



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
1-916-445-2130 • FAX 1-916-324-3984
www.boe.ca.gov

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No. 2013/029

May 15, 2013

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

Notice of Proposed Regulatory Action
by the
State Board of Equalization

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

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*. The proposed amendments to Property Tax Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (R&T) section 62, subdivision (p); Family Code section 297.5 regarding registered domestic partners; and R&T section 62.3 regarding transfers between cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create "original transferor" status (within the meaning of R&T section 65) in any of the remaining joint tenants, consistent with R&T section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on June 11, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's website at www.boe.ca.gov at least ten days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on June 11, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rule 462.040.

AUTHORITY

Government Code section 15606

REFERENCE

R&T sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1, and 67 and Evidence Code section 662.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 R&T 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 R&T 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 R&T, applicable to transactions that create, transfer, or terminate joint tenancy interests.

In particular, Property Tax Rule 462.040 implements, interprets, and makes specific R&T 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.

The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that "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."

In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of R&T section 62, subdivision (p), regarding transfers between registered domestic partners, and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the R&T to provide that "change in ownership" does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

Effects, Objectives, and Benefits of the Proposed Amendments

On February 22, 2012, the Board received a petition from the California Assessors' Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of R&T section 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA's requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

The Board considered the CAA's petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA's requested amendments. Accordingly, Board staff met with interested parties on August 27, 2012, and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently

prepared Formal Issue Paper 13-004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

In the issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civil Code section 683.2, subdivision. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with R&T section 65, subdivision (b);
- Address county assessors' additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with R&T section 65, subdivision (b);
- Provide in subdivision (b)(1) that "spouse" includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with R&T section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of R&T section 62.3, which provide that "change in ownership" does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are "original transferors" or "other than original transferors"; and
- Make other minor grammatical changes, such as deleting the word "subsequent" from example 3; replacing the "%" symbol with the word "percent"; and consistently using quotation marks around the phrases "original transferor" and "other than original transferor" throughout the rule.

The recommendations 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 12, 2013, 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 effects and objectives of the amendments are to:

- Address the CAA's petition by making the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with R&T section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with R&T section 65, subdivision (b);
- Make the rule consistent with R&T section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with R&T section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties by clarifying the types of transfers that create "original transferor" status within the meaning of R&T section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of R&T sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

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 R&T, 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.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Property Tax Rule 462.040 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 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. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the

purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley M. Heller, Tax Counsel IV, by telephone at 1-916-323-3091, by email at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attention Mr. Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, at 1-916-445-2130, by fax at 1-916-324-3984, by email at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on June 11, 2013, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rule 462.040 during the June 11, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rule 462.040. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underline and strikeout version of the text of Property Tax Rule 462.040 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rule 462.040 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rule 462.040, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's website at www.boe.ca.gov.

Sincerely,

/s/ Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

JR:rb