

**S266590**

**Case No.:**

**IN THE SUPREME COURT OF CALIFORNIA**

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**AMEN FAMILY 1990 REVOCABLE TRUST, Real Party in  
Interest**

*Appellant*

**v.**

**JEFFREY PRANG, Los Angeles County Assessor**

*Respondent*

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After a Decision of the Court of Appeal  
Second Appellate District, Division Five  
Appeal Case No. B298794  
Appeal from Los Angeles Superior Case No. BS173698  
Hon. James C. Chalfant

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**PETITION FOR REVIEW**

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TABLE OF CONTENTS

TABLE OF CONTENTS..... 2

TABLE OF AUTHORITIES ..... 2

I. ISSUES PRESENTED ..... 7

II. WHY REVIEW SHOULD BE GRANTED ..... 8

III. STATEMENT OF FACTS..... 10

    A. The Ownership and Transfer of the Property ..... 10

    B. The Framework Governing Changes in Ownership ..... 11

    C. The State Board’s Contemporaneous Regulation Measures  
    Corporate “Ownership Interests” Using Voting Stock  
    Alone ..... 14

    D. All State Board Guidance Uniformly Interprets “Ownership  
    Interests” Using Voting Stock Alone..... 15

    E. The Los Angeles Assessment Appeals Board Grants the  
    Trust’s Assessment Appeal, but the Trial Court Overturns  
    the Findings and the Court of Appeal Affirms ..... 21

IV. ARGUMENT ..... 23

    A. The Court of Appeal Erred in Holding that the State Board’s  
    Quasi-Legislative Regulations and Agency Interpretations  
    are Not Entitled to Deference..... 25

        1. The Court of Appeal Failed to Accord the “Dignity of  
        Statute” to the State Board’s Quasi-Legislative  
        Regulation Defining Corporate “Ownership Interests”  
        to Mean Voting Stock..... 27

        2. The Court of Appeal Failed to Accord “Great Weight”  
        to the State Board’s Consistent and Long-Standing  
        Agency Interpretations that Corporate “Ownership  
        Interests” are Measured by Voting Stock Alone ..... 30

    B. The Court of Appeal Created a Conflict in the Statutory  
    Framework for Changes in Ownership that Contravenes  
    Legislative Intent..... 33

C. The Court of Appeal’s Opinion Will Upset Settled Expectations and Undermine the State Board’s Ongoing Ability to Ensure Statewide Compliance by Local Governments and Taxpayers with Proposition 13.....	38
V. CONCLUSION.....	41
CERTIFICATE OF WORD COUNT.....	42
PROOF OF SERVICE .....	93

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization</i> (1978) 22 Cal.3d 208 .....	11, 12, 28
<i>County of Los Angeles v. State Water Resources Control Bd.</i> (2006) 143 Cal.App.4th 985 .....	28
<i>In re Dannenberg</i> (2005) 34 Cal.4th 1061 .....	38
<i>Helene Curtis, Inc. v. Assessment Appeals Board</i> (1999) 76 Cal.App.4th 124 .....	28
<i>Loeffler v. Target Corp.,</i> 58 Cal.4th at pp. 1103, 1106 & 1127 .....	31
<i>Lungren v. Deukmejian,</i> 45 Cal.3d 730 .....	34
<i>Magrabian v. Saenz</i> (2005) 130 Cal.App.4th 468 .....	30
<i>Pacific Southwest Realty co. v. County of Los Angeles</i> (1991) 1 Cal.4th 155 .....	9, 29, 34, 36
<i>Prang v. Amen Family 1990 Revocable Trust,</i> No. B298794 .....	15
<i>Ramirez v. Yosemite Water Co., Inc.</i> (1999) 20 Cal.4th 785 .....	25, 26, 27, 29
<i>Reilly v. City and County of San Francisco</i> (2006) 142 Cal.App.4th 480 .....	31
<i>Sara M. v. Superior Court</i> (2005) 36 Cal.4th 998 .....	9

<i>Western States Petroleum Assn. v. Board of Equalization</i> (2013) 57 Cal.4th 401.....	28
<i>Y.K.A. Industries, Inc. v. Redevelopment Agency of City of San Jose</i> (2009) 174 Cal.App.4th 339.....	25
<i>Yamaha Corp. of Am. v. State Bd. of Equalization</i> (2000) 73 Cal.App.4th 338.....	26
<i>Yamaha Corp. of America v. State Bd. of Equalization</i> (1998) 19 Cal.4th 1 ( <i>Yamaha I</i> ).....	<i>passim</i>

**Statutes**

Administrative Procedures Act.....	15, 26, 32
Bank and Corporation Tax Law.....	35
Cal. Code Regs., tit. 18, § 462.180.....	14, 27
Cal. Code Regs., tit. 18 § 462.180, subd. (d)(4).....	29
1994 Cal. Legis. Serv. Ch. 1243 (S.B. 1805 (WEST).).....	35
Gov. Code, §§ 11346.2, 11346.45.....	15
Gov. Code, § 15606, subds. (c), (e), (f) .....	14, 28
Rev. & Tax. Code, §§ 50 <i>et seq.</i> .....	12
Rev. & Tax. Code, §§ 60-69.5.....	9
Rev. & Tax. Code, § 64(c).....	34, 35, 37
Revenue and Taxation Code Division 1, part 0.5.....	12
Rev. & Tax. Code, § 62(a)(2).....	<i>passim</i>

**Other Authorities**

18 Cal. Code of Regs., § 462.180.....	36
(1979-1980 Reg. Sess.) §§ 1-2 .....	14

Attorney General Opinion No. 79–1005 (1980) 63 A.G. Op. 304, 309 .....	29
Cal. Rule Ct. 8.204(c) .....	42
California Constitution Article XIII A.....	11, 28, 29
Rule 462.....	14, 15, 32
Rule 462(j)(4)(A)(i) .....	15
Rule 462(j)(4)(B) .....	14
Rule 462.180.....	<i>passim</i>
Rule 462.180.....	36
Rule 462.180(d)(1).....	36
Rule 462.180, subd. (d)(2).....	14
Senate Bill 1805 (“SB 1805”).....	35
State Board Letter to Assessors 81/22, Feb. 11, 1981 .....	15
State Board Letter to Assessors No. 81/91, Aug. 7, 1981 .....	14
State Board Letter to Assessors No. 2003/039, May 29, 2003 .....	16
State Board Opinion Letter, Annotation 220.0067, Oct. 30, 2009.....	17

## I. ISSUES PRESENTED

Since 1974, the Legislature has charged the California State Board of Equalization (“State Board”) with administering and interpreting California’s property tax regime. The State Board has adopted, pursuant to express Legislative authority, longstanding and consistent regulations and interpretive guidelines. The Court of Appeal in this case adopted an interpretation contrary to the State Board’s.<sup>1</sup> This petition presents three issues for review:

1. Under *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1 (*Yamaha I*), did the Court of Appeal err by failing defer to the longstanding construction of California’s constitutional and statutory framework governing changes of ownership of real property by the agency charged with its administration and interpretation, where the agency’s construction was not clearly erroneous.

2. Where the *Yamaha I* analysis demonstrates the State Board’s quasi-legislative regulations must be accorded the “dignity of statute” and its longstanding and consistent agency interpretation of the statute it administers must be accorded “great weight” and “respect,” what legal standard governs the court’s departure from the State Board’s interpretation, where the court does not conduct any *Yamaha I* analysis?

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<sup>1</sup> The Court of Appeal’s majority opinion and dissent are attached as Exhibit A.

3. Did the Court of Appeal err in concluding that the phrase “ownership interests” in the statutory framework governing changes of ownership has a different meaning depending on the form of property exchanged (real property versus stock) by giving the same phrase (ownership interests) different meanings in the same statutory scheme?

## **II. WHY REVIEW SHOULD BE GRANTED**

This petition arises from a Court of Appeal opinion that undermines the uniformity of law on two important legal issues: the judicial status of the administrative interpretation of statutes generally, and the particular interpretation of the change in ownership statutes enacted pursuant to Proposition 13 in 1978.

Since 1981, the State Board, pursuant to express statutory authority, has issued regulations and guidelines interpreting Proposition 13 and the statutes for changes in ownership, a detailed and technical framework it is charged with administering. The court below, contrary to decisions of this Court, failed to give deference to the State Board’s formal, longstanding, and consistent interpretation that corporate “ownership interests” are measured by voting stock alone in analyzing changes in ownership. The majority opinion undermines uniformity on this important legal issue in two respects.

First, the opinion conflicts with this Court’s decision in *Yamaha I* and subsequent case law, which require courts to defer to an agency’s consistent and longstanding interpretation of the statute it is charged with administering unless its interpretation



is clearly erroneous. (See *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1014, quoting *Robinson v. Fair Employment & Housing Commission* (1992) 2 Cal. 4th 226, 234 [“administrative construction of a statute over many years, particularly when it originated with those charged with putting the statutory machinery into effect, is entitled to great weight and will not be overturned unless clearly erroneous.”].) The decisions of this and other courts have applied the clear error standard, whereas the court below disregarded the State Board’s consistent and longstanding interpretation without finding clear error or even conducting a *Yamaha I* analysis. By failing to adhere to these principles, the Court of Appeal has not only unsettled longstanding expectations, but has jeopardized the reliance of California taxpayers and hundreds of local jurisdictions on the State Board’s current and future guidelines and, in consequence, jeopardized the State Board’s ability to administer this important statute.

Second, the opinion fails to harmonize the statutes governing changes in ownership by creating multiple definitions of the phrase “ownership interests” despite the Legislature’s mandate for “uniformity and consistency” in applying the statutes. (*Pacific Southwest Realty co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 161-162.) Corporate ownership interests are measured using voting stock alone in the change in ownership statutes (Rev. & Tax. Code, §§ 60-69.5) and the constellation of State Board regulations and guidance. The Court of Appeal coined a new definition for the phrase in Revenue and Taxation

Code section 62(a)(2) (“Section 62(a)(2)”) that includes all forms of stock, based on its interpretation of the term “stock,” which is included in a subordinate clause of Section 62(a)(2) listing non-exclusive examples of interests in a variety of legal forms. The Court of Appeal’s interpretation fails to effectuate the purpose of Proposition 13 (limiting property tax increases), dislocates Section 62(a)(2) from the change in ownership statutes (by coining a definition unique to Section 62(a)(2)), creates loopholes enabling tax evasion, and disrupts both the State Board’s ability to administer the statute and taxpayers’ reliance on longstanding rules. The Court of Appeal’s decision will severely undermine the State Board’s vital enforcement role and the effectiveness of Proposition 13’s protections against tax increases.

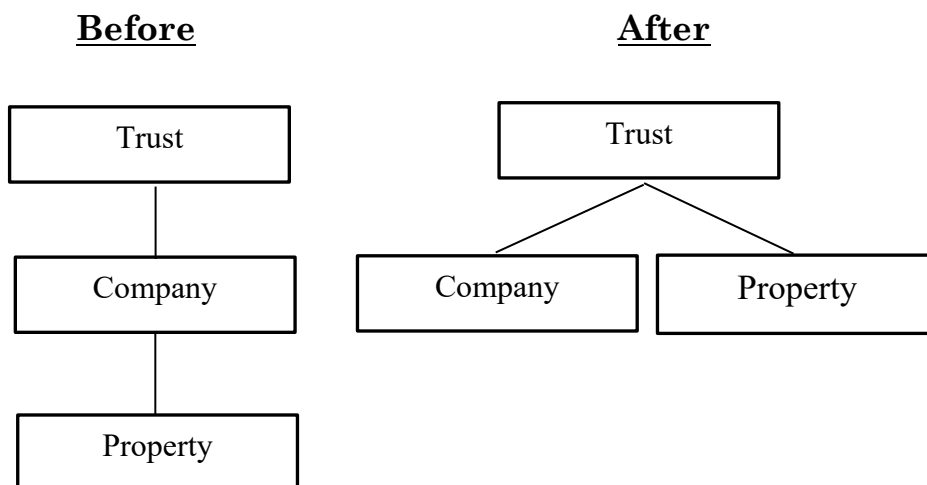
### **III. STATEMENT OF FACTS**

#### **A. The Ownership and Transfer of the Property**

The property (“Property”) at issue consists of two family-owned supermarkets operating under the brand name “Super A Foods.” (Administrative Record (“AR”) 120.)

On December 5, 2014, the Property was transferred (the “Transfer”) from Super A Foods, Inc. (the “Company”) to the Amen Family 1990 Revocable Trust (the “Trust.”) (AR 120, 318.) Before and after the Transfer, the Trust owned all 22,800 outstanding shares of the Company’s voting stock (AR 165, 167, 170). The Company had also issued non-voting stock as gifts to employees (AR 122, 320), representing 7.20% of all outstanding stock (AR 205).

The Transfer is depicted in this diagram:



### **B. The Framework Governing Changes in Ownership**

Proposition 13, the landmark tax-reform initiative in 1978, made changes in ownership of real property significant in property taxation by adding article XIII A to the California Constitution. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 218.) Article XIII A caps property tax increases at 2% per year, unless the property is purchased, newly constructed, or there is a “change in ownership,” at which point the property is reassessed at fair market value. (Cal. Const., art. XIII A, § 2.) The implementation of article XIII A, and the resolution of its ambiguities, has “depended upon the contemporaneous construction of the Legislature or of the *administrative agencies* charged with

implementing the new enactment.” (*Amador Valley*, 22 Cal.3d at p. 245, italics added.)<sup>2</sup>

Division 1, part 0.5 of the Revenue and Taxation Code implements article XIII A. (Rev. & Tax. Code, §§ 50 *et seq.*) The Legislature defined “change in ownership” using a general definition (*id.*, § 60) and non-exclusive examples of what is, and is not, a change in ownership (*id.*, §§ 61-69.5). A “change in ownership” is a “transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.” (*Id.*, § 60.) Either a transfer of real property or a transfer of an interest in the legal entity owning the real property may trigger a change in ownership.

One example of a change in ownership occurs when the transfer of an “ownership interest” in a legal entity results in a change in control of that entity. (*Id.*, § 64, subd. (c)(1).) This change in control is measured by the ownership of voting stock. (*Id.*) Specifically, section 64(c)(1) provides that when “control through direct or indirect ownership or control of more than 50 percent of the *voting stock* of any corporation,” or a “majority ownership interest” is obtained, “the purchase or transfer of that stock or other interest shall be a change of ownership of the real property.” (*Id.*)

Another example of a change in ownership is the transfer of more than 50 percent of the “original co-owner” shares of an

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<sup>2</sup> All emphases have been added unless otherwise indicated.

entity that owns real property. (*Id.*, § 64, subd. (d).) Pursuant to Section 62(a)(2)—the statute at issue in this case—a change in ownership does not include:

Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer.

