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August 7, 1991

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Honorable Dick Frank
 SAN LUIS OBISPO COUNTY ASSESSOR
 County Government Center, Room 100
 San Luis Obispo, CA 93408
 Attn: Ms. Barbara L. Edginton
Supervising Property Transfer Technician

Dear Dick:

This is in response to your letter of July 9, 1991 requesting advice regarding the application of subdivision (c) of Revenue and Taxation Code section 62.1 relating to mobilehome parks. Attached to your letter was a copy of the Articles of Incorporation of P: Park, Inc., filed with the Secretary of State on July 11, 1985, as well as a copy of the corporation by-laws, dated November 15, 1985, as revised November 20, 1985.

Although your letter does not expressly so state, I assume that the P: Park is the subject of this inquiry. Your letter states that the park was bought on July 24, 1985, by a tenant-owned non-profit corporation. (The articles of incorporation indicate that the P: Park is organized under the general corporation law and nothing in the articles indicate any intent to incorporate as a non-profit corporation. For the purposes of this discussion, however, we will assume that it is a non-profit corporation.) There are 232 spaces in the park, excluding one space used by the park manager, and there are 232 shares of stock. When the corporation originally issued shares, there were quite a few residents who bought stock shares for investment purposes. As I understand it, not all of the 232 tenants purchased shares when the tenant-owned corporation was formed. As a result, some tenants bought more than one share in the corporation. In addition, some shares were acquired by persons who were not tenants in the park.

As the result of your inquiry, the park has furnished a list of the shares which have transferred since January 1, 1989. You state that the attorney for the park divides this list into three

categories of transfers.

1. The first category involves transfers of a share in the corporation, held by a tenant-shareholder as an investment, to an existing tenant. This is a transfer between private parties of a stock share only. The coach is not included. The park receives no money. You state that the attorney thinks that this might be a change in ownership, but is not totally convinced. You treat it as a change in ownership.
2. The second category involves a transfer of a share to a new park resident. This involves a transfer between private parties of both the share of stock and the coach. The park receives no money. Both you and the attorney agree that this is a change in ownership. You state that a subcategory involves relocations where an existing tenant sells his/her coach at one space and buys and moves into a coach at another space. You state that the corporation cancels the existing tenant's old stock certificate and issues a new certificate to reflect the change in location. The attorney believes this should not be a change in ownership, while you believe it is a change in ownership.
3. The third category involves the transfer of a share of stock from the corporation to an existing tenant who had not previously owned a share. Most of the transfers in this category are to tenants who occupied their space at the time of the conversion but did not acquire an interest in the corporation at that time. The attorney believes these are not changes in ownership, but you disagree because you believe there should be a three-year time limit for acquiring an interest in the park. Your three-year time limit is based upon the filing time limits imposed under Revenue and Taxation Code sections 63.1 and 69.5.

Subdivision (a) of Revenue and Taxation Code section 62.1 excludes from change in ownership any transfer on or after January 1, 1985 of a mobilehome park to a non-profit corporation, stock cooperative corporation, limited equity stock cooperative or other entity formed by the tenants of a mobilehome park for the purpose of purchasing the mobilehome park, provided that various conditions are satisfied. As added by Chapter 1076 of the Statutes of 1988 (SB 1885), subdivision (c)(1) of section 62.1 provides:

"If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to subdivision (a) and the park has not been converted to condominium, stock cooperative ownership, or limited equity cooperative ownership, any transfer on or after January 1, 1989, of

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shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a) shall be a change in ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium, stock cooperative ownership, or limited equity cooperative ownership or is excluded from change in ownership by the provisions of Section 62, 63, or 63.1".

Your letter sets forth a series of questions relating to the proper application of subdivision (c)(1) to the issues raised by the Pismo Beach Mobilehome Park situation. I have set forth below each question followed by our response.

- A. "In the SBE Letter to Assessors Number 89/13, it states: "Upon the transfer of any ownership interest in the entity of either an originally issued share or of an unissued share to a new participant, a change in ownership of a pro rata portion of the real property of the park has taken place." Does this mean all stock shares at any time they change hands, or is there intended to be a class of stock shares which do not fall within the bounds of this description?"

