



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0080  
LOUIS AMBROSE (916) 445-5580  
DIANE OLSON (916) 322-9569  
FAX (916) 324-3984  
[www.boe.ca.gov](http://www.boe.ca.gov)

CAROLE MIGDEN  
First District, San Francisco

BILL LEONARD  
Second District, Ontario

CLAUDE PARRISH  
Third District, Long Beach

JOHN CHIANG  
Fourth District, Los Angeles

STEVE WESTLY  
State Controller, Sacramento

Timothy W. Boyer  
Interim Executive Director

May 23, 2003

No. 2003/038

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

NOTICE OF PROPOSED REGULATORY ACTION  
BY THE  
STATE BOARD OF EQUALIZATION

AMEND PROPERTY TAX RULE 462.040 – CHANGE IN OWNERSHIP JOINT  
TENANCIES AMEND PROPERTY TAX RULE 462.240 – THE FOLLOWING TRANSFERS  
DO NOT CONSTITUTE A CHANGE IN OWNERSHIP

PUBLIC HEARING: JULY 9, 2003 AT 9:30 A.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606 (c) of the Government Code, proposes to amend Rule 462.040 Change in Ownership – Joint Tenancies and Rule 462.240 The Following Transfers do not Constitute a Change in Ownership. A public hearing on the proposed amendments of the regulations 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 July 9, 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 July 9, 2003.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. Rule 462.040 Change in Ownership - Joint Tenancies

The proposed amendments clarify existing statutory provisions governing creation of “original transferor” status by amending the rule language to provide that co-owners may become “original transferors” by transferring to themselves in joint tenancy without requiring a third person among the transferees or by transferring to a trust or will for the benefit of the other

joint tenant. Under the amendments, the assessor would have authority (a) to presume that every joint tenant is an “original transferor”, if the assessor has reasonable cause based on specific types of evidence to make such a presumption, and (2) to apply the step transaction doctrine to transfers made for the purpose of avoiding a change in ownership and not for estate planning purposes. The proposed addition of a subdivision to specify that the rule provisions apply only to transfers between individuals, and not legal entities or commercial transactions, in recognition of the fact and in accord with the Legislature’s determination that joint tenancies are estate planning tools. The amendments also add a sentence to clarify that the “original transferor” status terminates upon the termination of the joint tenancy and an example to illustrate the termination of “original transferor” status..

## 2. Rule 462.240 The Following Transfers do not Constitute a Change in Ownership

The proposed amendment adds a subdivision to apply Probate Code provisions that treat transfers of property upon the death of a registered domestic partner to a surviving domestic partner in the same manner as transfers from a deceased spouse to a surviving spouse.

## COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that proposed amendments to Rule 462.040 and Rule 462.240 do not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed rule will not result in direct or indirect costs or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary costs 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 (a)(8), the Board of Equalization makes an initial determination that the adoption of the proposed amendments to Rule 462.040 and Rule 462.240 will not have a significant statewide adverse economic impact directly affecting business because the proposed rule amendments merely clarify and interpret existing code provisions which generally apply to transfers among individuals in close family and personal relationships.

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

The proposed rule amendments will not affect small business because the amendments interpret and make specific existing statutory law and do not impose any additional compliance or reporting requirements on taxpayers.

#### COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

There will be no adverse economic impact on private businesses or persons because the proposed rule amendments interpret and make specific existing statutory law and do not impose any additional compliance or reporting requirements on private businesses or persons.

#### SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

#### FEDERAL REGULATIONS

Rule 462.040 and Rule 462.240 have no comparable Federal regulations.

#### AUTHORITY

Government Code section 15606, subdivision (c).

#### REFERENCE

Sections 62 and 65, Revenue and Taxation Code; Sections 37 and 6401, Probate Code .

#### CONTACT

Questions regarding the substance of the proposed rule should be directed to: Mr. Louis Ambrose, Supervising Tax Counsel, at P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 445-5580; FAX (916) 323-3387.

The Board will consider comments on the proposed amendments and the proposed rule if received by July 9, 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 otherwise been identified and brought to its attention would be more effective in carrying out the

purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

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

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed rule amendments. Those documents and all information on which the proposal is 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, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed regulation (rule) amendments are available on the Internet at the Board's website <http://www.boe.ca.gov>.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed rule amendments. It is also available for public inspection at 450 N Street, Sacramento, California.

#### ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed rule 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 rule amendments. The text of the modified rule amendments 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 amendments will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule amendments for fifteen days after the date on which the modified rule amendments are made available to the public.

STATE BOARD OF EQUALIZATION

/s/ Deborah Pellegrini

Deborah Pellegrini  
Chief, Board Proceedings Division

DP:dgo  
Enclosures

**Rule 462.040 CHANGE IN OWNERSHIP--JOINT TENANCIES.**

(a) 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 subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% of the property.

(b) The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, including an interest in a trust or will, and after such creation or transfer, ~~all the~~ transferor(s) ~~are among~~ is one of the joint tenants. Such a transferor(s) ~~who are~~ is also a transferee(s) ~~in this situation are~~ and is, therefore, considered to be an “original transferor(s)” for purposes of determining the property to be reappraised upon subsequent transfers. 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. 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 or through his or her will, if the will provisions name the other joint tenant(s) as the devisee(s). 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 both~~ “original transferors.” ~~To become original transferors, the transfer must be from A and B to A and B at least one other person.~~

Example 4(a): 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 or wills. A and B are transferors who are among the joint tenants and are, therefore, considered to be “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”.

Example 6: A and B, as joint tenants, transfer to A, B, C, D and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E is also an "original transferor." (C and D are "other than original transferors.")

Example 7-1: A, B, and C are joint tenants and A is an "original transferor". A dies. B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy.

