



STATE BOARD OF EQUALIZATION

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No. 2016/020

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the: July 14, 2016 Board Meeting

*Joann Richardson*  
Joann Richardson, Chief  
Board Proceedings Division

May 27, 2016

To Interested Parties:

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt  
Amendments to California Code of Regulations,

Title 18,

Section 462.040, *Change in Ownership - Joint Tenancies*

NOTICE IS HEREBY GIVEN that 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 regarding the types of transfers that create “original transferor” status under Revenue and Taxation Code (RTC) section 65, subdivision (b), the change in ownership consequences of transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), and the applicability of the exclusion from the definition of change in ownership for transfers between cotenants, under RTC section 62.3. The proposed amendments clarify the rule’s current examples by identifying the joint tenancies in the current examples that are joint tenancies described in RTC section 65, subdivision (b), and subdivision (b)(1) of the rule, and are therefore subject to RTC section 65, subdivisions (c) and (d). The proposed amendments also reorganize the current provisions in paragraphs (1) through (3) in subdivision (b) by topic in new subparagraphs in new subdivision (b)(1), provide more descriptive subheadings for the numbered subparagraphs in new subdivision (b)(1) and renumbered paragraphs (2) through (6) in subdivision (b), and rearrange and renumber the examples in new subdivision (b)(1) so that the examples correspond to the subheadings.

PUBLIC HEARING

The Board will conduct a meeting at 1 Civic Center Plaza, Irvine, California, on July 14, 2016. 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 9:00 a.m. or as soon thereafter as the matter may be heard on July 14, 2016. 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.

Also, Property Tax Rule 462.040 implements, interprets, and makes specific RTC sections 61, subdivision (e), 62, subdivision (f), and 65.1, subdivision (a), which contain change in ownership provisions that are specific to joint tenancies. RTC section 61, subdivision (e), provides that the term change in ownership includes “[t]he creation, transfer, or termination of any joint tenancy interest, except as provided in subdivision (f) of Section 62, and in Section 63 and Section 65.” RTC section 62, subdivision (f), provides that the term change in ownership does not include “[t]he creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.” And, RTC section 65.1, subdivision (a), provides that “Except for a joint tenancy interest described in subdivision (f) of Section 62, when an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred shall be reappraised. A purchase or change in ownership of an interest with a market value of less than 5 percent of the value of the total property shall not be reappraised if the market value of the interest transferred is less than ten thousand dollars (\$10,000) provided, however, that transfers during any one assessment year shall be cumulated for the purpose of determining the percentage interests and value transferred.”

In addition, paragraphs (4), (5), and (7) in Property Tax Rule 462.040, subdivision (b), implement, interpret, and make specific the more general change in ownership provisions of, respectively, RTC sections 62, subdivision (a), 63, and 63.1. RTC section 62, subdivision (a),

provides that the term change in ownership does not include “(1) [a]ny transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common” and “(2) [a]ny transfer between an individual or individuals and a legal entity or between legal entities . . . that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer.” RTC section 63 provides an exclusion from the definition of change in ownership for interspousal transfers, and RTC section 63.1 provides an exclusion from the definition of change in ownership for specified parent-child and grandparent-grandchild transfers if a timely claim is filed.

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board make a number of amendments to Property Tax Rule 462.040. In response, the Board initiated the rulemaking process to make several of the requested amendments and amended Property Tax Rule 462.040, effective October 1, 2013. As relevant here, the 2013 amendments made the rule consistent with:

- Current law (see, e.g., Civ. Code, § 683.2, subd. (a)(1)), which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, for transfers to trusts occurring on or after October 1, 2013 (the effective date of the amendments);
- Family Code section 297.5 regarding the rights, protections, and benefits of registered domestic partners and RTC section 62, subdivision (p), providing an exclusion from the definition of “change in ownership” for transfers between registered domestic partners;
- RTC section 62.3 providing an exclusion from the definition of change in ownership for transfers of a principal residence between two cotenants that take effect upon the death of the transferor cotenant if specified statutory requirements are met, including that the transferee submits a signed affidavit affirming that he or she continuously resided with the transferor at the residence for the one-year period immediately preceding the transfer; and
- RTC section 65, subdivision (b), by providing that all transferor(s) must be among the joint tenants for a transfer creating a joint tenancy or transferring a joint tenancy interest to be excluded from the definition of change in ownership, and that a transfer resulting in the elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants.

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

In its 2012 petition, the CAA also requested that examples be added to Property Tax Rule 462.040 to clarify the change in ownership consequence of transfers terminating certain joint tenancies under the current provisions of Rule 462.040, subdivision (b)(4), which are applicable to proportional transfers of interests in joint tenancies that are not described in RTC section 65, subdivision (b), and subdivision “(b)(1)” of Rule 462.040. Due to ongoing litigation regarding a transfer terminating a joint tenancy, changes to this subdivision were deferred during 2012 and

2013. This litigation, *Richard N. Benson v. Marin County Assessment Appeals Board* (2013) 219 Cal.App.4th 1445 (hereafter *Benson*), has now been finally decided.

As a result, Board staff reviewed *Benson, supra*. In that case, brother A owned real property. Brother A transferred the real property into a joint tenancy with brother B, and the transfer creating the joint tenancy was excluded from being a 50 percent change in ownership of the real property because the joint tenancy was a joint tenancy described in RTC section 65, subdivision (b). Then, brother B subsequently transferred his joint tenancy interest to himself as a tenant in common and argued that the proportional transfer was excluded from the definition of change in ownership under RTC section 62, subdivision (a). However, the court agreed with the county assessor that brother B's transfer of his joint tenancy interest to himself as a tenant in common was a change in ownership triggering reassessment of his 50 percent interest under section 2, subdivision (a), of article XIII A of the California Constitution. This was because the joint tenancy of A and B was a joint tenancy described in RTC section 65, subdivision (b). The transfer of B's interest to himself terminated the joint tenancy and constituted a change in ownership under the express terms of RTC sections 61, subdivision (f), and 65, subdivision (a). And, the court held that the provisions in RTC section 62, subdivision (a), excluding specified proportional transfers from the definition of change in ownership do not apply to transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), because the Legislature intended that subdivision (f) be the only subdivision in RTC section 62 that applies to transfers of interests in joint tenancies described in RTC section 65, subdivision (b).

