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October 28, 2008

**Re: *Change in Ownership – Joint Tenancy  
Assignment No. 08-141***

Dear Mr. \_\_\_\_\_ :

This is in response to your July 15, 2008 letter to Randy Ferris, Assistant Chief Counsel, in which you request a written opinion concerning whether proposed transfers of real property interests held in joint tenancy to revocable trusts, and subsequent transfers under those trusts, would result in a change in ownership of those interests.

For the reasons set forth below, we conclude that a 100 percent change in ownership of the property at issue will occur when the last surviving original transferor (either Ted or Carol) dies and the property is transferred to the beneficiaries designated under the terms of each individual's trust unless an exclusion otherwise applies.

### **Facts**

You provided the following relevant facts:

- In 1977 Ted and Carol acquired title as joint tenants to residential real property ("House") in a deed describing them as a single man and a single woman.
- In 1987 Ted and Carol transferred title to the House to themselves as husband and wife as joint tenants.
- In 1994 Ted and Carol transferred title to Ted an unmarried man and Carol and unmarried woman as joint tenants. (You stated, and we assume, that Ted and Carol are currently unmarried.)

- Ted and Carol continue to live in the House and have not changed the status of ownership.
- Ted proposes to create a revocable trust and to convey to that revocable trust his joint tenancy interest in the House. The trust will provide that during Ted's lifetime the trustee shall distribute to Ted that amount and principal as Ted directs. Upon Ted's death, his trust will become irrevocable and Ted's half interest in the House shall be held in trust for the benefit of Carol. The trustee may distribute to Carol during her lifetime all of the net income of the trust estate and any principal reasonably required to support her living expenses based on the trustee's discretion. There is no authorization for the trustee to distribute income or principal to anyone other than Carol during her life. If Carol predeceases Ted, or upon her later death, Ted's half interest in the House is to be distributed to persons designated in Ted's trust.
- Carol proposes to create a revocable trust with similar provisions, but in favor of herself as the beneficiary during her lifetime, and in favor of Ted after her death. If Ted predeceases Carol, or on his later death, Carol's half interest in the house is to be distributed to persons designated in Carol's trust.

It is your analysis that: (1) Ted and Carol each become "original transferors" of the House upon the transfer of their respective joint tenancy interests in the House to their respective revocable trusts; (2) upon the death of the first to die between Ted and Carol, there will be no change in ownership because the decedent's interest in the house passes to the other remaining original transferor; and (3) upon the death of the survivor, there will be a change in ownership of the entire House unless an exclusion applies to a particular transfer. You have asked us to advise on whether your understanding of the legal consequences of the foregoing proposed transactions are accurate.

### Legal Analysis

A change in ownership and reassessment occurs upon a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. (Rev. & Tax. Code, § 60.) Various exclusions to change in ownership apply, including certain joint tenant transfers under Revenue and Taxation Code<sup>1</sup> section 65.

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)(1) of Property Tax Rule<sup>2</sup> 462.040 sets forth various exceptions to the general rule, including the following:

The transfer creates or transfers any joint tenancy interest, including an interest in a trust, 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. . . .

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<sup>1</sup> All statutory references are to the Revenue and Taxation Code unless otherwise specified.

<sup>2</sup> All references to Property Tax Rule or Rule are to title 18 of the California Code of Regulations.

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 tenants(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be ‘other than original transferors.’

\* \* \*

Example 4.1: A and B purchase property as joint tenants. Later 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.’

Under subdivision (b)(2) of Rule 462.040, there is no change in ownership if a transfer terminates an original transferor’s interest in a joint tenancy and the interest vests in whole or part in the remaining original transferor. Subdivision (b)(2) of Rule 462.040 further provides 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.” (See also Rev. & Tax. Code, § 65(c).)

A life estate is an estate (for use of, or income from, property) whose duration is limited to the life of a person holding it or the life of some other person; no particular language is required to create a life estate. (Civil Code, §§ 765, 766; Property Tax Annotation 220.0786<sup>3</sup> (2/18/99); 1-26 Matthew Bender & Co., California Wills & Trusts § 26.07.) In general, the creation, transfer or termination of a life estate is a change in ownership. (Rule 462.060, subd. (a).) Any vesting or right to possession or enjoyment of a remainder interest, which occurs upon the termination of a life estate or other similar precedent property interest (except as provided in subdivision (d) of section 62 and section 63) is a change in ownership unless an exclusion applies. (Rev. & Tax. Code, § 61, subd. (g).)

When joint tenants transfer property to revocable trusts that name each other as present beneficiaries and are otherwise consistent with the pre-existing joint tenancy, the joint tenancy is considered maintained and each is considered an original transferor, as set forth in Example 4.1 of Rule 462.040 above. In Example J in Letter to Assessors (LTA)2004/042, the Board advised that a trust providing the other joint tenant a life estate is consistent with the right of survivorship, and therefore the trustor becomes an original transferor upon the transfer of his or her joint tenancy interest into the trust.

Here, because the proposed trusts provide the other joint tenant the lifetime beneficial use of the property, they provide a life estate for each surviving joint tenant. Consequently, the right of survivorship component of a joint tenancy is retained under the trusts, and Ted and Carol would become original transferors when their property interests are transferred to the respective trusts. Therefore, on the first death of either Ted or Carol, the decedent-original transferor’s interest will be terminated by transfer to the surviving original transferor, and there will be no change in ownership. (Rule 462.040, subd. (b)(2).) When the last remaining original transferor

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<sup>3</sup> Annotations are summaries of the conclusions in selected legal rulings of counsel that are intended to provide guidance in the interpretation of statutes and Board regulations. (Cal. Code Regs., tit. 18, § 5700, subd. (a)(1).) Annotations do not have the force and effect of law. (*Ibid.*)

(the survivor as between Ted and Carol) dies, there will be a 100 percent change in ownership of the House unless an exclusion applies, such as the parent-child exclusion under section 63.1.

In conclusion, your understanding of the legal consequences of the proposed transactions is correct.

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 entity.

Sincerely,

*/s/ Kiren K. Chohan*

Kiren K. Chohan  
Tax Counsel III

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cc: Honorable Kenneth Stieger, President  
California Assessors' Association

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70
Ms. Glenna Schultz	MIC:64