



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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April 11, 2003

LTA 2003/029

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

CALIFORNIA CODE OF REGULATIONS  
TITLE 18. PUBLIC REVENUES

PROPERTY TAX  
AMEND RULE 462.180  
TRANSFERS OF OWNERSHIP INTERESTS IN LEGAL ENTITIES

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606, subdivision (c) of the Government Code, and as a result of a petition from Mr. Gary W. Maeder of Heller Ehrman White & McAuliffe LLP, proposes to amend section 462.180, "Change in Ownership – Legal Entities," in Title 18, Division 1, of the California Code of Regulations (Property Tax Rule 462.180). A public hearing on the amended regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on May 28, 2003. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by May 28, 2003.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. Rule 462.180 is proposed to be amended in order to clarify that limited liability companies (LLCs) should be included in subsection (d)(1)(B) which provides that partnership interests are to be treated as capital and profits interests. In conformity with the Board staff's Annotated Legal Opinion No. 220.0375 dated April 15, 1998, and in subsequent opinions thereafter, the legal staff concluded that for purposes of change in ownership and control, members' ownership interests in a limited liability company are measured by the members' capital and profits interests – the same method of measuring partners' capital and profits interests in partnerships. This measurement standard is necessary in order to determine 1) when more than 50 percent of the capital and profits have transferred in a change in control or ownership under Revenue and Taxation Code

section 64, subdivisions (c) or (d), and 2) when a transfer of capital and profits interests is proportional and thus excluded from change in ownership under section 62(a)(2).

Rule 462.180, subdivision (d) "Exceptions," paragraph (1) "Control" would expressly state in subparagraph (B) that, a change in control is obtained "through multi-tiering, reorganization or any transfer of direct or indirect ownership or control of more than 50 percent of the voting stock in any corporation which is not a member of the same affiliated group of corporations as described in (b)(1) direct or indirect ownership of more than 50 percent of the total interest in partnership or LLC capital and more than 50 percent of the total interest in partnership or LLC profits."

2. Rule 462.180, subdivision (d) "Exceptions," paragraph (2) Transfers of More Than 50 Percent," is proposed to be amended by adding an example in order to clarify that there is no attribution of stock, partnership, LLC, or other legal entity interests between spouses. In conformity with Letters to Assessors No. 83/17 and No. 85/33 and Rule 462.220, a husband and wife holding community property interests in a corporation, partnership, LLC or other legal entity are to be considered separate individuals, each owning 50% of the interests in the entity.

A new Example 7 is proposed to be added, in order to demonstrate the non-attribution principle. The new Example 7 would state that spouses acquiring 100% of the interests in a corporation, partnership or LLC as community property owned by shareholders, partners or members who are not original coowners, are each deemed to own only their community property share, or 50% of the shares or capital and profits interests, and, therefore, the transfer does not result in a change in ownership or control as defined in subdivision (c) and Revenue and Taxation Code section 64(a).

3. The current Example 7 would be renumbered as "Example 8;" Example 8 would be renumbered as "Example 9;" Example 9 would be renumbered as "Example 10" and Example 10 would be renumbered as "Example 11."

#### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendments of Rule 462.180 does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed amendments will not result in direct or indirect cost or savings to any State agency, any cost to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with § 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5, subdivision (a)(8), the Board of Equalization makes an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting business.

The proposed amendments 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.

The proposed amendments will not be detrimental to California businesses in competing with businesses in other states.

The proposed amendments will not affect small business because the proposed amendments and the proposed rule only clarify existing interpretations of statute.

#### COST IMPACT ON 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 as it has long been historical policy.

#### SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

#### FEDERAL REGULATIONS

Rule 462.180 has no comparable Federal regulation.

#### AUTHORITY

Government Code section 15606, subdivision (c).

#### REFERENCE

Revenue and Taxation Code sections 60, 61, 62, 63 and 64.

#### CONTACT

Questions regarding the substance of the proposed amendments and the proposed rule should be directed to Mr. Lou Ambrose, Supervising Tax Counsel, Property Tax Section, telephone (916) 445-5580, fax (916) 323-3387, email [Lou.Ambrose@boe.ca.gov](mailto:Lou.Ambrose@boe.ca.gov) or by mail to the State Board of Equalization, Attn: Mr. Lou Ambrose, MIC: 82, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0082.

