STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 324-2655
FAX (916) 323-3387
www.boe.ca.gov

September 25, 2002
Corrected October 2, 2002

Re: ***Resident – Owned Mobilehome Park Pro Rata Change in Ownership: Section 62.1 (b)(4)(C).***

Dear Mr. :

This is in response to your letters of March 15, and August 6, 2002, to Mr. Larry Augusta, requesting our opinion as to the proper interpretation of Revenue and Taxation Code section 62.1, subdivisions (b)(4)(A) and (C), as enacted last year in A.B. 1457, as they relate to regular assessments for the January 1, 2001 lien date, reflecting prior pro rata changes in ownership in resident owned mobilehome parks. There is a difference of opinion between your client, the , Inc., a non-profit mutual benefit corporation whose members are the residents of the Mobilehome Park (RGLM) in , California, and the County Assessor's office over the interpretation of these provisions. You supply us with your client's interpretation, which would result in the lowest property taxes for your client for the 2001/2002 tax year, the Assessor's interpretation, which would result in the highest property taxes for such year, and a third possible interpretation, which you label the "intermediate interpretation." You ask for our interpretation of these subdivisions. Based upon our understanding of the Legislature's intent in enacting A.B. 1457 (Ch. 772, stats. 2001), we believe the proper interpretation of the issue you present is closest to your " intermediate interpretation."

As noted above, the issue involves pro rata changes in ownership of resident owned mobilehome parks, which is discussed at some length in Assessors' Handbook section 511, *Assessment of Manufactured Homes and Parks*, pp. 63-68. Sections 62.1 and 62.2 of the Revenue and Taxation Code create three sets of change in ownership exclusions with respect to the transfers of mobilehome parks and lots/spaces. Of relevance here is subdivision (a)(1) of section 62.1, which excludes a transfer of a mobilehome park to an entity formed by the tenants of the park, provided 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. See Letter To Assessors No. 89/13, AH 511, p. 63.

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 considered the transfers of interests in an entity, seemingly 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 that the treatment of transfers of units in corporation-owned mobilehome parks be consistent with the transfers of other mobilehome park units, condominium units, and homes in stock cooperatives, etc. That legislation was Senate Bill 1885/Stats. 1988, ch. 1076. S.B. 1885 amended then 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 then 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, condominium units, and homes. Requirements by transferees to report such changes in ownership have long been prescribed by section 480.

Some county assessors immediately implemented the pro rata change in ownership provisions of the 1988 legislation by reviewing recorded documents, sending out change in ownership statements, and establishing methods of identifying such changes in ownership, and making consequent assessments as such changes in ownership occurred. Some county assessors, however, did not identify or reassess such pro rata changes in ownership, in part because such changes in ownership generally do not result in a recorded document, and, in part, because the assessors did not receive change in ownership statements or other notices of them.

For various reasons, county assessors who did not implement the 1988 legislation became aware of its requirements in 1999 and 2000, and began contacting the resident owned mobilehome parks in their counties. This resulted in the substantial concern about potentially large escape assessments, possibly going back to the dates of the changes in ownership, since change in ownership statements had not been filed for the transfers.[1]

So, as the Legislature addressed this issue in what became A.B. 1457, it faced the situation in which essentially three types of assessments on transfers of park spaces were being made: (1) assessments in counties which implemented the 1988 legislation through identifying and reassessing pro rata changes in ownership in resident owned mobilehome parks, which we will symbolize as "County A;" (2) assessments in counties which had not implemented the 1988 legislation as of 2000-2001, resulting in potentially large escape assessments to be levied against mobilehome parks for prior pro rata changes in ownership, which we summarize as "County B;" and (3) assessments in a subset of County B which, when assessors became aware of the 1988 legislative requirements, issued escape assessments in 2000 or 2001, before A.B. 1457 was passed, which we categorize as "County C."[2]

The Legislature's primary focus in enacting A.B. 1457 was the situation in County B, and its primary concern was, essentially, back taxes. As it stated in its statement of legislative intent:

> . . . The Legislature finds and declares, as a result, that there exists a situation in which *the failure to timely assess changes in ownership* in resident-owned mobilehome parks has or will result in the issuance of escape and supplemental assessments in an unfair and inequitable manner. Residents of those parks have been or will be faced with unforeseen tax bills in significant amounts that have imposed or will impose an unfair and unreasonable burden on the residents of the parks, many of whom are persons of limited means or fixed incomes. . . . Ch. 772, stats. 2001, sec. 1 (emphasis added).

