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No. 2016/050

November 30, 2016

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

CALIFORNIA CODE OF REGULATIONS
TITLE 18, PUBLIC REVENUES
PROPERTY TAX RULE 462.040

Following a public hearing on July 14, 2016, the State Board of Equalization amended Property Tax Rule 462.040, *Change in Ownership—Joint Tenancies*. The amendments were approved by the Office of Administrative Law on October 26, 2016 and will become effective on January 1, 2017.¹

The amendments to Property Tax Rule 462.040 include clarifying the change in ownership consequence of transfers terminating joint tenancies, consistent with *Richard N. Benson v. Marin County Assessment Appeals Board* (2013) 219 Cal.App.4th 1445, and adding examples. Please see Letter To Assessors 2014/025 for a discussion and copy of this court case. The current examples have been clarified to more clearly identify joint tenancies where "original transferor" status has been created. Also, the subsections within subdivision (b) of Rule 462.040 have been renumbered and more descriptive subheadings added. The examples have been rearranged in renumbered Rule 462.040(b)(1) so that the examples correspond to the subheadings.

Enclosed is a copy of the amended rule. In addition, the rule will be posted on the Board's website at www.boe.ca.gov/lawguides/property/current/ptlg/rule/462-040.html. If you have any questions regarding the content of this rule, 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

¹ Government Code section 11343.4 provides that amendments to rules approved between September 1 and November 30 will become effective on January 1.

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 462.040. 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)), a transferor who is also a transferee is an "original transferor" for purposes of determining the property to be reappraised upon subsequent transfers. 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 as one of the joint tenants. The purchase of property as joint tenants does not create original transferor status. 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. 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 6: 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 transferees, and B has only retained an undivided 33 1/3 percent interest in the real property, as a joint tenant, after the transfer. B does not become an "original transferor" since this is not a joint tenancy described in subdivision (b)(1) of this rule.

(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.

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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 while D is A's husband. 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. The new joint tenancy of B, C, and D is a joint tenancy described in subdivision (b)(1) of this rule. B and C are transferors who are among the transferees and thereby become "original transferors." However, 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." A and B, as joint tenants, transfer the property to A, B, and C as joint tenants. C is A's registered domestic partner. 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. C is A's registered domestic partner. C is an "original transferor" because C is the registered domestic partner of A and C acquired an interest by means of a transfer from A. C takes the place of A because C is A's registered domestic partner. Also, B remains on title as a transferor who is also a transferee, and thereby becomes an "original transferor."

(B) Termination of "Original Transferor's" Interest. The transfer terminates an "original transferor's" interest in a joint tenancy described in subdivision (b)(1) of this rule 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 12: 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."

(C) Termination of "Other Than Original Transferor's" Interest. The transfer terminates a joint tenancy interest held by an "other than 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 13: 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," continues to be on title. A remains an "original transferor." C is an "other than original transferor."

Example 14: 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,"

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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 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, an "other than 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) "Original Transferor" Status Through Trusts. 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 16: 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 or 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 17: 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. After collapsing the steps, the transfer from A and B to C and D is a 100 percent change in ownership as of January 13, 2004.

(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 18: 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 19: 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 C 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.

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Example 20: 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.

Example 21: A owns property. A transfers the property to A and B as joint tenants. A is an "original transferor" and B is an "other than original transferor" because the joint tenancy of A and B is a joint tenancy described in subdivision (b)(1) of this rule; for that reason as well, the proportional ownership interest exclusion described in section 62(a)(2) of the Revenue and Taxation Code will not apply to any transfer of interests in this joint tenancy. A and B transfer the property to X Corporation, each taking back 50 percent of the stock. 100 percent change in ownership because: (i) as explained above, the proportional ownership interest exclusion does not apply to this transfer; (ii) the transfer terminated the joint tenancy of A and B, thereby terminating the "original transferor" status of A pursuant to subdivision (b)(1)(C) of this rule; and (iii) the interests in the property were not vested in whole or in part in A as the only original transferor, after the termination, in violation of subdivision (b)(1)(B) of this rule.

(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.

(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 subdivision, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(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.

(6) **Cotenancy Exclusion.** The transfer is one to which the cotenancy exclusion applies, and for which an affidavit has been submitted as required by section 62.3 of the Revenue and Taxation Code.

(c) **REBUTTABLE PRESUMPTION.** For purposes of this rule, 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 rule, 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 sales contract, a deed, Affidavit of Death of Joint Tenant, a trust, will, estate plan, or other written document indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step-transaction doctrine exist.

Example 22: 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.
Amended July 14, 2016, effective January 1, 2017