The Board will consider comments on the proposed amendments and the proposed rule if received by May 28, 2003. Written comments for the Board's consideration, notice of intent to present testimony or witnesses, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, email [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov) or to Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, email [Joann.Richmond@boe.ca.gov](mailto:Joann.Richmond@boe.ca.gov) or by mail to the State Board of Equalization, Attn: Diane Olson or Joann Richmond, MIC: 80, P.O. Box 942879, Sacramento, CA 94279-0080.

#### ALTERNATIVES CONSIDERED

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

this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared initial statements of reasons and underscored versions (express terms) of the proposed amendments. This document and all information on which the proposals are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, at P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080. The express terms of the proposed amendments are available on the Internet at the Board's website <http://www.boe.ca.gov>.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Final statement of reasons will be made available on the Internet at the Board's website following its public hearing of the proposed amendments. The final statement of reasons are also available for public inspection at the State Board of Equalization, 450 N Street, Sacramento, California.

#### ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed amendments if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the amendments and the rule. The text of the modified rule(s) will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified rule(s) will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule(s) for fifteen days after the date on which the modified rule(s) is made available to the public.

Sincerely,

/s/ Deborah Pellegrini

Deborah Pellegrini, Chief  
Board Proceedings Division

DP:dgo  
Encloures

State of California  
BOARD OF EQUALIZATION  
PROPERTY TAX RULES

Chapter 1. State Board of Equalization—Property Tax  
Subchapter 4. Equalization by State Board  
Article 3. Taxable Property of a County, City or Municipal Corporation

**Rule 462.180. CHANGE IN OWNERSHIP - LEGAL ENTITIES.**

Reference: Sections 60, 61, 62, 63, 64, and 67, Revenue and Taxation Code; Sections 16909 and 17554, Corporations Code; Section 1351, Civil Code.

**(a) TRANSFERS OF REAL PROPERTY TO AND BY LEGAL ENTITIES.**

General Rule. The transfer of any interest in real property to a corporation, partnership, limited liability company, or other legal entity is a change in ownership of the real property interest transferred. For purposes of this rule, “real property” or “interests in real property” includes real property interests and fractional interests thereof, the transfer of which constitute a change in ownership under Sections 60 and following applicable sections of the Revenue and Taxation Code and under the applicable change in ownership provisions of the Property Tax Rules.

**(b) EXCEPTIONS.** The following transfers do not constitute changes in ownership of the real property:

(1) **AFFILIATED CORPORATION TRANSFERS.** Transfers of real property between or among affiliated corporations, including those made to achieve a corporate reorganization if:

(A) the voting stock of the corporation making the transfer and the voting stock of the transferee corporation are each owned 100 percent by one or more corporations related by voting stock ownership to a common parent, and

(B) the common parent corporation owns directly 100 percent of the voting stock of at least one corporation in the chain(s) of related corporations.

A transfer of real property by P, A, B, or C to any of the other three corporations would not be a change in ownership.

Example 1: Any transfer by C (wholly owned by A and B) to B (wholly owned by A and P) would not be a change in ownership because of those relationships and because P owns 100% of A.

If real property is transferred between non-affiliated corporations, only the property transferred shall be deemed to have undergone a change in ownership.

(2) **PROPORTIONAL TRANSFERS OF REAL PROPERTY.** Transfers of real property between separate legal entities or by an individual to a legal entity (or vice versa), which results solely in a change in the method of holding title and in which the proportional ownership interests in each and every piece of real property transferred remain the same after the transfer. (The holders of the ownership interests in the transferee legal entity, whether such interests are represented by stock, partnership interests, or other types of ownership interests, shall be defined as “original co-owners” for purposes of determining whether a change in ownership has occurred upon the subsequent transfer of the ownership interests in the legal entity.) This subdivision shall not apply to a transfer of real property which is also excluded from change in ownership pursuant to subdivision (b)(1) (transfers between or among affiliated corporations).

Examples of Transfers of Real Property in Legal Entities:

Example 2: A transfer of real property from A and B, as equal co-tenants, to Corporation X, where A and B each take back 50 percent of the stock. No change in ownership. However, if A and B each take back 49 percent of the stock and C receives 2 percent of the stock then there will be a change in ownership of the entire property.

Example 3: A transfers Whiteacre to Corporation X and B transfers Blackacre (equal in value to Whiteacre) to Corporation X. A and B each take back 50 percent of the stock. Change in ownership of 100 percent of both Whiteacre and Blackacre.

Example 4: Corporation X owns Blackacre and Whiteacre (both are of equal value). A and B each own 50 percent of Corporation X’s shares. X transfers Whiteacre to A and Blackacre to B. Change in ownership of 100 percent of both Blackacre and Whiteacre. However, if Corporation X transfers Whiteacre and Blackacre to both A and B as joint tenants or as equal tenants in common, there is no change in ownership.

