S205876

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

ASSESSOR FOR COUNTY OF SANTA BARBARA
Petitioner and Appellant

vs.

ASSESSMENT APPEALS BOARD NO. 1
Respondent

RANCHO GOLETA LAKESIDE MOBILEERS, INC. and SILVER SANDS VILLAGE, INC.
Real Parties in Interest and Respondents

Petition for Review from Decision of the Court of Appeal,
Second Appellate District, Division Six – Case No. B229656

Appeal from the Superior Court of Santa Barbara County
The Honorable James W. Brown - Case No. 01244457

RESPONDENTS' JOINT ANSWER TO PETITION FOR REVIEW

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JOINT ANSWER TO PETITION FOR REVIEW

Respondent ASSESSMENT APPEALS BOARD (**"AAB"**), and Real Parties in Interest/Respondents RANCHO GOLETA LAKESIDE MOBILEERS, INC. (**"RG, Inc."**) and SILVER SANDS VILLAGE, INC. (**"SSV, Inc."**) (collectively, **"Real Parties"**) jointly answer the Petition for Review of Petitioner/Appellant ASSESSOR (**"Assessor"**).

The Petition for Review seeks review of the Court of Appeal's majority Opinion on Rehearing (**"Opinion"**). The Opinion affirms the two-part **"AAB Decision"** [AR-v18-t254-p003621-003678; AR-v18-t255-p000368-0003714] and the Superior Court judgment and attached **"Statement of Decision"** [Appendix-v4-t47-p000871-000914]. [1]

At issue in this case is the proper methodology for assessments of the **"RG Park,"** the mobilehome park owned by RG, Inc., and the **"SSV Park,"** the mobilehome park owned by SSV, Inc. [2] The Opinion rejects the methodology suggested by the *staff* of the State Board of Equalization(**"SBE"**) in an *advisory* letter to assessors (**"LTA"**).

The AAB and the Real Parties (collectively, **"Respondents"**) respectfully submit that the Petition for Review should be denied.

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[1] The Administrative Record (**"AR"**) and the Appellant's Appendix (**"Appendix"**) are cited by volume, tab and page number. For example, AR-v18-t254-p003621-003678 cited above references Administrative Record-volume 18-tab 254-pages 003621-003678.

[2] This case arises from assessment appeals for the RG Park and SSV Park for 2002-2003. Similar assessment appeals are pending for each subsequent year, which the parties have agreed not to schedule for hearing until there is a final decision in this case.

OVERVIEW OF MOBILEHOME PARKS AND MOBILEHOMES

This case does not arise in a vacuum. The specific issues of this case arise inside the general context of real property and tax assessment concepts affecting mobilehome parks and mobilehomes. [3]

Therefore, an overview of mobilehome parks and mobilehomes is provided at the outset of this Answer, as was done in earlier briefing in the courts below.

A. Character and Ownership of Mobilehome Parks.

1. Subdivided Mobilehome Parks

The land of some mobilehome parks has been subdivided -- i.e., the mobilehome spaces have been parcelized or condominiumized by a recorded subdivision map.

In a subdivided mobilehome park, each subdivided space is separately owned and there are many owners of the real property of the mobilehome park.

Title to (ownership of) such individually-owned mobilehome spaces is transferred by a deed recorded with the County Recorder.

Each owner of a subdivided mobilehome space has the ability to provide a deed of trust on his/her separate identifiable real property, and therefore to obtain a residential real estate mortgage.

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[3] In this Answer, when referring to a **"mobilehome,"** Respondents refer to personal property only (as did the Court of Appeal majority, the trial judge and the AAB). The Assessor's unusual definition of "mobilehome" in the Petition for Review (fn. 2, p. 1) is not used.

The rights and duties of the owners of subdivided mobilehome spaces are similar to the rights and duties of owners in other real estate subdivisions. Such rights and duties are not structured or enforced as a landlord-tenant relationship.

2. Unsubdivided (Rental) Mobilehome Parks

Most mobilehome parks have not been subdivided, and are fundamentally different than subdivisions.

Unsubdivided mobilehome parks are *rental* properties, in which each mobilehome space is the subject of a written lease (or "occupancy agreement") between the owner of the mobilehome park (as landlord) and the owner of the mobilehome located on the rental space (as tenant). In the absence of such landlord-tenant relationships, there would be no way to structure, regulate and enforce the rights and responsibilities of the landowner and the mobilehome owners.

Mobilehome park tenants cannot obtain real estate mortgage loans since they do not own real property against which a deed of trust can be recorded. Their "mobilehome mortgage loans," in which the collateral is the mobilehome, bear significantly higher rates of interest than do residential real estate mortgage loans.

When a mobilehome that will remain in a rental park is sold, this sale is accompanied by either the assignment of the existing lease to the buyer or the execution of a new lease by the buyer.

The lease for a particular space grants the mobilehome buyer the right to retain the mobilehome on, and to personally reside at, the space.

Some rental mobilehome parks, like the RG Park and SSV Park, are owned by an entity whose shareholders or members are tenants of spaces and reside in the park.

B. Reassessment(s) of the Real Property of a Mobilehome Park

1. Subdivided Mobilehome Spaces.

If a mobilehome park has been subdivided, then, upon sale of an individual mobilehome space (i.e., a subdivided parcel or condominium), such individual mobilehome space is reassessed as of the date of purchase, pursuant to California *Revenue and Taxation Code* § 65.1(b). [4]

2. Unsubdivided/Rental Mobilehome Parks

When a rental mobilehome park is purchased by an investor, then the real property is reassessed based on value of the park as of the date of purchase, under standard procedures applicable in most (but not all) real property reassessments after a "change in ownership."

