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October 20, 2010

Honorable Doug Harms
Stanislaus County Assessor
1010 Tenth St., Suite 2400
Modesto, CA 95354-0847

Re: *Change in Ownership – Joint Tenancy*
Assignment No.: 10-123

Dear Mr. Harms:

This is in response to your July 8, 2010, letter to Chief Counsel Kristine Cazadd wherein you requested our opinion regarding change in ownership pertaining to an August 1, 2008, termination of a joint tenancy.

As hereinafter indicated, we agree with your conclusion that the general rule of Revenue and Taxation Code¹ section 61, subdivision (e) and section 65, subdivision (a) pertaining to terminations of joint tenancies and joint tenancy interests is applicable. Since neither joint tenant became an "original transferor" in 1996 when the joint tenancy was created, upon the death of one joint tenant and the termination of the joint tenancy, there was a change in ownership of 50 percent of the property pursuant to those statutes and Property Tax Rule 462.040, subdivision (a). As stated in the Board's December 18, 2003, Letter to Assessors No. 2003/077, the only potentially applicable amendments to Rule 462.040 are not retroactive prior to their November 13, 2003, effective date.

Facts

In 1972, FL, a single man, acquired the subject real property by grant deed. On October 16, 1980, FL and KL,² husband of NOL, granted the property to FL, a single man, and to NOL, wife of KL, as her sole and separate property. Your office regarded this transfer as a creation of a 50 percent tenancy in common interest in the property in NOL and reappraised the 50 percent interest pursuant section 61, subdivision (f).

On March 1, 1996, FL and NOL granted the property to FL, a single man, and NOL, a married woman, as joint tenants. Your office regarded this transfer as a change in the method of holding title to the property excluded from change in ownership pursuant to section 62, subdivision (a)(1) and, therefore, not subject to reappraisal.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

² The deed stated that KL, husband of NOL, joined in the execution of the deed for the purpose of granting the property to her as her sole and separate property.

FL died on August 1, 2008.³ As of that date the joint tenancy terminated and NOL became the sole owner of the property by operation of law. Your office regarded this transfer as a termination of a 50 percent joint tenancy interest in the property and reappraised the 50 percent interest pursuant to section 61, subdivision (e), and section 65, subdivision (a).

Law and Analysis

Section 61, subdivision (f) addresses changes in ownership of tenancy in common interests. The 1980 transfer from FL to NOL creating the tenancy in common interests resulted in a change in ownership of 50 percent of the property pursuant to section 61, subdivision (f), since neither the section 62, subdivision (a) nor the section 63 exclusions were applicable.

Sections 61, 62, and 65 address changes in ownership of joint tenancy interests. Section 61, subdivision (e) and section 65, subdivision (a) state the general rule that the creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest or portion transferred. Subdivision (b) of section 65, however, provides that the creation or transfer of a joint tenancy interest will not be considered a change in ownership if the transferor, after the creation or transfer of the interest, is one of the joint tenants. Such a joint tenant, per subdivision (b), is known as an "original transferor." Section 62, subdivision (f), an exception to section 61, subdivision (e), states that change in ownership shall not include the creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of section 65.

Subdivision (c) of section 65 provides that the termination of an interest in a joint tenancy, of the type described in subdivision (b), will not be considered a change in ownership if all or a portion of the property held by an "original transferor" vests in any remaining "original transferor." Otherwise, the terminated interest held by the original transferor or transferors is reappraised. Finally, subdivision (d) of section 65 provides that the termination of an interest held by someone other than an "original transferor" is a change in ownership unless the interest is transferred to an "original transferor" or all of the remaining joint tenants, providing that at least one of the remaining joint tenants is an original transferor.

The 1996 transfer from FL and NOL as tenants in common to FL and NOL as joint tenants was excluded from change in ownership pursuant to section 62, subdivision (a)(1) as a change in the method of holding title to the property transferred without changing the proportional interests of FL and NOL in the property.

At the time of this transfer, Property Tax Rule 462.040, Change in Ownership-Joint Tenancies, provided in part that:

- (a) The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.
- (b) 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, all transferor(s) are among the joint tenants. Such

³ Your office was notified of FL's death by the October 2009 recording of an Affidavit of Death of Joint Tenant with the Stanislaus County Recorder's Office.

transferor(s) who are also transferee(s) in this situation are considered to be "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 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.

As explained in the version of Rule 462.040, subdivision (b)(1), Example 4 in effect at that time, to become original transferors as well as joint tenants, the transfer had to be from A and B to A and B and at least one other person. Otherwise, the general rule, that the creation, transfer, or termination of a joint tenancy interest was a change in ownership of the interest or portion transferred (Rev. & Tax. Code, § 61, subd. (e) and § 65, subd. (a)), applied. For joint tenancies where there are no original transferors, it is the general rule that is applicable.⁴

We previously had occasion to consider a similar question in a December 6, 2000, letter pertaining to various joint tenancy transfers, as follows:

Paul and Pat each own one-half of a commercial building, as tenants in common. They deeded the building to themselves, out of tenancy in common and into joint tenancy. Pat dies.

Our response was:

Paul and Pat hold title to the property as tenants in common and then transfer it to themselves as joint tenants. The result is the same. When Pat dies and title vests solely in Paul, a 50% change in ownership occurs. Again, none of the exclusions from change in ownership available under section 65 are applicable, as no original transferor was created. This situation is analogous to that in Example 4 subdivision (a)⁵ of Rule 462.040, which states:

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.

In addition, under Rule 462.040(b)(3), a change in ownership occurs as to a 50% interest in the property when Pat dies and Paul acquires Pat's 50% interest. Since title to the property vests solely in Paul upon Pat's death and Paul is not an original transferor, the joint tenancy ends and Paul is the owner of Pat's 50% interest as well as his own interest.

Rule 462.040, subdivision (b)(1) and Example 4 thereof were amended in 2003 to provide and illustrate that original transferor status is created when transferors transfer to

⁴ See Property Tax Annotation No. 220.0307 and the November 3, 1986 letter upon which it is based, copies enclosed.

⁵ Should have referenced subdivision (b).

themselves as transferees in joint tenancy, even without any other persons included in the transfer as transferees. The Office of Administrative Law approved the amendments to the rule on October 14, 2003, and filed the amended rule with the Secretary of State on that date. By law, the amendments became effective 30 days after filing, on November 13, 2003. As stated in the December 18, 2003, Letter to Assessors No. 2003/077, this amendment to Rule 462.040 is not retroactive prior to the November 13, effective date.

Accordingly, as FL and NOL as tenants in common transferred the property to themselves as joint tenants prior to November 13, 2003, pursuant to Rule 462.040, subdivision (b)(1) and Example 4, neither FL nor NOL became "original transferors" but rather, were "other than original transferors." As the result, upon FL's death in 2008, when FL's joint tenancy interest in the property terminated and NOL as an other than an original transferor acquired FL's interest and became the sole owner of the property, there was a change in ownership of that 50 percent of the property pursuant to section 61, subdivision (e), section 65, subdivision (a), and Rule 462.040, subdivision (a).

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. Therefore, they are not binding on any office, or any person or public entity.

Sincerely,

/s/ J. K. McManigal, Jr.

J.K. McManigal, Jr.
Senior Tax Counsel

JKM:yg

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Enclosures

cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70