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Executive Director

June 12, 1998

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

No. 98/31

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION

AMEND PROPERTY TAX RULES 462.040, CHANGE IN OWNERSHIP - JOINT
TENANCIES AND 462.180 CHANGE IN OWNERSHIP - LEGAL ENTITIES.

PUBLIC HEARING: WEDNESDAY, JULY 29, 1998 AT 1:30 P.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by Section 15606 (c) of the Government Code proposes to amend Regulations sections 462.040 and 462.180 in Title 18, Division 1 of the California Code of Regulations. A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on July 29, 1998. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by July 29, 1998.

INFORMATIVE DIGEST

1. Rule 462.040 Change in Ownership - Joint Tenancies

The proposed amendments clarify existing statutory provisions governing creation of "original transferor" status by amending the rule language and by adding examples. The proposed amendments also explain the manner in which the spouse of an "original transferor" becomes an "original transferor".

2. Rule 462.180 Change in Ownership - Legal Entities.

The proposed changes clarify existing statutory change in ownership provisions by adding explanatory language and more specific references to various aspects of legal entity transfers.

The express terms of the proposed action, written in plain English, are available from the agency contact person named in this notice.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendment of Rule 462.040 and Rule 462.180 does not impose a mandate on local agencies or school districts. Further, the Board has determined that the repeal will result in no additional direct or indirect costs to any State agency or any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, and that there are no other non-discretionary costs or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code Section 11346.53(c), the Board of Equalization finds that the amendment of Rule 462.040 and Rule 462.180 will not have a significant adverse economic impact on business, because the amendments only clarify existing statutory interpretations.

The amendment of these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The amendment of the regulations as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed amendments of the regulations will not affect small business because the amendments only clarify existing statutory interpretations.

ADVERSE ECONOMIC IMPACT ON PRIVATE PERSONS/BUSINESSES

There will be no adverse economic impact on private businesses or persons because the proposed amendments only clarify existing statutory interpretations.

FEDERAL REGULATIONS

Rule 462.040 and Rule 462.180 have no comparable Federal regulations.

AUTHORITY

Government Code Section 15606, subdivision (c).

REFERENCE

Revenue and Taxation Code Sections 60, 61, 62, 63, 63.1, 64, 65, 65.1 and 67.

CONTACT

Questions regarding the content of the proposed regulations should be directed to: Mr. Louis Ambrose, Tax Counsel, at P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 445-5580 FAX (916) 323-3387.

Written comments for the Board's consideration or requests to present testimony and bring witnesses to the public hearing should be directed to Ms. Mary Ann Stumpf, Regulations Coordinator, (916) 322-9569, and P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no alternative considered would be more effective in carrying out the purpose for which this action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND OF TEXT OF PROPOSED REGULATIONS

The Board has prepared a statement of reasons and strike-out versions of the proposed amendments. Those documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Mary Ann Stumpf, Regulations Coordinator, (916) 322-9569, at P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080.

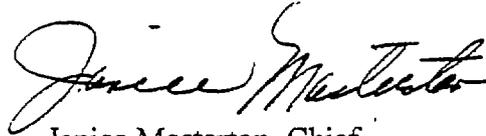
ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who

commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Stumpf. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Dated: June 2, 1998

STATE BOARD OF EQUALIZATION

A handwritten signature in cursive script, appearing to read "Janice Masterton".

Janice Masterton, Chief
Board Proceedings Division

Rule 462.040 CHANGE IN OWNERSHIP -- JOINT TENANCIES.

(a) ~~Except as is otherwise provided in subdivision (b), the~~ General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

~~(1) Examples:~~

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

~~(A) 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.~~

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

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

(1) The transfer creates or transfers any joint tenancy interest and after such creation or transfer, ~~the all transferor(s) transferors is one of~~ are among the joint tenants.

Such ~~transferor(s) transferors~~ who ~~is~~ are also a ~~transferee(s) transferees~~ in this situation ~~is~~ are 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. All other initial and subsequent joint tenants are considered to be "other than original transferors".

~~Example:~~

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 not "original transferors." To become original transferors, the transfer must be from A and B to A and B and at least one other person.

Example 5: $\text{\textcircled{E}}$ A and $\text{\textcircled{D}}$ B, as joint tenants, transfer to ~~C, D, E, and F~~ A, B, C, and D as joint tenants. No change in ownership because $\text{\textcircled{E}}$ A and $\text{\textcircled{D}}$ B, the transferors, are included among the transferees and are, therefore, "original transferors". ($\text{\textcircled{E}}$ C and $\text{\textcircled{F}}$ 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 6: 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 is also an "original transferor." (C and D are "other than original transferors.")