Example 5: A transfer of real property from Corporation X to its sole shareholder A. No change in ownership, even if A is an “original co-owner”, because interests in real property, and not ownership interests in a legal entity, are being transferred.

**(c) TRANSFERS OF OWNERSHIP INTERESTS IN LEGAL ENTITIES:**

General Rule. The purchase or transfer of corporate stock, partnership interests, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity, pursuant to Section 64(a) of the Revenue and Taxation Code.

**(d) EXCEPTIONS.** The following transfers constitute changes in ownership, except as provided in (d)(4) which is an exclusion from change in ownership:

(1) CONTROL. When any corporation, partnership, limited liability company, Massachusetts business trust or similar trust, other legal entity, or any person:

(A) obtains through a reorganization or any transfer, direct or indirect ownership or control of more than 50 percent of the voting stock in any corporation which is not a member of the same affiliated group of corporations as described in (b)(1), or

(B) obtains through multi-tiering, reorganization, or any transfer direct or indirect ownership of more than 50 percent of the total interest in partnership or LLC capital and more than 50 percent of the total interest in partnership or LLC profits, or

(C) obtains through any transfer direct or indirect ownership of more than 50 percent of the total ownership interest in any other legal entity.

Upon the acquisition of such direct or indirect ownership or control, which may include any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership.

(2) TRANSFERS OF MORE THAN 50 PERCENT. When on or after March 1, 1975, real property is transferred to a partnership, corporation, limited liability company, or other legal entity and the transfer is excluded from change in ownership under Section 62(a)(2) of the Revenue and Taxation Code, and the “original co-owners” subsequently transfer, in one or more transactions, cumulatively more than 50 percent of the total control or ownership interests, as defined in subdivision (d)(1), in that partnership, corporation, limited liability company or legal entity, there is a change in ownership of only that property owned by the entity which was previously excluded under Section 62(a)(2). However, when such transfer would also result in a change in control under Section 64(c) of the Revenue and Taxation Code, then reappraisal of the property owned by the corporation, partnership, limited liability company, or other legal entity shall be pursuant to Section 64(c) rather than Section 64(d).

For purposes of this subdivision ((d)(2)), interspousal transfers excluded under Section 63 of the Revenue and Taxation Code, transfers into qualifying trusts excluded under Section 62(d) of the Revenue and Taxation Code, and proportional transfers excluded under Section 62(a)(2) of the Revenue and Taxation Code shall not be cumulated or counted to determine a change in ownership.

Examples of Transfers of Interests in Legal Entities:

Example 6: A and B each own 50 percent of the stock of Corporation X. Corporation X acquires Whiteacre from Corporation Y, an unaffiliated corporation in which neither A nor B has interests, and Whiteacre is reappraised upon acquisition. A transfers 30 percent of Corporation X’s stock to C, and B later transfers 25 percent of Corporation X’s stock to C. Upon C’s acquisition of

55 percent of Corporation X's stock, there is a change in control of Corporation X under Section 64(c) and a reappraisal of Whiteacre.

Example 7: Spouses H and W acquire as community property from the current owners, who are not original coowners, 100% of the capital and profits interests in an LLC which owns Blackacre. Each of H and W is treated as acquiring 50 percent of the ownership interests as defined in subdivision (c) and Revenue and Taxation Code section 64(a). No change in control of the LLC; no change in ownership of Blackacre.

Example 7 8: A and B, hold equal interests as tenants in common in Greenacre, a parcel of real property. A and B transfer Greenacre to Corporation Y and in exchange A and B each receive 50 percent of the corporate stock. No change in ownership pursuant to Section 62(a)(2). Pursuant to Section 64(d), A and B become original coowners. A transfers 30 percent of Corporation Y's stock to C (A's child), and B then transfers 25 percent of Corporation Y's stock to D (B's grandchild). Change in ownership of Greenacre upon B's transfer to D. Parent/child and grandparent/grandchild exclusions are not applicable to transfers of interests in legal entities. However, if the same transfers were made by A and B to their respective spouses, no change in ownership pursuant to Section 63 and Rule 462.220.