Board staff also reviewed the current provisions of Property Tax Rule 462.040, subdivision (b)(4) (referred to in the CAA's petition), which implement, interpret, and make specific the provisions in RTC section 62, subdivision (a), excluding specified proportional transfers from the definition of change in ownership, and explain how the statutory provisions apply to transfers of interest in joint tenancies, "other than" joint tenancies described in RTC section 65, subdivision (b). And, staff determined that there were issues because subdivision (b)(4) does not contain any clarifying examples and it does not clearly explain that the provisions in RTC section 62, subdivision (a), do not apply to transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), as the court held in *Benson*.

Board staff therefore developed a draft of proposed amendments to the rule to add six examples that clarify the change in ownership consequences of transfers terminating interests in joint tenancies. Two of the examples specifically illustrate the different consequences of transfers terminating interests held by an "original transferor or transferors" described in RTC section 65, subdivision (b), and held by persons "other than original transferors." The other four examples specifically illustrate that the provisions in RTC section 62, subdivision (a), excluding specified proportional transfers from the definition of change in ownership do not apply to transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), in accordance with *Benson, supra*, but may apply to transfers terminating interests in joint tenancies that are "not" described in RTC section 65, subdivision (b).

While preparing the draft amendments, staff determined that the current provisions in Property Tax Rule 462.040, subdivision (b), would be easier to understand if they were reorganized by topic. Therefore, to better organize subdivision (b), staff's draft amendments combined paragraphs (1) through (3) in subdivision (b) into a new subdivision (b)(1). Staff's draft amendments included current subdivision (b)(1)'s provisions explaining the general requirements to qualify for the exclusion from the definition of change in ownership provided by RTC section 65, subdivision (b), and create "original transferor" status at the beginning of new subdivision (b)(1) with the rule's three current examples (4, 6, and 11) illustrating the general requirements. Staff's draft amendments included current subdivision (b)(1)'s provisions explaining the requirements for a spouse or registered domestic partner to be considered an original transferor in new subdivision (b)(1)(A) with the rule's four current examples (7-10) illustrating the requirements. Staff's draft amendments included current subdivision (b)(2)'s provisions explaining the consequences of transfers terminating an original transferor's interest in a joint tenancy in new subdivision (b)(1)(B) with the rule's current example (14) and one of the new examples (discussed above) illustrating the consequences. Staff's draft amendments included current subdivision (b)(3)'s provisions explaining the consequences of transfers terminating an interest in a joint tenancy held by a person other than an original transferor in new subdivision (b)(1)(C) with the rule's two current examples (15 and 16) and one of the new examples (discussed above) illustrating the consequences. Staff's draft amendments included current subdivision (b)(1)'s provisions regarding transfers of joint tenancy interests into trusts in new subdivision (b)(1)(D) with the rule's current examples (5 and 12) regarding transfers to trusts. Staff's draft amendments renumbered current paragraphs (4) through (8), as paragraphs (2) through (6), respectively, in new subdivision (b), and added the four other new examples (discussed above) to renumbered subdivision (b)(2) regarding proportional transfers. Board staff's draft amendments also added more descriptive subheadings to the numbered subparagraphs in new subdivision (b)(1) and renumbered paragraphs (2) through (6) in subdivision (b) for additional clarity, and renumbered the current examples in subdivision (b).

In addition, while preparing the draft amendments, staff determined that it would be easier to understand how the Board reached the conclusions in the current examples in Rule 462.040, subdivision (b), if the examples more clearly identified the joint tenancies that are joint tenancies described in RTC section 65, subdivision (b), and are therefore subject to RTC section 65, subdivisions (c) and (d). Therefore, staff's draft amendments revised new subdivision (b)(1) of the rule so that it refers to a joint tenancy described in RTC section 65, subdivision (b), as a "joint tenancy described in subdivision (b)(1)" of the rule, and revised the old and new examples in new subdivision (b)(1)(A) through (D) and renumbered subdivision (b)(2) so they identify the joint tenancies that are joint tenancies described in subdivision (b)(1) of the rule.

Board staff subsequently provided its draft of the proposed amendments to the county assessors and other interested parties for comment via Letter To Assessors (LTA) 2015/033, dated July 2, 2015, which requested that written comments be submitted by August 14, 2015. Then, Board staff met with the interested parties on October 21, 2015, to discuss staff's draft amendments to Property Tax Rule 462.040.

The interested parties recommended and Board staff agreed that:

- New subdivision (b)(1) should include language informing readers that the purchase of property as joint tenants does not create original transferor status based upon the Board's Legal Department's long-standing opinion that purchasers are transferees, but are not transferors of the purchased property, within the meaning of RTC section 65, subdivision (b). (See, e.g. the Legal Department's opinion in the November 3, 1986, back-up letter to Property Tax Annotation 220.0307 (11/3/86); annotations are published in the Board's Property Taxes Law Guide and are summaries of the conclusions reached in selected legal rulings of the Board's Legal Department (Cal. Code Regs., tit. 18, § 5700));
- Current example 8 should be revised to clarify that A died "while D was A's husband";
- Current example 12 should identify the date of the last step in the example's step transaction as the date of the change in ownership resulting from collapsing the transaction's steps under the step-transaction doctrine to be consistent with current law (See, e.g., *Crow Winthrop Operating Partnership v. Orange County* (1992) 10 Cal.App.4th 1848);
- One of the new examples should be further clarified to fully illustrate that the exclusions from the definition of change in ownership in RTC section 62, subdivision (a)(2), and RTC section 65 do not apply to a transfer of property held in a joint tenancy described in RTC section 65, subdivision (b), to a legal entity; and
- Renumbered subdivision (b)(6) should clarify that the exclusion from the definition of change in ownership for transfers between cotenants only applies when an affidavit has been submitted to the assessor, as required by RTC section 62.3.

Therefore, staff developed a second draft of the proposed amendments to the rule and distributed it to interested parties for comment via LTA 2015/063 dated December 31, 2015, which requested that written comments be submitted by February 12, 2016.