However, if a rental mobilehome park is purchased by a corporation whose shareholders or members are a majority of tenants (residents) of the park, then the real property is not reassessed as of the date of purchase, pursuant to Section 62.1(a). Such exclusion from reassessment occurs due to the Legislature's desire to promote such purchases of mobilehome parks. (See Section 62.1(d).)

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[4] Unless otherwise indicated, all references to statutes in this Answer are to the California *Revenue & Taxation Code* as it existed in 2001 (when the specific reassessment events in the AAB Decision occurred).

If a mobilehome park is excluded from reassessment under Section 62.1(a), then the Legislature has provided for partial reassessments of the park property at later dates, triggered by transfers of a share or membership in the corporation. (Section 62.1(c).) [5]

The proper reassessment of the RG Park and SSV Park, pursuant to Section 62.1(c), is the subject of this case.

C. Character of Mobilehomes as Personal Property

Mobilehomes (also called "manufactured housing") are *personal property*.

Each mobilehome is hauled (in one or more parts) on its axles and wheels from the factory to a mobilehome space where supporting piers are attached.

Importantly, the piers rest on, but are not attached to, the land.

If a mobilehome is permanently affixed to a foundation, then it changes character and <u>becomes real property</u>.

The affixing of a mobilehome to a foundation typically occurs on subdivided mobilehome spaces and on larger real properties, but does not occur on the leased spaces of rental mobilehome parks.

(The mobilehomes located in the RG Park and SSV Park are personal property, set on piers.)

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[5] The subdivisions of Section 62.1, <u>as in effect in 2001</u>, have been relettered as follows:

<u>*Subdivision as of 2001*</u>	<u>*Subdivision after 2001*</u>
(a)	(a)(1)
(b)	(a)(2)
(c)(1), (2) & (3)	(b)(1), (2) & (3)
(d)	(c)

Mobilehomes are registered with either the Department of Housing and Community Development (**"HCD"**) or the Department of Motor Vehicles (**"DMV"**).

When a mobilehome in a rental park is sold, then title to the mobilehome is re-registered with HCD or DMV, which completes the transfer of ownership of the mobilehome. (For examples of certificates of title for mobilehomes in the SSV Park, see AR-v13-t181.)

D. Taxation and Assessment of Mobilehomes

Many, but not all, mobilehomes are subject to property tax. Mobilehomes first registered on or after July 1, 1980 are subject to property tax, while mobilehomes first registered before July 1980 (usually, DMV-registered) usually are not subject to property tax.

The sale of a mobilehome that is subject to property tax and located in a rental mobilehome park is reassessed under Section 5803(b).

Personal property taxes are paid by the buyer (owner) of the mobilehome, based on the reassessment valuation of such mobilehome.

The personal property taxes are secured by the mobilehome (including the possessory interest -- i.e., the lease on the underlying rental space), but not by any ownership (fee) interest in real property. *See* Statement of Decision [Appendix-v4-t47-p000897-898].

Under Section 5803(b), there is not a "purchase price presumption" in the reassessment process. Without regard to a mobilehome's actual sales price, the Assessor must reassess a mobilehome that is subject to property tax and located on "rented or leased land" using the NADA Guide (blue-book) value.

The AR contains legislative history for Section 5803(b). AR-v1-t19-23. When Section 5803(b) was enacted, the "legislative intent [was] that site values be excluded from the assessed value of mobilehomes located on rented or leased land." [AR-v1-t21-p000209-000210.]

E. Mobilehome Ressessments in 2001 in the Santa Barbara Area

The Assessor acknowledged in the AAB proceedings that:

1. After the sale of mobilehomes subject to property tax in the RG Park and SSV Park, such mobilehomes were reassessed using the NADA Guide, and the resulting tax bills, based on such assessed values, were sent to the persons owning such mobilehomes;

2. This is the same manner that mobilehomes were reassessed (and their owners were taxed) in mobilehome parks that the Assessor agreed were rental mobilehome parks (the Assessor disputes whether the RG Park and SSV Park are rental mobilehome parks); and

3. In 2001, mobilehomes in rental mobilehome parks in southern Santa Barbara County typically sold for prices significantly in excess of their NADA Guide values and the reassessment values for the mobilehomes accordingly were much lower than the actual sales prices.

The difference between the actual sales price of a mobilehome in a rental park and its reassessment valuation per Section 5803(b) was termed "non-assessable site value" in LTA 99/87 (more on this below).

Consistent with the Section 5803(b) legislative history, this "non-assessable site value" reflects the value of the possessory interest (lease) of the rental space and trades in the marketplace as part of the price for the mobilehome. Such possessory interest, the tenant's interest in the lease, is held (owned) by the mobilehome owner (tenant).

DISCUSSION OF THE FACTS OF THIS CASE AND WHY THE PETITION FOR REVIEW DOES NOT SET FORTH AN "ISSUE PRESENTED FOR REVIEW"

The Petition for Review does not contain an "issue presented for review" that conforms to California *Rules of Court*, Rule 8.504(b)(1). [6]

First, the "issue presented for review" in the Petition for Review is not "[framed]... in terms of the facts of the case," as required by Rule 8.504(b)(1).

In the Petition for Review, the Assessor asserts its factual contentions as if they are the facts of the case. They are not.

The facts of this case are set forth in the AAB's detailed factual findings and were summarized in the Opinion. As stated by the Court of Appeal, the facts of this case are:

> "In 1992 and 1998, residents of the Parks formed the Nonprofit Corporations which purchased the Parks including the underlying real property. ... each resident who wished to do so purchased a membership in the Nonprofit Corporation. A membership included an undivided interest in the Nonprofit Corporation, but not a direct ownership interest in the real property, and no right to occupy a specific space in the Park. The right to occupy a specific space in the Park was conveyed by a lease between the Nonprofit Corporation and the owner of the mobilehome. ... Pursuant to Section 62.1, subdivision (a), the transfer of ownership of the Parks to the Nonprofit Corporations was a [nonassessable] event. But a change of assessment of the underlying real property is triggered by each subsequent sale of a

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[6] In this Answer, all references to a **"Rule"** are to the California *Rules of Court*, unless otherwise stated.