(3) COOPERATIVE HOUSING CORPORATION. When the stock transferred in a cooperative housing corporation ("stock cooperative" as defined in subdivision (m) of Section 1351 of the Civil Code) conveys the exclusive right to occupancy of all or part of the corporate property, unless:

(A) the cooperative was financed under one mortgage which was insured under Sections 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or was financed or assisted pursuant to Sections 514, 515, or 516 of the Housing Act of 1949, or Section 202 of the Housing Act of 1959, or was financed by a direct loan from the California Housing Finance Agency, and,

(B) the regulatory and occupancy agreements were approved by the respective insuring or lending agency, and

(C) the transfer is from the housing cooperative to a person or family qualifying for purchase by reason of limited income.

(4) PROPORTIONAL INTEREST TRANSFERS. Transfers of stock, partnership interests, limited liability company interests, or any other interests in legal entities between legal entities or by an individual to a legal entity (or vice versa) which result solely in a change in the method of holding title and in which proportional ownership interests of the transferors and transferees, in each and every piece of property represented by the interests transferred, remain the same after the transfer, do not constitute changes in ownership, as provided in subdivision (b)(2) of this rule and Section



62(a)(2) of the Revenue and Taxation Code. This provision shall not apply to a statutory conversion or statutory merger of a partnership into a limited liability company or other partnership (or a limited liability company into a partnership) when the law of the jurisdiction of the converted or surviving entity provides that such entity remains the same entity or succeeds to the assets of the converting or disappearing entity without other act or transfer and the partners or members of the converting or disappearing entity maintain the same ownership interest in profits and capital of the converted or surviving entity that they held in the converting or disappearing entity.

Examples of Excluded Proportional Interest Transfers:

Example 8 9: General Partnership (GP), which owns Whiteacre and in which A and B hold equal partnership interests, converts to Limited Partnership (LP) under the Revised Uniform Partnership Act of 1994 (California Corporations Code section 16100 et seq.). As a result of the conversion, A and B each hold 50 percent of the LP interests in capital and profits. No change in ownership of Whiteacre upon the conversion, because, under Section 16909 of the Corporations Code, there is no transfer of Whiteacre. Section 62(a)(2) of the Revenue and Taxation Code does not apply. However, if A and B were “original coowners” in GP, they remain “original coowners” in LP.

Example 9 10: Following the conversion in Example 8, A and B each transfer 30 percent of their capital and profits interests in LP to Limited Liability Company (LLC), which is owned equally by A and B. Each retain an equal 20 percent interest in LP. No change in ownership of Whiteacre pursuant to Section 62(a)(2) because A and B own 100 percent of both LP and LLC and their respective proportional interests remain the same after the transfer. Neither section 64(c) nor section 64(d) of the Revenue and Taxation Code applies to this transfer, although A and B become “original coowners” with respect to their interests in LLC.

Example ~~10~~ 11: A limited partnership (LP), which owns Blackacre and in which C and D hold equal partnership interests, changes its form to a limited liability company (LLC), in which C and D hold equal membership interests, by statutory merger under the California Revised Limited Partnership Act (California Corporations Code section 15611 et seq.) and the Beverly-Killea Limited Liability Company Act (California Corporations Code section 17000 et seq.). No change in ownership of Blackacre upon the change in form because under section 17554 of the California Corporations Code, there is not a transfer of property from LP to LLC. Section 62(a)(2) of the Revenue and Taxation Code does not apply. However, if C and D were “original coowners” in LP, they remain “original coowners” in LLC.

**(e) PARTNERSHIPS.**

(1) TRANSFERS OF REAL PROPERTY BY PARTNERSHIPS. General Rule. Except as provided by (b)(2), where the proportional ownership interests remain the

same, when real property is contributed to a partnership or is acquired, by purchase or otherwise, by the partnership, there is a change in ownership of such real property, regardless of whether the title to the property is held in the name of the partnership or in the name of the partners with or without reference to the partnership. Except as provided by (b)(2), where the proportional ownership interests remain the same, the transfer of any interest in real property by a partnership to a partner or any other person or entity constitutes a change in ownership.

(2) Except as provided in (d)(1)(B) and (d)(2), the addition or deletion of partners in a continuing partnership does not constitute a change in ownership of partnership property.

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 (j). Amended and effective December 19, 1995. Amended subdivision (b)(1)(b) to insert the “Simple Example” diagram, at the end of the first sentence.

The “Simple Example” diagram was inadvertently omitted in the renumbering amendments that previously were approved to former Rule 462.

Amended December 9, 1998, effective April 8, 1999. Amended subdivisions (a), (b), (c), (d) and (e) to delete and to update outdated portions of the rule and to clarify other provisions.

KEC:tr

rules/462.180/03/Rule