Board staff received a few comments recommending nonsubstantive changes to the second draft of the proposed amendments from interested parties in response to LTA 2015/063, all of which were accepted. Therefore, staff did not hold a second interested parties meeting.

Staff subsequently prepared a revised draft of the proposed amendments to Property Tax Rule 462.040, which incorporated the nonsubstantive changes recommended by the interested parties, deleted current example 13 because it is included in current example 14, and renumbered the following old and new examples accordingly. Staff also prepared Formal Issue Paper 16-04, and submitted it to the Board with the revised draft of the proposed amendments for consideration during its March 30, 2016, Property Tax Committee meeting.

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

- Combine paragraphs (1) through (3) in subdivision (b) into a new subdivision (b)(1);

- Consolidate current subdivision (b)(1)'s provisions explaining the general requirements to qualify for the exclusion from the definition of change in ownership provided by RTC section 65, subdivision (b), and create "original transferor" status at the beginning of new subdivision (b)(1) with the rule's current examples illustrating the general requirements;
- Clarify in new subdivision (b)(1) that the purchase of property as joint tenants does not create original transferor status, consistent with RTC section 65, subdivision (b);
- Consolidate in newly created subdivision (b)(1)(A) the rule's current provisions and examples regarding transfers between spouses and registered domestic partners;
- Consolidate in newly created subdivision (b)(1)(B) the rule's current provisions and example explaining the consequences of transfers terminating an original transferor's interest in a joint tenancy.
- Clarify in a new example included in newly created subdivision (b)(1)(B) that the termination of the last surviving original transferor's interest will result in a reassessment, consistent with RTC section 65, subdivision (c);
- Delete current example 13 because it duplicates current example 14;
- Consolidate in newly created subdivision (b)(1)(C) the rule's current provisions and examples explaining the consequences of transfers terminating an interest in a joint tenancy held by a person other than an original transferor;
- Clarify in a new example included in newly created subdivision (b)(1)(C) that there is no reassessment as long as an original transferor continues to be on title, consistent with RTC section 65, subdivision (d);
- Consolidate in newly created subdivision (b)(1)(D) the rule's current provisions and examples regarding transfers to trusts that occurred between November 13, 2003 and September 30, 2013;
- Renumber paragraphs (4) through (8) in subdivision (b) as paragraphs (2) through (6), respectively;
- Add four new examples to renumbered subdivision (b)(2) to specifically illustrate that the provisions in RTC section 62, subdivision (a), do not apply to transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), in accordance with *Benson, supra*, but may apply to transfers terminating joint tenancies that are "not" described in RTC section 65, subdivision (b);
- Add more descriptive subheadings to all the numbered subparagraphs in new subdivision (b)(1) and renumbered paragraphs (2) through (6) in subdivision (b) for additional clarity and to make the rule easier to navigate;
- Clarify in subdivision (b)(6) that the exclusion from the definition of change in ownership for transfers between cotenants only applies when an affidavit has been submitted to the assessor, as required by RTC section 62.3; and
- Provide more detailed information in current examples 4 through 16 to more clearly identify the joint tenancies that are joint tenancies described in RTC section 65, subdivision (b), and Rule 462.040, subdivision (b)(1), and renumber the current examples.

The recommendations in the formal issue paper 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 30, 2016, 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 Board determined that the amendments were reasonably necessary to have the effects and accomplish the objectives of addressing the CAA's petition and the issues created by the facts that Property Tax Rule 462.040, subdivision (b)(4), does not contain any clarifying examples and it does not clearly explain that the provisions in RTC section 62, subdivision (a), do not apply to transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), as the court held in *Benson, supra*. The Board also determined that the amendments were reasonably necessary to have the effects and accomplish the objectives of:

- Clarifying that the purchase of property as joint tenants does not create original transferor status;
- Clarifying that there is no reassessment of property held in a joint tenancy so long as an original transferor is on title, but that the termination of the last surviving original transferor's interest in a joint tenancy will result in a reassessment;
- Identifying the joint tenancies in the rule's current examples 4 through 16 that are joint tenancies described in RTC section 65, subdivision (b), and subdivision (b)(1) of the rule, and are therefore subject to RTC section 65, subdivisions (c) and (d);
- Clarifying the conclusions reached in some of the current examples in subdivision (b);
- Reorganizing the current provisions of paragraphs (1) through (3) in subdivision (b) by topic in new subparagraphs in new subdivision (b)(1), renumbering paragraphs (4) through (8) as paragraphs (2) through (6), respectively in subdivision (b), and providing more descriptive subheadings for the number subparagraphs in new subdivision (b)(1) and renumbered paragraphs (2) through (6);
- Rearranging and renumbering the current examples in renumbered Rule 462.040, subdivision (b)(1), so that the examples correspond to the subheadings; and
- Clarifying that the exclusion from the definition of change in ownership for transfers between cotenants only applies when an affidavit has been submitted to the assessor.

The Board subsequently determined that it was necessary to make minor grammatical and clarifying changes to new subdivision (b)(1)(B), new examples 19 and 21, renumbered subdivision (b)(4), and subdivisions (c) and (d), and the Board included these minor changes in the Board's proposed amendments. (See footnote 2 in the initial statement of reasons for more detail.)

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties and benefit the public, local boards of equalization and assessment appeals boards, and county assessors by providing additional notice regarding the provisions of RTC section 65, as interpreted in *Benson, supra*, clarifying the types of transfers that create "original transferor" status, and clarifying the change in ownership consequences of transfers

terminating interests in joint tenancies described in RTC section 65, subdivision (b), under current law.

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 or the proposed amendments 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 requires state reimbursement 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, no cost to any local agency 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, no other non-discretionary cost or savings imposed on local agencies, and no 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 determined that the proposed amendments to Property Tax Rule 462.040 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, 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 new businesses or expand businesses currently doing 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 benefits of the rule to 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 Sonya Yim, Tax Counsel III (Specialist), by telephone at (949) 224-4804, by e-mail at [Sonya.Yim@boe.ca.gov](mailto:Sonya.Yim@boe.ca.gov), or by mail at State Board of Equalization, Attn: Sonya Yim, 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. Mr. Bennion is the designated backup contact person to Ms. Yim.