When Section 62(a)(2) excludes a transfer from being a change in ownership, those holding “ownership interests” in the legal entity immediately after the transfer are considered “original coowners.” (*Id.*, § 64, subd. (d).) Section 64(d), however, requires reappraisal when the original co-owners transfer more than 50 percent of their “ownership interests”:

Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under [Section 62(a)(2)] shall be reappraised.

The Legislature did not enact statutory definitions of the terms “ownership interest” or “stock” in Section 62(a)(2), or “ownership interests” or “shares” in Section 64(d).<sup>3</sup>

**C. The State Board’s Contemporaneous Regulation Measures Corporate “Ownership Interests” Using Voting Stock Alone**

The State Board is authorized to prescribe rules and regulations to govern equalization and to promote uniformity throughout California in the assessment of property. (Gov. Code, § 15606, subs. (c), (e), (f).) Contemporaneously with the enactment of the change in ownership statutes, the State Board promulgated Property Tax Rule 462 to clarify the statutes’ application to legal entity changes in ownership. (Cal. Code Regs., tit. 18, § 462.180 (“Rule 462.180”), former Regulation § 462; see also State Board Letter to Assessors No. 81/91, Aug. 7, 1981.)<sup>4</sup> Rule 462.180 defines the terms “ownership interests” and “shares” in Section 64(d) to mean “voting shares.” (Rule 462.180, subd. (d)(2), former tit. 18, § 462, subd. (j)(4)(B).)

Former Rule 462(j)(4)(B) explained that Section 64(d) applies when “the ‘original coowners’ subsequently transfer, in one or more transactions, more than 50 percent of the total control or *ownership interests* in the entity as defined in (4)(A).”

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<sup>3</sup> The Legislature enacted Sections 62(a)(2) and 64(d) in 1980, and they became operative in 1981. (Assem. Bill No. 2777 (1979-1980 Reg. Sess.) §§ 1-2; Stats. 1980, ch. 1349.)

<sup>4</sup> All references to Rules or Regulations are to title 18 of the California Code of Regulations.

Rule 462(j)(4)(A)(i), in turn, provided a change in ownership occurs “[w]hen any corporation, partnership, other legal entity or any person obtains direct or indirect ownership or control of more than 50 percent of the *voting stock* in any corporation which is not a member of the same affiliated group of corporations . . .” While Rule 462 has been renumbered, and is now contained within Rule 462.180, the definition of “ownership interests” and “shares” as meaning *voting* shares remains unchanged. (See Regulation 462.180, subd. (d)(2).)

These Regulations were subject to the Administrative Procedure Act. (See e.g., Gov. Code, §§ 11346.2, 11346.45; see also State Board Letter to Assessors 81/22, Feb. 11, 1981.) The Final Statement of Reasons reflects no opposition to using “voting stock” to measure corporate “ownership interests” (Rule 462, Final Statement of Reasons, § IV, at p. 7) and, “except for this action, [the State Board] is not aware of any dispute over this language since adopting the legal entity change in ownership rules in 1981” (Brief of *Amicus Curiae* California State Board of Equalization, *Prang v. Amen Family 1990 Revocable Trust*, No. B298794, at p. 13.)<sup>5</sup>

**D. All State Board Guidance Uniformly Interprets “Ownership Interests” Using Voting Stock Alone**

The State Board has always interpreted “ownership interest” in Section 62(a)(2) to mean voting stock. The State

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<sup>5</sup> The SBE *Amicus* Brief is attached hereto as Exhibit B.

Board’s guidance includes the Assessors’ Handbook,<sup>6</sup> legal opinions,<sup>7</sup> and Letters to Assessors.<sup>8</sup> Assessors’ Handbook section 401 was promulgated in 2010 following a two-year interested-parties drafting process, with the participation of County Assessors, County Counsel, representatives of the elected State Board members, and the Deputy State Controller, as well as private attorneys and State Board staff members. (AR 76-77.)

Section 401 of the Assessors’ Handbook, entitled Change in Ownership, focuses exclusively on voting stock in explaining Section 62(a)(2). The Chapter concerning Section 62(a)(2) provides: “For change in ownership purposes, ownership in a corporation is determined by the percentage of ownership or control of a corporation’s *voting stock*.” (SBE, Assessors’ Handbook (2010, reprinted 2015) Ch. 401, Change in Ownership, p. 38.) Section 401 continues: “Control of a corporation exists

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<sup>6</sup> “The *Assessors’ Handbook* is a collection of manuals or sections adopted and published by the Board of Equalization” that “address property tax appraisal and assessment practices.” (AR 215; State Board Letter to Assessors No. 2003/039, May 29, 2003 (“LTA 2009/039”).)

<sup>7</sup> “Legal opinions issued by the [State] Board staff are legal rulings of counsel which means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel’s designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government, or other Board staff.” (AR 216; LTA No. 2003/039.)

<sup>8</sup> “In the late 1960’s, the [State] Board began issuing a series of letters to county assessors in order to comply with [Government Code] section 15606. . . . The LTA series covers a myriad of topics each year, including . . . policy-setting assessment guidelines . . . and *Assessors’ Handbook* sections.” (AR 216; LTA 2003/039.)



when one entity or person has direct or indirect ownership or control of more than 50 percent of the *voting stock* of the corporation.” (*Id.* at p. 42, original italics.) AH-401 also provides three examples (numbered 6-10, 6-11, and 6-12) to illustrate Section 62(a)(2)’s applicat—all of which evaluate “ownership interests” based on “voting stock” alone. (AR 191-193.) Example 6-10 is the most pertinent to this action because it concerns a transfer of real property to a corporation:

D and B, equal co-tenants, transfer their real property to Corporation X and each take back 50 percent of the single class of *voting stock*. No change in ownership occurs, since the proportional ownership interests remain the same before and after the transfer.

However, if D and B each take back 49 percent of the *voting stock* and C receives 2 percent of the *voting stock*, there will be a change in ownership of the entire property since the proportional ownership interests did not remain the same before and after the transfer.

(AR 192.) Example 6-11 addresses facts different from this case but is relevant because it explains the rule that “there is no change in ownership” as long as “transfers are proportional to the[] ownership of the corporation’s *voting stock*.” (AR 192.)

The State Board has also issued four legal opinion letters explaining how Section 62(a)(2) applies in specific cases, which all state that Section 62(a)(2) measures corporate “ownership interests” using voting stock alone.<sup>9</sup>

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<sup>9</sup> The opinion letters are in the record below and are annotated as follows: (i) State Board Opinion Letter re: “Change of Ownership – Transfer from Revocable Trust to Corporation,” Annotation 220.0267, May 31, 2007 (AR 194-197); (ii) State Board Opinion

The State Board legal opinion dated May 31, 2007 concerns events similar to this case, where a husband and wife, as trustees, transferred real property to a corporation in which they held 49% and 51% of the voting stock, respectively. (AR 194-197.) The State Board used voting stock to analyze Section 62(a)(2):

[T]he transfer to the corporation caused their interests in the property, which were now represented by the interests in the corporation's *voting stock*, to change [from 50% each to 49% and 51%, respectively] so that husband and wife no longer had equal interest in the property. . . . However, if husband and wife can establish by clear and convincing evidence that their *voting shares* in the corporation are held as community property, the proportional interest transfer exclusion of section 62, subdivision (a)(2) would apply.

(AR 196.)

The State Board legal opinion dated October 30, 2009 considers whether Section 62(a)(2) applied to a real property transfer resulting from the merger of two corporations into one surviving corporation in which, like here, there were two classes of corporate stock. (AR 198-201.) Corporation "US" merged into corporation "KB" and the shareholders of "US" received "class B" voting stock in "KB," which was the surviving corporation. (AR

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Letter, Annotation 220.0067, Oct. 30, 2009 (AR 198-201); (iii) State Board Opinion Letter re: "Request for Legal Opinion - BOE-100-B, Statement of Change in Control and Ownership of Legal Entities for [Redacted] & Subsidiaries," Sept. 30, 2011, Ex. A to Trust's Motion for Judicial Notice below ("RJN"); and (iv) State Board Opinion Letter re: "Exchange, Transfer and Conversion of Interests in a Limited Partnership Owning Real Property," Apr. 12, 2002, Ex. B to RJN.

199-201.) “KB” thus had at least two classes of stock: class A and class B. Nevertheless, in concluding that Section 62(a)(2) did not apply, the State Board advised:

[F]or the exclusion of section 62, subdivision (a)(2) to apply complete proportionality between transferees and the transferors is required. In other words, the shareholder’s interest in [companies 1 and 2] as represented by their *voting stock* must have been the same prior to the Merger, and after the Merger.

(AR 201.)

The State Board legal opinion dated September 30, 2011, addresses the change in ownership implications, under Sections 62(a)(2) and 64(c)(1), of a complex transaction involving two businesses. (RJN, Ex. A.) While the facts are different from this case, the State Board stated that corporate ownership interests are measured by voting stock alone:

Under California property tax law, it is necessary to measure ownership interest in a legal entities for purposes of determining or measuring changes in control, and as discussed below, proportionality of ownership. *For corporations, the ownership interests for measuring changes in control and proportionality of ownership are represented by voting stock.* (See Rev. & Tax. Code, § 62, subd. (a)(2); § 64, subd. (c)(1); and Rule 462.180, subd. (d)(1)(A.)

(RJN, Ex. A at p. 8.)

The State Board legal opinion dated April 12, 2002 addresses whether transfers of partnership interests constituted a change in ownership under Section 62(a)(2) or Section 64. (RJN, Ex. B.) The State Board described the standard to measure corporate “ownership interests” under Section 62 and Section 64:

While the term “ownership interests” used in sections 62 and 64 is not defined in the code, it is defined in Property Tax Rule 462.180(d)(1) (18 Cal. Code of Regs., § 462.180) which interprets those provisions. In this regard, *Rule 462.180, in effect, defines “ownership interest” as the voting stock in a corporation, or as the “total interest in partnership capital and . . . profits.”* Accordingly, it is these definitions of “ownership interest” to which we look in determining the applicable interests in entities, such as limited partnerships.

(RJN, Ex. B at p. 14.)

The State Board issued a Letter to Assessors on April 27, 2011 entitled “Legal Entities change in Ownership – Overview” that “provides a brief overview of the applicable change in ownership laws that affect real property owned by legal entities.”

(RJN, Ex. C at p. 20, capitalization removed in title.) It explains the application of the “original coowners” exception of Section 64(d), discussed above. The Letter to Assessors provides:

Section 64(d) provides that when *voting stock* or other ownership interests representing cumulatively more than 50 percent of the total interests in a legal entity are transferred by any of the original co-owners in one or more transactions, the real property that was previously excluded from change in ownership under section 62(a)(2) will be reassessed.

(RJN, Ex. C at 22.) The State Board’s understanding of Section 64(d) is consistent with its understanding that corporate “ownership interests” are measured using voting stock alone in Section 62(a)(2). It would be illogical to measure ownership interests in the original transaction using all stock (under Section 62(a)(2)) and then measure ownership interests in the same

entity in future transactions using only voting stock (which all parties agree is the correct application of Section 64(d)).

**E. The Los Angeles Assessment Appeals Board Grants the Trust’s Assessment Appeal, but the Trial Court Overturns the Findings and the Court of Appeal Affirms**

The Los Angeles County Assessor (“Assessor”) considered the Transfer a change in ownership and reassessed the Property from \$5,140,120 to \$10,280,000. (AR 425-441.) The Trust appealed to the Assessment Appeals Board (“AAB”), contending that the Transfer was not a change in ownership under Section 62(a)(2) because the Transfer only changed the method by which the Trust held title. (AR 417-449.)

On December 11, 2018, the AAB ruled for the Trust and concluded the Transfer was excluded under Section 62(a)(2). (AR 126.) The AAB held that “for purposes of Section 62(a)(2), where voting stock is issued by a corporation, the proportional interest transfer exclusion should be analyzed with respect to only those shares of voting stock issued and outstanding,” and without regard for non-voting stock. (AR 126.)

On June 10, 2019, the trial court found “[t]he Board erred when it concluded that the December 4, 2014 transfers did not constitute a change of ownership of the Properties.” (JA 486.) The trial court found: “the term ‘stock’ in section 62(a)(2) has a different meaning than voting stock, and therefore means all types of stock, both voting and non-voting.” (JA 493.)

After the Court of Appeal heard argument on February 10, 2020, it requested *amicus* briefs from the State Board, three private practitioners specializing in property tax, and two trade organizations representing California assessors and counties. The State Board and all three private practitioners argued the Transaction was exempt under Section 62(a)(2), while the trade organizations jointly urged affirmance. The State Board explained: “Reading the statutory scheme implementing Proposition 13 as a whole, ‘stock’ in Section 62(a)(2) should be interpreted to mean ‘voting stock.’ Interpreting “stock” in Section 62(a)(2) to include non-voting stock would render the statutes inconsistent, and lead to problems in administering the statutory scheme and create opportunities for gamesmanship to avoid reassessment.” (Ex. B at p. 7.)

On December 7, 2020, the Court of Appeal issued a published opinion in which two Justices (Rubin, J. and Moor, J.) affirmed and the third Justice (Baker, J.) dissented. The majority found the State Board’s interpretations “not particularly helpful” to its analysis. (Ex. A at p. 13 fn. 10.) The majority analyzes the plain meaning of the term “stock”—even though Section 62(a)(2) analyzes “ownership interests” before and after a transaction—and concludes that all forms of stock must be used in applying the statute. (Ex. A at p. 6.)