> membership in the Nonprofit Corporation which [owns] the particular Park. Although a mobilehome is typically sold with a membership, reassessment of the mobilehome is separate from the reassessment of the Parks. The mobilehome is assessed as personal property (§5810), and despite the absence of any formal change in ownership of the real property, a pro rata portion of the real property is deemed to change ownership for purposes of reassessment pursuant to section 62.1, subdivision (c)." Opinion, p. 2.

In contrast, the Assessor's factual contentions are that (1) individual mobilehome spaces *change ownership* with the transfer of a membership in RG, Inc. or SSV, Inc., (2) a membership gives its owner the right to occupy a specific space, and (3) the RG Park and SSV Park ceased to be rental mobilehome parks when they were purchased by RG, Inc. and SSV, Inc. (the Assessor has called this the "renter-fiction" in prior briefing).

The Assessor's factual contentions were rejected in the AAB's Decision and in all prior court proceedings.[7]

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[7] The AAB's detailed findings and discussion of evidence in Part 1 of the AAB Decision [AR-v18-t254-p003628-003636] were quoted at length in the Statement of Decision [Appendix-v4-t47-p000886-890].

The Superior Court ruled that substantial evidence was the standard of review and that substantial evidence supported the AAB's factual findings. Appendix-v4-t47-p 000895-896, 000898-899.

The Court of Appeal affirmed the Superior Court's rulings on such issues in the Opinion, at pp. 3-5.

Part 2 of the AAB Decision concisely summarizes the AAB's rejection of the Assessor's factual contentions:

> "The Assessor mistakenly assumed that the members... did not lease the Spaces, and expressly stated that there were no leases ...There is no evidence to support that contention and, in fact, the evidence is uncontradicted that members ... did enter into leases ... for a leasehold right to a Space in [each] Park... The Assessor mistakenly assumed that the purchase of a membership interest was essentially the purchase of a fee interest in the Space." (AR-v18-t255-p003707)

In the Petition for Review, the Assessor *assumes* its factual contentions are true, although they are not true and are contrary to the evidence and were rejected in all underlying proceedings. [8]

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[8] The evidence on which the AAB based its factual findings included extensive documentation and testimony from multiple witnesses to the effect that: (1) the parks are unsubdivided real properties that are owned in fee by the Real Parties, (2) the Real Parties are corporations organized and existing under California law, (3) the Parks are operated as rental mobilehome parks, and the Real Parties are the landlords, (4) each space is leased, whether the tenant of the space is a member of the corporation or not (and there are numerous tenants in each park who are not members), (5) rent is paid monthly by all tenants, and each tenant is subject to eviction under unlawful detainer statutes for failure to pay rent, (6) members do not receive deeds to a space and may not obtain real estate mortgages because they do not own and cannot encumber the (rental) spaces underlying their mobilehomes, (7) if any portion of the real property taxes on one of the parks is not paid, then the property tax lien is on the entire, unsubdivided park and not on a specific mobilehome space, (8) the Department of Corporations required the inclusion of a disclosure in the statement of information (prospectus) for the sale of memberships

In the Petition for Review, the Assessor fails to address the facts of this case as summarized by the Court of Appeal. The Assessor therefore fails to frame an "issue presented for review" in terms of the facts of this case. [9]

Second, the "issue presented for review" is highly argumentative, contrary to Rule 8.504(b)(1).

The Assessor includes a misleading and confusing definition of "mobilehome" in the "issue presented for review." Specifically, the Petition for Review states: "The term 'mobilehome' refers to the individual mobile home space/site and mobilehome coach located on that space unless otherwise indicated." [Petition for Review, p. 1, fn. 2].

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stating that purchase of a membership does not provide the purchaser with the right to a specific space in the park, and (9) the membership subscription agreement, approved by the Department of Corporations and signed by each subscriber (member), stated that the membership entitles the member only to an interest in the corporation, and does not entitle the member to ownership of or an exclusive right of occupancy to a mobilehome space. [See AR-v18-t254-p003628-003636.]

[9] Respondents note that, in the Petition for Review, the Assessor did not directly challenge the AAB findings or the Court of Appeal's rulings upholding the AAB's factual findings.

Any such challenge, if intended, is required to have been stated as an "issue presented for review" under Rule 8.504(b)(1).

While the Assessor's assertion of facts in the Petition for Review that are different than the facts established in the AAB proceedings indicates the Assessor's ongoing disagreement with the factual findings, the Assessor's *act of assuming facts* does not state an "issue presented for review" as required in Rule 8.504(b)(1).

As such, Respondents respectfully submit that the facts of the case, as set forth in the Opinion, are beyond challenge by the Assessor.

Such definition of "mobilehome" then is used throughout the Petition for Review.

The Assessor improperly seeks, *by such definition*, to convert:

(1) unsubdivided rental real property owned by the Real Parties into separately-owned real property (individual mobilehome spaces) in the absence of a recorded subdivision map, and

(2) non-assessable personal property owned by one taxpayer (the mobilehome owner) into assessable real property owned by another taxpayer (RG, Inc. or SSV, Inc.).

(Such confused, circular thinking is at the core of the Assessor's positions in this case, and why the Assessor's arguments are without merit.)

The Assessor's "mobilehome" definition incorporates the Assessor's factual contention that "26 individual mobilehome properties sold" in 2001. [Petition for Review p. 1, fn. 1].

