220.0205 **Exclusions.** The Revenue and Taxation Code section 62(g) conclusive presumption that all homes subject to property tax, eligible for the homeowners' exemption, and located on leased land have a renewal option of at least 35 years applies regardless of who purchases the land. Further, the transfer of a lessor's interest in real property subject to a lease with a remaining term (whether actual or conclusively presumed) of 35 years or more does not constitute a change in ownership whether the transferee is the lessee or another party. C 8/11/93.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 322-0050

MEMBER
First District
BRAD SHERMAN
Second District, Los Angeles
ERNEST J. DRONENBURG, JR.
Third District, San Diego
MATTHEW K. FONG
Fourth District, Los Angeles
GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

August 11, 1993

[redacted], Esq.

[redacted]

Re: Revenue and Taxation Code Section 62(g)
Your File 14336-008 and 009

Dear Ms. [redacted]:

This is in response to your letter to Richard Ochsner Esq. of June 24, 1993 in which you request our opinion with respect to the applicability of Revenue and Taxation Code[1] section 62(g) under the circumstances described in your letter and set forth below.

The issue presented is whether the acquisition by the tenant under a ground lease of the fee title to the land is excluded from the definition of "change in ownership" pursuant to section 62(g), or otherwise, where the tenant is the owner and occupant of a home located on that land. The facts involve a husband and wife leasing from the family business (a corporation) the land upon which they subsequently built their home. The original term of the ground lease was 40 years, commencing in 1971, with an option for the tenant to purchase the land. The tenants, in October 1991, exercised the option to purchase the land. (According to the Santa Clara County Assessor (Assessor), the wife, after her husband's death, exercised the option in 1988.)

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

10

At the time of the transfer, the home was subject to a homeowner's exemption. The Assessor has viewed this purchase as a re-assessable change in ownership, but you believe that the acquisition of the lessor's fee title by the tenant is excluded from the definition of "change in ownership" by section 62, subdivision (g) and by Title 18, California Code of Regulations, (Property Tax Rule) 462, subdivision (f)(2)(B)(i).

Section 62, subdivision (g) excludes from change in ownership:

> "Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979-80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than mobilehomes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), which are on leased land and have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement."

It is your contention that section 62, subdivision (g) creates a conclusive presumption (as the Code states) that the subject land, on which the tenant/taxpayer's home is located, is subject to a lease of at least 35 years. The result of such a presumption would be to exclude the land purchase from the definition of a re-assessable change in ownership.

You also rely on a December 24, 1991 letter from Tax Counsel Carl Bessent which states on page 5: "The transfer of a lessor's interest in real property subject to a lease with a remaining term of 35 years or more, whether to a third party or to the lessee, does not constitute a change in ownership."

The Assessor's position, as set forth in the letter of Deputy County Counsel James J. Rees dated June 22, 1993, is as follows:

> In addition to the fact that the second sentence of subdivision (g) does not appear to be grammatically correct (apparently because of the use of the word "and" before the word "have"), the Assessor is concerned about its proper interpretation. As the Assessor has understood the legislative intent behind the second sentence of subdivision (g), it has been to avoid reassessment upon acquisition by a third party of an ownership interest in

leased land on which a lessee's residence is constructed. If that is the legislative intent behind that provision, the application of that provision to the acquisition of fee title by the lessee of the leased land would not appear to be appropriate. It is, therefore, the proper interpretation of the second sentence of section 62(g) in the context of the facts presented which the Assessor is asking the State Board of Equalization to address.

The Assessor's questions relative to section 62(g) involve both the proper interpretation of the "conclusive presumption" provision of the second sentence and that of the general exclusion for transfers involving land expressly subject to a lease of 35 years or more. More specifically, in those instances where the lessee, rather than a third party, is the one who acquires fee title does the 62(g) exclusion apply?

With respect to the grammatical correctness of subdivision (g), you point out that the third sentence of section 61, subdivision (c)(1) addresses the same issue of conclusive presumption as is described in subdivision (g), but is grammatically correct and suggest that the incorrect language in subdivision (g) should be read to be the same as section 61, subdivision (c)(1). We agree. That is the Board's view as indicated by Property Tax Rule 462, subdivision (f)(5) which uses the grammatically correct language of section 61, subdivision (c)(1). Property Tax Rule 462, subdivision (f) is the Board's interpretation of the lease provisions of both sections 61, subdivision (c) and 62, subdivision (g).