Example 7-1: A and B are joint tenants and A is an "original transferor". A dies. B transfers to B and C as joint tenants. C is A's husband. C does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy.

Example 7-2: Same as example 7-1, however, if A and B transfer to B and C before A dies, C is an original transferor because he was the spouse of an original transferor and he acquired an interest by means of a transfer from A.

Example 7-3: 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 C. C is an original transferor

Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3% change in ownership of the transferred interests because A is not of one the transferees.

Example 9: A and B transfer to A, B and a third person as joint tenants and, thereafter, the third person transfers his or her interest to A and B. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate, A and B do not

become "original transferors" as a result of the transfer to A, B and the third person.

(2) The transfer terminates an original transferor's interest in a joint tenancy described in ~~(A)~~ (b)(1) and the interest vests in whole or in part in the remaining original transferor~~(s)~~. transferors; For the 1980-81 assessment year and thereafter, any original transferor's interest which was previously reappraised under Section 65(a) (1) of the Revenue and Taxation Code in effect prior to September 26, 1980, shall be reversed if it does not constitute a change in ownership in accordance with this subdivision, 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:

Example 10: Following the example set forth in (1) ~~(above)~~, C A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, D, E, and F B, C, and D. No change in ownership because D B, an original transferor, remains as a joint tenant.

Example 11: Following the example set forth in Example 10 (above), 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.

~~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 property held by all transferors.~~

(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: ~~(A)~~ to an original transferor~~(s)~~, or ~~(B)~~ to all the remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

Example:

Example 12: Following the example set forth in ~~(2)~~ Example 10 (above), E C, not an original transferor, grants his interest to D B and F D.

No change in ownership because E C grants to the remaining joint tenants, D B and F D, and D B is 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 ~~to~~ 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(s) of the ownership interests in the property.)

~~(5) The transfer occurred between 3/1/75 and 3/1/81 and was between or among co-owners of property which was:~~

~~(A) held by such co-owners for all or part of the period between March 1, 1975, and March 1, 1981, and~~

~~(B) the property was eligible for the homeowners' exemption during the entire period of co-ownership.~~

~~(6) The transfer creates or terminates a joint tenant's interest between spouses.~~

~~(7) The transfer terminates a joint tenancy or a community property interest between spouses or former spouses in connection with a death or a property settlement agreement or decree of dissolution of a marriage or of a legal separation.~~

(5) The transfer is one to which the interspousal exclusion applies.

~~(8)~~ (6) The transfer is of a joint tenancy interest(s) 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 March January 1 through ~~the last day~~

~~in February of the following year~~ 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, exclusive of any interest transferred to a spouse or other exempt transfer, 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.

(c) 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, ~~shall be~~ is an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 63, 63.1, 65, 65.1 and 67, Revenue and Taxation Code.

Rule 462.180 CHANGE IN OWNERSHIP -- LEGAL ENTITIES.

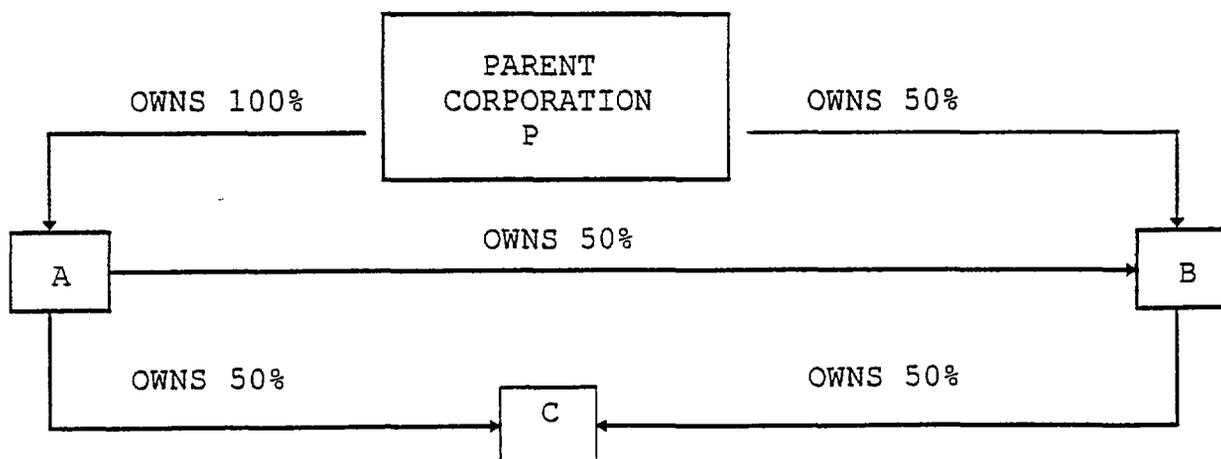
(a) **Transfers of Real Property to and by Legal Entities.** ~~Except as otherwise provided in subdivision (b), the General Rule.~~ The transfer of any interest in real property to a corporation, partnership, limited liability company, or other legal entity is a change in ownership of such the real property interest transferred. For purposes of this rule, "real property" or "interests in real property" includes real property interests and fractional interests thereof, the transfer of which constitute a change in ownership under Sections 60 and following applicable sections of the Revenue and Taxation Code and under the applicable change in ownership provisions of the Property Tax Rules.