It simply is not true that "26 individual mobilehome properties sold" in the sense that Assessor asserts. In fact, *no individual mobilehome space ever changed ownership.*

It is not possible for individual mobilehome spaces in the RG Park and SSV Park to change ownership since the Parks are not subdivided real properties. Every space in both of these Parks is leased to a tenant, and it is the lease of the space that gives the owner of a mobilehome the right to keep the mobilehome on the space.

Under Section 62.1(c), the *real property* that is deemed to change ownership for assessment purposes in the RG Park and the SSV Park is a *pro rata portion* of the *total real property of the mobilehome park.* Under Section 62.1(c), what triggers each such pro rata "change

of ownership" of the RG Park or SSV Park is the transfer of a membership (share) in the corporation that owns the park (RG, Inc. or SSV, Inc.).

The "pro rata adjustment" (as the provisions of Section 62.1(c) are termed in LTA 89/13 and in legislative history documents) compensates for the exclusion from a "change of ownership" (and reassessment) applicable under Section 62.1(a) when the corporation purchased the mobilehome park real property. [10]

The pro rata portion of the mobilehome park property that is deemed to change ownership upon transfer of a membership is **not** a specific rental mobilehome space. Rather, the pro rata portion is an undivided portion of the total real property of the (rental) mobilehome park, which is owned in fee by the corporation. In the case of the RG Park, this is 1/200th of each of the 200 spaces and 1/200th of all the roads and the clubhouse and swimming pool and laundry room – i.e., 1/200th of the total real property of the mobilehome park that is owned

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[10] Under the *Revenue and Taxation Code*, when there is an event that is defined as a "change in ownership" of real property (Section 60 et seq.), then such defined "change in ownership" triggers reassessment of *the real property that changed ownership.*

Typically, a change of ownership occurs when title to real property transfers. If 100% of a real property transfers, then the entire property is reassessed. If there is fractional change of ownership, then an undivided fraction of the total real property is reassessed.

In certain situations, "changes of ownership" of *real property* are deemed to occur for purposes of reassessment upon the transfer of ownership interests in an entity owning the real property, although title to the real property does not change. One example is Section 62.1(c).

in fee by RG, Inc. This was the ruling of the Court of Appeal majority, the trial court and the AAB.

Thus, the Assessor's misleading definition and unsupported factual contentions give rise to a highly argumentative "issue presented for review" – *such that a reassessment event under Section 62.1(c), relating to a pro rata portion of the total real property of the mobilehome park, is mischaracterized as a transaction (i.e., the transfer of fee title to an individual space) that (in fact) does not and cannot occur.*

The Assessor's "issue presented for review" is not an issue that exists at all under the facts of this case or under the law.

Such "issue presented for review" is not an issue that complies with Rule 8.504(b)(1), and is not an issue on which Supreme Court review should be granted.

THE PETITION FOR REVIEW SHOULD BE DENIED

A. Introduction

In this case, the only ground on which review might be granted is that review by the Supreme Court is "necessary... to settle an important question of law." Rule 8.500(b)(1).[11]

This case involves a question of law: the construction and application of Section 62.1.

During oral argument in the Court of Appeal, counsel for Real Parties and counsel for the Assessor both stated that a published decision was appropriate and needed. The reason is that there are multiple pending assessment appeals involving the same issues, as well as the interest in the case shown by the amici curiae. Only a published opinion can resolve the ongoing debate concerning the proper methodology for reassessments under Section 62.1.

The Court of Appeal certified its Opinion for publication. *See* Rule 8.1105(c)(4) [construction of a statute].

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[11] Review is not "necessary to secure uniformity of decision" under Rule 8.500(b)(1). The parties agree that this is a "case of first impression" (to use the Assessor's phrase).

Review is not appropriate under Rule 8.500(b)(2) since the Court of Appeal had jurisdiction in this case, which was on appeal from judgment in the Superior Court. In contrast to death penalty cases, the trial court judgment in this case was not directly appealable to the Supreme Court and was appealable only to the Court of Appeal.

Review is not appropriate under Rule 8.500(b)(3) since the Opinion was joined in by two justices serving on a panel of three qualified justices.

Despite the importance of the case to the parties and amici curiae and the need for a published decision, however, Respondents question whether the relatively narrow question of law in this case is an "important question of law" for purposes of Rule 8.500(b)(1).

Even assuming that this case raises an important question of law under Rule 8.500(b)(1), it is "not necessary" for the Supreme Court to grant review in order to "settle" such question of law.

The majority Opinion construes Section 62.1 according to its plain meaning and consistent with the Legislature's intent and the Legislative history. The Opinion properly decides all of the issues in the case. Nothing, other than publication of the Opinion, is "necessary" to "settle" the question of law in this case.

If review is denied, publication of the Opinion should end the use by the Assessor and by other county assessors of the methodology set forth in LTA 99-87 (and Assessor's Handbook) when reassessing mobilehome parks such as the RG Park and SSV Park. *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal. 2d 450, 455.

The Petition for Review essentially argues that the impact of Opinion would be to approve assessment practices contrary to the Constitution and statutes of the State of California, and to violate the Legislature's intent in enacting Section 62.1(c). The Assessor's arguments are without merit, and the specific reasons why are set forth in the Opinion and in this Answer and in briefs filed by or in support of the Respondents in the Court of Appeal.

Respondents state below what the impacts of the Opinion would be.

The Assessor's use of the LTA 99/87 methodology has resulted in excessive annual reassessments of certain mobilehome park real properties such as the RG Park and SSV Park, owned by (taxpayer) corporations such as the Real Parties. Therefore, there have been excessive taxes to such taxpayers (and additional rent to member-tenants based on a pass-through of the excessive taxes).

In addition to the Real Parties' assessment appeals for years after 2002-2003, there are similar assessment appeals pending for at least two other real properties. The corporations that have filed such assessment appeals are Summerland by the Sea, Inc. (owner of a mobilehome park in Santa Barbara County) and Palm Beach Park, Inc. (owner of a mobilehome park in Orange County). These two corporations were amici curiae below, supporting Respondents.