Response

Subdivision (c)(1) refers to "any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park" These words seem fairly straight forward and unambiguous, particularly under the circumstances of this case since the articles of incorporation state that the corporation is authorized to issue only one class of shares to be designated "common shares". Further, the by-laws of the corporation indicate that the corporation is to be managed and all corporate power shall be exercised by a board of directors who are elected by the shareholders. Although I could not find a precise statement, I assume each share is entitled to one vote. Under these circumstances, it seems clear that each share in the corporation is a share of voting stock and under the quoted language above any transfer on or after the specified date of such a share of stock would constitute a change in ownership of a pro rata portion of the park unless one of the express exclusions applied. Thus, any transfer after the specified date of a share of the park stock from either the corporation, an existing tenant, or a non-tenant to either an existing tenant or a new tenant would qualify as a change in ownership absent an applicable exclusion. With the exception of the relocation situation, which will be discussed separately below, it appears that all three categories of transfers of corporation stock described above fall within the

language of subdivision (c)(1).

It should be recognized, however, that the application of subdivision (c)(1) will depend upon the facts of each case. Here, the problem is straight forward since there is only one class of common stock. It is possible, of course, that there may be more "exotic" situations where the answer is not so clear. For example, a corporation may issue a form of preferred stock which is more in the nature of a debt obligation than an ownership interest. In these situations, the determination will have to be tailored to the facts of each case.

B. "If a renter buys a stock share and he/she was a renter at the time of the 1985 conversion, is that a reassessable change in ownership? Is there ever a time period past which it is too late for a renter who did not take part in the conversion to buy in and not be subject to reassessment? Would it make a difference if the renter bought unissued stock from the corporation versus buying one of the "extra" stock shares from another tenant?"

Response

I find nothing in the language of subdivision (c)(1) which would exclude the transfer of a share of voting stock to a tenant who was renting the space at the time of the conversion in 1985 as long as the transfer occurred after January 1, 1989. If, for example, we had a 1990 park acquisition by a tenant-owned corporation, I find nothing within the language of the code which would exclude from pro rata reassessment the transfer of a share of stock to a tenant who was renting at the time of conversion, even though the transfer occurred only a week or two after the conversion took place.

Subdivision (a) only excludes the transfer of a mobilehome park (as distinguished from park spaces) to the entity formed by the tenants from change in ownership. It does not deal with the transfer of individual spaces in the park to individual tenants. Subdivision (b) contains a very limited exclusion for transfers of spaces in the park which occurred between January 1, 1985 and January 1, 1987 and which meet various other requirements. In addition, as indicated in Assessor's Letter No. 89/13, we believe that subsequent transfers of rental spaces to condominium ownership are also excluded by subdivision (a) in order to carry out its expressed intent. Beyond that, however, I am not aware of any provision in the code, or of any interpretation, which would provide some safe period after conversion of the mobilehome park to tenant-corporation ownership in which renters would be exempted from the provisions of subdivision (c)(1).

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Finally, I know of no reason why the result would be different if the stock were purchased from the park corporation rather than from one of the existing tenants. Subdivision (c)(1) refers to "any transfer . . . of shares . . ." (emphasis added) and we find no basis under the facts presented for distinguishing one type of transfer of shares from another type of transfer of shares. While there may be some unusual situation in which there could be a difference, we are not presented with such a situation here.

- C. "In the SBE Letter Number 89/13, it indicates the changes of stock should 'parallel as closely as possible the tax treatment accorded condominium and stock cooperatives'. Does this mean, then, that transfers into revocable trusts are not reassessable; they may be subject to Proposition 58; interspousal transfers are excluded; original transferors may be created; and there may be fractional changes in ownership of a single stock share?"

Response

The language of subdivision (c)(1) expressly excludes from the pro rata change in ownership provision certain types of transfers. In addition to transfers for the purpose of converting the park to condominium, stock cooperative ownership or limited equity cooperative ownership, the subdivision also expressly excludes any transfer which is excluded from change in ownership by the provisions of section 62, 63 or 63.1. I believe these provisions cover most of the situations described in your question. The specific reference to sections 62, 63 or 63.1 normally indicates a legislative intent to limit the exclusion to these provisions. We would not, therefore, generally interpret the exclusion as being broader than the provisions of those sections. If you have an actual transfer which falls beyond the scope of these sections which you believe should be excluded from the pro rata change in ownership provision, we would need a full description of the facts and circumstances in order to determine whether there is a basis for exclusion.

- D. "Would a change in stock for relocation within the park be considered a reassessable change in ownership?"

Response

Subdivision (c)(1) refers to "any transfer on or after January 1, 1989 of shares of the voting stock, or other ownership or membership interests in, the entity which acquired the park . . ." Thus, a transfer of a share of voting stock or other ownership or membership interest is essential to trigger a pro rata change in ownership.

