

**Updated Informative Digest for the State Board of Equalization’s
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Section 462.040, *Change in Ownership - Joint Tenancies***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Rule) 462.040, *Change in Ownership - Joint Tenancies*, on July 14, 2016. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Rule 462.040 without making any changes.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on July 14, 2016, to comment on the proposed regulatory action.

There have not been any changes to the applicable laws or the effects of, the objectives of, and anticipated benefits from the adoption of the proposed amendments to Rule 462.040 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

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 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 [(e)¹], 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

¹ The informative digest in the notice of proposed regulatory action contained a typographical error indicating subdivision (f) instead of subdivision (e).

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.