Justice Baker in his dissent concludes that “[a]s a matter of statutory interpretation and of implementing agency deference [citations], *the majority opinion reaches the wrong result.*” (Ex. A at p. 1, Baker, J. diss. opn.) The final paragraphs of Justice

Baker’s dissent summarize his concerns and are worth quoting in full:

The majority’s oversimplified interpretive approach (the statute just says “stock,” so that means any sort of stock) fails to harmonize the statutory scheme, and that is an analytical flaw. Analytical vulnerabilities, however, are the least of the opinion’s problems; the deleterious practical consequences of today’s holding are the real concern. The Legislature has stated a preference for uniformity in the administration of property tax assessment practices throughout the state—with the Board specifically charged with achieving that end. (Gov. Code, § 15606, subd. (e).) The majority nonetheless permits the Los Angeles County Assessor to disregard the Board’s instructions and expertise, thereby opening the door to a patchwork, county-by-county system of differing reassessment methods that is the opposite of what the Legislature intended. Not only that, decisions about how to structure an untold number of property transactions and legal entity relationships in Los Angeles County have almost certainly been informed by the Board’s longstanding guidance regarding Section 62(a)(2) and related statutes. The majority upends these reliance interests with unpredictable and, at least in some cases, unfair consequences.

Let us therefore hope today’s decision is not the last word on the meaning of Section 62(a)(2). For now, I respectfully dissent.

(Ex. A at pp. 2-3, Baker J. diss. opn.)

#### **IV. ARGUMENT**

As Justice Baker concluded in his dissent, this case presents a matter of first impression involving “an issue of statewide importance.” (Ex. A at 1, Baker, J diss. opn.) This is the first case in which the courts have been asked to determine the

“ownership interests” that trigger a change in ownership resulting in reassessment. The Court of Appeal’s opinion “authorizes the Assessor in Los Angeles County to reassess real property in a manner *inconsistent* with the considered legal view of the State Board of Equalization (the Board)—the entity responsible for promulgating property tax assessment regulations and for instructing county assessors on correct property tax assessment methods.” (*Id.*) This case thus provides the Court a valuable opportunity to resolve the meaning of the phrase “ownership interests” in the framework governing changes in ownership, an extremely important issue given the immense tax consequences resulting from a change of ownership. This case is also an excellent vehicle for addressing, more broadly, that a government agency’s quasi-legislative actions must be given the dignity of statutes and its agency interpretations must be given great weight, especially where the public has relied on those rules for years. Because the Court of Appeal’s interpretation of “ownership interests” creates two different definitions of the same phrase depending on the form of property transferred and departs from the uniform meaning found in the Revenue and Taxation Code, the California Code of Regulations, and all guidance by the State Board, this Court should grant review and reverse the judgment of the Court of Appeal.



**A. The Court of Appeal Erred in Holding that the State Board’s Quasi-Legislative Regulations and Agency Interpretations are Not Entitled to Deference**

While courts have final responsibility for interpreting statutes (*Yamaha*, 19 Cal.4th at p. 11, fn. 4), they defer to the construction of an agency empowered with administering the statute. The degree of deference depends on whether the interpretation is a “quasi-legislative rule” or an “agency interpretation” (*Id.* at p. 10.) “[A]dministrative rules do not always fall neatly into one category or the other; the terms designate opposite ends of an administrative continuum, depending on the breadth of the authority delegated by the Legislature.” (*Id.* at p. 6, fn. 3.)

“Quasi-legislative regulations are those ‘adopted by an agency to which the Legislature has confided the power to make law’” (*Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 798-799; quoting *Yamaha*, 19 Cal.4th at p. 7), and such rules “have the dignity of statutes” (*Yamaha*, 19 Cal.4th at p. 10). Quasi-legislative acts “bind this and other courts as firmly as statutes themselves.” (*Id.* at p. 7; see also *Y.K.A. Industries, Inc. v. Redevelopment Agency of City of San Jose* (2009) 174 Cal.App.4th 339, 359 [“quasi-legislative acts . . . are the formulation of a rule to be applied to future cases.”].) Courts deferentially review quasi-legislative acts: “Our inquiry necessarily is confined to the question whether the classification is ‘arbitrary, capricious or [without] reasonable or rational basis.’”

(*Yamaha*, 19 Cal.4th at p. 11, quoting *Wallace Berrie and Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65.)

“[I]nterpretive regulations are those which involve ‘an agency’s interpretation of a statute or regulation’” (*Ramirez*, 20 Cal.4th at p. 799, quoting *Yamaha*, 19 Cal.4th at p. 7), “and are given variable deference according to a number of factors” (*Ramirez*, 20 Cal.4th at p 799.) The first factor that suggests deference is the agency’s expertise and technical knowledge. (*Yamaha*, 19 Cal.4th at p. 12.) The second group of factors—“those suggesting the agency’s interpretation is likely to be correct”—are: (a) “careful consideration by senior agency officials;” (b) evidence that the agency has “consistently maintained the interpretation in question, especially if [it] is long-standing;” (c) an indication that the agency’s interpretation was “contemporaneous with legislative enactment of the statute being interpreted;” and (d) whether the agency has enacted a regulation pursuant to the Administrative Procedures Act. (*Id.* at pp. 12-13.) After *Yamaha I*, on remand, the court deferred to a State Board annotation (legal opinion), holding it was entitled to “great weight.” (*Yamaha Corp. of Am. v. State Bd. of Equalization* (2000) 73 Cal.App.4th 338, 354 (“*Yamaha II*”).)

By failing to adhere to these principles—and by not conducting any *Yamaha I* analysis—the Court of Appeal departed from binding precedent, unsettled longstanding legislative and regulatory expectations, jeopardized the reliance of the 58 counties and millions of taxpayers in California on the State

Board's guidelines, and threatened the State Board's ability to administer change in ownership laws.

**1. The Court of Appeal Failed to Accord the “Dignity of Statute” to the State Board’s Quasi-Legislative Regulation Defining Corporate “Ownership Interests” to Mean Voting Stock**

The State Board exercised its quasi-legislative powers in enacting Rule 462.180 (Cal. Code Regs., tit. 18, § 462.180) because the regulation does not merely interpret a statute, but implements and applies the change in ownership rules enacted by Proposition 13 pursuant to authority delegated by the Legislature.

Courts find administrative agencies exercise quasi-legislative power in interpreting a statute “when the agency is expressly or impliedly delegated interpretive authority.” (*Yamaha*, 19 Cal.4th at p. 17 (Mosk, J., conc. opn.); *Ramirez*, 20 Cal.4th at 799.) Delegated authority is implied “when there are broadly worded statutes combined with an authorization of agency rulemaking power” or “when an issue of interpretation is heavily freighted with policy choices which the agency is empowered to make.” (*Yamaha*, 19 Cal.4th at p. 17 (Conc. Opn. of Mosk, J).) The Legislature has expressly delegated such authority to the State Board. The statutes governing changes in ownership, which are broadly worded with undefined terms and concern policy decisions, also show the State Board's implied interpretive authority.

This Court has not only recognized that the State Board possesses “quasi-legislative rulemaking powers” (*Yamaha*, 19 Cal.4th at p. 8), but also that the implementation of article XIII A of the California Constitution and the resolution of its “ambiguities may be resolved by the contemporaneous construction of the Legislature *or of the administrative agencies* charged with implementing the new enactment.” (*Amador Valley*, 22 Cal.3d at p. 245.) “[T]he orderly functioning of our property tax system depends on administrative regulations to implement general statutory directives.” (*Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401, 414.)

The State Board adopted Rule 462.180 pursuant to its authorization to prescribe rules and regulations to govern and promote uniformity of assessment throughout California. (Gov. Code, § 15606, subs. (c), (e), (f).) Rule 462.180 squarely falls within the State Board’s delegated rulemaking authority because it is necessary to “fill in the gaps”<sup>10</sup> of Section 62 and Section 64, which did not define “ownership interests” or “stock.” The State Board needed to fill this gap because the Task Force charged with implementing Proposition 13—of which the State Board was a

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<sup>10</sup> (See *Helene Curtis, Inc. v. Assessment Appeals Board* (1999) 76 Cal.App.4th 124, 129 [“An administrative agency granted quasi-legislative powers may, however, adopt regulations to fill in the details of the statutes enacted by the Legislature.”]; *County of Los Angeles v. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985, 997 [deference to agency’s expertise especially appropriate “in construing language which is not clearly defined in statutes.”].)

member (*Pacific Southwest Realty Co. v. Cnty. of Los Angeles* (1991) 1 Cal.4th 155, 161)—recommended using “examples’ to elaborate on common transactions” because “[l]ay assessors and taxpayers would otherwise have difficulty applying legal concepts” (*id.*). (See also Attorney General Opinion No. 79–1005 (1980) 63 A.G. Op. 304, 309 [nothing in article XIII A or the materials presented to the voters provides any guidance as to the meaning of “change in ownership”.].)

The Court of Appeal, however, failed to consider that Rule 462.180 defines corporate “ownership interests” to mean voting stock. While Rule 462.180 defines “ownership interests” for purposes of Section 64, the Rule also interprets Section 62(a)(2) (Cal. Code Regs., tit. 18 § 462.180, subd. (d)(4)) and the State Board’s *amicus* brief advised the Court of Appeal here that the “exclusion in Section 62(a)(2) should likewise apply when there is no change in the proportional ownership interest as measured by *voting* stock, and BOE has consistently interpreted it as such.” (Ex. B at p. 17, original italics.)

The Court of Appeal has created two different definitions of “ownership interests” by ignoring the State Board’s regulation and interpreting Section 62(a)(2) in isolation, even though Section 62 and Section 64 are part of the same statutory framework. One definition applies where real property is transferred and a different definition applies where stock is transferred. In doing so, the Court of Appeal erred by failing to accord Rule 462.180 the dignity of a statute. (See *Ramirez*, 20 Cal.4th at p. 799 [court of appeal erred in failing to accord dignity

of statute to agency’s regulatory definition of “outside salesperson”]; *Magrabian v. Saenz* (2005) 130 Cal.App.4th 468, 273, 275 [trial court erred in failing to accord dignity of statute to agency’s regulatory definition of “entered into the United States”].) This Court should review the opinion below as a result.

**2. The Court of Appeal Failed to Accord “Great Weight” to the State Board’s Consistent and Long-Standing Agency Interpretations that Corporate “Ownership Interests” are Measured by Voting Stock Alone**

Even if this Court does not view Rule 462.180 as a quasi-legislative regulation, the Court of Appeal still erred by failing to accord great weight to the constellation of State Board guidance that has uniformly measured corporate “ownership interests” using voting stock alone for over forty years, which was buttressed with particular force here by the State Board’s *amicus* brief in favor of the Trust. All the *Yamaha I* factors suggest the highest degree of deference (*i.e.*, great weight) to the State Board’s agency interpretations of Section 62(a)(2). The Court of Appeal not only failed to accord any deference but failed to conduct a *Yamaha I* analysis at all.

1. The State Board has an interpretive advantage interpreting change in ownership statutes. “Because part of [State] Board’s function is to assess the tax consequences resulting from the myriad ways in which property may be held, it has practical expertise a court may lack. With its expertise and background, the Board is positioned to establish consistent rules

regarding change in ownership.” (*Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480, 491.) “[T]he [State] Board and its staff have accumulated a substantial body of experience and informed judgment in the administration of the business tax law to which the courts and litigants may properly resort for guidance.” (*Yamaha I*, 19 Cal.4th at p. 14, citations omitted.) The weight is even greater where the law is “exceedingly comprehensive and complex,” as with change in ownership laws. (*Loeffler v. Target Corp.*, 58 Cal.4th at pp. 1103, 1106 & 1127.)

2. The State Board has “consistently interpreted ‘stock’ in Section 62(a)(2) to mean voting stock.” (Ex. B at p. 13). The State Board’s consistent and longstanding understanding of Section 62(a)(2) is expressed in a regulation and five agency interpretations issued over forty years. “A written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially *legislative* in nature even if it merely *interprets* applicable law.” (*Yamaha I*, 19 Cal.4th at p. 18, Mosk. J. conc. opn., quoting *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 574–575, original italics.) This principle is particularly appropriate where, as here, such legal opinions have been collected and made public so taxpayers can order their transactions according to such policies. (*Id.* at p. 23.)

“[L]awmakers are presumed to be aware of long-standing administrative practice and, thus, the reenactment of a provision, or the failure to substantially modify a provision, is a strong indication the administrative practice was consistent with

underlying legislative intent.” (*Yamaha I*, 19 Cal.4th at pp. 21–22, Mosk, J. concur opn., quoting *Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 862.) Section 62 has been amended *twenty* times since Rule 462.180 was promulgated in 1979, eight times since the State Board’s April 2002 Legal Opinion stated that “Rule 462.180, in effect, defines ‘ownership interest’ as the voting stock in a corporation’ for purposes of Section 62(a)(2),” and four times since Assessors’ Handbook Section 401 stated in 2010 that “[f]or change in ownership purposes, ownership in a corporation is determined by the percentage of ownership or control of a corporation’s *voting stock*.” The amendments did nothing to suggest the Legislature had any problem with the State Board's interpretation of Section 62(a)(2).

3. The State Board interpretation was contemporaneous with the enactment of Section 62(a)(2), as it promulgated former Rule 462 in 1978, contemporaneous with Section 62(a)(2). (Ex. B at pp. 7, 11.)

4. The State Board’s agency interpretations are subject to careful consideration by senior agency officials, and its regulations are enacted pursuant to the APA. Former Rule 462 was “subject to public comment and discussion as part of the required rulemaking process under the Administrative Procedure Act.” (Ex. B at p. 12.) The Foreword of Assessors’ Handbook Section 401 explains that “Board staff met with members of the California Assessors’ Association, County Counsels’ Association of California, and industry representatives to solicit input for this handbook section.” (AR 22-23, 29-30.) “Legal opinions issued by



the [State] Board staff are legal rulings of counsel which means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel’s designee.” (AR 216.)

\* \* \*

This Court should grant review to address the circumstances in which the courts may depart from quasi-legislative regulations and consistent and longstanding administrative interpretations. The State Board regulation interpreting Section 62 and Section 64 should have been dispositive, and its agency interpretations reflected its years of expertise in a technical subject matter, and was correct. The Court of Appeal erred in rejecting it.

**B. The Court of Appeal Created a Conflict in the Statutory Framework for Changes in Ownership that Contravenes Legislative Intent**

The Court of Appeal held that the phrase “ownership interests” has a unique meaning in Section 62(a)(2) that is different from its meaning in Section 64, resulting in different definitions of the same phrase in the same statutory framework. The court based this holding on the plain meaning of the term “stock,” which it found includes all forms of stock. As Justice Baker recognized in his dissent, “[t]he majority’s oversimplified interpretive approach (the statute just says ‘stock,’ so that means any sort of stock) fails to harmonize the statutory scheme, and that is an analytical flaw.” (Ex. A at 2, Baker J. diss. opn.) This error arose because the Court of Appeal focused on the wrong term in Section 62(a)(2)—overlooking the key standard,

“ownership interests,” and focusing instead on the term “stock,” which is found in a subordinate clause that merely lists non-exclusive examples of various legal interests.