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Your letter states that the P: Park is not a stock cooperative. The term "cooperative housing corporation" is defined in subdivision (h) of Revenue and Taxation Code section 61 as a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right to possess a portion of the real property. Nothing in the articles of incorporation or the by-laws of the P:

Park indicate that stock ownership in the corporation carries with it the exclusive right to possess a portion of the mobilehome park. (In fact, you stated that some non-residents owned stock in the corporation.) Thus, as I understand it, a share of stock in the corporation does not give the shareholder the right to occupy a particular space or even any space in the park.

Your letter states that when a resident sells his coach and buys and moves into a coach at another space, the corporation cancels the old certificate and issues a new stock certificate to reflect this change. (The reason for the cancellation and reissuance of stock certificates is not clear since the stock interest is not site specific.) A stock certificate, in and of itself, is merely physical evidence of the ownership interest of the owner of the stock share. There may be a variety of reasons for the cancellation of a stock certificate and the issuance of a new certificate. A reverse stock split, for example, which reduces the number of shares outstanding by one-half may cause the cancellation of existing certificates and the issuance of new certificates. The relative ownership interest of each stockholder, however, remains unchanged. In these situations, there is truly no transfer of a share of stock or other ownership interest in the sense used in subdivision (c)(1). . . there is merely a transfer of the certificates which evidence the ownership interests. Thus, based upon your description, we believe that the cancellation and issuance of stock certificates in the relocation situation is a similar event and should not be viewed as a transfer of a share of stock or other ownership interest. For this reason, the transfer of certificates will not result in a pro rata change in ownership.

E. "There are a small number of shares owned by people who are not tenants in the park. Are changes of stock for non-tenants viewed the same way as for tenants?"

Response

Yes. The theory of subdivision (c)(1) is that each share of stock represents a pro rata ownership interest in the park and when a share transfers it will be treated like a transfer of a pro rata portion of the park. Nothing in the language of subdivision (c)(1) limits the application of the provision to shares of stock

held by tenants. As noted above, it refers to "any transfer". The same rule applies to transfers of stock held by non-tenants. If at the time of sale of the park, for example, the seller purchased a few shares in order to assist in closing the transaction, there is no reason why the pro rata change in ownership rule should not apply when those shares are transferred.

F. "Finally, what is the status of stock transfers between the 1985 conversion and January 1, 1989? Is there any section under which these transfers may be assessed as changes in ownership? Would any tenant who came into the park during that period as a renter, and who now buys a stock share, be reassessed for that pro rata portion?"

Response

While the exclusion from change in ownership under subdivision (a) of section 62.1 extends to transfers of a mobilehome park on or after January 1, 1985, the pro rata change in ownership provisions of subdivision (c)(1) only apply to transfers of shares "on or after January 1, 1989". Thus, pursuant to the express language of subdivision (c)(1), a transfer of a share of voting stock or other ownership or membership interest before that date will not result in a pro rata change in ownership.

Prior to January 1, 1989, the only change in ownership provisions in the Revenue and Taxation Code relating to transfers of corporate stock or other ownership interests were found in Revenue and Taxation Code section 64. (Section 61(h) relating to cooperative housing corporation stock is not applicable here.) Subdivision (a) of section 64 generally provides that the transfer of ownership interests in legal entities, such as corporate stock, shall not be deemed to constitute a transfer of real property. The only exceptions to this rule are subdivision (h) of section 61 and subdivisions (c) and (d) of section 64. Unless the transfer satisfies the conditions of one of those subdivisions, the transfer of corporate stock would not trigger a change in ownership.

Subdivision (c)(1) of section 62.1 applies the pro rata change in ownership provision to transfers of stock on or after January 1, 1989. Nothing in subdivision (c)(1) limits this provision to transfers of stock made to tenants who occupied the park after that date. These provisions would also apply to a transfer of stock to a tenant who first occupied the park prior to January 1, 1989. In short, the date on which the tenant first occupied the park is immaterial for purposes of this subdivision. The application of subdivision (c)(1) depends upon the transfer date of the stock.

Honorable Dick Frank

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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,

A handwritten signature in black ink, appearing to read "Richard H. Ochsner". The signature is stylized with a large, circular initial "R" and "H" that are intertwined.

Richard H. Ochsner
Assistant Chief Counsel

RHO:ta
3453D

cc: Mr. John W. Hagerty
Mr. Verne Walton
Mr. Robert R. Keeling