



STATE BOARD OF EQUALIZATION

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May 14, 1999

Honorable Robert C. Petersen, Assessor
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Dear Mr. Peterson:

This is in response to your letter to Assistant Chief Counsel Larry Augusta, asking our opinion as to several questions concerning changes in ownership in and of resident owned mobilehome parks. You enclose copies of Richard Ochsner's memorandum dated August 27, 1987 and Letter To Assessors No. 86/52, and ask us to update the information there, as necessary.

As you will see from the enclosed Letters To Assessors, and the following discussion, there have been several major changes to the law involving change in ownership and mobilehome parks since the memorandum and Letter you enclose, and those writings no longer reflect the current state of the law in this regard. We will summarize the current situation.

Since 1987, there have been major changes to subdivision (a) of section 62.1; the addition of, among other things, subdivision (b) to that section; and the addition of section 62.2 to the Revenue and Taxation Code. Sections 62.1 and 62.2 create three sets of change in ownership exclusions with respect to the transfers of mobilehome parks and lots. Subdivision (a) of section 62.1 excludes a transfer of a mobilehome park to an entity formed by the tenants of the park, and requires that the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park. We have also expressed the view that transfers from that entity to the individual lot owners, for example to complete a condominium plan, would necessarily be excluded to fulfill the purpose of the subdivision. See Letter To Assessors No. 89/13.

Subdivision (b) of section 62.1 provides a separate exclusion for the transfer of rental spaces in a mobilehome park to the individual tenants of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization as described in subdivision (k) of Section 50781 of the Health and Safety Code, to operate and maintain the park. We have expressed the view that all of the transfers of rental spaces need not occur on the same day; it is our view that the 51 percent participation can be accumulated, but must occur within the

one year period within which the residents have to form the resident organization to operate and maintain the park.

A third exclusion is set forth in section 62.2, for any transfer of a mobilehome park to an entity which is *not* formed by the tenants, for a temporary period following the transfer, to facilitate the transfer of the park to resident ownership pursuant to one of the exclusions of section 62.1 described above. Within that temporary period, either subdivision (a) of section 62.1 (transfer to a tenant-formed entity), or subdivision (b) of section 62.1 (transfers to at least 51 percent of the individual tenants), must be complied with, or the exclusion of this section 62.2 is lost, and the property is subject to reappraisal and escape or supplemental assessments. §62.2, subd (d). For mobilehome parks initially transferred after 1993, this temporary period within which section 62.1 must be complied with is 36 months. For mobilehome parks initially transferred between January 1, 1989 and January 1, 1993, that period was 18 months.

You will note that subdivision (a) of section 62.1 no longer requires the form of ownership to be a condominium or cooperative housing corporation. It can be any type of entity formed by the tenants, as long as the 51 percent participation requirement and the other requirements are satisfied. In 1987, the Legislature amended section 62.1 to, among other things, delete the requirement that the acquiring entity be only a nonprofit corporation, stock cooperative corporation, or other entity, as described in section 50561 of the Health and Safety Code (a condominium or stock cooperative), with the intent of expanding the scope of the exclusion to bona fide transfers of parks to tenant ownership in the form of any nonprofit corporation, stock cooperative corporation, or other entity. Stats. 1987, ch. 1344; see Letter To Assessors No. 88/44.

This change brought an immediate expression of concern from the Board. Whereas post-conversion transfers of mobilehome units held in the form of condominium units or stock cooperative shares constituted changes in ownership and reassessment on a par with other forms of home ownership transfers, the transfers of individual ownership interests in a mobilehome park with a corporate form of ownership were the transfers of interests in an entity, governed by the provisions of section 64 of the Revenue and Taxation Code. Under those provisions, with limited exceptions, the transfer of an ownership interest is not a change in ownership. Thus, the possibility was raised that mobilehome parks could be converted to resident ownership under the property tax reappraisal exclusion of section 62.1, and then virtually never be reassessed for property tax purposes thereafter.

Therefore, Board staff worked with the author of the 1987 legislation on amendments to provide for the treatment of transfers of units in corporation-owned mobilehome parks consistent with the transfers of other mobilehome park units and homes. That legislation was Senate Bill 1885/Stats. 1988, ch. 1076. S.B. 1885 amended subdivision (a) of section 62.1 to include the requirement discussed above that at least 51 percent of the tenants must participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park. It also amended subdivision (c) of section 62.1 to provide that a transfer of stock or an ownership interest in a mobilehome park is a change in ownership of a pro rata portion of the real property of the park, if the park had previously been transferred in a transaction qualifying under subdivision (a), but had

not been converted to condominium or stock cooperative ownership. See Letter To Assessors No. 89/13.

Thus, the Legislature, in adopting the language under consideration was doing so with the intent to cause the transfers of ownership interests in the entities acquiring parks to be changes in ownership and reassessable for property tax purposes, similar to transfers of other mobilehome park units and homes. Therefore, in direct answer to your last question, not only in the cases of condominium or stock cooperatives, but in cases of *all* entities formed by tenants, the initial transfers to which are excluded from change in ownership by virtue of subdivision (a) of section 62.1, the subsequent transfers of ownership interests in the entity are treated similarly, resulting in a pro rata change in ownership and reassessment of the underlying property. Similarly, subsequent transfers by tenants after the initial transfers of units to tenants, which are excluded from change in ownership by virtue of subdivision (b) of section 62.1, would be changes in ownership of those units transferred.

With respect to the separate assessment of the pro rata portions of mobilehome parks which change ownership pursuant to section 62.1, we direct your attention to Revenue and Taxation Code section 2188.10, a copy of which is enclosed. That section requires a separate assessment of such pro rata portions when the conditions set forth therein exist.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,



Daniel G. Nauman
Tax Counsel

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Enclosure

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70

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