The Court of Appeal’s isolated interpretation of Section 62(a)(2) ignores the rule that statutes must be read in context to harmonize the statutory scheme (*Lungren v. Deukmejian*, 45 Cal.3d 730, 735) and the Legislature’s instruction to courts and the State Board to apply the change in ownership statutes with “uniformity and consistency” (*Pacific Southwest*, 1 Cal.4th at pp. 161-162; see also Ex. A at pp. 2-3, Baker J. diss. opn. [“The Legislature has stated a preference for uniformity in the administration of property tax assessment practices throughout the state—with the Board specifically charged with achieving that end.”].)

Corporate “ownership interests” are measured using voting stock alone throughout the statutory scheme governing changes in ownership. (See Ex. B at pp. 19 [“interpreting “stock” in Section 62(a)(2) to mean voting stock is consistent with the statutory scheme implementing Proposition 13.”].) Two provisions of Section 64 are relevant here.

First, Section 64(c) provides that transferring an ownership interest in a legal entity triggers a change in ownership of the entity’s real property if the buyer obtains “ownership or control of more than 50 percent of the voting stock of any corporation” “including any purchase or transfer of 50 percent or less of the *ownership interest* through which control or a majority ownership interest is obtained.” (Rev. & Tax. Code, § 64(c).) The corporate

“ownership interest” used in determining a change in ownership under Section 64(c) is voting stock alone. The amendments to Section 64(c) made in 1994 by Senate Bill 1805 (“SB 1805”) demonstrate that the Legislature intended corporate “ownership interests” to be measured using voting stock alone. The Legislative Counsel’s Digest of SB 1805 provides that one of the reasons for amending Section 64(c) was to make it consistent with “Bank and Corporation Tax Law,” which “defines, for those purposes, that direct or indirect *ownership* or control of more than 50% of the *voting stock* of the taxpayer *shall constitute ownership or control.*” (Section 68 to Stats. 1994, c. 1243 (S.B.1805); 1994 Cal. Legis. Serv. Ch. 1243 (S.B. 1805 (WEST).)

Second, as set forth above, Section 64(d) requires reassessment of property excluded from a change in ownership under Section 62(a)(2) when 50 percent of the original co-owners’ shares are transferred. As the State Board explained: “If Section 62(a)(2) means ‘all stock,’ the exclusion under Section 62(a)(2) would be measured under one standard—all stock—but under a different standard—voting stock—to measure when the exclusion ends under Section 64(d).” (Ex. B at p. 19; accord Brief of *Amicus Curiae* Charles J. Moll at p. 15; Brief of *Amicus Curiae* Ajalat, Polley, Ayoob & Matarese at p. 16.)

The Court of Appeal justified this approach because it found Section 62 and Section 64 must be interpreted separately. (Ex. A at p. 15 [“Because the two sections deal with different methods of changing property ownership, section 64’s rules relating to control of a corporation do not fit in the

proportionality exclusion under section 62(a)(2).”].) But this Court has rejected efforts to interpret the change in ownership statutes in isolation, holding that “because sections 60, 61, and 62 are in *pari materia*, we strive to interpret them in a manner that gives effect to each yet does not lead to disharmony with the other two.” (*Pacific Southwest*, 1 Cal. 4th at 167.) And the State Board has recognized the overlap between Sections 62 and 64 from the beginning by issuing a single rule, Rule 462.180, to guide application of both statutes. The State Board’s legal opinions have also interpreted Sections 62 and 64 together, recognizing that “[f]or corporations, the ownership interests for measuring changes in control and *proportionality of ownership* are represented by *voting stock* (RJN Ex A, citing *both* Section (a)(2) and Section 64(c)(1)) and that “[w]hile the term ‘ownership interests’ used in sections 62 and 64 is not defined in the code, it is defined in Property Tax Rule 462.180(d)(1) (18 Cal. Code of Regs., § 462.180) which . . . defines ‘ownership interest’ as the voting stock in a corporation” (RJN, Ex. B at p. 2). The Court of Appeal is also factually incorrect that Sections 62 and 64 measure different kinds of ownership: both statutes measure ownership interests in legal entities. The Court of Appeal erred by interpreting the change in ownership statutes inconsistently to coin a new standard that gives different meanings to the same phrase in the same statutory scheme.

The root cause of this error is that the court applied the wrong standard to identify changes in ownership. Section 62(a)(2) measures corporate “ownership interests,” but the Court of

Appeal instead focused on the term stock. “Stock” is included in Section 62(a)(2) as part of a subordinate clause listing general examples of interests in a variety of legal forms that are non-exclusive (the list ends open-endedly with the phrase “or otherwise”), not as the standard for determining changes in ownership. Section 64(c) employs the same pattern, listing a variety of legal forms (*i.e.*, “corporation, partnership, or limited liability company”) followed by a list of examples of legal interests (*i.e.*, “corporate stock, partnership, or limited liability company interest”). This pattern suggests interpreting the statutes together, not in isolation.

The Court of Appeal’s conclusion is not even required by the text of Section 62(a)(2), but instead requires adding language to the statute. What the statute literally says is that the “ownership interests” that are being measured for a corporation must consist of “stock,” as opposed to some other indicia of ownership or control. The requirement that corporate ownership interests be “represented by stock,” is not the same as requiring that it be represented by “all of the stock in the corporation.” It is simply a distinction between using stock for corporations, partnership interests for partnerships, and other interests for other types of entities. To read Section 62(a)(2) as requiring that all stock should be considered would require adding words to the statute that are not there: all of the corporation’s stock, or even the stock in the corporation.

**C. The Court of Appeal’s Opinion Will Upset Settled Expectations and Undermine the State Board’s Ongoing Ability to Ensure Statewide Compliance by Local Governments and Taxpayers with Proposition 13**

Proposition 13 is one of the most consequential laws ever enacted through the initiative process. Because of its strict limits on annual *ad valorem* tax increases, Proposition 13’s change-in-ownership reassessment-trigger presents assessors with their primary opportunity to reset value. Expanding the circumstances that constitute a change in ownership, in a departure from forty years of settled practice and the tax-limiting intent of Proposition 13, will upend taxpayers’ reliance on State Board guidance in structuring transactions, hinder the State Board’s administrative authority, invite assessors to ignore the State Board resulting in a patchwork of approaches, and induce courts to ignore long-standing agency interpretations in violation of the *Yamaha I* standard. As Justice Baker correctly recognized in his dissent: “Analytical vulnerabilities . . . are the least of the opinion’s problems; the deleterious practical consequences of today’s holding are the real concern.” (Ex. A at p. 2, Baker J. diss. opn.; see also *In re Dannenberg* (2005) 34 Cal.4th 1061, 1082 [“The court may also consider the impact of an interpretation on public policy, for ‘where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.’”], quoting *Mejia v. Reed* (2003) 31 Cal.4th 657, 663.)

1. The Court of Appeal's construction creates loopholes that allow for tax evasion. For example, the State Board explains: "if 'stock' in Section 62(a)(2) were interpreted to mean 'all stock,' a legal entity could engineer a transfer of real property without any reassessment" by creating and selling a new class of non-voting stock to a third-party (an exempt transaction under Section 64(c)(1) since control is unchanged) and then dissolving such that the entity's real property would be partially owned by the new non-voting shareholder (an exempt transaction under Section 62(a)(2) because ownership would remain proportional according to the Court of Appeal's opinion). (Ex. B at pp. 21-23.) The State Board's use of voting stock to measure corporate ownership interests prevents this gamesmanship because it destroys the proportionality of the transfer caused by dissolution, since the original shareholder's interest would be reduced upon dissolution by the proportion of real property held by the non-voting shareholder. (*Id.* at p. 23.) This is merely one loophole created by the Court of Appeal that the parties addressed below. (See Trust' Response to *Amicus Curiae* Briefs at pp. 8-9.)

2. Justice Baker recognized that "[r]eading 'stock' in Section 62(a)(2) to mean voting stock also avoids significant administrative difficulties because, as the Board again explains, 'evaluat[ing] the proportional ownership interests of voting stock is relatively straightforward and readily ascertainable' while '[a]ssessing whether or not the 'proportional ownership interests of the transferors and transferees' remained the same [for all stock shares] would necessitate an evaluation of all the different

classes and types of stock and their attendant rights, having to assign what may amount to random percentages of ownership to particular classes of stock since . . . owners of corporations have no specific right to any corporate real property.” (Ex. A at p. 2, Baker J., diss. opn.)

3. The import of the Court of Appeal’s decision is not limited to the construction of this statute. If not reversed, it invites lower courts to reach statutory interpretations inconsistent with long-settled legislative and regulatory expectations. (See *Yamaha*, 19 Cal.4th at 21, Mosk, J., conc. opn., quoting *Whitcomb Hotel, Inc. v. Cal. Emp. Com.* ( 1944) 24 Cal.2d 753, 757) (“When an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation.”); Ex. A at 3, Baker J., diss. opn.

[“[D]ecisions about how to structure an untold number of property transactions and legal entity relationships in Los Angeles County have almost certainly been informed by the Board’s longstanding guidance regarding Section 62(a)(2) and related statutes. The majority upends these reliance interests with unpredictable and, at least in some cases, unfair consequences.”].) Assessors will similarly use the majority’s opinion to avoid State Board regulation. Justice Baker correctly recognized this too: “The majority nonetheless permits the Los Angeles County Assessor to disregard the Board’s instructions and expertise, thereby opening the door to a patchwork, county-



by-county system of differing reassessment methods that is the opposite of what the Legislature intended.” (Ex. A at p. 3, Baker J. diss. opn.)

## V. CONCLUSION

For the foregoing reasons, the Trust respectfully asks the Court to grant the petition for review.

DATE: January 13, 2021

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: /s/ Colin W. Fraser

Colin W. Fraser

Cris K. O’Neill

*Attorneys for Appellant*

*Amen Family 1990 Revocable Trust*

**CERTIFICATE OF WORD COUNT**

**(CAL. RULE CT. 8.204(c))**

I certify that this brief contains 8,297 words as counted by the word counting function of the program used to generate this document, not including the tables of contents and authorities, the caption page, signature blocks, or this certification page.

DATE: January 13, 2021

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: /s/ Colin W. Fraser

Colin W. Fraser

Cris O'Neal

*Attorneys for Amen Family 1990  
Revocable Trust*

# **EXHIBIT A**

Filed 12/7/20

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FIVE

**COURT OF APPEAL – SECOND DIST.**

**FILED**

**Dec 07, 2020**

DANIEL P. POTTER, Clerk

kdominguez Deputy Clerk

JEFFREY PRANG, Los Angeles  
County Assessor,

Plaintiff and Respondent

v.

LUIS A. AMEN et al., as Trustees,  
etc.,

Real Party in Interest and  
Appellant,

B298794

(Los Angeles County  
Super. Ct. No. BS173698)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Greenberg Traurig, Colin W. Fraser and Cris O'Neal for Real Party in Interest and Appellant.

Lamb and Kawakami, Thomas G. Kelch and Michael K. Slattery; Mary C. Wickham, County Counsel, Nicole Davis Tinkham, Assistant County Counsel, and Richard Girgado, Deputy County Counsel for Petitioner and Respondent.

Ajalat, Polley, Ayoob & Matarese, Richard J. Ayoob, Christopher J. Matarese and Gregory R. Broege for Amicus

Curiae Ajalat, Polley, Ayoob & Matarese.

California State Association of Counties and Jennifer B. Henning for Amicus Curiae California State Association of Counties and the California Assessors Association.

McDermott Will & Emery and Charles J. Moll, III, for Amicus Curiae Charles J. Moll III.

Xavier Becerra, Attorney General, Tamar Pachter, Assistant Attorney General, Karen W. Yiu and Heather B. Hoesterey, Deputy Attorneys General, for Amicus Curiae California State Board of Equalization.

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The Revenue and Taxation Code provides that a transfer of real property between legal entities triggers a reassessment of the property’s value for tax purposes. Importantly for this appeal, the code also contains an exception to this rule when the proportional ownership interests in real property of the transferor and transferee—”whether represented by stock” or another measure—remain the same after the transfer. This appeal raises the question of how we should interpret “stock” in the phrase “proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred.” (Rev. & Tax. Code, § 62, subd. (a)(2).) Specifically, does “stock” refer only to voting stock or all classes of stock?

Appellants, the trustees of the Amen Family 1990 Revocable Trust (Trust or Appellant), challenges respondent Los

Angeles County Assessor’s (Assessor) reassessment of property the Trust received from a corporation that the Trust had partially owned.<sup>1</sup> Although there were at least five owners of the stock of the transferor corporation (including the Trust) and the transferee was solely the Trust, the Trust contends the proportional ownership interest exception applied because it had owned all the voting stock in the corporation. In the Trust’s view, ownership interests in real property held by a corporation should be measured by voting stock alone, meaning that the Trust was the sole owner of the real property held by the corporation, and remained the sole owner after the corporation transferred that property to the Trust. The Assessor measured ownership in the real property held by the transferor corporation by all stock—voting and non-voting.

According to the Trust, the term “stock” as used in Revenue & Taxation Code section 62, subdivision (a)(2) (section 62(a)(2)) should be interpreted to mean only voting stock.<sup>2</sup> The Assessor argues “stock” in section 62(a)(2) means exactly what it says—stock—and applies to all classes of stock, including for present purposes both voting and non-voting stock. Under this interpretation, the Assessor was right to reassess the property

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<sup>1</sup> The State Board of Equalization (SBE) and others filed amicus curiae briefs at our invitation. Under California Rules of Court, rule 8.20(c)(6) we provided the parties with an opportunity to respond to the amicus arguments and each filed a supplemental brief.

<sup>2</sup> All further statutory references are to the Revenue and Taxation Code.

after the transfer because the proportional ownership interests, as measured by all the stock of the transferor corporation, had changed.

The trial court agreed with the Assessor and upheld the reassessment. We affirm.

***FACTUAL AND PROCEDURAL BACKGROUND***

Super A Foods, Inc. (the “Corporation”) held title to two pieces of real property (the “Property”) in Los Angeles. All of the Corporation’s voting stock was issued to the Trust. The Corporation’s non-voting stock was issued to the Trust and several other individuals, including a company employee.