Your questions and our responses thereto are as follows:

1. Is the conclusive presumption language in section 62, subdivision (g) (which we believe has the same meaning as the conclusive presumption language in section 61(c)) inapplicable where the transfer by the lessor is to the lessee rather than to a third party?

Response: An indication of the legislative purpose behind the conclusive presumption language of sections 61, subdivision (c) and 62, subdivision (g) is found in a report issued by the Assembly Revenue and Taxation Committee which sets forth that purpose as follows:

"The purpose of this provision is to protect those homeowners who own the dwelling but lease the land, where the lessor sells his interest in the land. Prior to passage of AB 1019, in cases where a homeowner's remaining lease term was less than 35 years, reassessment would occur without this provision. The immediate problem was on Irvine Company land in Orange County. With many leases of less than 35 years remaining, the recent acquisition of the Irvine Company constituted a change of ownership of the lessor, which would have initiated reappraisal for perhaps thousands of such tenant-homeowners. Given the unlikely prospect of evicting a homeowner from land where he actually OWNS the dwelling on that land, it was felt that an inherent renewal option existed, and that such a conclusive presumption was warranted." (1 Assem. Rev. & Tax. Com. Rep. on Property Tax Assessment (Oct. 29, 1979) p. 26.)

Notwithstanding what may have been the purpose of the Legislature in including the conclusive presumption language in section 62, subdivision (g), there is no indication that the Legislature intended to treat transfers of lessor's interests to a lessee differently than transfers to a third party under subdivision (g). The language of subdivision (g) is clearly and unambiguously to the contrary. It excludes from change in ownership "Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. (Emphasis added.) It then goes on to state that the conclusive presumption applies "For the purpose of this subdivision...." Where "the words of a statute, when given their ordinary and popular meaning, are reasonably free of uncertainty, courts will look no further to ascertain the statute's meaning." (County of Orange v. Flournoy (1974) 42 Cal.App.3d 908, 912.) See also, Delaney v. Superior Court (1990) 50 Cal.3d 785, 798-800.

Moreover, we are not aware of any opinion letters of Board staff wherein the conclusive presumption in subdivision (g) was not given effect where the transfer of the lessor's interest was to the lessee.

Accordingly, we are of the view that the conclusive presumption language of subdivision (g) is applicable in this case.

2. Does Section 62(g) apply to a "transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more" when the transfer is to the lessee?

Response: Yes. Property Tax Rule 462, subdivision (f) is the Board's interpretation of sections 61, subdivision (c) and 62, subdivision (g) and provides in relevant part:

(f) Leases.

(2) The following transfers of either the lessee's interest or the lessor's interest in taxable real property do not constitute a change in ownership of such real property:

(B) Lessor's interest:

(i) The transfer of a lessor's interest in real property subject to a lease with a remaining term of 35 years or more, whether to the lessee or another party. [Emphasis added.]

The foregoing rule reflects the "one primary owner" approach used by the Legislature in implementing Proposition 13. (See Howard v. County of Amador (1990) 220 Cal.App.3d 962, 974.) Thus, since the lessee is considered to be the one primary owner of the real property when then remaining lease term is 35 years or more, a transfer by the lessor is not a change in ownership regardless of who the transferee may be.

3. Is Property Tax Rule 462 (f)(2)(B)(i) still effective?

Response: Yes. Sections 61, subdivision (c) and 62, subdivision (g) are substantially the same now as they were when Property Tax Rule 462, subdivision (f)(2)(B)(i) was adopted. Also, no case has held the rule to be invalid. Accordingly, it is still effective.

4. Is the portion of Mr. Bessent's letter described above still the position of the State Board of Equalization?

Response: Yes. Since Mr. Bessent's letter is consistent with Property Tax Rule 462, subdivision (f)(2)(B)(i) and since that rule is still effective, the quoted portion of Mr. Bessent's letter is still the position of the State Board of Equalization.

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

Eric F. Eisenlauer
Senior Staff Counsel

EFE:ba

EFE:ba
cc: Mr. John Hagerty - MIC:63
Mr. Verne Walton - MIC:64

Hon. Alfred E. Carlson
Santa Clara County Assessor
Government Center
70 West Hedding Street
San Jose, CA 95110

precednt\13leases\93002