The Opinion would resolve the question of the proper methodology to be used in the reassessments at issue in these multiple assessment appeals, which eventually should result in refunds of excessive property taxes collected.

There are 136 rental mobilehome parks statewide that are owned by a corporation that is owned by a majority of the mobilehome park's tenants (i.e., so-called "resident-owned" parks). [12] Therefore, at this time, at most, the assessments of 136 real properties might be impacted

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[12] As of August 2012, statewide, there are a total 4,544 rental mobilehome parks, of which 136 are "resident-owned" parks, 54 are municipal-owned parks, and 4,354 are investor-owned parks.

Source: Western Manufactured Housing Communities Assn. (formerly, the Western Mobilehome Assn.), in Sacramento. [Verbal communication of David Fainer with Catherine Borg, Oct. 24, 2012.]

by publication of the Opinion. In fact, fewer than 136 mobilehome parks would be affected because a number of county assessors do not use the LTA 99/87methodology.

The Assessor was far ahead of nearly all other county assessors in embracing and implementing LTA 99/87. [13]

In addition to the impact on taxpayers such as Real Parties, the outcome of this case may impact whether or not the Legislature's purpose in enacting Section 62.1 – to facilitate affordable conversions of mobilehome parks to tenant ownership, including through a corporation owned by the tenants – will be frustrated in the future by reassessment practices contrary to Section 62.1 itself.

Publication of the Opinion, by changing reassessment practices affecting "resident-owned" mobilehome parks, would affect the future willingness of mobilehome park tenant groups (in the over 4,000 investor-owned mobilehome parks statewide) to attempt to purchase

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[13] The Petition for Review, at p. 20, states that "[t]he Opinion unwittingly changes the way resident-owned mobilehomes [sic] have been assessed for the last 20 years throughout the State."

The quoted statement is not accurate, even assuming that the reference to "resident-owned mobilehomes" means "resident-owned mobilehome parks."

The statement is false, and not only because some other county assessors still do not follow LTA 99/87.

In Santa Barbara County, the Assessor followed a different methodology in the 1990s than it has followed under LTA 99/87 to reassess the RG Park when a membership in RG, Inc. sold.

their (unsubdivided) mobilehome parks, if and when such investor-owned mobilehome parks are for sale. [14]

In conclusion, while publication of the Opinion would have some impact statewide and while this case might raise an important question of law, the Respondents again state that it is *not necessary* for the Supreme Court to grant review to settle such question of law, since the Court of Appeal majority properly decided the case.

B. Discussion of Dissenting Opinion and Issue of "Deference"

Justice Yegan's dissenting opinion, at page 2, states: "I would give deference to the SBE because it has a certain expertise and perhaps a better understanding than we do of how the market for mobile homes and mobile spaces actually functions." Specifically, the dissenting opinion defers to the SBE's position in LTA 99/87.

The dissenting opinion does not discuss the facts of this case, or the evidence in the underlying proceedings, or what the plain meaning of the statute is, or what the legislative history demonstrates.

Unfortunately for all involved, the author of LTA 99/87, was not very knowledgeable about mobilehomes and mobilehome parks. [15]

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[14] The dynamics why are discussed in the Brief of Amici Curiae in Support of Respondents, filed in October 2011, at p. 18.

[15] For example, LTA 99/87 states in part that:

> "Thus, while each share in the corporation may be said to afford its holder the right ... to participate in the governance of the corporation and management of the park, such rights are merely incidental to that which the share conveys to its holder in substance: (1) the outright ownership of a particular

As discussed in more detail below, LTA 89/13 contains an entirely different methodology than does LTA 99/87, based on an entirely different view of the 1988 legislation and legislative history.

As the Court of Appeal ruled, LTA 99/87 deserves no deference under *Yamaha Corp.of America v. State Bd. of Equalization* (1998) 19 Cal. 4th 1. [16]

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mobilehome, and (2) the exclusive right to occupy a particular space within the mobilehome park." [AR-v1-t12-p000136]

The LTA 99/87 author does not appear to understand that (a) mobilehomes are personal property that, by law, have a certificate of title from either HCD or DMV, and (b) ownership of the mobilehome is transferred in the HCD and DMV registration process. Nothing about the transfer of a membership in a corporation (a security subject to regulation by the Department of Corporations) transfers a mobilehome (registered with HCD or DMV).

Similarly, as the Department of Corporations required be specified, transfer of a membership in a corporation like the Real Parties does not transfer ownership of an individual mobilehome space. In order to occupy a mobilehome space, the owner of a mobilehome located in the RG Park and SSV Park must lease the space.

[16] Deference to an agency's interpretation depends on the circumstances and the weight to be given to the agency's determination is "fundamentally situational." *Yamaha, supra,* 19 Cal. 4th at 12. Standards for assessing the appropriate deference to be given an agency interpretation were set forth at length in *Yamaha, supra,* 19 Cal. 4th at 8, 12-15. Under such standards, LTA 99/87 and the Assessor's Handbook discussion based on LTA 99/87 are not entitled to any deference or weight. First, the SBE's rationale in LTA 99/87 is contrary to the plain meaning of Section 62.1(c), the Legislative Bill Analyses (prepared during the legislative process), and LTA 89/13 (issued by the SBE when the statute was newly-enacted). continues→

Since the two LTAs conflict with each other, the hyper-critical tone of the Assessor in the Petition for Review concerning the lack of deference to the SBE is without merit.

The Court of Appeal majority, like the trial judge and AAB, properly gave weight to LTA 89/13, but not to LTA 99/87.