### **WRITTEN COMMENT PERIOD**

The written comment period ends at 9:00 a.m. on July 14, 2016, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rule 462.040 during the July 14, 2016, 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). The Board has also prepared a separate document identifying the current text of Rule 462.040 that the Board is proposing to move. 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, the initial statement of reasons, and document identifying the current text of the rule that the Board is proposing to move 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 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.

May 27, 2016

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

**SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY,  
AND ANTICIPATED BENEFITS**

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.

Also, Property Tax Rule 462.040 implements, interprets, and makes specific RTC sections 61, subdivision (e), 62, subdivision (f), and 65.1, subdivision (a), which contain change in ownership provisions that are specific to joint tenancies. RTC section 61, subdivision (e), provides that the term change in ownership includes “[t]he creation, transfer, or termination of any joint tenancy interest, except as provided in subdivision (f) of Section 62, and in Section 63 and Section 65.” RTC section 62, subdivision (f), provides that the term change in ownership does not include “[t]he creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.” And, RTC section 65.1, subdivision (a), provides that “Except for a joint tenancy interest described in subdivision (f) of Section 62, when an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred shall be reappraised. A purchase or change in ownership of an interest with a market value of less than 5 percent of the value of the total property shall not be reappraised if the market value of the interest transferred is less than ten thousand dollars (\$10,000) provided, however, that transfers during any one assessment year shall be cumulated for the purpose of determining the percentage interests and value transferred.”

In addition, paragraphs (4), (5), and (7) in Property Tax Rule 462.040, subdivision (b), implement, interpret, and make specific the more general change in ownership provisions of, respectively, RTC sections 62, subdivision (a), 63, and 63.1. RTC section 62, subdivision (a), provides that the term change in ownership does not include “(1) [a]ny transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in

that real property, such as a partition of a tenancy in common” and “(2) [a]ny transfer between an individual or individuals and a legal entity or between legal entities . . . that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer.” RTC section 63 provides an exclusion from the definition of change in ownership for interspousal transfers, and RTC section 63.1 provides an exclusion from the definition of change in ownership for specified parent-child and grandparent-grandchild transfers if a timely claim is filed.

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board make a number of amendments to Property Tax Rule 462.040. In response, the Board initiated the rulemaking process to make several of the requested amendments and amended Property Tax Rule 462.040, effective October 1, 2013. As relevant here, the 2013 amendments made the rule consistent with:

- Current law (see, e.g., Civ. Code, § 683.2, subd. (a)(1)), which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, for transfers to trusts occurring on or after October 1, 2013 (the effective date of the amendments);
- Family Code section 297.5 regarding the rights, protections, and benefits of registered domestic partners and RTC section 62, subdivision (p), providing an exclusion from the definition of “change in ownership” for transfers between registered domestic partners;
- RTC section 62.3 providing an exclusion from the definition of change in ownership for transfers of a principal residence between two cotenants that take effect upon the death of the transferor cotenant if specified statutory requirements are met, including that the transferee submits a signed affidavit affirming that he or she continuously resided with the transferor at the residence for the one-year period immediately preceding the transfer; and
- RTC section 65, subdivision (b), by providing that all transferor(s) must be among the joint tenants for a transfer creating a joint tenancy or transferring a joint tenancy interest to be excluded from the definition of change in ownership, and that a transfer resulting in the elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants.

### Proposed Amendments

In its 2012 petition, the CAA also requested that examples be added to Property Tax Rule 462.040 to clarify the change in ownership consequence of transfers terminating certain joint tenancies under the current provisions of Rule 462.040, subdivision (b)(4), which are applicable to proportional transfers of interests in joint tenancies that are not described in RTC section 65, subdivision (b), and subdivision “(b)(1)” of Rule 462.040. Due to ongoing litigation regarding a transfer terminating a joint tenancy, changes to this subdivision were deferred during 2012 and 2013. This litigation, *Richard N. Benson v.*

*Marin County Assessment Appeals Board* (2013) 219 Cal.App.4th 1445 (hereafter *Benson*), has now been finally decided.

As a result, Board staff reviewed *Benson, supra*. In that case, brother A owned real property. Brother A transferred the real property into a joint tenancy with brother B, and the transfer creating the joint tenancy was excluded from being a 50 percent change in ownership of the real property because the joint tenancy was a joint tenancy described in RTC section 65, subdivision (b). Then, brother B subsequently transferred his joint tenancy interest to himself as a tenant in common and argued that the proportional transfer was excluded from the definition of change in ownership under RTC section 62, subdivision (a). However, the court agreed with the county assessor that brother B's transfer of his joint tenancy interest to himself as a tenant in common was a change in ownership triggering reassessment of his 50 percent interest under section 2, subdivision (a), of article XIII A of the California Constitution. This was because the joint tenancy of A and B was a joint tenancy described in RTC section 65, subdivision (b). The transfer of B's interest to himself terminated the joint tenancy and constituted a change in ownership under the express terms of RTC sections 61, subdivision (f), and 65, subdivision (a). And, the court held that the provisions in RTC section 62, subdivision (a), excluding specified proportional transfers from the definition of change in ownership do not apply to transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), because the Legislature intended that subdivision (f) be the only subdivision in RTC section 62 that applies to transfers of interests in joint tenancies described in RTC section 65, subdivision (b).

Board staff also reviewed the current provisions of Property Tax Rule 462.040, subdivision (b)(4) (referred to in the CAA's petition), which implement, interpret, and make specific the provisions in RTC section 62, subdivision (a), excluding specified proportional transfers from the definition of change in ownership, and explain how the statutory provisions apply to transfers of interest in joint tenancies, "other than" joint tenancies described in RTC section 65, subdivision (b). And, staff determined that there were issues (or problems within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) because subdivision (b)(4) does not contain any clarifying examples and it does not clearly explain that the provisions in RTC section 62, subdivision (a), do not apply to transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), as the court held in *Benson*.

