

State of California
BOARD OF EQUALIZATION
PROPERTY TAX RULES

Division 1. State Board of Equalization-Property Tax
Chapter 4. Equalization by State Board
Article 4. Change in Ownership and New Construction

Rule 462.200. Change in Ownership—Miscellaneous Arrangements.

Authority: Section 15606, Government Code.

Reference: Sections 60, 62 and 67, Revenue and Taxation Code; Section 1105, Civil Code; and Section 662, Evidence Code.

(a) SECURITY TRANSACTIONS. There are transactions that may be interpreted to be either a conveyance of the property or a mere security interest therein, depending on the facts. There is a rebuttable presumption under Civil Code Section 1105 and Evidence Code Section 662 that a grant of title to real property is a transfer of a present interest in the real property, including the beneficial use thereof, equal to a fee interest. In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

(1) The existence of a debt or promise to pay.

(2) The principal amount to be paid for reconveyance is the same, or substantially the same, as the amount paid for the original deed.

(3) A great inequality between the value of the property and the price alleged to have been paid.

(4) The grantor remaining in possession with the right to reconveyance on payment of the debt; and

(5) A written agreement between the parties to reconvey the property upon payment of the debt. The best evidence of the existence of any factor shall be an adjudication of the existence of the factor reflected in a final judicial finding, order, or judgment. Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, cancelled checks, insurance policies, and tax returns.

(b) DEED PRESUMPTION. When more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in property, unless an exclusion from change in ownership applies. In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

(1) The existence of a written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests.

(2) The monetary contribution of each party. The best evidence of the existence of any factor shall be an adjudication of the existence of the factor reflected in a final judicial finding, order, or judgment. Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, cancelled checks, insurance policies, and tax returns.

(c) HOLDING AGREEMENTS. A holding agreement is an agreement between an owner of the property, hereafter called a principal, and another entity, usually a title company, that the principal will convey property to the other entity merely for the purposes of holding title. The entity receiving title can have no discretionary duties but must act only on explicit instructions of the principal. The transfer of property to the holder of title pursuant to a holding agreement is not a change in ownership. There shall be no change in ownership when the entity holding title pursuant to a holding agreement conveys the property back to the principal.

(1) There shall be a change in ownership for property subject to a holding agreement when there is a change of principals.

(2) There shall be a change in ownership of property subject to a holding agreement if the property is conveyed by the holder of title to a person or entity other than the principal.

Rule 462.200 (Contd.)

(d) SALE AND LEASEBACK. There is a rebuttable presumption under Civil Code 1105 and Evidence Code 662 that a sale of real property, coupled with a leaseback, is a transfer of the present interest, including the beneficial use thereof, equal to a fee interest which constitutes a change in ownership of such property. This presumption may be rebutted by a proper written showing by the property owner, such as a written opinion or ruling by the Franchise Tax Board and/or the Internal Revenue Service, to the effect that the transaction is considered to be a financing transaction for state and/or federal income tax purposes.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended November 13, 1979, effective December 6, 1979.
Amended May 5, 1981, effective August 12, 1981.
Amended March 31, 1982, effective June 10, 1982.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(k).
Amended March 19, 1997, effective June 11, 1997.