On December 5, 2014, the Corporation transferred the Property to the Trust whose beneficiaries did not include the persons who had non-voting stock in the Corporation. The Assessor determined the transfer constituted a change of ownership from the Corporation to a separate entity, the Trust, and reassessed the Property from approximately \$5 million to \$10 million. The Trust appealed the Assessor’s change-of-ownership determination to the Assessment Appeals Board (Board).

The Board reversed the reassessment, concluding that no change in ownership occurred when the Corporation transferred the Property to the Trust. The Board reasoned that only voting stock should be considered when analyzing whether the proportional ownership interest exclusion applies under section 62(a)(2). As the Trust owned 100 percent of the voting stock of the transferor Corporation and the transferee was the Trust itself, the Board found that the transfer was excluded from reassessment under section 62(a)(2).

The Assessor filed a petition for writ of administrative mandate in the trial court and sought to vacate the Board’s

decision. The Assessor argued that principles of statutory construction require that section 62(a)(2) be interpreted to measure ownership interest using both an entity's voting and non-voting stock. The trial court agreed and granted the petition. The Trust timely appealed.

## ***DISCUSSION***

### ***1. Standard of Review and Statutory Interpretation Principles***

On appeal of a trial court's ruling on a petition for writ of administrative mandate, we review de novo issues of statutory interpretation under Code of Civil Procedure section 1094.5. (*Anserv Ins. Servs. v. Kelso* (2000) 83 Cal.App.4th 197, 204.) The general principles that guide interpretation of a statutory scheme are well-settled. (*Rudd v. California Casualty Gen. Ins. Co.* (1990) 219 Cal.App.3d 948, 952.) "Our function is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. [Citation.] To ascertain such intent, courts turn first to the words of the statute itself [citation], and seek to give the words employed by the Legislature their usual and ordinary meaning. [Citation.] When interpreting statutory language, we may neither insert language which has been omitted nor ignore language which has been inserted. [Citation.] The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute [citation], and where possible the language should be read so as to conform to the spirit of the enactment. [Citation.]" (*Ibid.*)

### ***2. Property Tax Reassessments***

"In 1978 the voters adopted Proposition 13, which provides that until a change in ownership occurs real property may be taxed at no more than 1 percent of its 1975–1976 assessed value adjusted for inflation. When ownership changes, the property



may be reassessed at its current market value.” (*Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 158–159 (*Pacific Southwest Realty*); *926 North Ardmore Ave., LLC v. County of Los Angeles* (2017) 3 Cal.5th 319, 326 [a “change in ownership triggers reappraisal and reassessment for property tax purposes”].) “Because Proposition 13 did not explicate the meaning of ‘change in ownership’ [citations], it fell to the Legislature to define the phrase . . . .” (*Pacific Southwest Realty, supra*, pp. 160–161.) The Legislature did so by codifying the change-in-ownership test in Revenue and Taxation Code section 60. (*Id.* at p. 161.)

Section 60 defines a “change in ownership” as “a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.” Section 62 lists various tax-exempt transfers as excluded from the definition of a change in ownership.

At issue here is section 62(a)(2) which provides that a change of ownership does not include “any transfer . . . between legal entities . . . that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred remain the same after the transfer.”

**3. *Facially, the Plain Meaning of Section 62(a)(2) Proportionality is Measured by All Stock***

In challenging the trial court’s ruling, the Trust argues the plain meaning of “stock” should be disregarded. It contends “stock” in section 62(a)(2) is ambiguous and, by applying various forms of statutory construction, “stock” should be interpreted to mean only voting stock. Construed in this fashion, the

proportional ownership interests of the transferor (the Corporation) and the transferee (the Trust) remained the same after the transfer of the Property. The Trust owned all the voting stock in the Corporation and, as transferee, the Trust owned the property outright. Accordingly, the Trust argues that no change of ownership occurred when the Property was transferred, and the Property should not have been reassessed.

**a. The Common Meaning of Stock**

The Assessor argues that the plain meaning of “stock” as used in section 62(a)(2) includes stock of every class, not just voting stock. The parties do not dispute that the commonly accepted and ordinary meaning of the term “stock” includes both voting and non-voting stock.<sup>3</sup>

**b. The Trust’s Ambiguity Argument**

In arguing that “stock” in section 62(a)(2) is ambiguous, the Trust relies on the principle that clear statutory language may be “rendered ambiguous when the language is read in light of the statute as a whole or in light of the overall legislative scheme.” (*People v. Valencia* (2017) 3 Cal.5th 347, 360.) According to the Trust, section 62(a)(2)’s use of the term “stock” is ambiguous because other provisions in the “statutory scheme” use “stock” when referring to “voting stock.”

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<sup>3</sup> See entry for “Stock” in Black’s Law Dictionary (11th ed. 2019) [defining the term and listing various kinds of stock, including voting and non-voting stock; other examples include common stock, preferred stock, and treasury stock].

The Trust posits several arguments to support its claim that, as a matter of statutory interpretation, “stock” in section 62(a)(2) really means “voting stock.” We consider each.<sup>4</sup>

1. *“Voting Stock” in the Statutory Scheme and Elsewhere in the Revenue & Taxation Code*

Principal among the Trust’s various arguments is that section 64 and related sections of the Revenue & Taxation Code essentially use “stock” and “voting stock” interchangeably. So, the argument continues, “stock” in section 62(a)(2) means “voting stock.” A careful reading of the code sections on which the Trust relies does not show the terms are interchangeable.

The Trust’s principal focus for this argument is on two subdivisions of section 64.<sup>5</sup> Subdivision (b) of section 64 (section

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<sup>4</sup> The trial court concluded that “stock” in section 62(a)(2) was not ambiguous but proceeded to consider the Trust’s other proposed statutory interpretation, as do we.

<sup>5</sup> Section 64, subdivisions (a) through (c) provide in part, “(a) Except as provided in subdivision (i) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests, shall not be deemed to constitute a transfer of the real property of the legal entity. This subdivision is applicable to the purchase or transfer of ownership interests in a partnership without regard to whether it is a continuing or a dissolved partnership.

“(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and that qualifies as a reorganization under section 368 of the United States Internal Revenue Code and that is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, or any reorganization of

64(b)) provides that “any transfer of real property among members of an affiliated group . . . shall not be a change of ownership.” The subdivision then defines “affiliated group” as “one or more chains of corporation connected through stock

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farm credit institutions pursuant to the federal Farm Credit Act of 1971 (Public Law 92-181), as amended, shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

“For purposes of this subdivision, ‘affiliated group’ means one or more chains of corporations connected through stock ownership with a common parent corporation if both of the following conditions are met:

“(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations.

“(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

“(c)(1) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.”

ownership with a common parent corporation if . . . (1) One hundred percent of the voting stock . . . is owned by one or more of the other corporations [and] (2) The common parent corporation owns, directly, 100 percent of the voting stock. . . .” (§ 64(b) (emphasis added).) The Trust argues that the “term ‘stock’ in the first sentence here means voting stock, as the two numbered sentences make clear.”<sup>6</sup> We do not read it that way. Rather, giving these words their “usual and ordinary” meaning as we must (see *In re Alpine* (1928) 203 Cal. 731, 736–737), this sentence is explained as follows: The Legislature has used a general term (stock) to explain the basic corporate relationship with the parent (e.g. not a partnership), followed by a more specific term (voting stock) to measure which type of stock qualifies for the exclusion. (See *Marshall v. Pasadena Unified School Dist.* (2004) 119 Cal.App.4th 1241, 1254.) In this context, voting stock is one of many classes of stock and is the one class that matters under section 64. It does not follow that “stock” means “voting stock” in section 62(a)(2).

The Trust also cites to subdivision (c)(1) of section 64 (section 64(c)(1)), which provides that “When a corporation . . . obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation . . . the purchase or transfer of that stock or other interest shall be a change of ownership . . . .” (Emphasis added.) The Trust argues that “voting stock” and “stock” are used interchangeably here. We see it differently—the use of the word “that” shows that the

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<sup>6</sup> By “first sentence here,” we understand the Trust to mean “one or more chains of corporation connected through stock ownership with a common parent corporation.”

Legislature was referring to the prior use of “voting stock” in the sentence, using “that” in a grammatically correct manner.

Nor do we find the different uses of “voting stock” in other parts of the Revenue and Taxation Code to mean that “stock” in section 62(a)(2) is “voting stock.” Each of the Code provisions cited by the Trust uses the specific term “voting stock,” not the more general term “stock.” This shows the Legislature knew how to refer to “voting stock” when defining “ownership interests,” and deliberately chose a different test for section 62(a)(2) than for other types of transfers. (See § 64(c) [transfer of ownership interest in a legal entity], § 64(b) [transfer of real property among subsidiaries]; § 62.1 [transfer of mobile home park to nonprofit, stock cooperative, limited equity stock cooperative or other entity formed by tenants]; § 62.5 [transfer of floating home marina to nonprofit, stock cooperative, limited equity stock cooperative or other entity formed by tenants]).

The Trust’s argument would carry more weight if the Code used “stock” infrequently, but “stock” is used repeatedly in the Code.<sup>7</sup> That the Legislature regularly uses both “stock” and “voting stock” in various parts of the Code undermines the Trust’s argument that in section 62(a)(2), “stock” was only a stray misnomer of “voting stock.” To adopt the Trust’s argument would suggest that these terms are interchangeable throughout the Code, and would make “stock” or “voting stock” at times superfluous. (See *Wells v. One2One Learning Foundation* (2006))

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<sup>7</sup> Numerous provisions in the Code use the term “stock” (§§ 23361, 23804, 250105) while others use the term “voting stock” (§§ 62.1, 62.5, 2188.10). A search of the Code reveals that “stock” is used much more frequently than “voting stock.”

39 Cal.4th 1164, 1207 [“interpretations which render any part of a statute superfluous are to be avoided”].)<sup>8</sup>

2. “Voting Stock” in Property Tax Rule 462.240

The Trust also cites Property Tax Rule 462.240, subdivision (d) to support its “stock” means “voting stock” argument.<sup>9</sup> As it did with section 64, the Trust again points out the regulation uses “stock” and “voting stock” in the same sentence. (Cal. Code Regs., tit. 18, § 462.240.) Under this regulation, an employee benefit plan’s acquisition “of the stock of the employer corporation pursuant to which the employee benefit plan obtains . . . more than 50 percent of the voting stock” (emphasis added) of the corporation is not a change in ownership. This use of the two terms neither creates ambiguity nor proves that the words are equivalents. As in section 64, subdivision (b), the regulation employs a general term (stock) to describe a transaction that

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<sup>8</sup> Quite the contrary, section 23361 subdivision (a), for example, expressly distinguishes “stock” and “voting stock” in the statute’s last sentence: “*Except in paragraph (c), ‘stock’ does not include nonvoting stock which is limited and preferred as to dividends.*” (Emphasis added.) Stock has one meaning in paragraphs (a) and (b) and a different one in paragraph (c).

<sup>9</sup> The regulations set forth in California Code of Regulations, title 18 are referred to as “property tax rules.” (*Phillips Petroleum Co. v. County of Lake* (1993) 15 Cal.App.4th 180, 189, fn. 7; *CAT Partnership v. County of Santa Cruz* (1998) 63 Cal.App.4th 1071, 1077, fn. 4.) The rules of this subchapter “govern assessors when assessing, county boards of equalizations and assessment appeals boards when equalizing, and the State Board of Equalization, including all divisions of the property tax department.” (Cal. Code Regs., tit. 18, § 1.)

involves stock acquisition, and then employs a different and more specific term (voting stock) to measure what type of stock transaction results in a change of ownership. We reject the Trust’s argument by applying one of the common statutory construction principles – the use of two different terms in a statute indicates a legislative intent to distinguish between the terms. (See *Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 497 [“ordinarily, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning.”].)<sup>10</sup>

**c. The State Board of Equalization’s Ambiguity Argument**

Lastly, the Trust adopts the argument of amicus the State Board of Equalization that the term “stock” is ambiguous because there are many subcategories of stock. But the fact that there are subcategories of a general term does not show ambiguity; rather it confirms that the general term includes all the subcategories. The Code expressly identifies numerous subcategories of stock: voting stock (§ 64), non-voting stock (§ 23361), capital stock (§ 212), treasury stock (§ 24942), common stock (§ 23040.1), preferred stock (§ 23040.1), and qualified small

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<sup>10</sup> The parties and amici have directed our attention to several extrinsic sources such as the Assessor’s Handbook, Letters to the Assessor, and legal opinions of the State Board of Equalization. We agree with the trial court that these materials are not particularly helpful. None of the examples cited in these materials addresses the situation in which both voting and non-voting stock are at play in determining ownership under section 62(a)(2).



business stock (§ 18038.4). The statutory references to these various classes of stock reaffirms our interpretation of “stock” in section 62(a)(2) as meaning all classes of stock, not just voting stock. <sup>11</sup>

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<sup>11</sup> The dissent expresses concern that our holding will open the “door to a patchwork, county-by-county system of differing assessment practices that is the opposite of what the Legislature intended.” (Dis. Opn., p. 3) To avoid that result, the dissent suggests that this court should interpret Tax and Revenue Code, section 62(a)(2) consistent with the construction given by State Board of Equalization (“Board”). The Board is charged with preparing and issuing “instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation.” (Gov. Code, § 15606, subd. (e).) The Board filed an amicus brief and stated that it interpreted “stock” in Tax and Revenue Code section 62(a)(2) as meaning voting stock. The California Assessors Association, a statewide association for assessors representing each of California’s 58 counties, also filed an amicus brief, taking the contrary position, namely that “stock” means all stock. Ultimately, it is this court’s task to interpret the statute. “Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency’s interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency’s interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth.” (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7–8.)

It remains to be seen whether our holding prompts the adoption of practices that avoid the dissent’s concern about patchwork interpretation of section 62(a)(2). If not, or for other reasons, the Legislature may step in.

#### ***4. The Trust's Reliance on Section 64 Is Substantively Misplaced***

Implicit in many of the Trust's arguments is that sections 62 and 64 must be read together because they cover the same subject. That assumption does not hold up. The two statutes address two different kinds of transactions: the former deals with the actual transfer of real property from one entity to another; the later deals with a change of ownership of the legal entity (a corporation) that owns real property. Because the two sections deal with different methods of changing property ownership, section 64's rules relating to control of a corporation do not fit in the proportionality exclusion under section 62(a)(2).