Board staff therefore developed a draft of proposed amendments to the rule to add six examples that clarify the change in ownership consequences of transfers terminating interests in joint tenancies. Two of the examples specifically illustrate the different consequences of transfers terminating interests held by an "original transferor or transferors" described in RTC section 65, subdivision (b), and held by persons "other than original transferors." The other four examples specifically illustrate that the provisions in RTC section 62, subdivision (a), excluding specified proportional transfers from the definition of change in ownership do not apply to transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), in accordance with

*Benson, supra*, but may apply to transfers terminating interests in joint tenancies that are “not” described in RTC section 65, subdivision (b).

While preparing the draft amendments, staff determined that the current provisions in Property Tax Rule 462.040, subdivision (b), would be easier to understand if they were reorganized by topic. Therefore, to better organize subdivision (b), staff’s draft amendments combined paragraphs (1) through (3) in subdivision (b) into a new subdivision (b)(1). Staff’s draft amendments included current subdivision (b)(1)’s provisions explaining the general requirements to qualify for the exclusion from the definition of change in ownership provided by RTC section 65, subdivision (b), and create “original transferor” status at the beginning of new subdivision (b)(1) with the rule’s three current examples (4, 6, and 11) illustrating the general requirements. Staff’s draft amendments included current subdivision (b)(1)’s provisions explaining the requirements for a spouse or registered domestic partner to be considered an original transferor in new subdivision (b)(1)(A) with the rule’s four current examples (7-10) illustrating the requirements. Staff’s draft amendments included current subdivision (b)(2)’s provisions explaining the consequences of transfers terminating an original transferor’s interest in a joint tenancy in new subdivision (b)(1)(B) with the rule’s current example (14) and one of the new examples (discussed above) illustrating the consequences. Staff’s draft amendments included current subdivision (b)(3)’s provisions explaining the consequences of transfers terminating an interest in a joint tenancy held by a person other than an original transferor in new subdivision (b)(1)(C) with the rule’s two current examples (15 and 16) and one of the new examples (discussed above) illustrating the consequences. Staff’s draft amendments included current subdivision (b)(1)’s provisions regarding transfers of joint tenancy interests into trusts in new subdivision (b)(1)(D) with the rule’s current examples (5 and 12) regarding transfers to trusts. Staff’s draft amendments renumbered current paragraphs (4) through (8), as paragraphs (2) through (6), respectively, in new subdivision (b), and added the four other new examples (discussed above) to renumbered subdivision (b)(2) regarding proportional transfers. Board staff’s draft amendments also added more descriptive subheadings to the numbered subparagraphs in new subdivision (b)(1) and renumbered paragraphs (2) through (6) in subdivision (b) for additional clarity, and renumbered the current examples in subdivision (b).

In addition, while preparing the draft amendments, staff determined that it would be easier to understand how the Board reached the conclusions in the current examples in Rule 462.040, subdivision (b), if the examples more clearly identified the joint tenancies that are joint tenancies described in RTC section 65, subdivision (b), and are therefore subject to RTC section 65, subdivisions (c) and (d). Therefore, staff’s draft amendments revised new subdivision (b)(1) of the rule so that it refers to a joint tenancy described in RTC section 65, subdivision (b), as a “joint tenancy described in subdivision (b)(1)” of the rule, and revised the old and new examples in new subdivision (b)(1)(A) through (D) and renumbered subdivision (b)(2) so they identify the joint tenancies that are joint tenancies described in subdivision (b)(1) of the rule.

Board staff subsequently provided its draft of the proposed amendments to the county assessors and other interested parties for comment via Letter To Assessors (LTA) 2015/033, dated July 2, 2015, which requested that written comments be submitted by August 14, 2015. Then, Board staff met with the interested parties on October 21, 2015, to discuss staff's draft amendments to Property Tax Rule 462.040.

The interested parties recommended and Board staff agreed that:

- New subdivision (b)(1) should include language informing readers that the purchase of property as joint tenants does not create original transferor status based upon the Board's Legal Department's long-standing opinion that purchasers are transferees, but are not transferors of the purchased property, within the meaning of RTC section 65, subdivision (b). (See, e.g. the Legal Department's opinion in the November 3, 1986, back-up letter to Property Tax Annotation 220.0307 (11/3/86));<sup>1</sup>
- Current example 8 should be revised to clarify that A died "while D was A's husband";
- Current example 12 should identify the date of the last step in the example's step transaction as the date of the change in ownership resulting from collapsing the transaction's steps under the step-transaction doctrine to be consistent with current law (See, e.g., *Crow Winthrop Operating Partnership v. Orange County* (1992) 10 Cal.App.4th 1848);
- One of the new examples should be further clarified to fully illustrate that the exclusions from the definition of change in ownership in RTC section 62, subdivision (a)(2), and RTC section 65 do not apply to a transfer of property held in a joint tenancy described in RTC section 65, subdivision (b), to a legal entity; and
- Renumbered subdivision (b)(6) should clarify that the exclusion from the definition of change in ownership for transfers between cotenants only applies when an affidavit has been submitted to the assessor, as required by RTC section 62.3.

Therefore, staff developed a second draft of the proposed amendments to the rule and distributed it to interested parties for comment via LTA 2015/063 dated December 31, 2015, which requested that written comments be submitted by February 12, 2016.

Board staff received a few comments recommending nonsubstantive changes to the second draft of the proposed amendments from interested parties in response to LTA 2015/063, all of which were accepted. Therefore, staff did not hold a second interested parties meeting.

Staff subsequently prepared a revised draft of the proposed amendments to Property Tax Rule 462.040, which incorporated the nonsubstantive changes recommended by the

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<sup>1</sup> Annotations are published in the Board's Property Taxes Law Guide and are summaries of the conclusions reached in selected legal rulings of the Board's Legal Department. (Cal. Code Regs., tit. 18, § 5700.)

interested parties, deleted current example 13 because it is included in current example 14, and renumbered the following old and new examples accordingly. Staff also prepared Formal Issue Paper 16-04, and submitted it to the Board with the revised draft of the proposed amendments for consideration during its March 30, 2016, Property Tax Committee meeting.

