

ALTERNATIVE LANGUAGE
REVISION OF PROPERTY TAX RULE 462.040, CHANGE IN OWNERSHIP – JOINT TENANCIES (2)

No.	Section Reference		Source	Proposed Language	BOE Staff Position
1	(b)(1)		Connie Siebler, Marin County	Revise sentence: To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title <u>as one of the joint tenants.</u>	Agree
2	(b)(1)	Ex. 6	Connie Siebler, Marin County	Add sentence: Example 6: A and B acquire real property as joint tenants. A and B transfer the property to B, C, and D, as joint tenants. 66 2/3 percent change in ownership of the transferred interests because the joint tenancy of B, C, and D is not a joint tenancy described in subdivision (b)(1) of this rule since both of the transferors are not transferees, and B has only retained an undivided 33 1/3 percent interest in the real property, as a joint tenant, after the transfer. <u>Since it is not a joint tenancy described in subdivision (b)(1) of this rule, B does not become an original transferor.</u> BOE Rewrite: <u>B does not become an "original transferor" since this is not a joint tenancy described in subdivision (b)(1) of this rule.</u>	Agree – See BOE Rewrite
3	(b)(1)(B)	Ex. 12	Barbara Edginton, San Luis Obispo County	Is Example 12 needed, since Example 13 has exactly the same language but with an additional sentence at the end? Doesn't that make Example 12 redundant?	Agree – delete Example 12 and renumber existing rules
4	(b)(1)(C)	Ex. 16	Barbara Edginton, San Luis Obispo County	Revise sentence: Using the positive, rather than the negative, might help to clarify. Example 16: A and B transfer property to A, B, C, and D as joint tenants. The joint tenancy of A, B, C, and D is a joint tenancy described in subdivision (b)(1) of this rule; A and B are "original transferors," and C and D are "other than original transferors." A dies or grants his interest in the property to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. C, not an " <u>other than</u> original transferor," grants his interest in the property to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an "original transferor." D dies and D's joint tenancy interest passes to B by operation of law. Since B is an "original transferor," there is no change in ownership. Upon D's death, the joint tenancy is terminated and B ceases to be an "original transferor."	Agree

No.	Section Reference		Source	Proposed Language	BOE Staff Position
5	(b)(1)(D)		Sonya Yim, BOE	Revise heading: (D) Trusts as "Original Transferors" <u>Status Through Trusts</u>	Agree
6	(b)(2)(C)	Ex. 22	Sonya Yim, BOE Barbara Edginton, San Luis Obispo County	Revise sentence: Example 22: A owns property. A transfers the property to A and B as joint tenants. A is an "original transferor" and B is an "other than original transferor," because the joint tenancy of A and B is a joint tenancy described in subdivision (b)(1) of this rule; for that reason as well, the proportional ownership interest exclusion described in section 62(a)(2) of the Revenue and Taxation Code will not apply to any transfer from this joint tenancy. A and B transfer the property to X Corporation, each taking back 50 percent of the stock. 100 percent change in ownership because (i) as explained above, the proportional ownership interest exclusion does not apply to this transfer; (ii) the transfer terminated the joint tenancy of A and B, thereby termination <u>terminating</u> the "original transferor" status of A pursuant to subdivision (b)(1)(C) of this rule; and (iii) the interests in the property were not vested in whole or in part in A as the only original transferor, after the termination, in violation of subdivision (b)(1)(B) of this rule.	Agree
7			Kathleen Hunt, Attorney	Comment: I am writing to comment upon the proposed amendments to the above-referenced Rule. As written, individuals who transfer their interest in a jointly-owned property into individual trusts will be deemed to have changed the ownership of the property, even if the beneficial ownership remains the same. For instance, A and B own a property together as joint tenants. A transfers A's interest to "A, as Trustee of A's Living Trust". This severs the joint tenancy, since a trust cannot be a joint tenant; under the Rule, then, the property would be subject to a 50% reassessment. However, A is an original transferor and remains the beneficial transferee; the reassessment would unjustly penalize A for using a common estate-planning tool.	No alternative language suggested. A's transfer to A's Trust would sever the joint tenancy and cause the Trust to become a tenant in common, similar to the case of <i>Benson v. Marin County Assessment Appeals Board</i> (2013) 219 Cal.App.4th 1445, which held that such a transfer would result in a 50% reassessment. This is consistent with subdivision (a) of this rule. Reassessment is a well-established consequence of changing the nature of the ownership interest involved.