(b) ~~Exclusions~~ **EXCEPTIONS.** The following transfers do not constitute changes in ownership of the real property:

(1) Affiliated Corporation Transfers. Transfers of real property between or among affiliated corporations, including those made to achieve a corporate reorganization if:

(A) the voting stock of the corporation making the transfer and the voting stock of the transferee corporation are each owned 100 percent by a one or more corporations related by voting stock ownership to a common parent, and

(B) the common parent corporation owns directly 100 percent of the voting stock of at least one corporation in the chain(s) of related corporations.



A transfer of real property by P, A, B, or C to any of the other three corporations would not be a change in ownership.

Example 1: A Any transfer by C (wholly owned by A and B) to B (wholly owned by A and P) would not be a change in ownership because of those relationships and because P owns 100% of A.

If real property is transferred between non-affiliated corporations, only the property transferred ~~or the property of the acquired corporation~~ shall be deemed to have undergone a change in ownership.

(2) Proportional Transfers of Real Property. Transfers of real property between separate legal entities or by an individual~~(s)~~ to a legal entity (or vice versa), which results solely in a change in the method of holding title and in which the proportional ownership interests ~~in the property in each and every piece of real property transferred~~ remain the same after the transfer. (The holders of the ownership interests in the transferee legal entity, whether such interests are represented by stock, partnership ~~shares~~ interests, or other types of ownership interests, shall be defined as "original co-owners" for purposes of determining whether a change in ownership has occurred upon the subsequent transfer~~(s)~~ of the ownership interests in the legal entity.) This subdivision shall not apply to a transfer of real property which is also excluded from change in ownership pursuant to subdivision (b) (1) (transfers between or among affiliated corporations.

Examples of Transfers of Real Property in Legal Entities:

~~(A)~~ Example 2: A transfer of real property from A and B, as equal co-tenants, to Corporation X, where A and B each take back 50 percent of the stock. No change in ownership. However, if A and B each take back 49 percent of the stock and C receives 2 percent of the stock then there will be a change in ownership of the entire property.

~~(B) Same as (A) above, except A and B take back 49 percent of the stock and C receives 2 percent of the stock. Change in ownership of the entire property.~~

~~(C)~~ Example 3: A transfers Whiteacre to Corporation X and B transfers Blackacre (equal in value to Whiteacre) to Corporation X. A and B each take back 50 percent of the stock. Change in ownership of 100 percent of both Whiteacre and Blackacre.

~~(D)~~ Example 4: Corporation X owns Blackacre and Whiteacre (both are of equal value). A and B each own 50 percent of Corporation X's shares. X transfers Whiteacre to A and Blackacre to B. Change in ownership of 100 percent of both Blackacre and Whiteacre. However, if Corporation X transfers Whiteacre and Blackacre to both A and B as joint tenants or as equal tenants in common, there is no change in ownership.

~~(E)~~ Example 5: A transfer of real property from Corporation X to its sole shareholder A. No change in ownership, even if A is an "original co-owner", because interests in real property, and not ownership interests in a legal entity, are being transferred.

(c) TRANSFERS OF OWNERSHIP INTERESTS IN LEGAL ENTITIES:

Except as is otherwise provided in subdivision (d), the General Rule. The purchase or transfer of corporate stock, partnership shares interests, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity, pursuant to Section 64(a) of the Revenue and Taxation Code.

(d) EXCEPTIONS. The following transfers constitute changes in ownership:

(1) Control. When any corporation, partnership, limited liability company, Massachusetts business trust, or similar trust, other legal entity, or any person:

(A) obtains through a reorganization or any transfer, direct or indirect ownership or control of more than 50 percent of the voting stock in any corporation which is not a member of the same affiliated group of corporations as described in (b) (1), or

(B) obtains through multi-tiering, reorganization, or any transfer direct or indirect ownership of more than 50 percent of the total interest in both partnership capital and more than 50 percent of the total interest in partnership profits, or

(C) obtains through any transfer direct or indirect ownership ~~or control~~ of more than 50 percent of the total ownership interest in any other legal entity.

Upon the acquisition of such direct or indirect ownership or control, which may include any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership.