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

- Combine paragraphs (1) through (3) in subdivision (b) into a new subdivision (b)(1);
- Consolidate current subdivision (b)(1)'s provisions explaining the general requirements to qualify for the exclusion from the definition of change in ownership provided by RTC section 65, subdivision (b), and create "original transferor" status at the beginning of new subdivision (b)(1) with the rule's current examples illustrating the general requirements;
- Clarify in new subdivision (b)(1) that the purchase of property as joint tenants does not create original transferor status, consistent with RTC section 65, subdivision (b);
- Consolidate in newly created subdivision (b)(1)(A) the rule's current provisions and examples regarding transfers between spouses and registered domestic partners;
- Consolidate in newly created subdivision (b)(1)(B) the rule's current provisions and example explaining the consequences of transfers terminating an original transferor's interest in a joint tenancy.
- Clarify in a new example included in newly created subdivision (b)(1)(B) that the termination of the last surviving original transferor's interest will result in a reassessment, consistent with RTC section 65, subdivision (c);
- Delete current example 13 because it duplicates current example 14;
- Consolidate in newly created subdivision (b)(1)(C) the rule's current provisions and examples explaining the consequences of transfers terminating an interest in a joint tenancy held by a person other than an original transferor;
- Clarify in a new example included in newly created subdivision (b)(1)(C) that there is no reassessment as long as an original transferor continues to be on title, consistent with RTC section 65, subdivision (d);
- Consolidate in newly created subdivision (b)(1)(D) the rule's current provisions and examples regarding transfers to trusts that occurred between November 13, 2003 and September 30, 2013;
- Renumber paragraphs (4) through (8) in subdivision (b) as paragraphs (2) through (6), respectively;
- Add four new examples to renumbered subdivision (b)(2) to specifically illustrate that the provisions in RTC section 62, subdivision (a), do not apply to transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), in accordance with *Benson, supra*, but may apply to transfers terminating joint tenancies that are "not" described in RTC section 65, subdivision (b);

- Add more descriptive subheadings to all the numbered subparagraphs in new subdivision (b)(1) and renumbered paragraphs (2) through (6) in subdivision (b) for additional clarity and to make the rule easier to navigate;
- Clarify in subdivision (b)(6) that the exclusion from the definition of change in ownership for transfers between cotenants only applies when an affidavit has been submitted to the assessor, as required by RTC section 62.3; and
- Provide more detailed information in current examples 4 through 16 to more clearly identify the joint tenancies that are joint tenancies described in RTC section 65, subdivision (b), and Rule 462.040, subdivision (b)(1), and renumber the current examples.

The recommendations in the formal issue paper 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 30, 2016, 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 Board determined that the amendments were reasonably necessary for the specific purposes of addressing the CAA's petition and the issues (or problems) created by the facts that Property Tax Rule 462.040, subdivision (b)(4), does not contain any clarifying examples and it does not clearly explain that the provisions in RTC section 62, subdivision (a), do not apply to transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), as the court held in *Benson, supra*. The Board also determined that the amendments were reasonably necessary for the specific purposes of:

- Clarifying that the purchase of property as joint tenants does not create original transferor status;
- Clarifying that there is no reassessment of property held in a joint tenancy so long as an original transferor is on title, but that the termination of the last surviving original transferor's interest in a joint tenancy will result in a reassessment;
- Identifying the joint tenancies in the rule's current examples 4 through 16 that are joint tenancies described in RTC section 65, subdivision (b), and subdivision (b)(1) of the rule, and are therefore subject to RTC section 65, subdivisions (c) and (d);
- Clarifying the conclusions reached in some of the current examples in subdivision (b);
- Reorganizing the current provisions of paragraphs (1) through (3) in subdivision (b) by topic in new subparagraphs in new subdivision (b)(1), renumbering paragraphs (4) through (8) as paragraphs (2) through (6), respectively in subdivision (b), and providing more descriptive subheadings for the number subparagraphs in new subdivision (b)(1) and renumbered paragraphs (2) through (6);
- Rearranging and renumbering the current examples in renumbered Rule 462.040, subdivision (b)(1), so that the examples correspond to the subheadings; and

- Clarifying that the exclusion from the definition of change in ownership for transfers between cotenants only applies when an affidavit has been submitted to the assessor.<sup>2</sup>

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties and benefit the public, local boards of equalization and assessment appeals boards, and county assessors by providing additional notice regarding the provisions of RTC section 65, as interpreted in *Benson, supra*, clarifying the types of transfers that create "original transferor" status, and clarifying the change in ownership consequences of transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), under current law.

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 or the proposed amendments to Property Tax Rule 462.040.

#### DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 16-04, the attachments to the issue paper, and the comments made during the Board's discussion of the issue paper during its March 30, 2016, 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

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<sup>2</sup> The Board subsequently determined that it was necessary to make minor grammatical changes to new subdivision (b)(1)(B) and new examples 19 and 21. It was necessary to make minor changes to clarify that: (1) new subdivision (b)(1)(B)'s reference to "(b)(1)" refers to "subdivision (b)(1) of this rule"; (2) new example 21 refers to a transfer of "an interest in," rather than a transfer "from," a joint tenancy; (3) "reasonable cause," as defined in subdivision (d), includes a "sales contract," or "other written document," such as the sales contract in renumbered example 22; and (4) subdivision (d) refers to the step-transaction "doctrine." Also, it was necessary to replace "subsection" with "subdivision" in renumbered subdivision (b)(4) and replace "section" with "rule" in subdivisions (c) and (d) for consistency. Therefore, all of these minor changes were included in the Board's proposed amendments.

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)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

As explained in more detail above, the proposed amendments to Property Tax Rule 462.040 make the rule consistent with current law regarding the types of transfers that create “original transferor” status under RTC section 65, subdivision (b), the change in ownership consequences of transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), and the applicability of the exclusion from the definition of change in ownership for transfers between cotenants, under RTC section 62.3. The proposed amendments also reorganize the current provisions in paragraphs (1) through (3) in subdivision (b) by topic in new subparagraphs in new subdivision (b)(1), provide more descriptive subheadings for the numbered paragraphs and subparagraphs in subdivision (b), and rearrange and renumber the examples in new subdivision (b)(1) so that the examples correspond to the subheadings. As such, the Board anticipates that the proposed amendments will promote fairness throughout California’s 58 counties and benefit the public, local boards of equalization and assessment appeals boards, and county assessors by providing additional notice regarding the provisions of RTC section 65, as interpreted in *Benson, supra*, clarifying the types of transfers that create “original transferor” status, and clarifying the change in ownership consequences of transfers terminating interests in joint tenancies described in RTC section 65, subdivision (b), under current law.