Deference of a different sort is due to the AAB with respect to its factual findings, but is absent from the dissenting opinion. A strong presumption of correctness attaches to a board's factual findings, whether the standard of review is the (stricter) independent judgment test or the (standard) substantial evidence test. *Fukada v. City of Angels* (1999) 20 Cal.4th 805, 824 [trial court erred in "failing to accord a presumption of correctness to the administrative findings"].

When substantial evidence is applicable, as here,[17] the petitioner has the burden to demonstrate to the court that the board's

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Second, LTA 99/87 includes the completely inaccurate statement that the transfer of a membership effectively accomplishes an "outright" transfer of the mobilehome and the mobilehome space. (See previous footnote.)

[17] The standard for review of factual findings in an administrative mandate case is either independent judgment or substantial evidence. *Code of Civil Procedure* § 1094.5(c). "Unless a statute provides for independent judgment review or a case involves a fundamental vested right, the general standard of review of administrative decisions is the substantial evidence test." CEB, *California Administrative Mandamus* at p. 278. The Assessor has never asserted a statutory basis for the independent judgment test as the standard of review for the factual findings. Substantial evidence is the standard of review of the AAB's findings.

findings are not supported by substantial evidence in light of the whole record. California *Code of Civil Procedure* § 1094.5(c). In applying the substantial evidence test, the courts "indulge all presumptions and resolve all conflicts in favor of the board's decision." *Calif. Youth Authority v. State Personnel Board* (2002) 104 CA4th 575, 584-585.

In the Petition for Review, the Assessor did not argue or demonstrate that the AAB's factual findings are not supported by substantial evidence in light of the whole record." [18]

Instead, in the courts below and in its Petition for Review, the Assessor simply disagrees with the AAB's factual findings by asserting its factual contentions (based on LTA 99/87).

The AAB devoted an enormous amount of time, including three weeks of full-day hearings to witness testimony and the examination of voluminous documentary evidence, in order to ascertain the facts of this case and make its factual findings.

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[18] The Assessor makes only one minor effort to refer to evidence in the AR other than the Assessor's multiple citations to LTA 99/87. *See* last full sentence on page 17 of the Petition for Review (which cites to testimony by Leann Lustig, a former president of RG, Inc.). To the extent that such passing references are assumed to be a challenge to the AAB's factual findings, the Assessor fails to carry its burden.

As to Ms. Lustig's testimony, the Assessor mischaracterizes it. Ms. Lustig testified concerning the sales of *mobilehomes*, not sales of *mobilehome spaces*. Ms. Lustig repeatedly testified that she leased the space on which her mobilehome is located and that she did not own the space. The statements of alleged fact in the last full sentence on page 17 of the Petition for Review are false, and are not supported by the Assessor's citation to testimony in the AR.

The members of the AAB were: (1) an experienced certified public accountant, (2) an attorney who had litigated cases involving landlord-tenant issues in mobilehome parks, and (3) a tenured University of California, Santa Barbara professor of history whose specialty is economic history.

The AAB set forth its factual findings in detail, and the AAB Decision was unanimous.

Applying the proper standard of review for the AAB's factual findings, the trial court and the Court of Appeal majority ruled that substantial evidence supports the findings.

In conclusion, deference from the courts in this case is appropriate only for the SBE's statements in LTA 89/13 and to the AAB concerning its factual findings.

The dissenting opinion mistakenly gives deference to LTA 99/87, and does not address the AAB's factual findings, the strong presumption of correctness that attaches to them, or the standard of review for the factual findings.

As such, the dissenting opinion (and the Assessor's arguments concerning deference to LTA 99/87) do not provide any basis for Supreme Court review in this case.

C. LTA 99/87 conflicts with LTA 89/13 and Legislative History

The Assessor's argument that LTA 99/87 and LTA 89/13 are consistent with one another (Petition for Review, p. 27) is false.

These two LTAs set forth very different methodologies on how to assess a pro rata portion of the total real property of the mobilehome park and they discuss the 1988 legislation and facts quite differently.

Compare:

LTA 89/13:

"Section 62.1(c) attempts to parallel as closely as possible the tax treatment accorded condominium and stock cooperatives. A perfect match is not possible, however, because the transfer of a share or membership interest in a nonprofit corporation is not the same thing as a transfer of ownership of a condominium or stock cooperative interest which relates to specific identifiable real property. Rather than following the pattern prescribed in Section 65.1(b), which provides for reappraisal of the specific unit or lot transferred as well as a share of the common area, the amendment provides for a straight pro rata adjustment.[19]

"This pro rata adjustment is similar to a fractional change of ownership of real property...." [AR-v8-t125.1-p001743; emphasis added]

LTA 99/87:

"2. ...Answer: In amending section 62.1 ... the Legislature intended that transfers of ownership interests in such parks be treated on a par with transfers of ... condominiums [and] stock cooperatives and with stick-built homes. Thus, while each share in the corporation may be said to afford its holder the right ... to participate in the governance of the corporation and management of the park, such rights are merely incidental to that which the share conveys to its holder in substance: (1) the outright ownership of a particular mobilehome, and (2) the exclusive right to occupy a particular space within the mobilehome park. With this backdrop in mind, if the reported purchase price [for the mobilehome and membership] was negotiated in the open

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[19] This same paragraph appears twice in the legislative history -- in each of the two Legislative Bill Analyses that the SBE prepared when the 1988 legislation was proposed in February 1988 and when it was amended in March 1988 (discussed further below).

market at arm's length, then it is our view that the entire amount should be reflected in the combined assessments of the mobilehome and the underlying interest in the park.

"3....Answer: The most reasonable way of allocating the value between the two assessments would be to (1) extract from the reported purchase price (for the mobilehome and membership) the value of the mobilehome itself, using the N.A.D.A. Manufactured Housing Appraisal Guide or another recognized value guide, and then (2) assign the remainder of the purchase price to the interest in the park.

