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No. 2015/033

July 2, 2015

TO COUNTY ASSESSORS:

**PROPERTY TAX RULE 462.040,
CHANGE IN OWNERSHIP—JOINT TENANCIES**

On February 22, 2012, the Board of Equalization (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, *Change in Ownership – Joint Tenancies*. In response, the Board initiated the rulemaking process to make several of the requested amendments and amended Rule 462.040, effective October 1, 2013.

In its 2012 petition, the CAA also requested that examples be added to Rule 462.040 to clarify the change in ownership consequence of transfers terminating certain joint tenancies under Rule 462.040(b)(4). Due to ongoing litigation regarding a transfer terminating a joint tenancy, changes to this subdivision were deferred. This litigation, *Richard N. Benson v. Marin County Assessment Appeals Board* (2013) 219 Cal.App.4th 1445, has now been finally decided.

Therefore, the Board is now proposing to add examples to Rule 462.040 to clarify the change in ownership consequence of transfers of interests in joint tenancies, including transfers terminating joint tenancies. In addition, the Board 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(c) and (d). The Board is proposing to further clarify the conclusions reached in some of the current examples in subdivision (b).

Also, the Board is proposing to renumber and add more descriptive subheadings to Rule 462.040, subdivision (b), and rearrange the examples in renumbered Rule 462.040(b)(1) so that the examples correspond to the subheading. All the proposed changes to the rule are in strike-out and underline format. The portions of the rule and examples that have been moved are also highlighted.

Enclosed is a copy of Rule 462.040 with the proposed amendments. Interested parties may provide comments or revisions to the proposed amendments. Please submit your comments/revisions/solutions by August 14, 2015 to Ms. Glenna Schultz in the Property Tax Department. You may email your submissions to glenner.schultz@boe.ca.gov or mail them to the above address.

Following receipt of comments/revisions/solutions to the proposed amendments to the rule, if necessary the staff will meet with interested parties to discuss the issues.

All documents regarding this project will be posted to the project webpage at www.boe.ca.gov/proptaxes/rule462040.htm. If you have any questions regarding these proposed rule changes, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee
Deputy Director
Property Tax Department

DRK:grs
Enclosure

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. 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 614: 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 A is not one of the transferees, and B has only retained an undivided 33 1/3 percent interest in the real property, as a joint tenant, after the transfer.

(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. 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. Although, the joint tenancy of B, C, and D is a joint tenancy described in subdivision (b)(1) of this rule, 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 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 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 was 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 1243: 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.

Example 1344: 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 "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 14: 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," is on title.

Example 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 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 "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) Trusts as "Original Transferors." 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 517: 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 4218: 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.

(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 19: 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 20: 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 D 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 21: 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 section 64.

Example 22: A owns property. A transfers 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; A is an "original transferor," and B is an "other than original transferor." A and B transfer the property to X Corporation, each taking back 50 percent of the stock. 100 percent change in ownership because the transfer terminated the joint tenancy of A and B, and none of the interests in the property were vested in A, the only original transferor, after the termination.

(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 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 2347: 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.

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(c).
Amended October 15, 1998, effective January 29, 1999.
Amended and effective April 3, 2001. Made grammatical change to subsection B(1), Example 5, and Example 8.
Amended July 9, 2003, effective November 13, 2003.
Amended June 11, 2013, effective October 1, 2013.