The proposed amendments do not mandate that individuals or businesses do anything that is not already required by Property Tax Rule 462.040 or the RTC, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave in the absence of the proposed regulatory action, or that would have a significant effect on the state’s economy or the state’s revenue. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and businesses. And, the Board has determined that the proposed amendments to Property Tax Rule 462.040 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Therefore, based upon these facts and all of the information in the rulemaking file, the Board has also 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 benefits of Property Tax Rule 462.040 to 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 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 of property do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest and after such creation or transfer, all transferor(s) are among the joint tenants. Upon the creation of such a joint tenancy (hereafter, a joint tenancy described in subdivision (b)(1)), ~~Such a transferor who is also a transferee is, therefore, considered to be an “original transferor” 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 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 as one of the joint tenants. The purchase of property as joint tenants does not create original transferor status. 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. The joint tenancy of A and B is a joint tenancy described in subdivision (b)(1) of this rule, and A and B are both “original transferors.”

Example 5: ~~A and B purchase property as joint tenants. On December 12, 2004, A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be~~

“original transferors.” If A and B had transferred their interests into trust 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 56: A and B purchase property as joint tenants. A and B transfer to A, B, C, and D as joint tenants. No change in ownership because the joint tenancy of A, B, C, and D is a joint tenancy described in subdivision (b)(1) of this rule. 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 because the joint tenancy of A, B, C, and D is a joint tenancy described in subdivision (b)(1) of this rule. A would be an “original transferor” and B, C, and D would be “other than original transferors.”

Example 6: A and B acquire real property as joint tenants. A and B transfer the property to B, C, and D, as joint tenants. 66 2/3 percent change in ownership of the transferred interests because the joint tenancy of B, C, and D is not a joint tenancy described in subdivision (b)(1) of this rule since both of the transferors are not transferees, and B has only retained an undivided 33 1/3 percent interest in the real property, as a joint tenant, after the transfer. B does not become an “original transferor” since this is not a joint tenancy described in subdivision (b)(1) of this rule.

(A) Spouse of “Original Transferor.” 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.

Example 7: A and B acquire property as joint tenants. A and B transfer the property to A, B, C, D and E as joint tenants. E is B’s wife. No change in ownership because the joint tenancy of A, B, C, D, and E is a joint tenancy described in subdivision (b)(1) of this rule since 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 8: A is the sole owner of property. A grants the property to A, B, and C as joint tenants. The joint tenancy of A, B, and C is a joint tenancy described in subdivision (b)(1) of this rule; A is an “original transferor,” and B and C are “other than original transferors.” A dies while D is A’s husband. A’s interest in the property passes by operation of law to B and C, resulting in a 100 percent change in ownership because, after A’s death, the only original transferor is no longer on title (as explained in subdivision (b)(1)(B) of this rule). Subsequently, B and C transfer the property to B, C, and D as joint tenants. ~~D is A’s husband.~~ The new joint tenancy of B, C, and D is a joint tenancy described in subdivision (b)(1) of this rule. B and C are transferors who are among the transferees and thereby become “original transferors.” However, 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 of A, B, and C.

Example 9: A transfers property to A and B as joint tenants. The joint tenancy of A and B is a joint tenancy described in subdivision (b)(1) of this rule; 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 the property to A, B, and C as joint tenants. C is A’s registered domestic partner. C is an “original transferor” because he is the registered domestic partner of an “original transferor.” and acquired his interest in the joint tenancy during the period that A was an “original transferor.” B becomes an “original transferor” because he is a transferor who is among the transferees.

Example 10: A transfers property to A and B as joint tenants. The joint tenancy of A and B is a joint tenancy described in subdivision (b)(1) of this rule; A is an “original transferor,” and B is an “other than original transferor.” A and B, as joint tenants, transfer the property to 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~~ is the registered domestic partner of ~~A~~ an “original transferor” and C acquired an interest by means of a transfer from A. C takes the place of A because C is A’s registered domestic partner. Also, B remains on title as a transferor who is also a transferee, and thereby becomes an “original transferor.”

Example 11: ~~A and B acquire real property as joint tenants. A and B 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 12: A and B purchase property as joint tenants. 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. 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)(B) Termination of “Original Transferor’s” Interest. The transfer terminates an “original transferor’s” interest in a joint tenancy described in subdivision (b)(1) of this rule and the interest vests in whole or in part in the remaining “original transferors<sub>2</sub>”; 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 11: A transfers property to A and B as joint tenants. The joint tenancy of A and B is a joint tenancy described in subdivision (b)(1) of this rule; A is an “original

transferor,” and B is an “other than original transferor.” A and B transfer the property to B and C as joint tenants. B does not become an original transferor because A is not one of the transferees. 100 percent change in ownership because A, the only original transferor, is no longer on title.

~~Example 13: 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 ~~12~~14: A and B transfer property to A, B, C, and D as joint tenants. The joint tenancy of A, B, C, and D is a joint tenancy described in subdivision (b)(1) of this rule; A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest in the property 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 in the property to C and D. 100 percent change in ownership because B was the last surviving “original transferor.”

~~(3)(C) Termination of “Other Than Original Transferor’s” Interest.~~ The transfer terminates a joint tenancy interest held by an “other than ~~an~~ original transferor” in a joint tenancy described in subdivision (b)(1) of this rule 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 13: A transfers property to A and B as joint tenants. The joint tenancy of A and B is a joint tenancy described in subdivision (b)(1) of this rule; A is an “original transferor,” and B is an “other than original transferor.” A and B transfer the property to A and C as joint tenants. No change in ownership because A, an “original transferor,” continues to be on title. A remains an “original transferor.” C is an “other than original transferor.”