~~(2) When real property transferred to a corporation, partnership, or other legal entity is excluded from change in ownership pursuant to (b)(2) and the "original co-owners" subsequently transfer in one or more transactions, more than 50 percent of the total control or ownership interests in the entity as defined in (d)(1). For purposes of determining whether more than 50 percent of the total control or ownership interests in the entity has been transferred, transfers of such interests by the "original co-owners" shall be cumulated beginning with the time of the first ownership interest transfer.~~

~~Such a change in ownership requires the reappraisal of the same percentage of the legal entity's real property as the percentage of the ownership interest in the legal entity transferred by the "original co-owners".~~

~~For purposes of this subdivision, persons holding ownership interests in the legal entity immediately following the reappraisal shall be considered the new "original co-owners".~~

(2) Transfers of More than 50 Percent. When on or after March 1, 1975, real property is transferred to a partnership, corporation, limited liability company, or other legal entity and the transfer is excluded from change in ownership under Section 62(a)(2) of the Revenue and Taxation Code, and the "original co-owners" subsequently transfer, in one or more transactions, cumulatively more than 50 percent of the total control or ownership interests, as defined in subdivision (d)(1), in that partnership, corporation, limited liability company or legal entity, there is a change in ownership of only that property owned by the entity which was previously excluded under Section 62(a)(2). However, when such transfer would also result in a change in control under Section 64(c) of the Revenue and Taxation Code, then reappraisal of the property owned by the corporation, partnership, limited liability company, or other legal entity shall be pursuant to Section 64(c) rather than Section 64(d).

For purposes of this subdivision ((d)(2)), interspousal transfers excluded under Section 63 of the Revenue and

Taxation Code, transfers into qualifying trusts excluded under Section 62(d) of the Revenue and Taxation Code, and proportional transfers excluded under Section 62(a)(2) of the Revenue and Taxation Code shall not be cumulated or counted to determine a change in ownership.

Examples of Transfers of Interests in Legal Entities:

Example 6: A and B each own 50 percent of the stock of Corporation X. Corporation X acquires Whiteacre from Corporation Y, an unaffiliated corporation in which neither A nor B has interests, and Whiteacre is reappraised upon acquisition. A transfers 30 percent of Corporation X's stock to C, and B later transfers 25 percent of Corporation X's stock to C. Upon C's acquisition of 55 percent of Corporation X's stock, there is a change in control of Corporation X under Section 64(c) and a reappraisal of Whiteacre.

Example 7: A and B, hold equal interests as tenants in common in Greenacre, a parcel of real property. A and B transfer Greenacre to Corporation Y and in exchange A and B each receive 50 percent of the corporate stock. No change in ownership pursuant to Section 62(a)(2). Pursuant to Section 64(d), A and B become original coowners. A transfers 30 percent of Corporation Y's stock to C (A's child), and B then transfers 25 percent of Corporation Y's stock to D (B's grandchild). Change in ownership of Greenacre upon B's transfer to D. Parent/child and grandparent/grandchild exclusions are not applicable to transfers of interests in legal entities. However, if the same transfers were made by A and B to their respective spouses, no change in ownership pursuant to Section 63 and Rule 462.220.

(3) Cooperative Housing Corporation. When the stock transferred in a cooperative housing corporation, ~~as defined in Section 17265 of the Revenue and Taxation Code,~~ as defined in Section 34605 of the Health and Safety Code, conveys the exclusive right to occupancy of all or part of the corporate property, unless:

(A) the cooperative was financed under one mortgage which was insured under Sections 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or was financed or assisted pursuant to Sections 514, 515, or 516 of the Housing Act of 1949, or Section 202 of the Housing

Act of 1959, or was financed by a direct loan from the California Housing Finance Agency, and,

(B) the regulatory and occupancy agreements were approved by the respective insuring or lending agency, and

(C) the transfer is from the housing cooperative to a person or family qualifying for purchase by reason of limited income.

(e) PARTNERSHIPS.

(1) Transfers of Real Property by Partnerships. General Rule. Except as provided ~~in~~ by (b)(2), where the proportional ownership interests remain the same, when real property is contributed to a partnership or is acquired, by purchase or otherwise, by the partnership, there is a change in ownership of such real property, regardless of whether the title to the property is held in the name of the partnership or in the name of the ~~partner(s)~~ partners with or without reference to the partnership. Except as provided by (b)(2), where the proportional ownership interests remain the same, the transfer of any interest in real property by a partnership to a partner or any other person or entity constitutes a change in ownership.

(2) Except as provided in (d)(1)(C) and (d)(2), the addition or deletion of partners in a continuing partnership does not constitute a change in ownership of partnership property.

Note: Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 63, 62, 64, and 67, Revenue and Taxation Code.