This point is illustrated in section 64, subdivision (c)(1). When an entity obtains control of a corporation through its "ownership or control of more than 50 percent of the voting stock of [the] corporation," (section 64(c)(1)), the new configuration of the corporation becomes a transferee owner of the corporate real property for reassessment purposes. The 50 percent demarcation apparently represents a legislative policy that, because shares of corporations are regularly traded, sales of less than 50 percent of the voting stock are legally not significant to justify reassessment.

The Trust's argument that the Legislature meant "voting stock" when it used "stock" in section 62 similar to section 64 ignores that section 62 does not address sales of corporate stock at all, but transfers of real property from one entity to another. Nothing in the record suggests that intrinsic in the nature of corporations is that voting stock must be the sole measure of transfers from a corporation to another form of ownership. Section 62(a)(2) looks at the proportional interests in real property of owners of the transferor and transferee entities, not a

change in stock ownership.<sup>12</sup> The Legislature reasonably could use stock or voting stock or other standards as its section 62(a)(2) reassessment yardstick. It chose for corporations “stock,” even though, as we have seen, voting stock is used in other situations covered by the Revenue and Taxation Code.

In the present case, the proportional ownership interests were not aligned before and after transfer. Before the transfer, the corporation had at least five stockholders, namely several individuals and the Trust, all five having economic interests in the Property held by the corporation. After the transfer, the Trust owned the Property, and the individuals no longer had any ownership interest in the Property. The proportional ownership interests of the transferor and transferee were different.

**5. *The “Primary Economic Value” test in Section 60 also Supports that all Stock Is Considered in Applying Section 62(a)(2)***

Finally, the Assessor correctly observes that section 62(a)(2) must be read in light of section 60, which provides, “A ‘change in ownership’ means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.”

Under section 60, there is a change in ownership of real property when there is “(1) a transfer of a present interest in real property, (2) including the beneficial use thereof, (3) the value of which is substantially equal to the value of the fee interest.” (*Pacific Southwest Realty, supra*, 1 Cal.4th at p. 162.) As explained by the *Pacific Southwest Realty* court, the “Legislature intended to find a change in ownership when the primary

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<sup>12</sup> Section 64 does not use the “proportional ownership interests” standard.

economic value of the land is transferred from one person or entity to another.” (*Id.* at p. 167.)

The “beneficial use” inquiry in whether or not there has been a change of ownership under section 60 asks who has an economic interest in a parcel of real estate, not the nature of the ownership interests in the entity that owns the real property. Here, the Corporation’s Articles of Incorporation state, “[E]xcept with respect to all voting rights being vested exclusively in the holder of the Voting Common Shares, as herein provided, the Voting Common Stock and the Nonvoting Common Stock shall be equal in all other respects including but not limited to, dividend and liquidation rights.” By express provision, at a minimum both voting and non-voting stockholders had “dividend and liquidation” rights, meaning both had economic interests in the Corporation.<sup>13</sup> After the transfer, non-voting stockholders had no interest in the Trust and had lost their previous economic interest in the real property. The economic value of the properties had been transferred from the non-voting stockholders to the voting stockholders, resulting in a change in ownership under section 60 and one not excluded under section 62(a)(2).

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<sup>13</sup> The trial court also found that non-voting stockholders had economic interests in the Corporation. “The non-voting shareholders own between .09% and 1.7% of the [Corporation’s] stock. The Assessor appraised the Property at \$10,280,000. It is not inconceivable that, upon liquidation of the [Corporation], a 1/7% [*sic*] shareholder may receive a significant portion of this amount.” Using the trial court’s findings, the non-voting stockholders would be entitled to between \$92,520 and \$174,760 if the Corporation had sold the property.

***DISPOSITION***

The judgment is affirmed. Each party is to bear its own costs on appeal.



RUBIN, P. J.

I CONCUR:



MOOR, J.

Jeffrey Prang, as County Assessor, etc. v. Luis Amen, as Trustee,  
etc. et al.

B298794

BAKER, J., Dissenting

Resolving an issue of statewide importance, the majority opinion authorizes the Assessor in Los Angeles County to reassess real property in a manner inconsistent with the considered legal view of the State Board of Equalization (the Board)—the entity responsible for promulgating property tax assessment regulations and for instructing county assessors on correct property tax assessment methods. (Gov. Code, § 15606, subd. (c); see also Gov. Code, § 15606, subd. (e) [directing the Board to “[p]repare and issue instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation”].) As a matter of statutory interpretation and of implementing agency deference (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1322; *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 524-525; *SHC Half Moon Bay, LLC v. County of San Mateo* (2014) 226 Cal.App.4th 471, 485), the majority opinion reaches the wrong result.

In regulations interpreting related statutes (see, e.g., Rev. & Tax. Code, § 64, subd. (d); Cal. Code Regs., tit. 18, § 462.180) and in guidance issued to county assessors that discusses Revenue and Taxation Code section 62, subdivision (a)(2) (Section 62(a)(2)), the Board has interpreted the term “stock” to mean

voting stock. That interpretation should be given great weight, and I see no good reason to deviate from it. As the Board persuasively explains in the amicus briefing this court invited, its interpretation of “stock” harmonizes Section 62(a)(2) with pertinent portions of the statutory scheme implementing Proposition 13. As the Board elaborates: “If Section 62(a)(2) means ‘all stock,’ the exclusion under Section 62(a)(2) would be measured under one standard—all stock—but under a different standard—voting stock—to measure when the exclusion ends under [Revenue and Taxation Code] Section 64(d).” Reading “stock” in Section 62(a)(2) to mean voting stock also avoids significant administrative difficulties because, as the Board again explains, “evaluat[ing] the proportional ownership interests of voting stock is relatively straightforward and readily ascertainable” while “[a]ssessing whether or not the ‘proportional ownership interests of the transferors and transferees’ remained the same [for all stock shares] would necessitate an evaluation of all the different classes and types of stock and their attendant rights, having to assign what may amount to random percentages of ownership to particular classes of stock since . . . owners of corporations have no specific right to any corporate real property.”

The majority’s oversimplified interpretive approach (the statute just says “stock,” so that means any sort of stock) fails to harmonize the statutory scheme, and that is an analytical flaw. Analytical vulnerabilities, however, are the least of the opinion’s problems; the deleterious practical consequences of today’s holding are the real concern. The Legislature has stated a preference for uniformity in the administration of property tax assessment practices throughout the state—with the Board

specifically charged with achieving that end. (Gov. Code, § 15606, subd. (e).) The majority nonetheless permits the Los Angeles County Assessor to disregard the Board's instructions and expertise, thereby opening the door to a patchwork, county-by-county system of differing reassessment methods that is the opposite of what the Legislature intended. Not only that, decisions about how to structure an untold number of property transactions and legal entity relationships in Los Angeles County have almost certainly been informed by the Board's longstanding guidance regarding Section 62(a)(2) and related statutes. The majority upends these reliance interests with unpredictable and, at least in some cases, unfair consequences.

Let us therefore hope today's decision is not the last word on the meaning of Section 62(a)(2). For now, I respectfully dissent.

  
BAKER, J.



# **EXHIBIT B**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION FIVE

**JEFFREY PRANG, Los Angeles  
County Assessor,**

Petitioner and Respondent,

v.

**AMEN FAMILY 1990 REVOCABLE  
TRUST,**

Real Party in Interest.

Case No. B298794

Los Angeles County Superior Court, Case No. BS173698  
The Honorable James C. Chalfant, Judge

**BRIEF OF AMICUS CURIAE CALIFORNIA  
STATE BOARD OF EQUALIZATION**

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**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Interests of Amicus Curiae California State Board of Equalization .....	6
Introduction and Summary of Position .....	6
Legal Background .....	8
I. Statutes Relating to Legal Entity Change in Ownership .....	8
II. BOE’s Regulations and Guidance .....	11
A. BOE’s Contemporaneous Regulations Clarify “Shares” in Section 64(d) Means Voting Shares .....	11
B. In the Assessors’ Handbook and Other Guidance, BOE Consistently Interprets “Stock” in Section 62(a)(2) to Mean Voting Stock .....	13
Argument.....	14
I. Under The Rules of Statutory Construction, “Stock” in Section 62(a)(2) is Properly Interpreted as Voting Stock .....	14
A. Courts May Properly Look to External Sources When Statutory Language is Ambiguous.....	14
B. The Term “Stock,” as Used in Section 62(a)(2), Is Ambiguous.....	15
C. BOE’s Consistent and Longstanding Administrative Interpretation Is That “Stock” in Section 62(a)(2) Means “Voting Stock” .....	16
II. Interpreting the Term “Stock” as Voting Stock Harmonizes the Statutory Scheme and Allows for Effective Administration of Proposition 13 .....	19
Conclusion .....	24

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
<b>CASES</b>	
<i>Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization</i> (1978) 22 Cal.3d 208 .....	8
<i>Dole Food Co. v. Patrickson</i> (2003) 538 US 468 .....	20
<i>Grosset v. Wenaas</i> (2008) 42 Cal.4th 1100 .....	20
<i>Hoechst Celanese Corp. v. Franchise Tax Bd.</i> (2001) 25 Cal.4th 508 .....	14
<i>In re Catalano</i> (1981) 29 Cal.3d 1 .....	15
<i>Lungren v. Deukmejian</i> (1988) 45 Cal.3d 727 .....	15, 19
<i>Microsoft Corp. v. Franchise Tax Bd.</i> (2006) 39 Cal.4th at 750 .....	14, 15, 16
<i>Pacific Southwest Realty Co. v. Cnty. of Los Angeles</i> (1991) 1 Cal.4th 155 .....	8
<i>Reilly v. City and County of San Francisco</i> (2006) 142 Cal.App.4th 480 .....	17
<i>SHC Half Moon Bay, LLC v. County of San Mateo</i> (2014) 226 Cal.App.4th 471 .....	17
<i>Taiheiyo Cement U.S.A., Inc. v. Franchise Tax Bd.</i> (2012) 204 Cal.App.4th 254 .....	15, 19
<i>Western Oil &amp; Gas Assn. v. Air Resources Board</i> (1984) 37 Cal.3d 502 .....	16

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
<i>Yamaha Corp. of America v. State Bd. of Equalization</i> (1998) 19 Cal.4th 1.....	16, 18
 <b>STATUTES</b>	
 Corporate Code	
§ 184.....	16, 20
§ 400.....	16, 20
 Government Code	
§ 11346.2.....	12
§ 11346.45.....	12
§ 15606, subd. (c).....	6, 11
§ 15606, subd. (e) .....	6, 13
 Revenue and Taxation Code	
§ 50 et seq. ....	8
§ 60.....	9
§ 60 et seq. ....	8
§ 61, subd. (j) .....	19
§ 62, subd. (a) .....	11
§ 62, subd. (a)(2) .....	<i>passim</i>
§ 64, subd. (a) .....	9, 19, 22
§ 64, subd. (c)(1) .....	9, 19, 22, 23
§ 64, subd. (d) .....	<i>passim</i>
 <b>CONSTITUTIONAL PROVISIONS</b>	
 California Constitution Article	
XIII A.....	8
XIII A, § 2 .....	8
 <b>OTHER AUTHORITIES</b>	
Assem. Bill No. 2777 (1979-1980 Reg. Sess.) §§ 1-2 .....	10
Black’s Law Dictionary (11th ed. 2019).....	15

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
California Code of Regulations Title 18	
§ 462.....	11, 12, 13
§ 462(j)(4)(A)(i) .....	12
§ 462(j)(4)(B).....	12
§ 462.180.....	11
§ 462.180, subd. (b) .....	20
§ 462.180, subd. (d)(2).....	12
§ 462.180, subd. (d)(4).....	20
§ 5700.....	18
Stats. 1980, ch. 1349.....	11
Stats. 1982, ch. 1465.....	11

**INTERESTS OF AMICUS CURIAE  
CALIFORNIA STATE BOARD OF EQUALIZATION**

The California State Board of Equalization (BOE) is charged with promulgating regulations related to property tax assessment, and it acts in an oversight capacity to instruct county assessors in the administration of property tax laws. (Gov. Code, § 15606, subds. (c), (e).) As part of its oversight function, BOE also promulgates regulations, develops property tax assessment policies, and prepares and issues instructions to guide county assessors and local assessment appeals boards, so as to promote uniformity in tax assessment policies throughout the state. (Gov. Code, § 15606, subd. (e).)

Accordingly, and in response to this Court’s May 21, 2020 invitation, BOE respectfully submits this amicus curiae brief.<sup>1</sup> This brief discusses the administration of the property tax laws, including Revenue and Taxation Code section 62, subdivision (a)(2) (Section 62(a)(2)), based on BOE’s historical knowledge and cumulative experience.<sup>2</sup>

**INTRODUCTION AND SUMMARY OF POSITION**

Section 62(a)(2) excludes transfers that result “solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and

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<sup>1</sup> No party nor counsel for any party in the pending case authored any portion of the amicus curiae brief or contributed financially to the preparation of the brief.

<sup>2</sup> Unless otherwise specified, all further statutory references are to the Revenue and Taxation Code.

transferees, whether represented by stock, partnership interest, or otherwise, . . . remain the same after the transfer,” from changes in ownership triggering reassessment for property tax purposes. (§ 62, subd. (a)(2).) Because the term “stock” is subject to many different meanings and not defined by the relevant statutory scheme, it is ambiguous, and the Court may properly look to external sources to determine its meaning.

BOE has consistently interpreted the term “stock” in Section 62(a)(2) as meaning “voting stock.” BOE’s contemporaneous rules interpreting related statutes and the guidance it issues, including the Assessors’ Handbook, evidence BOE’s consistent interpretation of Section 62(a)(2). Section 64, subdivision (d) (Section 64(d)) is a companion statute, triggering reassessment when a transfer is excluded under Section 62(a)(2) but the “original co-owners” later transfer 50 percent of their “shares.” (§ 64, subd. (d).) BOE has promulgated regulations clarifying that the term “shares” in Section 64(d) means “voting shares,” and the Assessors’ Handbook similarly demonstrates BOE’s interpretation that “stock” in Section 62(a)(2) means “voting stock.” Reading the statutory scheme implementing Proposition 13 as a whole, “stock” in Section 62(a)(2) should be interpreted to mean “voting stock.” Interpreting “stock” in Section 62(a)(2) to include non-voting stock would render the statutes inconsistent, and lead to problems in administering the statutory scheme and create opportunities for gamesmanship to avoid reassessment.