Therefore, in A.B. 1457, the Legislature enacted Paragraph (4) of subdivision (b) of section 62.1 to prevent the levy of escape or supplemental assessments with respect to these changes in ownership, as follows:[3]

> (4) (A) Notwithstanding any other provision of law, after an exclusion under subdivision (a), the assessor may not levy any escape or supplemental assessment with respect to any change in ownership of a pro rata portion of the real property of the mobilehome park that occurred

[1] Section 531 of the Revenue and Taxation Code requires county assessors to assess upon discovery property that has "escaped" assessment. Prior to 2001, section 532 limits escape assessments to four years unless the escape involved a change in ownership for which neither a change in ownership statement nor a preliminary change of ownership report was filed. If neither statement was filed, then the assessor must issue escape assessments for all prior years dating back to the transaction. However, beginning January 1, 2001, escape assessments are limited to eight years where there is an unreported or unrecorded change in ownership.

[2] Actually, there was a fourth category of counties, those which implemented the 1988 legislation for some types of parks, but not others. However, including them in this discussion unnecessarily complicates matters.

[3] Not of relevance here, A.B. 1457 also enacted reporting requirements for resident owned mobilehome parks.

> between January 1, 1989, and January 1, 2002, and for which the assessor did not, prior to January 1, 2000, levy any assessments. However, commencing with the January 1, 2002, lien date, the assessor shall correct the base year value of the pro rata portion of the real property of the park to properly reflect these changes in ownership. . . .

When the Legislature became aware of the situation in County C, it added subparagraph (C) to paragraph (4), to provide similar relief for back taxes:

> (C) Any outstanding taxes that were levied between January 1, 2000, and January 1, 2002, as a result of a pro rata change in ownership as described in subparagaph (*sic*) (A) shall be canceled. However, there shall be no refund of taxes, as so levied, that were paid prior to January 1, 2002.[4]

It should be noted, however, that the Legislature made a conscious decision to *not* negatively affect County A. Thus, the prohibition against the levy of back taxes only applies when the assessor failed to timely assess the changes in ownership.

In this context, you describe the dispute between your client and the Assessor as the meaning of the phrase "a pro rata change in ownership as described in subparagraph (A)."[5] It is, however, in our view actually the larger issue of the Legislature's intended application of subparagraph (C). Or, in other words, what taxes did the Legislature intend to cancel in County C situations?

The Assessor's position is that he interprets the words "*a pro rata change in ownership as described in subparagraph (A)*" to mean "an escape or supplemental assessment with respect to any change in ownership of a pro rata portion of the real property of the mobilehome park that occurred between January 1, 1989 and January 1, 2002, and for which the assessor did not, prior to January 1, 2000, levy any assessments." The import of this interpretation, as we understand it, is that it permits the Assessor to include in the regular (section 601) roll value on the January 1, 2001 lien date, the reassessed value attributable to all prior pro rata changes in ownership, even those that occurred prior to 2000 which were not discovered or assessed in prior years.

Your client, on the other hand, interprets the words "a pro rata change in ownership as described in subparagraph (A)" to mean "a change in ownership of a pro rata portion of the real property of the mobilehome park that occurred between January 1, 1989 and January 1, 2002." The result of this interpretation, again as we understand it, would be that a promptly discovered pro rata change in ownership that occurred in 2000, could not be reassessed for the January 1, 2001 roll, and could not be reassessed until the 2002 roll.

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[4] For the remainder of this letter, we, like you, will use a correct spelling version of Subparagraph (C).

