

AMENDED IN SENATE SEPTEMBER 8, 2003

AMENDED IN SENATE AUGUST 26, 2003

AMENDED IN SENATE JULY 1, 2003

AMENDED IN SENATE JUNE 19, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY JANUARY 29, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 23**

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**Introduced by Assembly Member Nation**

December 2, 2002

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An act to amend Section 65 of the Revenue and Taxation Code, relating to property taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 23, as amended, Nation. Property taxation: joint tenancy: change in ownership.

Existing property tax law generally requires that the appraised value of real property be reassessed whenever there is a change in ownership, but specifies that there is no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after the creation or transfer, are among the joint tenants. Upon the creation of the joint tenancy interest, the transferor or transferors become the “original transferor or transferors.” A subsequent transfer or termination of a joint tenancy interest does not result in a change in ownership if the interest vests entirely or in part in an original transferor,

but does result in a change in ownership when the last original transferor's interest terminates.

This bill would clarify this law by specifying that there is no change in ownership if the transferor or transferors, after the creation or transfer of the joint tenancy interest, either become the joint tenants or are among the joint tenants. The bill would also specify that the transferor or transferors shall become the "original transferor or transferors" upon either the creation or transfer of the joint tenancy interest.

Existing law also specifies that there is no change in ownership upon the transfer of a joint tenant's interest into a trust by the joint tenant trustor for as long as, among other things, the trustor is the present beneficiary of the trust.

This bill would provide that a joint tenant who transfers his or her joint tenancy interest to his or her trust or will for the benefit of the other joint tenants shall become an "original transferor."

*This bill would state the intent of the Legislature to recognize the fact that title is held in joint tenancy in order to protect or carry out certain estate planning objectives.*

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 65 of the Revenue and Taxation Code is  
2 amended to read:

3 65. (a) The creation, transfer, or termination of any joint  
4 tenancy is a change in ownership except as provided in this section,  
5 Section 62, and Section 63. Upon a change in ownership of a joint  
6 tenancy interest only the interest or portion that is thereby  
7 transferred from one owner to another owner shall be reappraised.

8 (b) (1) There shall be no change in ownership upon the  
9 creation or transfer of a joint tenancy interest if the transferor or  
10 transferors, after that creation or transfer, become the joint tenants  
11 or are among the joint tenants. Upon the creation or transfer of a  
12 joint tenancy interest described in this subdivision, the transferor  
13 or transferors shall be the "original transferor or transferors" for  
14 purposes of determining the property to be reappraised on  
15 subsequent transfers.



(2) (A) As used in this subdivision, a “transfer” includes a transfer of the joint tenant’s interest into a trust or will for the benefit of the other joint tenants. The joint tenant or tenants transferring the interest are both a transferor or transferors, and a transferee or transferees, and shall be considered an “original transferor or transferors” for purposes of determining the property to be reappraised on subsequent transfers.

(B) The transfer of a joint tenant’s interest into a trust or will pursuant to this paragraph may not be construed for purposes of this part to be a severance of the joint tenancy, as described in Section 683.2 of the Civil Code.

(3) The spouses of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors that were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

(e) 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.

*(f) It is the intent of the Legislature that the amendments made by the act adding this subdivision give recognition to the fact that title is held in joint tenancy in order to protect or carry out estate planning objectives by creating a survivorship right in each joint tenant. Transfers made solely for estate planning objectives shall be fully recognized and shall not be ignored or given less than full*

1 *recognition under a substance-over-form or step transaction*  
2 *doctrine. Nothing in this section, however, shall be construed as an*  
3 *expression of intent on the part of the Legislature to disapprove in*  
4 *principle the appropriate application of the substance-over-form*  
5 *or step transaction doctrine where the transfers are undertaken for*  
6 *purposes other than creating or retaining survivorship rights for*  
7 *estate planning purposes. Specifically, nothing shall prohibit a*  
8 *county assessor from applying the step transaction doctrine to a*  
9 *series of transfers that are made in order to achieve original*  
10 *transferor status for purposes other than estate planning.*

11 SEC. 2. This act provides for a tax levy within the meaning of  
12 Article IV of the Constitution and shall go into immediate effect.

