

Issue Paper Number **16-04**



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Property Tax Rule 462.040,
Change in Ownership—Joint Tenancies

I. Issue

Should the State Board of Equalization (Board) authorize publication of amendments to Property Tax Rule¹ 462.040, *Change in Ownership—Joint Tenancies*?

II. Alternative 1 - Staff Recommendation

Staff recommends that the attached amendments to Rule 462.040 be authorized for publication (see Attachment A).

III. Other Alternative(s) Considered

None

¹ All references to Rules are Property Tax Rules which are regulations codified in division 1 of title 18, California Code of Regulations.

IV. Background

Under Government Code section 15606, subdivision (c), the Board is given the power and duty to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. In compliance with this duty, the Board adopted Property Tax Rule 462.040, *Change in Ownership—Joint Tenancies*.

In 2006, the California Assessors' Association (CAA) requested that the Board initiate a rulemaking process to amend Rule 462.040. The Board initially commenced an abbreviated interested parties process in response to the CAA's request, but in December 2006, the Board instructed staff to begin a more in-depth interested parties process to review all of the CAA's concerns regarding the rule. At the request of Board staff, the CAA resubmitted its request to amend Rule 462.040 on February 8, 2007 to commence the interested parties process. However, on May 8, 2007, the CAA requested that the interested parties process be delayed.

On February 22, 2012, the Board received a new petition from the CAA requesting that the Board make amendments to the rule. In response, the Board initiated the rulemaking process to make several of the requested amendments and amended Rule 462.040, effective October 1, 2013.

The CAA also requested that examples be added to clarify the change in ownership consequence of severances of certain joint tenancies under Rule 462.040, subdivision (b)(4)(C). However, due to ongoing litigation, these changes were deferred. This litigation, *Richard N. Benson v. Marin County Assessment Appeals Board* (2013) 219 Cal.App.4th 1445, has now been decided. These examples have been added as part of these proposed changes.

V. Discussion

Rule 462.040 reflects the change in ownership provisions for transactions that create, transfer, or terminate joint tenancy interests under the provisions of Article XIII A of the California Constitution (Proposition 13). The rule was last amended by the Board in June 2013, with an effective date of October 1, 2013.

Staff developed a draft of proposed amendments to the rule and distributed it to interested parties for comments/suggestions via Letter To Assessors (LTA) 2015/033. Staff met with interested parties in Sacramento on October 21, 2015 to discuss the proposed amendments to Rule 462.040. In response to items discussed at the interested parties meeting, staff developed a second draft of proposed amendments to the rule and distributed it to interested parties for comments/suggestions via LTA 2015/063.

A few nonsubstantive comments were received in response to LTA 2015/063, all of which were accepted by staff. Thus, no second interested parties meeting was held.

The draft rule is proposing to add examples to clarify the change in ownership consequence of transfers of interests in joint tenancies, including transfers terminating joint tenancies. In addition, the draft rule is proposing to update Rule 462.040, subdivision (b), to more clearly identify the joint tenancies in the rule's current examples that are joint tenancies described in subdivision (b)(1) of the rule and are therefore subject to Revenue and Taxation Code section 65, subdivisions (c) and (d). The draft rule is proposing to further clarify the conclusions reached in some of the current examples in subdivision (b). Also, the draft rule is proposing to renumber and add more descriptive subheadings to Rule 462.040,

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subdivision (b), and rearrange the examples in renumbered Rule 462.040(b)(1) so that the examples correspond to the subheading.

There are no outstanding issues following the interested parties meeting. The attached draft of Rule 462.040 reflects consensus of those who participated in the interested parties process (see Attachment A).

VI. Alternative 1 - Staff Recommendation

Authorize for publication amendments to Property Tax Rule 462.040.

A. Description of Alternative 1

Staff recommends that the attached amendments to Rule 462.040 be authorized for publication (see Attachment A). The amendments will incorporate the provisions requested in the petition of the California Assessors' Association (as revised at the interested parties meetings held on August 27, 2012 and October 21, 2015) and others who participated in the interested parties process.

B. Pros of Alternative 1

The proposed amendments to Rule 462.040 will:

- Add subdivision titles to make the rule easier to navigate.
- Address county assessors' concerns about certain transfers by providing in subdivision (b)(1) that acquiring title as joint tenants does not create original transferor status and to create original transferor status through a transaction that adds another person, the additional person must be one of the joint tenants, consistent with Revenue and Taxation Code section 65, subdivision (b);
- Consolidate in newly created subdivision (b)(1)(A) the provisions and examples for transfers between spouses and registered domestic partners, consistent with Revenue and Taxation Code section 62, subdivision (p), and section 63;
- Clarify 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 Revenue and Taxation Code section 65, subdivision (c);
- Clarify in newly created subdivision (b)(1)(C), that there is no reassessment as long as an "original transferor" is on title, consistent with Revenue and Taxation Code section 65, subdivision (d);
- Consolidate in newly created subdivision (b)(1)(D) the provisions and examples for transfers to trusts that occurred between November 13, 2003 and September 30, 2013;
- Clarify the proportional ownership interest transfer by adding examples that are consistent with Revenue and Taxation Code section 62, subdivision (a)(2), *Richard N. Benson v. Marin County Assessment Appeals Board*, and section 64, subdivision (d);
- Address county assessors' concerns in subdivision (b)(6) that the cotenancy exclusion applies when an affidavit has been submitted to the assessor, consistent with section Revenue and Taxation Code 62.3; and

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- Provide more detailed information in Examples 4 through 22 to clarify that the creation of original transferor status is pursuant to Rule 462.040, subdivision (b)(1).

C. Cons of Alternative 1

None

D. Statutory or Regulatory Change for Alternative 1

Action by the Board to adopt amendments to Rule 462.040 will amend section 462.040 of title 18 of the California Code of Regulations.

E. Operational Impact of Alternative 1

None

F. Administrative Impact of Alternative 1

1. Cost Impact

Development of Property Tax Rules is within the scope of the statutory duties of the County-Assessed Properties Division and will be absorbed by existing staff.

2. Revenue Impact

None

G. Taxpayer/Customer Impact of Alternative 1

None

H. Critical Time Frames of Alternative 1

Action by the Board at its March 2016 meeting will allow time for the rulemaking process to proceed with a projected effective date of October 1, 2016 for the amendment to the rule.

VII. Other Alternatives

None

Preparer/Reviewer Information

Prepared by: Property Tax Department, County-Assessed Properties Division

Current as of: February 24, 2016

Rule 462.040. Change in Ownership - Joint Tenancies.

Authority: 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.

(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 644: 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 (b)(1) and the interest vests in whole or in part in the remaining "original transferors"; except that, upon the termination of the interest of the last surviving "original transferor," there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 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 1244: 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 1445: 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 1546: 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 from 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 subsection, 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 section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) Reasonable Cause. For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and "original transferors" if there is "reasonable cause" to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan

indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 2217: 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.