[5] Based on the facts in pp. 4-5 of your March 15, 2002 letter, RGLM's regular assessment for the January 1 1999 lien date was appealed (over valuation issues), and thereafter the January 1, 2001 assessment was appealed. Prior to the hearing, the Assessor gave notice of intent to increase these two assessments due to discovery of additional changes in ownership. The Assessment Appeals Board rejected both the Assessor's argument for increasing these assessments and RGLM's appeal for reducing them, but affirmed the regular assessments on the roll.

Neither interpretation accurately reflects the Legislature's intent. The subject of subparagraph (A) is, in essence, a prohibition against escapes and supplementals on unlevied or untimely assessments in County B situations. And, it also provides "[h]owever, *commencing with the January 1, 2002, lien date*, the assessor *shall correct* the base year value of the pro rata portion of the real property of the park to properly reflect these changes in ownership." While this clearly is a commandment to assessors who have not properly discovered and assessed pro rata changes in ownership to do so and to enroll the value for the 2002 assessment year, it also by implication means that they are not to put such assessments on a prior lien date roll, since it says that they *shall* do so *commencing with the January 1, 2002 lien date*. "Commencing with the January 1, 2002 lien date" cannot be interpreted to mean, "commencing on the 2001 lien date", as the Assessor apparently has concluded.

On the other hand, as was noted above, the Legislature made a conscious decision not to affect County A. Properly discovered and levied escape and supplemental assessments are not "undone" by this legislation. There is absolutely nothing in the legislative history to indicate that, if an assessor discovers a year 2000 pro rata change in ownership and assesses it for the 2001 lien date, that it would be prohibited by this legislation.

Conversely, it is clear that subparagraph (C) was intended to cover only assessments made in 2000 and 2001 attributable to pro rata changes in ownership that had not been timely reassessed (the County C situation). The Board's Enrolled Bill Analysis of A.B. 1457, which was sent to the Governor prior to his signing the bill, states: "The September 7 amendments [which added the current subparagraph (C)] specifically address the situation of Santa Clara County, the only county to have completed the reassessment process for previously undiscovered pro rata changes prior to the introduction of this bill." In addition, the cover letter transmitting the Analysis to the Governor and advising the Governor of the Board's support of A.B. 1457, states that "This bill would relieve mobilehome park residents of additional property tax liability for escape assessments for prior tax years due to previously undiscovered pro rata changes in ownership that occurred between January 1, 1989 and January 1, 2002. And "The Board believes that it is appropriate to correct these assessments prospectively and protect the mobilehome residents from unforeseen additional tax liability for previous tax years."

Finally, Letter to Assessors No. 2002/010, announcing the passage of A.B. 1457, provides in part "Where an assessor did not timely assess a pro rata change in ownership that occurred between January 1, 1989, and January 1, 2002 *and* levy an assessment prior to January 1, 2000, no supplemental or escape assessments may be levied. . . . Any outstanding taxes that were levied under the circumstances described above, between January 1, 2000 and January 1, 2002, are to be cancelled. However, no refunds will be issued for any taxes paid before January 1, 2002." (Emphasis in original.) As such, subparagraph (C) of paragraph 4 of section 62.1(b) is properly interpreted to require the cancellation of unpaid property taxes attributable to pro rata changes in ownership for which assessments were not timely levied.

Based on the forgoing, the Assessor is prohibited from levying any escape or supplemental assessments and/or must cancel any unpaid taxes on assessments levied between

January 1, 2000 and January 1, 2002 for pro rata changes in ownership involving RGLM -- occurring between January 1, 1989 and January 1, 2002 – if the assessor failed to timely discover a subsequent pro rata change in ownership after the initial exclusion in 1992. However, a timely made assessment of a year 2000 pro rata change in ownership for the 2001 lien date is not prohibited. Commencing with the January 1, 2002 lien date, the Assessor is required to correct RGLM's base year value to properly reflect such changes in ownership, with the result that its regular assessments would be higher – assuming that changes in ownership between 1992 and January 1, 2002 increased the value.

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,

/s/ Daniel G. Nauman

Daniel G. Nauman
Senior Tax Counsel

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cc:

Mr. David Gau, MIC:63
Chief of PPSD, MIC:64
Mr. Charles Knudsen, MIC:62
Ms. Jennifer Willis – MIC:70
Ms. Glenna Schultz, MIC:61