"7. Question: Can any portion of the purchase price be attributed to non-assessable 'site value,' as provided under section 5803(b)? Answer: No. The ownership of a fractional interest in the park represents exclusive ownership of the individual underlying space. Thus, while a resident may formally lease his or her space from the owning entity, in substance the ownership of the space is with the individual resident. Since the owner of the mobilehome and the owner of the underlying space are one and the same for all practical purposes, ...Section 5803(b) does not apply." [AR-v1-t12-p000136-0001367; underlining above has been added to highlight the methodology to be used, per LTA 99/87]

The alternative methodologies (shown in underlining in the quotations above) are quite different, and are based in two completely different views of the legislation – including differences whether whether a direct interest in the real property is involved and whether the reassessment was to be treated "on a par with transfers of ... condominiums [and] stock cooperatives and with stick-built homes" (per LTA 99/87) or needed to be treated differently.

The February and March 1988 Legislative Bill Analyses (along with the February and March versions of the legislation) are the key legislative history documents. These four documents are Attachments 1 through 4 to this Answer.

The same paragraph quoted above from LTA 89/13 (see footnote 19, above) also appears, in exactly the same words, in the two Legislative Bill Analyses -- see the bottom of p. 2 of Attachment 2 and the top of p. 3 of Attachment 4.

LTA 89/13 and both Legislative Bill Analyses distinguish a "straight pro rata adjustment" under Section 62.1(c) from a reassessment under Section 65.1(b).

Section 65.1(b), from 1988 through today, provides: "If a unit or lot within a ... condominium... or other residential... subdivision ... changes ownership, *then only the unit or lot transferred... shall be reappraised.*" (italics added.)

LTA 89/13 calls for a reassessment like a fractional change of ownership, while LTA 99/87 sets forth an extraction-type methodology much like a Section 65.1(b) reassessment of a stick-built home on a subdivided lot (and using the NADA Guide to value the mobilehome).

An example of a "fractional change of ownership" is provided below:

> "If a property had five original owners (A, B, C, D and E), each holding an undivided one-fifth interest in the property, and A should sell his/her one-fifth interest to F in Sale 1 on Day 1 and B should sell his/her one-fifth interest to G in Sale 2 on Day 2, respectively, <u>then reassessment of the property after such fractional changes</u>

in ownership (ignoring the annual assessment inflation factor) would be as follows:

- After Sale 1, the property would be reassessed to a new assessed value calculated as follows: [1/5 X FMV of the total real property on Day 1] + [4/5 X original assessed value]; and
- After Sale 2, the property would be reassessed to a new assessed value calculated as follows: [1/5 X FMV of the total real property on Day 2] + [1/5 X FMV of the total real property on Day 1] + [3/5 X original assessed value]." Respondents' Joint Brief, p. 38.

The example above is very similar to how reassessments of the RG Park and SSV Park are to be carried out under Section 62.1(c).

In a "fractional change of ownership of real property," as in a "straight pro rata adjustment" under Section 62.1(c), the value of the *total* real property as of the date of the change of ownership is multiplied by a fraction representing the undivided portion of the real property deemed to change ownership.

Both Legislative Bill Analyses and LTA 89/13 acknowledge that a Section 65.1(b) reassessment is "not possible because the transfer of a share or membership interest in a nonprofit corporation is not the same thing as a transfer of ownership of a condominium or stock cooperative interest which relates to specific identifiable real property."

Both Legislative Bill Analyses and LTA 89/13 state that Section 62.1(c) provides for a "straight pro rata adjustment" in lieu of a Section 65.1(b) reassessment.

In the first Legislative Bill Analysis from February 1988, when the language which became Sections 62.1(c)(1) and (2) was first proposed, the SBE staff provided some additional explanation how a *"straight pro rata adjustment"* under the proposed statute was different than *"the pattern prescribed by Section 65.1(b)"*:

> "[A]ny differences in a value between mobilehome spaces in a particular park cannot be recognized under this *method* [i.e., the straight pro rata adjustment].... the allocation is based on the ownership interest in the corporation rather than in specific property..." (See top of page 3 of Attachment 2; italics added.)

The Legislature adopted SB 1885 based on the SBE's explanation that the "straight pro rata adjustment" was unlike a reassessment under Section 65.1(b) and that "differences in a value between mobilehome spaces in a particular park cannot be recognized under this method."

In the Petition for Review, at p. 24-25, the Assessor asserts that the Opinion misconstrues the legislative history, and that the intent of Section 62.1(c) changed between the February and March versions of the bill because one paragraph of the first Legislative Bill Analysis was not included in the second Legislative Bill Analysis and because a bookkeeping statute, Section 2188.10, was added to the legislative bill in March 1988.

Review of Attachments 1 and 3 and the final adopted statutory language demonstrates that the wording of what became Section 62.1(c)(1) and (2) never changed in any meaningful way from the time it was introduced until it was enacted.

There is no merit to the Assessor's suggestion that, although the wording of the proposed statute [Section 62.1(c)] did not change, the meaning of the words did change between February and March 1988. The inclusion or non-inclusion of a paragraph in a Legislative Bill Analysis does not change the meaning of the words themselves in a legislative bill. On these issues, see Statement of Decision at Appendix-v4-t47-p000874-000878.

In connection with Section 2188.10, the Assessor argues that the bookkeeping for "separate assessments" means something different than it does. This "separate assessments" argument is without merit, as discussed in the Brief of Amici Curiae in Support of Respondents, filed in October 2011, at p. 14-17. See also Statement of Decision at Appendix-v4-t47, at p. 000896-897, and p. 000901-902.

In summary, the legislative history and LTA 89/13 supports the Court of Appeal majority's construction of Section 62.1(c), which carries out a "straight pro rata adjustment," and does not follow the pattern of Section 65.1(b).

