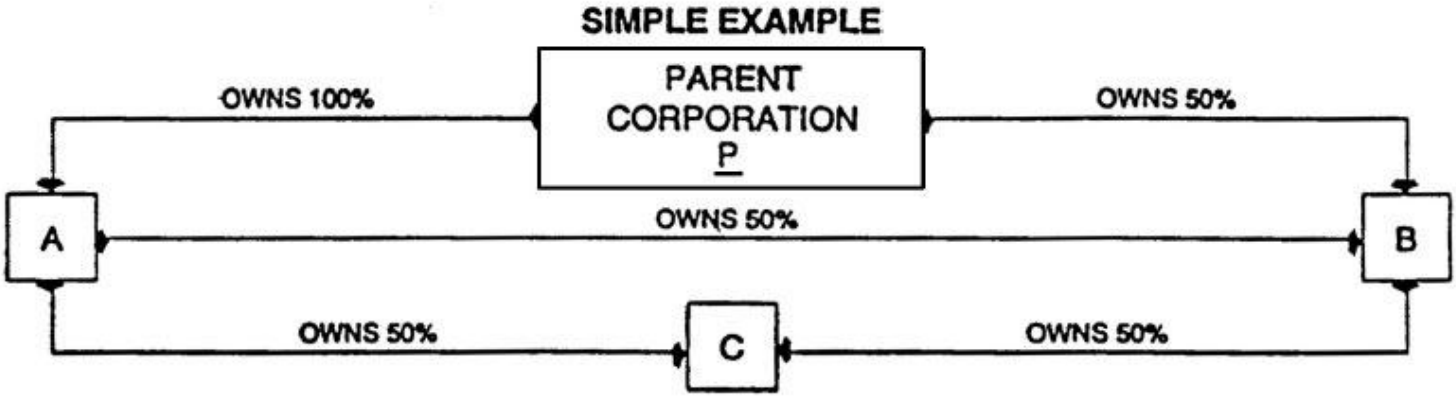
General Rule. The transfer of any interest in real property to a corporation, partnership, limited liability company, or other legal entity is a change in ownership of the real property interest transferred. For purposes of this rule, "real property" or "interests in real property" includes real property interests and fractional interests thereof, the transfer of which constitute a change in ownership under Revenue and Taxation Code ~~S~~section~~s~~ 60 and the following applicable sections of the Revenue and Taxation Code, and under the applicable change in ownership provisions of the Property Tax Rules.

(b) EXCEPTIONS. The following transfers do not constitute changes in ownership of the real property:

(1) Affiliated Corporation Transfers. Transfers of real property between or among affiliated corporations, including those made to achieve a corporate reorganization if:

(A) the voting stock of the corporation making the transfer and the voting stock of the transferee corporation are each owned 100 percent by one or more corporations related by voting stock ownership to a common parent, and

(B) the common parent corporation owns directly 100 percent of the voting stock of at least one corporation in the chain(s) of related corporations.



A transfer of real property by P, A, B, or C to any of the other three corporations would not be a change in ownership.

Example 1: Any transfer by C (wholly owned by A and B) to B (wholly owned by A and P) would not be a change in ownership because of those relationships and because P owns 100~~%~~ percent of A.

If real property is transferred between non-affiliated corporations, only the property transferred shall be deemed to have undergone a change in ownership.

(2) Proportional Transfers of Real Property. Transfers of real property between separate legal entities or by an individual to a legal entity (or vice versa), which result solely in a change in the method of holding title and in which the proportional ownership interests in each and every piece of real property transferred remain the same after the transfer. (The holders of the ownership interests in the transferee legal entity, whether such interests are represented by stock, partnership interests, or other types of ownership interest, shall be defined as "original co-owners" for purposes of determining whether a change in ownership has occurred upon the subsequent transfer of the ownership interests in the legal entity.) This subdivision shall not apply to a transfer of real property which is also excluded from change in ownership pursuant to subdivision (b)(1) of this rule (transfers between or among affiliated corporations).

Examples of Transfers of Real Property in Legal Entities:

Example 2: A transfer of real property from A and B, as equal co-tenants, to Corporation X, where A and B each take back 50 percent of the stock. No change in ownership. However, if A and B each take back 49 percent of the stock and C receives 2 percent of the stock then there will be a change in ownership of the entire property.

Example 3: A transfers Whiteacre to Corporation X and B transfers Blackacre (equal in value to Whiteacre) to Corporation X. A and B each take back 50 percent of the stock. Change in ownership of 100 percent of both Whiteacre and Blackacre.