## LEGAL BACKGROUND

### I. STATUTES RELATING TO LEGAL ENTITY CHANGE IN OWNERSHIP

Proposition 13, which California voters passed in 1978, added article XIII A to the California Constitution. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 218 [upholding constitutionality of Proposition 13].) Article XIII A limits the amount of ad valorem tax that may be assessed on real property unless property is purchased, newly constructed, or there is a “change in ownership.” (Cal. Const., art. XIII A, § 2.) These terms are defined elsewhere. As our State Supreme Court has recognized, the implementation of article XIII A, and resolution of certain ambiguities therein, has “depended upon the contemporaneous construction of the Legislature or of the administrative agencies charged with implementing the new enactment.” (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d at p. 245.)

Division 1, part 0.5 of the Code implements article XIII A. (§§ 50 et seq.) There, the Legislature defined “change in ownership,” in part by providing examples of what is and is not a change in ownership. (See §§ 60 et seq.; see also *Pacific Southwest Realty Co. v. Cnty. of Los Angeles* (1991) 1 Cal.4th 155, 160-161 [noting, “[b]ecause Proposition 13 did not explicate the meaning of ‘change in ownership’ . . . it fell to the Legislature to define the phrase.” [internal citations omitted].])

A “change in ownership” is defined as a “transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.” (§ 60.) Accordingly, either a transfer of real property or a transfer of an interest in the legal entity owning the property may trigger a change in ownership. Yet ordinarily, “the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests,” do not trigger a change in ownership, and thus do not trigger a reassessment, unless they fall into certain exceptions. (§ 64, subd. (a).)

One such exception triggering reassessment of real property is when the transfer of an ownership interest in a legal entity holding an interest in real property results in a change in control of that entity. (§ 64, subd. (c)(1).) This change in control is measured by the ownership of voting stock. (*Ibid.*) Specifically, section 64, subdivision (c)(1) provides when “control through direct or indirect ownership or control of more than 50 percent of the *voting stock* of any corporation,” or a “majority ownership interest” is obtained, “the purchase or transfer of that stock or other interest shall be a change of ownership of the real property.” (*Ibid.* [italics added].)

Another exception triggering reassessment is the transfer of more than 50 percent of the “original co-owner” shares. (§ 64, subd. (d).) Pursuant to Section 62(a)(2), a change in ownership does not include,

Any transfer between an individual or individuals and a legal entity or between legal entities, . . . that

results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, . . . remain the same after the transfer....

(§ 62, subd. (a)(2).) When Section 62(a)(2) operates to exclude such a transfer from a change in ownership triggering reassessment, those who hold ownership interests in the legal entity immediately after the transfer are considered “original co-owners.” (§ 64, subd. (d).)<sup>3</sup> Section 64(d), however, provides for a reappraisal when the original co-owners transfer more than 50 percent of their total interests. It provides:

Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under [Section 62(a)(2)] shall be reappraised.

(§ 64, subd. (d).) Therefore, when a transfer is excluded from change in ownership under Section 62(a)(2), the property will nevertheless be reappraised pursuant to Section 64(d) upon a transfer of more than 50 percent of the total shares owned by the original co-owners. (§ 64, subd. (d).)

The Legislature enacted Sections 62(a)(2) and 64(d) in 1980, and the statutes became operative in 1981. (Assem. Bill No. 2777

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<sup>3</sup> By statute, original co-owner status is created only if the excluded transfer occurs on or after March 1, 1975.

(1979-1980 Reg. Sess.) §§ 1-2; Stats. 1980, ch. 1349.)<sup>4</sup> The Legislature did not enact statutory definitions of the terms “stock,” or “partnership interest,” as contained in Section 62(a)(2), or “shares,” or “other ownership interests” as contained in Section 64(d).

## **II. BOE’S REGULATIONS AND GUIDANCE**

### **A. BOE’s Contemporaneous Regulations Clarify “Shares” in Section 64(d) Means Voting Shares**

BOE is authorized to prescribe rules and regulations to govern local boards of equalization when equalizing and assessors when assessing. (Gov. Code, § 15606, subd. (c).) Contemporaneously with the statutory enactments, BOE promulgated Property Tax Rule 462, clarifying the property tax and reassessment laws as they relate to legal entity change in ownership. (Cal. Code Regs., tit. 18, § (Regulation) 462.180, former Regulation § 462; see also BOE Letter to Assessors No. 81/91, Aug. 7, 1981; Gov. Code, § 15606, subd. (c).)<sup>5</sup> As relevant here, the rules clarified the word “shares” in Section 64(d) means “voting shares,” and the phrase “other ownership interests” means capital and profits interests for partnerships and limited

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<sup>4</sup> The language of Section 62(a)(2) was originally included in section 62, subdivision (a). In 1983, section 62, subdivision (a) was separated into two subdivisions, (a)(1) and (a)(2), with no change to the language. (See Stats. 1982, ch. 1465.)

<sup>5</sup> Unless otherwise specified, all further references to Rules or Regulations are to title 18 of the California Code of Regulations.

liability companies. (Regulation 462.180, subd. (d)(2), former tit. 18, § 462, subd. (j)(4)(B).)

Former Rule 462(j)(4)(B) explained Section 64(d) applies when “the ‘original coowners’ subsequently transfer, in one or more transactions, more than 50 percent of the total control or ownership interests in the entity as defined in (4)(A).” Rule 462(j)(4)(A)(i), in turn, provided a change in ownership occurs “[w]hen any corporation, partnership, other legal entity or any person obtains direct or indirect ownership or control of more than 50 percent of the *voting stock* in any corporation which is not a member of the same affiliated group of corporations . . . .” and 462(j)(4)(A)(ii) provided a change in ownership occurs when control of a partnership or LLC is obtained through “direct or indirect ownership of more than 50 percent of the total interest in partnership or LLC *capital* and more than 50 percent of the total interest in partnership or LLC *profits* . . . .” (italics added). While Rule 462 has been renumbered, and is now contained within Regulation 462.180, the clarification of “shares” as meaning *voting* shares and “ownership interests” in partnerships and limited liability companies means a capital and profits interest remains unchanged. (Regulation 462.180, subd. (d)(2).)

These rules were subject to public comment and discussion as part of the required rulemaking process under the Administrative Procedure Act. (See, e.g., Gov. Code, §§ 11346.2, 11346.45 [notification and public discussion process]; see also BOE Letter to Assessors 81/22, Feb. 11, 1981.) The Final Statement of Reasons does not reflect any opposition to the use of

the terms “voting stock” (Rule 462, Final Statement of Reasons, § IV, at p. 7) and, except for this action, BOE is not aware of any dispute over this language since adopting the legal entity change in ownership rules in 1981.

**B. In the Assessors’ Handbook and Other Guidance, BOE Consistently Interprets “Stock” in Section 62(a)(2) to Mean Voting Stock**

While BOE has not promulgated any regulations clarifying the meaning of “stock” in Section 62(a)(2), it has also consistently interpreted “stock” in Section 62(a)(2) to mean voting stock. In administering property taxes, BOE issues instructions and guidance to assessors to promote uniformity in property taxation throughout the state. (Gov. Code, § 15606, subd. (e).) The Assessors’ Handbook is among the guidance issued.

Chapter 401 of the Assessors’ Handbook, entitled Change in Ownership, provides in pertinent part that “[f]or change in ownership purposes, ownership in a corporation is determined by the percentage of ownership or control of a corporation’s *voting stock*.” (BOE, Assessors’ Handbook (2010, reprinted 2015) Ch. 401, Change in Ownership, p. 38 [italics added] (AH-401).) “*Control* of a corporation exists when one entity or person has direct or indirect ownership or control of more than 50 percent of the voting stock of the corporation.” (*Id.* at p. 42 [italics in original].) And, as it relates to the application of Sections 64(d) and 62(a)(2), the Assessors’ Handbook consistently provides guidance to analyze change in ownership of real property held by legal entities based on “voting stock.” (See AH-401, at pp. 42, 49,

50, Examples 6-10, 6-11, 6-12 [all relating to transfers of “voting stock”].)

Similarly, BOE has issued legal opinions evaluating Section 62(a)(2) based on changes to “voting stock.” (See BOE Request for Legal Opinion, No. 09-126, Oct. 30, 2009 [BOE legal opinion No. 09-126], at p. 4; BOE Legal Opinion, *Re: Change in Ownership – Transfer from Revocable Trust to Corporation*, May 31, 2007 [BOE legal opinion, May 31, 2007], at p. 3.)

## ARGUMENT

### I. UNDER THE RULES OF STATUTORY CONSTRUCTION, “STOCK” IN SECTION 62(A)(2) IS PROPERLY INTERPRETED AS VOTING STOCK

#### A. Courts May Properly Look to External Sources When Statutory Language is Ambiguous

Like other statutes, when interpreting tax statutes, the court must begin with the text of the relevant provisions. (*Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th at 750, 758 (*Microsoft Corp.*)). “If the text is unambiguous and provides a clear answer, [the court] need go no further.” (*Ibid.*) However, “[i]f the language supports multiple readings, [the court] may consult extrinsic sources, including but not limited to the legislative history and administrative interpretations of the language.” (*Ibid.*)

While courts ultimately construe taxing statutes, great weight and respect is accorded to the administrative construction of the statutes. (*Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 524-525.) And where the Legislature has

adopted a uniform act, as in tax statutes, “the history behind the creation and adoption of that act is also relevant.” (*Microsoft Corp., supra*, 39 Cal.4th at p. 758.) Statutes must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible so as not to produce absurd results. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; *In re Catalano* (1981) 29 Cal.3d 1, 11; see also *Taiheiyo Cement U.S.A., Inc. v. Franchise Tax Bd.* (2012) 204 Cal.App.4th 254, 259-260 (*Taiheiyo Cement U.S.A., Inc.*).

**B. The Term “Stock,” as Used in Section 62(a)(2), Is Ambiguous**

Stock is not defined in the statutes implementing Proposition 13. Black’s Law Dictionary provides four definitions for stock, including “[t]he capital or principal fund raised by a corporation through subscribers’ contributions or the sale of shares,” and “[a] proportional part of a corporation’s capital represented by the number of equal units (or shares) owned, and granting the holder the right to participate in the company’s general management and to share in its net profits or earnings.” (Black’s Law Dictionary (11th ed. 2019), available at Westlaw.) It also includes entries for more than seventy particularized types of “stock.” (*Id.*)

The Corporations Code confirms myriad types of shares, and that the attendant rights of any type of stock may depend on the specific terms of the corporation’s articles. For example, it authorizes the issuance of “one or more classes or series of shares, or both, with full, limited or no voting rights and with such other rights, preferences, privileges and restrictions as are stated or



authorized in [the corporation’s] articles.” (Corp. Code, § 400.) The Corporations Code defines “shares” to mean “the units into which the proprietary interest in a corporation are divided in the articles.” (Corp. Code, § 184.)

Accordingly, there is no plain meaning of the term “stock,” as contained in Section 62(a)(2), and this Court may properly rely on external sources to interpret the statute.<sup>6</sup> (*Microsoft Corp.*, *supra*, 39 Cal.4th at pp. 750, 758.)

**C. BOE’s Consistent and Longstanding Administrative Interpretation Is That “Stock” in Section 62(a)(2) Means “Voting Stock”**

An administrative agency’s quasi-legislative rules, such as regulations enacted pursuant to powers delegated by the Legislature, have the “dignity of statutes.” (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 10 [internal quotations omitted] (*Yamaha*)). The “contemporaneous construction of a statute by an administrative agency charged with its enforcement,” is “entitled to great weight.” (*Western Oil & Gas Assn. v. Air Resources Board* (1984) 37 Cal.3d 502, 520.) Here, BOE’s regulations interpreting Section 64(d), which the Legislature enacted simultaneously to and as part of the same statutory scheme as Section 62(a)(2), provide that property is

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<sup>6</sup> There is, in fact, no plain meaning of any of the words in Section 62(a)(2) used to describe how ownership interests may be represented (i.e., “stock, partnership interest, or otherwise”). The word “partnership interest,” is subject to multiple meanings and the word “otherwise” inherently needs definition. This lends weight to the necessity of administrative regulations to clarify these terms as described in part I(C), *supra*.

reassessed when the original co-owners transfer more than 50 percent of their *voting* shares. (Regulation 462.180, subd. (d)(2).)

The exclusion in Section 62(a)(2) should likewise apply when there is no change in the proportional ownership interest as measured by *voting* stock, and BOE has consistently interpreted it as such, as evidenced by its Assessors' Handbook.<sup>7</sup> "Because part of [BOE's] function is to assess the tax consequences resulting from the myriad ways in which property may be held, it has practical expertise [a court] may lack." (*Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480, 491 (*Reilly*).) Accordingly, "[w]ith its expertise and background, [BOE] is positioned to establish consistent rules regarding change in ownership." (*Ibid.*) Therefore, while the Assessors' Handbook is not a regulation and does not possess the force of law, it "ha[s] been relied upon and accorded great weight [by the Courts] in interpreting valuation questions." (*SHC Half Moon Bay, LLC v. County of San Mateo* (2014) 226 Cal.App.4th 471, 485.)

While the examples in the Assessors' Handbook do not directly address whether "stock" in Section 62(a)(2) means all stock or voting stock, the Assessors' Handbook demonstrates the consistent reliance on *voting* stock as the determinative factor in

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<sup>7</sup> It bears noting that BOE has also provided consistent interpretation of "partnership interest" to mean a capital and profits interest in the partnership regardless of whether the interests are limited or general partnership interests, and has given as an example of another type of legal entity and its ownership representation, limited liability companies with ownership measured by capital and profits interest and not, for example, managing interests.

ascertaining whether a change in ownership of a corporation has occurred, and the lack of controversy over this interpretation. (AH-401, at pp. 38, 49, 50, Examples 6-10, 6-11, 6-12.) It evidences BOE’s interpretation that the exclusion under Section 62(a)(2) applies when the proportional ownership interests, as measured by voting stock, remain unchanged.