Example ~~14~~15: A and B transfer property to A, B, C, and D as joint tenants. The joint tenancy of A, B, C, and D is a joint tenancy described in subdivision (b)(1) of this rule; A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest in the property 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 in the property 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 ~~15~~16: A and B transfer property to A, B, C, and D as joint tenants. The joint tenancy of A, B, C, and D is a joint tenancy described in subdivision (b)(1) of this rule; A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest in the property 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 “other than original transferor,” grants his interest in the property 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. Since B is an “original transferor,” there is no change in ownership. Upon D’s death, the joint tenancy is terminated and B ceases to be an “original transferor.”

(D) “Original Transferor” Status Through Trusts. For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, 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.

Example 16: A and B purchase property as joint tenants. On December 12, 2004, A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be “original transferors.” If A and B had transferred their interests into trust on or 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 17: A and B purchase property as joint tenants. 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. 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. After collapsing the steps, the transfer from A and B to C and D is a 100 percent change in ownership as of January 13, 2004.

(4)(2) Proportional Ownership Interest Transfer. For other than joint tenancies described in subdivision (b)(1) of this rule, the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

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

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

Example 18: A and B purchased property as joint tenants. A and B transfer the property to A and B as tenants in common. No change in ownership as both A's and B's interests were reassessed when the property was purchased, the joint tenancy of A and B was not a joint tenancy described in subdivision (b)(1) of this rule, and this transfer was merely a change in the method of holding title.

Example 19: A is the sole owner of property. A grants the property to A and son B as joint tenants. The joint tenancy of A and B is a joint tenancy described in subdivision (b)(1) of this rule; A is an "original transferor," and B is an "other than original transferor." A dies. A's interest passes by operation of law to B. B timely files for the parent-child exclusion (as provided in subdivision (b)(5) of this rule) so there is no change in ownership. Subsequently, B transfers to B and brother C as joint tenants. The joint tenancy of B and C is a joint tenancy described in subdivision (b)(1) of this rule; B is an "original transferor," and C is an "other than original transferor." Later, C transfers C's 50 percent interest in the property to C as a tenant in common. The creation of the tenancy in common terminates the joint tenancy and results in a reassessment of C's 50 percent interest because the joint tenancy of B and C was a joint tenancy described in subdivision (b)(1) of this rule, and C's interest did not vest in an original transferor.

(C) A transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. Such transferees shall be considered to be the "original co-owners" pursuant to section 64(d) of the Revenue and Taxation Code for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the legal entity property.

Example 20: A and B purchased property as joint tenants. A and B transfer the property to X Corporation, each taking back 50 percent of the stock. No change in ownership because A's and B's joint tenancy was not a joint tenancy described in subdivision (b)(1) of this rule, and A's and B's interests in the property remained the same after the transfer. However, A and B are "original co-owners" pursuant to section 64(d) of the Revenue and Taxation Code.

Example 21: A owns property. A transfers the property to A and B as joint tenants. A is an "original transferor" and B is an "other than original transferor" because the joint tenancy of A and B is a joint tenancy described in subdivision (b)(1) of this rule; for that reason as well, the proportional ownership interest exclusion described in section 62(a)(2) of the Revenue and Taxation Code will not apply to any transfer of interests in this joint tenancy. A and B transfer the property to X Corporation, each taking back 50 percent of the stock. 100 percent change in ownership because: (i) as explained above, the proportional ownership interest exclusion does not apply to this transfer; (ii) the transfer terminated the joint tenancy of A and B, thereby terminating the "original transferor" status of A pursuant to subdivision (b)(1)(C) of this rule; and (iii) the interests in the property were not vested in whole or in part in A as the only original transferor, after the termination, in violation of subdivision (b)(1)(B) of this rule.

~~(5)~~(3) Interspousal or Registered Domestic Partner Exclusion. 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)~~(4) De Minimis Exclusion. 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 ~~subdivisionsubsection~~, the “accumulated interests transferred” shall not include any transfer of an interest that is otherwise excluded from change in ownership.

~~(7)~~(5) Parent-Child or Grandparent-Grandchild Exclusion. 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 section 63.1 of the Revenue and Taxation Code.

~~(8)~~(6) Cotenancy Exclusion. The transfer is one to which the cotenancy exclusion applies, and for which an affidavit has been submitted as required by ~~pursuant to~~ section 62.3 of the Revenue and Taxation Code.

(c) Rebuttable Presumption. For purposes of this ~~rulesection~~, 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 ~~rulesection~~, 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 sales contract, a deed, Affidavit of Death of Joint Tenant, a trust, will, ~~or~~ estate plan, or other written document indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step-transaction doctrine exist.

Example 2247: 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. The assessor may determine that the sales contract establishes that A and B intended to hold title as joint tenants upon purchase.

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.

**Current Text of California Code of Regulations,  
Title 18, Section 462.040, *Change in Ownership - Joint Tenancies*,  
The State Board of Equalization is Proposing to Move**

As part of the proposed amendments to California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*, the Board is proposing to:

1. Move the following text from current subdivision (b)(1) to new subdivision (b)(1)(A):

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.

2. Move the following text from current subdivision (b)(1) to new subdivision (b)(1)(D):

For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, 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.

3. Move the following text from current example 5 and renumber it as example 16:

A and B purchase property as joint tenants. On December 12, 2004, A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be “original transferors.” If A and B had transferred their interests into trust on or 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.

4. Move the following text from current example 11 and renumber it as example 6 (before amending it):

A and B acquire real property as joint tenants. A and B transfer to B, C, and D, as joint tenants.  $66\frac{2}{3}$  percent change in ownership of the transferred interests because A is not one of the transferees.

5. Move the following text from current example 12 and renumber it as example 17 (before adding a new last sentence):

A and B purchase property as joint tenants. 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. 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.

## Regulation History

**Type of Regulation:** Property Tax Rule

**Rule:** 462.040

**Title:** *Change in Ownership – Joint Tenancies*

**Preparation:** Glenna Schultz

**Legal Contact:** Sonya Yim

Proposed amendments to clarify and better organize the rule, and make it consistent with Revenue and Taxation Code sections 62.3 and 65.

### History of Proposed Rule:

July 14, 2016	Public Hearing
May 27, 2016	OAL publication date; 45-day public comment period begins; Interested Parties mailing
May 16, 2016	Notice to OAL
March 30, 2016	Property Tax Committee, Board Authorized Publication (Vote 5-0)

Support: NA

Oppose: NA