Example 4: Corporation X owns Blackacre and Whiteacre (both are of equal value). A and B each own 50~~%~~ percent of Corporation X's shares. X transfers Whiteacre to A and Blackacre to B. Change in ownership of 100~~%~~ percent of both Blackacre and Whiteacre. However, if Corporation X transfers Whiteacre and Blackacre to both A and B as joint tenants or as equal tenants in common, there is no change in ownership.

Example 5: A transfer of real property from Corporation X to its sole shareholder A. No change in ownership, even if A is an "original co-owner,"~~,~~ because interests in real property, and not ownership interests in a legal entity, are being transferred.

(c) TRANSFERS OF OWNERSHIP INTERESTS IN LEGAL ENTITIES.

General Rule. The purchase or transfer of corporate stock, partnership interests, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity, pursuant to Revenue and Taxation Code ~~S~~section 64, subdivision (a)~~ of the Revenue and Taxation Code~~.

(d) EXCEPTIONS. The following transfers constitute changes in ownership, except as provided in subdivision (d)(4) of this rule which is an exclusion from change in ownership:

(1) Control. When any corporation, partnership, limited liability company, Massachusetts business trust or similar trust, other legal entity or any person:

(A) obtains through a reorganization or any transfer, direct or indirect ownership or control of more than 50 percent of the voting stock in any corporation which is not a member of the same affiliated group of corporations as described in subdivision (b)(1) of this rule, or

(B) obtains through multi-tiering, reorganization, or any transfer direct or indirect ownership of more than 50 percent of the total interest in partnership or LLC capital and more than 50 percent of the total interest in partnership or LLC profits, or

(C) obtains through any transfer direct or indirect ownership of more than 50 percent of the total ownership interest in any other legal entity.

Upon the acquisition of such direct or indirect ownership or control, which may include any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership.

(2) Transfers of More Than 50 Percent. When on or after March 1, 1975, real property is transferred to a partnership, corporation, limited liability company, or other legal entity and the transfer is excluded from change in ownership under Revenue and Taxation Code ~~S~~section 62, subdivision (a)(2)~~ of the Revenue and Taxation Code~~, and the "original co-owners" subsequently transfer, in one or more transactions, cumulatively more than 50 percent of the total control or ownership interests, as defined in subdivision (d)(1) of this rule, in that partnership, corporation, limited liability company or legal entity, there is a change in ownership of only that property owned by the entity which was previously

excluded under ~~S~~section 62, subdivision (a)(2). However, when such transfer would also result in a change in control under Revenue and Taxation Code ~~S~~section 64, subdivision (c) ~~of the Revenue and Taxation Code~~, then reappraisal of the property owned by the corporation, partnership, limited liability company, or other legal entity shall be pursuant to ~~S~~section 64, subdivision (c) rather than s~~S~~ection 64, subdivision (d).

For purposes of this subdivision ((d)(2)), interspousal transfers excluded under ~~Section 63 of the~~ Revenue and Taxation Code section 63, transfers between registered domestic partners excluded under Revenue and Taxation Code section 62, subdivision (p), transfers into qualifying trusts excluded under Revenue and Taxation Code ~~S~~section 62, subdivision (d) ~~of the Revenue and Taxation Code~~, and proportional transfers excluded under Revenue and Taxation Code s~~S~~ection 62, subdivision (a)(2) ~~of the Revenue and Taxation Code~~ shall not be cumulated or counted to determine a change in ownership.

Examples of Transfers of Interests in Legal Entities:

Example 6: A and B each own 50 percent of the stock of Corporation X. Corporation X acquires Whiteacre from Corporation Y, an unaffiliated corporation in which neither A nor B has interests, and Whiteacre is reappraised upon acquisition. A transfers 30 percent of Corporation X's stock to C, and B later transfers 25 percent of Corporation X's stock to C. Upon C's acquisition of 55 percent of Corporation X's stock, there is a change in control of Corporation X under Revenue and Taxation Code ~~S~~section 64, subdivision (c) and a reappraisal of Whiteacre.

Example 7: Spouses H and W acquire as community property 100~~%~~ percent of the capital and profits interests in an LLC which owns Blackacre. Each of H and W is treated as acquiring 50 percent of the ownership interests as defined in subdivision (c) of this rule and Revenue and Taxation Code section 64, subdivision (a). Since the selling members of the LLC are not original co-owners (because they did not transfer the property to the LLC under the Revenue and Taxation Code ~~S~~section 62, subdivision (a)(2) exclusion), no change in control of the LLC would occur under Revenue and Taxation Code section 64, subdivision (c) and no change in ownership of Blackacre under Revenue and Taxation Code section 64, subdivision (d).

