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STATE BOARD OF EQUALIZATION

State of California
Office of Administrative Law

In re:
Board of Equalization

NOTICE OF APPROVAL OF REGULATORY
ACTION

Regulatory Action:

Government Code Section 11349.3

Title 18, California Code of Regulations

OAL File No. 2013-0617-03 S

Adopt sections:

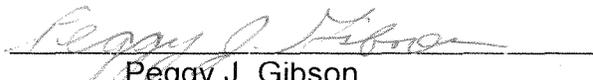
Amend sections: 462.040

Repeal sections:

The California State Board of Equalization in this rulemaking amends title 18, section 462.040 of the California Code of Regulations. This amendment makes the regulation consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy. The amendment clarifies that all transferor(s) must be among the joint tenants for the transfer to be excluded from change in ownership. The amendments also clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants. This amendment also updates the regulation to include transfers between registered domestic partners.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2013.

Date: 7/24/2013


Peggy J. Gibson
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW

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DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 7/29/2013
RE: Return of Approved Rulemaking Materials
OAL File No. 2013-0617-03S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-0617-03S regarding Change in Ownership - Joint Tenancies).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's Web site once OAL posts the Internet Web site link to the full text of the regulation that is received from the state agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at **postedregslink@oal.ca.gov**.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

per agency request

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2013-0415-01	REGULATORY ACTION NUMBER 2013-0617-03S	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	REGULATIONS 2013 JUN 17 P 2:08 OFFICE OF ADMINISTRATIVE LAW
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ENDORSED FILED
 2013 JUL 24 PM 3:23
[Signature]

AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2013, 17Z	PUBLICATION DATE 04/26/2013

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Change in Ownership—Joint Tenancies	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ACTION
	ADOPT
	AMEND 462.040
TITLE(S) 18	REPEAL

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
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5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE June 17, 2013
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
 JUL 24 2013
 Office of Administrative Law

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

462.040. Change in Ownership - Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The ~~subsequent~~ transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% percent of the property.

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

(1) ~~The transfer creates or transfers any joint tenancy interest, including an interest in a trust, and after such creation or transfer, the transferors is one of all transferor(s) are among the joint tenants. Such a transferor(s) who is also a transferee(s) and is, therefore, considered to be an “original transferors” for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an “original transferor” acquires an interest in the joint tenancy property either during the period that the “original transferor” holds an interest or by means of a transfer from the “original transferor,” such spouse shall also be considered to be an “original transferor.” “Spouse” includes a registered domestic partner who shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities and obligations as granted to and imposed upon spouses pursuant to section 297.5 of the Family Code. For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, any~~ Any joint tenant may also become an “original transferor” by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be “other than original transferors.” To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title. The elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants.

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both “original transferors.”

Example ~~54~~(a): A and B purchase property as joint tenants. On December 12, 2004, ~~Later~~ A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be “original transferors.” If A and B had transferred their

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

Example 65: A and B purchase property as joint tenants. A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors."

Example 76: A and B acquire property as joint tenants. A and B, as joint tenants, transfer to A, B, C, D, and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E, the wife of an "original transferor," is also an "original transferor." (C and D are "other than original transferors.")

Example 87-1: A is the sole owner of property. A grants to A, B, and C as joint tenants. A is an "original transferor." B and C are "other than original transferors." A, B, and C are joint tenants and A is an "original transferor." A dies. A's interest passes by operation of law to B and C, resulting in a 100 percent change in ownership. Subsequently, B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an "original transferor" because he did not acquire his interest from A during the period that A held an interest in the initial joint tenancy.

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

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

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

Example 129: A and B purchase property as joint tenants and transfer their joint

tenancy interests to each other through their respective trusts. A and B become “original transferors.” On August 13, 2003, A and B sell a 50% percent interest to C and D, with the deed showing A, B, C and D as joint tenants. A and B become “original transferors.” C and D become “other than original transferors.” On December 13, 2003, C and D then transfer their joint tenancy interests to their respective trusts for the benefit of the remaining joint tenants, each other through their trusts, so that both C and D become “original transferors.” On January 13, 2004, A and B then sell their remaining 50% percent to C and D, and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C and D do not become “original transferors” as the result of their transfers to each other.

(2) The transfer terminates an “original transferor’s” interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining “original transferors”; except that, upon the termination of the interest of the last surviving “original transferor,” there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 1340: A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant.

Example 1414: ~~Following the example set forth in Example 10 (above),~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. ~~Subsequently, B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal and B was the last surviving “original transferor.”~~

(3) The transfer terminates a joint tenancy interest held by “other than an original transferor” in a joint tenancy described in (b)(1) and the interest is transferred either to an “original transferor,” or to all the remaining joint tenants, provided that one of the remaining joint tenants is an “original transferor.” The “original transferor” status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 1512: ~~Following the example set forth in Example 10 (above),~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. C, not an “original transferor,” grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an “original transferor.”

Example 1613: ~~A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become “original transferors”.~~ A dies and A’s ~~A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. C, not an “original transferor,” grants his interest to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an “original transferor.” D dies and D’s~~ joint tenancy interest passes to B by operation of law, without a ~~Since B is an “original transferor,” there is no change in ownership, because B is an “original transferor.” Upon D’s~~ A’s ~~death, the joint tenancy is terminated and B ceases to be an “original transferor.”~~

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

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

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

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

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

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the “accumulated interests transferred” shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law section 63.1 of the Revenue and Taxation Code.

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

(c) Rebuttable Presumption. For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an “original transferor.” This presumption is not applicable to joint tenancies created after March 1, 1975.

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

Example 1714: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract and trust instruments establishes that A and B intended to hold title as joint tenants upon purchase, ~~and that each subsequently became an “original transferor.”~~

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