Moreover, while BOE’s legal opinions similarly do not have force of law, they confirm the consistency of BOE’s interpretation. (See *Yamaha, supra*, 19 Cal.4th at p. 20 [noting “[a]nother important factor,” in assessing the weight of administrative interpretations is whether it is “consistent and longstanding”].) For example, a 2007 legal opinion letter, annotated as Annotation<sup>8</sup> 220.0267, responds to a question regarding whether a transfer from a husband and wife’s revocable trust to a corporation qualified for the Section 62(a)(2) exclusion, in part, by stating, “if husband and wife can establish by clear and convincing evidence that their *voting* shares in the corporation are held as community property, the proportional transfer

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<sup>8</sup> “Annotations” are summaries of conclusions reached in selected rulings of legal counsel posted on the Board’s website. A “legal ruling of counsel” means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel’s designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government agency, or board staff. To qualify to be annotated, a legal ruling of counsel must include the following elements: (1) A summary of pertinent facts; (2) An analysis of the issue(s); (3) References to any applicable statutes, regulations, or case law; and (4) A conclusion supported by the analysis of the issue(s). (Regulation § 5700.)

exclusion of [Section 62(a)(2)] would apply.” (BOE legal opinion, May 31, 2007, at p. 3 [italics added].) Also, in 2009, analyzing a transfer under section 61, subdivision (j), BOE issued an opinion letter stating “for the exclusion of [Section 62(a)(2)] to apply, ... the shareholders’ interest as represented by their *voting* stock must have been the same . . . .”) (BOE legal opinion No. 09-126, at p. 4 [italics added], annotated as Annotation 220.0067.)

In all instances, BOE’s guidance reflects its interpretation that Section 62(a)(2) should be analyzed by considering whether the proportionality of voting stock remains the same.

**II. INTERPRETING THE TERM “STOCK” AS VOTING STOCK HARMONIZES THE STATUTORY SCHEME AND ALLOWS FOR EFFECTIVE ADMINISTRATION OF PROPOSITION 13**

Statutes must be read in context so as to harmonize the statutory scheme. (*Lungren v. Deukmejian, supra*, 45 Cal.3d at p. 735; *Taiheiyo Cement U.S.A., Inc., supra*, 204 Cal.App.4th at pp. 259-260.) Here, interpreting “stock” in Section 62(a)(2) to mean voting stock is consistent with the statutory scheme implementing Proposition 13.

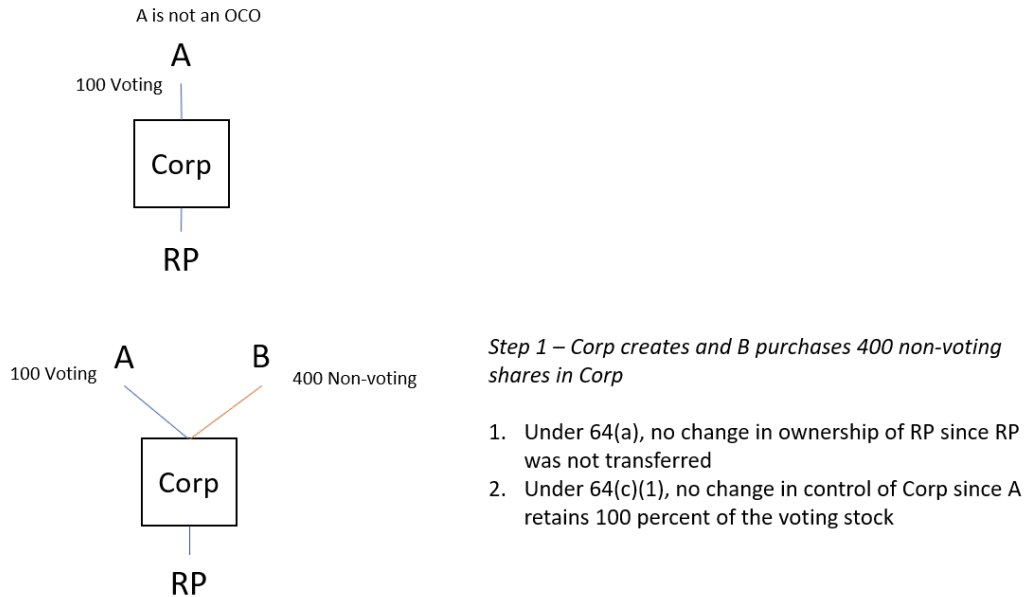
First, as set forth above, Section 64(d) provides for reassessment when 50 percent of the original co-owner shares are transferred. If Section 62(a)(2) means “all stock,” the exclusion under Section 62(a)(2) would be measured under one standard – all stock – but under a different standard – voting stock – to measure when the exclusion ends under Section 64(d).

Second, ordinarily, the transfer of corporate stock is not a change in ownership unless the transfer results in a change in control. (§ 64, subs. (a), (c)(1).) A change in control is measured

by “voting stock” and interpreting Section 62(a)(2) to only exclude transfers when the proportional ownership interest, as measured by voting stock remains the same, makes the statutes governing change in ownership of real property held by legal entities consistent and coherent, particularly since the proportional ownership interest exclusion for transfers of real property as described in Section 62(a)(2) and Rule 462.180(b) is made applicable also to transfers of legal entity interests by Rule 462.180(d)(4).

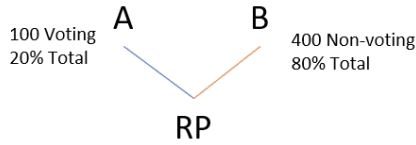
Moreover, interpreting “stock” in Section 62(a)(2) as “all stock” would hinder efforts to administer the statute. Assessing whether or not the “proportional ownership interests of the transferors and transferees” remained the same would necessitate an evaluation of all the different classes and types of stock and their attendant rights, having to assign what may amount to random percentages of ownership to particular classes of stock since, as entities with separate legal existence from its owners, owners of corporations have no specific right to any corporate real property. (See, e.g., *Dole Food Co. v. Patrickson* (2003) 538 US 468, 474 [“the corporation and its shareholders are distinct entities”]; *Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1108 [“fundamental” that a corporation is legal entity distinct from its shareholders]; Corp. Code, §§ 184, 400 [defining attendant rights in different classes of shares as those set forth in the articles].) In contrast, evaluation of the proportional ownership interests of voting stock is relatively straightforward and readily ascertainable.

Additionally, if “stock” in Section 62(a)(2) were interpreted to mean “all stock,” a legal entity could engineer a transfer of real property without any reassessment.<sup>9</sup> This is best demonstrated by example, as illustrated below:



<sup>9</sup> In its Reply Brief, Respondent gives two examples purportedly leading to “absurd results” if “stock” in Section 62(a)(2) means voting stock. (Respondent’s Reply Brief, at pp. 24-27.) However, the change in ownership consequence in each example is incorrectly analyzed. In the first example, there is no change in ownership of the property because there is only a single class of stock, none of which transfers. In the second example, there is a change in ownership because ownership of a limited liability company is properly measured by capital and profits, not managing control. (See Annotation 220.0375.)

Step 2 – Transfer of RP to A & B



1. If “stock” means “all stock,” transfer qualifies for Section 62(a)(2), as follows:
  - Proportional ownership of RP *before* transfer: A- 20% (through ownership of 100 shares of all Corp stock), B-80% (through 400 shares of all Corp stock)\*
  - Proportional ownership of RP *after* transfer: A- 20%, B-80%
  
2. If “stock” means “voting stock,” transfer **does not** qualify for Section 62(a)(2), as follows:
  - Proportional ownership of RP *before* transfer: A- 100% (through ownership of 100 shares of all Corp voting stock), B-0% (owns no Corp voting stock)
  - Proportional ownership of RP *after* transfer: A- 20%, B-80%

\*This assumes that ownership in RP is represented equally by voting and non-voting Corp shares. That, however, need not be the case.

In this example, a corporation (Corp) has 100 shares of voting stock, which are owned entirely by party A (A), and Corp owns real property (RP). If Corp desires to transfer an 80 percent interest in its real property to another party (B) without triggering reassessment, it could first create, and then sell to B, 400 shares of non-voting stock.<sup>10</sup> When B purchases the non-voting stock, it will not be a change in ownership (CIO) of the real property transferred because, under section 64, subdivisions (a) and (c)(1), the purchase of ownership interests in a corporation is ordinarily not a change in ownership in real property owned by the corporation, unless there is a change in control (CIC). (§ 64, subds. (a), (c)(1).) Change in control is measured by direct or

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<sup>10</sup> This example assumes Corp is not an original co-owner (OCO). If Corp were an original co-owner, the transaction would have to be separately analyzed under Section 64(d).

indirect ownership of “more than 50 percent of the voting stock.” (§ 64, subd. (c)(1).) Because the voting stock remains with Corp, and only non-voting stock was purchased by B, there is no change in control, and reassessment is not triggered.

If Corp were then to dissolve, transferring a 20 percent interest in RP to A, and an 80 percent interest in RP to B, there would still be no reassessment if “stock” in Section 62(a)(2) is read to mean “all stock.” This is because, under the “all stock” interpretation, before the transfer A and B would be considered to own a 20 percent and 80 percent interest, respectively, in RP, through their respective percentage ownership of all the stock in Corp. After the transfer, A owns a 20 percent and B owns an 80 percent interest in RP. If “stock” in Section 62(a)(2) means all stock, there is no resulting change in the proportional ownership in RP before and after the transfer, and A has successfully avoided reassessment while at the same time transferring 80 percent of RP to a third party, B.

But, if stock in Section 62(a)(2) is read to mean “voting stock,” as BOE has consistently interpreted it to mean, such gamesmanship could not occur. Before the transfer of RP, A is considered to hold 100 percent of the property through its ownership of 100 percent of Corp’s voting stock, while B is considered to own no part of RP since it does not own any voting stock. After the transfer, however, A holds only 20 percent of RP, while B holds 80 percent of RP. Thus there is a change in the proportional ownership interest before and after the transfer, Section 62(a)(2) is not satisfied, and the property is reassessed.



## CONCLUSION

BOE respectfully submits that the term “stock” in Section 62(a)(2) should be interpreted as “voting stock,” consistent with BOE’s longstanding interpretation, and so as to harmonize the statutes implementing Proposition 13.

Dated: August 21, 2020      Respectfully submitted,

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*Equalization*

Document received by the CA 2nd District Court of Appeal.

**CERTIFICATE OF COMPLIANCE**

I certify that the attached **BRIEF OF AMICUS CURIAE CALIFORNIA STATE BOARD OF EQUALIZATION** uses a 13 point Century Schoolbook font and contains 4,326 words.

Dated: August 21, 2020

XAVIER BECERRA  
Attorney General of California

*/s/ Heather B. Hoesterey*  
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Deputy Attorney General  
*Attorneys for Amicus Curiae*  
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*Equalization*

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**DECLARATION OF SERVICE via TrueFiling and E-mail**

Case Name:       **Prang v. Amen Family Trust**  
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I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive copies of said correspondence via electronic mail.

August 21, 2020, I electronically served the attached

**BRIEF OF AMICUS CURIAE CALIFORNIA  
STATE BOARD OF EQUALIZATION**

by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on August 21, 2020, I electronically mailed correspondence addressed as follows:

**See Service Lists**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 21, 2020, at San Francisco, California.

Pauline Santamaria

Declarant



Signature

Document received by the CA 2nd District Court of Appeal.

**Service List for Amicus Briefs in  
Prang v. Amen Family 1990 Revocable Trust, B298794**

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 18565 Jamboree Road, Suite 500, Irvine, CA 92612.

On January 13, 2021, I served **PETITION FOR REVIEW**, on the interested parties, addressed as follows:

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<p>T: (213) 974-0809  Rgirgado@counsel.lacounty.gov  Attorneys for Petitioner  <b>JEFFREY PRANG, Los Angeles County Assessor</b></p>	
<p>DON H. GAEKLE, President  California Assessors' Association  Stanislaus County Assessor  1010 10th Street Suite 2400  Modesto, CA 95354  gaekled@stancounty.com</p>	<p>Charles Moll, III  McDermott Will &amp; Emery  415 Mission Street, Suite 5600  San Francisco, CA 94105-2533  cmoll@mwe.com</p>
<p>Jennifer Bacon Henning  Executive Director, County Counsels' Association, and Litigation Counsel, California State Association of Counties®  1100 K Street, Suite 101  Sacramento, CA 95814  jhenning@counties.org</p>	<p>Jozen Brunett  Chief Counsel, Franchise Tax Board Legal Division  PO Box 1720  Rancho Cordova, CA 95741  jozel.brunett@ftb.ca.gov</p>
<p>State Board of Equalization  Property Tax Department  450 N. Street, MIC 121  P.O. Box 942879  Sacramento, CA 94279-0121  Henry.Nanjo@boe.ca.gov</p>	<p>CA Court of Appeals  Second District, Div. 5  300 S. Spring St., Ste. B-228  Los Angeles, CA 90013</p>
<input checked="" type="checkbox"/>	<p><b>[BY TRUEFILING]</b> I caused the above document to be electronically served on counsel of record by using TrueFiling's e-service and all interested parties registered by e-service for this case.</p>
<input checked="" type="checkbox"/>	<p><b>(STATE)</b> I declare under penalty of perjury under the laws of the State of California that the above is true and correct.</p>
<p>Honorable James C. Chalfant  Los Angeles Superior Court  Stanley Mosk Courthouse  111 N. Hill Street  Los Angeles, CA 90012</p>	

<input checked="" type="checkbox"/>	<p><b>[BY UPS OVERNIGHT]</b> I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for delivery by UPS Overnight. Under the practice it would be deposited with UPS on that same day with postage thereon fully prepared at Irvine, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if delivery by UPS is more than one day after date of deposit with UPS.</p>
<input checked="" type="checkbox"/>	<p><b>(STATE)</b> I declare under penalty of perjury under the laws of the State of California that the above is true and correct.</p>

Executed on January 13, 2021 at Irvine, California.

*/s/ Vanessa Hudak*

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Vanessa Hudak

**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **Amen Family 1990 Revocable Trust v. Jeffrey Prang, Los Angeles County Assessor**

Case Number: **TEMP-2S8P6S6C**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **frasercw@gtlaw.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW (FEE PREVIOUSLY PAID)	Petition for Review

Service Recipients:

<b>Person Served</b>	<b>Email Address</b>	<b>Type</b>	<b>Date / Time</b>
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/13/2021

Date

/s/Vanessa Hudak

Signature

Fraser, Colin (266867)

Last Name, First Name (PNum)

Greenberg Traurig, LLP

Law Firm