Example 8: A and B, hold equal interests as tenants in common in Greenacre, a parcel of real property. A and B transfer Greenacre to Corporation Y and in exchange A and B each receive 50 percent of the corporate stock. No change in ownership pursuant to Revenue and Taxation Code s~~S~~ection 62, subdivision (a)(2). Pursuant to Revenue and Taxation Code s~~S~~ection 64, subdivision (d), A and B become original coowners. A transfers 30 percent of Corporation Y's stock to C (A's child), and B then transfers 25 percent of

Corporation Y's stock to D (B's grandchild). Change in ownership of Greenacre upon B's transfer to D. Parent/child and grandparent/grandchild exclusions are not applicable to transfers of interests in legal entities. However, if the same transfers were made by A and B to their respective spouses, no change in ownership pursuant to Revenue and Taxation Code ~~S~~section 63 and Rule 462.220.

(3) Cooperative Housing Corporation. When the stock transferred in a cooperative housing corporation ("stock cooperative" as defined in subdivision (m) of ~~S~~section 1351 of the Civil Code) conveys the exclusive right to occupancy of all or part of the corporate property, unless:

(A) the cooperative was financed under one mortgage which was insured under ~~S~~sections 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or was financed or assisted pursuant to ~~S~~sections 514, 515, or 516 of the Housing Act of 1949 or s~~S~~ection 202 of the Housing Act of 1959, or was financed by a direct loan from the California Housing Finance Agency, and

(B) the regulatory and occupancy agreements were approved by the respective insuring or lending agency, and

(C) the transfer is from the housing cooperative to a person or family qualifying for purchase by reason of limited income.

(4) Proportional Interest Transfers. Transfers of stock, partnership interests, limited liability company interests, or any other interests in legal entities between legal entities or by an individual to a legal entity (or vice versa) which result solely in a change in the method of holding title and in which proportional ownership interests of the transferors and transferees, in each and every piece of property represented by the interests transferred, remain the same after the transfer, do not constitute changes in ownership, as provided in subdivision (b)(2) of this rule and Revenue and Taxation Code s~~S~~ection 62, subdivision (a)(2)~~ of the Revenue and Taxation Code~~. This provision shall not apply to a statutory conversion or statutory merger of a partnership into a limited liability company or other partnership (or a limited liability company into a partnership) when the law of the jurisdiction of the converted or surviving entity provides that such entity remains the same entity or succeeds to the assets of the converting or disappearing entity without other act or transfer and the partners or members of the converting or disappearing entity maintain the same ownership interest in profits and capital of the converted or surviving entity that they held in the converting or disappearing entity.

Examples of Excluded Proportional Interest Transfers:

Example 9: General Partnership (GP), which owns Whiteacre and in which A and B hold equal partnership interests, converts to Limited Partnership (LP) under the Revised Uniform Partnership Act of 1994 (California Corporations Code section 16100 et seq.). As a result of the conversion, A and B each hold 50 percent of the LP interests in capital and profits. No change in ownership of Whiteacre upon the conversion, because, under ~~S~~section 16909 of the Corporations Code, there is no transfer of Whiteacre. Revenue and Taxation Code ~~S~~section 62, subdivision (a)(2)~~ of the Revenue and Taxation Code~~ does not apply. However, if A and B were "original coowners" in GP, they remain "original coowners" in LP.

Example 10: Following the conversion in Example 9, A and B each transfer 30 percent of their capital and profits interests in LP to Limited Liability Company (LLC), which is owned equally by A and B. Each retain an equal 20 percent interest in LP. No change in ownership of Whiteacre pursuant to Revenue and Taxation Code ~~S~~section 62, subdivision (a)(2) because A and B own 100 percent of both LP and LLC and their respective proportional interests remain the same after the transfer. Neither Revenue and Taxation Code section 64, subdivision (c) nor ~~section 64~~subdivision (d)~~ of the Revenue and Taxation Code~~ applies to this transfer, although A and B become "original coowners" with respect to their interests in LLC.

Example 11: A limited partnership (LP), which owns Blackacre and in which C and D hold equal partnership interests, changes its form to a limited liability company (LLC), in which C and D hold equal membership interests, by statutory merger under the California Revised Limited Partnership Act (Corporations Code section 15611 et seq.) and the Beverly-Killea Limited Liability Company Act (California Corporations Code section 17000 et seq.). No change in ownership of Blackacre upon the change in form because under section 17554 of the ~~California~~ Corporations Code, there is not a transfer of property from LP to LLC. Revenue and Taxation Code ~~S~~section 62, subdivision (a)(2)~~ of the Revenue and Taxation Code~~ does not apply. However, if C and D were "original coowners" in LP, they remain "original coowners" in LLC.

(e) PARTNERSHIPS.

(1) Transfers of Real Property By Partnerships.

