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January 12, 2005

Honorable Gary W. Freeman
San Joaquin County
Assessor-Recorder-County Clerk
24 South Hunter Street
Stockton, CA 95202-3273

Attn: Ms. Debra Wilson
Chief of Standards

Re: Property Tax Rule 462.040 – Transfer from Joint Tenants

Dear Ms. Wilson:

Your letter dated October 19, 2004, with attached e-mails, addressed to Ms. Kristine Cazadd, Assistant Chief Counsel, regarding Property Tax Rule (“Rule”) 462.040 has been referred to me for response. You request a legal opinion addressing the conflict you see between Rule 462.040, subdivision (b)(1) and Example 8 in the rule. You also ask whether a transfer from A, B, and C, as joint tenants, to A and B, as joint tenants, is excluded under Rule 462.040, subdivision (b)(1).

As discussed below, we conclude that Example 8 is consistent with Rule 462.040, subdivision (b)(1). We also conclude that there is a 33 1/3 percent change in ownership if A, B, and C, as joint tenants, transfer their interests to A and B, as joint tenants, unless either A or B, or both A and B are original transferors (“OTs”) and C is an other than original transferor (“OTO”) as a result of a prior transfer. In that case, the transfer at issue would be excluded from change in ownership.

Legal Analysis

Revenue and Taxation Code section 65 sets forth change in ownership provisions governing joint tenancy interest transfers. The implementing regulation, Rule 462.040, subdivision (a), provides the general rule that “[t]he creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.” However, subdivision (b) sets forth various exceptions to the general rule, including the following:

- (1) The transfer creates or transfers any joint tenancy interest . . . and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an ‘original transferor(s)’ 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.’

* * *

Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because 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. A would be an ‘original transferor’ and B, C, and D would be ‘other than original transferors.’

Thus, when a transfer creates a joint tenancy in which all of the transferors remain on title, the transferors becomes OTs, and all of the other joint tenant transferees become OTOs. Under such circumstances, the transfer is excluded from change in ownership pursuant to subdivision (b)(1), as set forth in Example 5 above.

However, when a transfer creates or transfers a joint tenancy interest in which all of the transferors do not remain on title, as in Example 8 quoted below, the percentage of the joint tenancy interest that is transferred is subject to reappraisal pursuant to subdivision (a). Example 8 provides:

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 one of the transferees.

Prior to the transfer, A and B each owned a 50 percent joint tenancy interest. After the transfer, B, C, and D each own 33 1/3 percent joint tenancy interest. Thus, A and B transferred 50 percent interest and 16 2/3 percent interest, respectively, to C and D, for a total amount of 66 2/3 percent interest being transferred to C and D. The transfer results in a change in ownership of the 66 2/3 percent interest transferred to C and D.

Example 8 is not in conflict with Rule 462.040, subdivision (b)(1) because that subdivision applies to transfers by joint tenants who become OTs. To become an OT, all of the joint tenant transferors must remain on title after the transfer and be among the transferees. In Example 8, A did not remain on title after the transfer. Therefore, B does not become an OT as a result of the transfer.

Lastly, as to the remaining issue, if A, B, and C, as joint tenants, transfer their interests to A and B, as joint tenants, there is a 33 1/3 percent interest change in ownership because C did not remain on title after the transfer as one of the transferees. As discussed above, in order to qualify for exclusion from change in ownership under subdivision (b)(1), all of the transferors must be among the transferees. Therefore, the transfer of C’s 33 1/3 percent joint tenancy interest results in a change in ownership, subject to reappraisal. We note that if there was a prior transfer, and as a result, either A or B, or both A and B are OTs and C is an OTO, the transfer at issue would be excluded from change in ownership. For example:

1. A transferred the property to A, B, and C, as joint tenants. A becomes an OT, and B and C become OTOs. Thereafter, C transfers his or her joint tenancy interest to A

- and B. The transfers are excluded from change in ownership because A is an OT and remained on title after the transfer of C's interest.
2. A and B, as co-owners, transferred their interest to A, B, and C, as joint tenants. A and B become OTs, and C becomes an OTO. Thereafter, C transfers his or her joint tenancy interest to A and B. The transfer is excluded from change in ownership because A and B are OTs who remained on title after C's transfer.

We have discussed the conclusions set forth herein with Ms. Cazadd. After further review, Ms. Cazadd agrees that our conclusions are consistent with the language of Rule 462.040, subdivision (b)(1), Example 8 in the rule, as well as the examples set forth in LTA No. 2004/042, Questions and Answers Regarding Changes to Property Tax Rule 462.040. We apologize for any confusion that may have been caused by the prior erroneous advice.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entities.

Very truly yours,

/s/ Sophia Chung

Sophia Chung
Senior Tax Counsel

SC:eb

Prec/JtTen/05/01-SC

cc: Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70