Example 7-2: A and B, as joint tenants, transfer to B and C, as joint tenants, and C is A's spouse. C is an original transferor because he was the spouse of an original transferor and he acquired an interest by means of a transfer from A.

Example 7-3: A and B are joint tenants and A is an "original transferor". C is A's spouse. A and B as joint tenants transfer to A, B, and C. C is an original transferor

Example 8: 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.

Example 9: ~~A and B transfer to A, B and C as joint tenants and, thereafter, C transfers his or her interest to A and B~~ purchase property as joint tenants and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors". A and B sell a 50% interest to C and D, with the deed showing A, B, C and D as joint tenants. C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors". A and B then sell their remaining 50% 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 a result of their transfers to A, B and C each other.

(2) The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining original transferor(s); 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 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant.

Example 11: Following the example set forth in Example 10 (above), B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal and B was the last surviving original transferor.

(3) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy described in (b)(1) 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 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest 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 13: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become “original transferors”. A dies and A’s joint tenancy interest passes to B by operation of law without a change in ownership because B is an “original transferor.” Upon A’s death, the joint tenancy is terminated and B ceases to be an “original transferor.”

(4) For other than joint tenancies described in (b)(1), 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.

(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" for purposes of determining whether a change in ownership occurs upon the subsequent transfer(s) of the ownership interests in the property.)

(5) The transfer is one to which the interspousal exclusion applies.

(6) 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 accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, exclusive of any interest transferred to a spouse or other exempt transfer, only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the “accumulated interests transferred” shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) 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 law.

(c) For purposes of this section, 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, shall be an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) For purposes of this section, 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 deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 14: 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. Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other. The assessor may determine that the sales contract and trust instruments establish that A and B intended to hold title as joint tenants upon purchase and that each subsequently became an "original transferor."

(e) This rule and chapter interpret, implement and make specific the provisions of section 65 of the Revenue and Taxation Code which provide that the creation, transfer or termination of a joint tenancy interest results in a change in ownership unless the transferor, classified as an "original transferor", remains as one of the joint tenants. This treatment was intended by the Legislature to protect family joint tenancy interests and those of the original owners from changes in ownership until the termination of the last original transferor's interest. The Legislature found that a joint tenant's survivorship rights in property replicate a transfer to the beneficiary under a trust or will who is usually a family member or another person in an intimate personal relationship with the decedent. In applying these provisions, therefore, "original transferors" shall not include legal entities.

*Authority cited:* Section 15606, Government Code  
*Reference:* Sections 60, 61, 62, 63, 65, 65.1, 67, Revenue and Taxation Code; Section 662, Evidence Code.

H:/property/drafts/ambrose/Rule462-040draft.doc



**Rule 462.240 THE FOLLOWING TRANSFERS DO NOT CONSTITUTE A CHANGE IN OWNERSHIP.**

The following transfers do not constitute a change in ownership:

- (a) The transfer of bare legal title, e.g.,
  - (1) Any transfer to an existing assessee for the purpose of perfecting title to the property.
  - (2) Any transfer resulting in the creation, assignment, or reconveyance of a security interest not coupled with the right to immediate use, occupancy, possession or profits.
- (b) Any transfer caused by the substitution of a trustee.
- (c) Any purchase, redemption or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.
- (d) Any contribution of real property to an employee benefit plan, any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the voting stock in the employer corporation, or the creation, vesting, transfer, distribution, or termination of a participant's or beneficiary's interest in such a plan. The terms used herein shall have the meaning ascribed to them in the Employee Retirement Income Security Act of 1974, which is codified as United States Code annotated, Title 29, Section 1002. (The term "any contribution" as used in Section 66 (b) of the Revenue and Taxation Code and this section means only those original contributions of real property made to an employee benefit plan by an employer, a group of employees, or both, without any consideration.)
- (e) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h of the Revenue and Taxation Code holding title for the benefit of any of the aforementioned corporations, or any combination thereof (including any transfer from one such entity to the same type of entity), provided that both the transferee and the transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.
- (f) Any transfer, occurring on or after January 1, 1983, which results from the reformation or correction of a deed which, by mistake, inaccurately describes the property intended to be conveyed, or adds or omits some term not agreed to by the parties, or in some other manner fails to express the true intentions of the parties.

Example 1: A agrees to sell one acre to B. The deed mistakenly describes a two-acre area. Reformation of the deed to describe the original acre intended to be transferred is not a change in ownership.

(g) Any transfer, occurring on or after January 1, 1983, of an eligible dwelling unit from a parent(s) or legal guardian(s) to a minor child or children or among minor siblings resulting from a court order or judicial decree due to the death of one or both of the parents. An “eligible dwelling unit” means the dwelling which was the principal place of residence of the minor child or children prior to the transfer and remains such after the transfer.

(h) Any transfer of property to a disabled child, whether minor or adult, upon the death of a parent pursuant to Section 62(n) of the Revenue and Taxation Code.

(i) Any transfer, on or after January 1, 1985, of a mobilehome park or of rental spaces in a mobilehome park pursuant to Section 62.1 of the Revenue and Taxation Code.

(j) Any transfer of a mobilehome park or of rental spaces in a mobilehome park pursuant to Section 62.2 of the Revenue and Taxation Code.

(k) Any transfer of separate property as defined in Revenue and Taxation Code section 401.4, inherited by a surviving domestic partner, as defined in subdivision (b) of section 37 of the Probate Code, whether by intestate succession, will, or trust, or other estate plan, upon the death of a registered domestic partner.

Note: Authority: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 62.1, 62.2, 64, 66, and 67, Revenue and Taxation Code; Sections 37, 6401, Probate Code.

H:/property/drafts/ambrose/Rule462-240draft.doc