General Rule. Except as provided by subdivision (b)(2) of this rule where the proportional ownership interests remain the same, when real property is contributed to a partnership or is acquired, by purchase or otherwise, by the partnership there is a change in ownership of such real property, regardless of whether the title to the property is held in the name of the partnership or in the name of the partners with or without reference to the partnership. Except as provided by subdivision (b)(2) of this rule where the proportional ownership

interests remain the same, the transfer of any interest in real property by a partnership to a partner or any other person or entity constitutes a change in ownership.

(2) Except as provided in subdivision (d)(1)(B) and ~~(d)~~(2) of this rule, the addition or deletion of partners in a continuing partnership does not constitute a change in ownership of partnership property.

RULE 462.220. CHANGE IN OWNERSHIP—INTERSPOUSAL AND REGISTERED DOMESTIC PARTNER TRANSFERS.

Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 63, 64, 65, 65.1 and 67, Revenue and Taxation Code.

Notwithstanding any other provision of Rules 460 through 471, a change in ownership shall not include any interspousal transfer, pursuant to Revenue and Taxation Code section 63, or any transfer between registered domestic partners, pursuant to Revenue and Taxation Code section 62, subdivision (p), including, but not limited to:

(a) Transfers of ownership interests in legal entities,

(b) Transfers of ownership interests in legal entities resulting in one spouse or registered domestic partner obtaining control as defined in Revenue and Taxation Code ~~S~~section 64, subdivision (c) ~~of the Revenue and Taxation Code~~,

Example 1: Husband (H) owns a 30 percent ownership interest in a partnership and wife (W) owns a 30 percent ownership interest in the same partnership. W transfers her interest to H; H now owns a 60 percent ownership interest. There is no change in ownership.

(c) Transfers of ownership interests in legal entities by “original ~~coowners~~ co-owners" which would otherwise be cumulated or counted for purposes of Revenue and Taxation Code ~~S~~section 64, subdivision (d) ~~of the Revenue and Taxation Code~~,

Example 2: Spouses H and W are "original ~~coowners~~co-owners" of a partnership; each originally owned a 50 percent partnership interest. They have previously each transferred a 10 percent interest to X and to Y, leaving H and W each with a 30 percent partnership interest. W transfers a 15 percent interest to H. Although cumulatively more than 50 percent has been transferred, there is no change in ownership.

(d) Transfers to a trustee for the beneficial use of a spouse or registered domestic partner, or the surviving spouse or registered domestic partner of a deceased transferor, or by a trustee of such a trust to the spouse or registered domestic partner of the trustor,

(e) Transfers which take effect upon the death of a spouse or registered domestic partner,

Example 3: H and W each own a 30 percent interest in General Partnership (GP). H and W transfer their respective partnership interests to the HW Revocable Trust. No change in ownership. Trust provides that upon the death of the first spouse: the assets of the deceased spouse, including partnership interests in GP, shall be distributed to "A Trust,"~~,~~ and the assets of the surviving spouse, including partnership interests in GP, shall be distributed to "B Trust." Surviving spouse is the sole present beneficiary of both A Trust and B Trust. No change in ownership upon the death of the first spouse.

(f) Transfers to a spouse or registered domestic partner or former spouse or registered domestic partner in connection with a property settlement agreement, including post-dissolution amendment thereto, or decree of dissolution of a marriage or registered domestic partnership, or legal separation,

(g) The creation, transfer, or termination, solely between spouses or registered domestic partners, of any co-owner's interest, or

(h) The distribution of property of a corporation, partnership, or other legal entity to a spouse or registered domestic partner or former spouse or registered domestic partner having an ownership interest in the legal entity, in exchange for the interest of such spouse in the legal entity in connection with a property settlement agreement, or decree of dissolution of a marriage or registered domestic partnership, or legal separation.

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

Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 62.1, 62.2, 62.5, 64, 66, 67, Revenue and Taxation Code. Sections 37, 6401 and 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 employer 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, ~~T~~title 29, ~~S~~section 1002. (The term "any contribution" as used in Revenue and Taxation Code ~~S~~section 66, subdivision (b)~~ of the Revenue and Taxation Code~~ and this rule~~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 Revenue and Taxation Code ~~S~~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 parents or legal guardians to a minor child or children or among minor siblings, 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 Revenue and Taxation Code ~~S~~section 62, subdivision (n)~~ of the Revenue and Taxation Code~~.

(i) Any transfer, on or after January 1, 1985, of a mobilehome park or of rental spaces in a mobilehome park pursuant to Revenue and Taxation Code ~~S~~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 Revenue and Taxation Code ~~S~~section 62.2~~ of the Revenue and Taxation Code~~.

(k) Any transfer of a floating home marina pursuant to Revenue and Taxation Code section 62.5.~~ 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.~~

(l) Any transfer of real property between registered domestic partners, pursuant to Revenue and Taxation Code section 62, subdivision (p).