Thus, the legislative history and LTA 89/13 conflict with and contradict LTA 99/87 -- because LTA 99/87 attempts to follow the pattern of Section 65.1(b).

D. Response to Assessor Arguments Concerning Full Cash Value, Purchase Price Presumption and Appraisal Unit

The Assessor's positions concerning full cash value, purchase price presumption and the appropriate appraisal unit are very much linked to each other, to the Assessor's arguments about the California Constitution, and to the Assessor's factual contentions.

These intertwined arguments are repeated at length throughout the Petition for Review.

The Assessor's position is capsulized in the Petition for Review, at p. 4 and 22, as follows:

> "The Opinion attempts to justify its decision to abandon ...sections 110 and 51 by characterizing them as 'general statutes [that] have no application where, as here, a specific statutory provision [section 62.1] covering the subject has been enacted.' (Opinion at p. 14.) This conclusion is fatally flawed because it fails to recognize the fact that section 110 and 51 are mandatory statutes of general application which flow directly from article XIII, section 1 and article XIIIA, section 2 of the California Constitution....
>
> "In contrast to the *acquisition cost* valuation system ... a taxpayer who acquires a mobilehome [*Assessor's definition*] under the new approach adopted by the Opinion will not be assessed and taxed based on how much he was willing to pay for his property."

In the quotation above and throughout the Petition for Review, the Assessor fails to properly characterize the Opinion, or to recognize that Section 110 and Section 51, as such statutes apply to this matter, were followed by the AAB and the Court of Appeal.

The Assessor's entire position is based on its factual contentions, which are not accurate and which do not apply in this case.

A full and fair reading of what the Court of Appeal said at p. 14 the Opinion, which was only selectively excerpted by the Assessor in quote above, directly answers the Assessor's assertions concerning Section 110 and Section 51. At page 14 of the Opinion, the Court of Appeal majority stated that:

> "The Assessor's justification for its method based on conformance with sections 110 and 51, subdivision (d), has little merit. Those general statutes have no application where, as here, a specific statutory provision covering the subject has been enacted *and the Board expressly determined the* ***full cash value*** *of the* ***total real property of the Parks*** *prior to applying the pro rata fraction.*" (Opinion, p.14; emphasis added.)

As discussed below, (1) a purchase price presumption under Section 110(b) is not applicable, (2) the reference to "full cash value" demonstrates that the Court of Appeal properly applied Section 110(a) in this matter, and (3) the reference to "total real property of the Parks" demonstrates that the Court of Appeal properly applied Section 51(d).

1. Section 110, Purchase Price Presumption & Full Cash Value.

Section 110(a) requires the valuation of *real property* at full cash value (fair market value) and Section 110(b) provides for a general, rebuttable "purchase price presumption" when *real property* is sold in a "change of ownership" transaction.

In this matter, in the transactions which occur between individuals and give rise under Section 62.1(c) to a deemed change of ownership of a pro rata portion of the total real property of the mobilehome park owned by the corporation, no real property was sold!

What was sold was a mobilehome (i.e., *tangible personal property* registered with HCD or DMV) and a membership in a corporation (i.e., a *security* subject to regulation by the Department of Corporations).

The Assessor characterizes this transaction between two individuals as a purchase and sale of *real property* (i.e., a subdivided mobilehome space). The Assessor then argues that such fictional sale

of *real property* should be assessed using the purchase price presumption for a sale of *real property*.

But the Assessor's characterization of what happens in the transaction between the individuals is false. Only *personal property* is sold and no *real property* is sold. Thus, the "purchase price presumption" for *real property*, set forth in Section 110(b) and applicable only to the sale of *real property*, simply does not apply in this matter at all, and certainly not in the way that the Assessor asserts.

Property Tax Rule 2 codifies the above analysis. Property Tax Rule 2, as adopted by the SBE, is part of the California *Code of Regulations*, Title 18, Division 1, Chapter 1. As such, it has the force of law. [20]

Property Tax Rule 2 implements Section 110. Property Tax Rule 2(a), like Section 110(a), requires the valuation of *real property* at full

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[20] In the Assessor's Handbook Section 501, *Basic Appraisal* (1997, updated in January 2002), at page 136-137, the SBE stated that:

- The Property Tax Rules are regulations codified in the California Code of Regulations that "[interpret] and [implement] the Revenue and Taxation Code statutes;"
- "Numerous appellate courts have held that these rules are more than mere 'guidelines' and have the force of law on all parties, taxpayers and assessors;" and
- In contrast, "while several Board-generated documents and publications [expressly including the Assessors Handbook and LTAs] provide advice..., none actually have the authority of law." The Assessors Handbook and LTAs "are strictly advisory and are not binding on taxpayers or assessors."

See *Prudential Insurance Co. of America v. City and County of San Francisco* (1987) 191 Cal. App.3d 1142, 1152, 1155, to the same effect as these quotes from the SBE in *Basic Appraisal*.

cash value (fair market value). Property Tax Rule 2(b), like Section 110(b), sets forth a general, rebuttable "purchase price presumption" as to *real property* that is purchased and sold.

Rule 2(c)(2) expressly provides, however, that the purchase price presumption "shall not apply" to "the transfer of real property when ... the change in ownership occurs as the result of the acquisition of ownership interests in a legal entity."

Property Tax Rule 2(c)(2) became effective in September 1991, shortly after the adoption of Section 62.1. This rule makes sense because the acquisition of an ownership interest in a legal entity does not represent direct ownership of real property.

If a "change of ownership" of real property is deemed to occur by reason of transfers of ownership interests in a corporation [as occurs, for example, under Section 62.1(c)], then the total real property should be valued using standard appraisal methods to ascertain fair market value (as occurred in the AAB proceedings). The purchase price for the ownership interest in a corporation is not presumed to be the value of the real property (owned by the corporation) that is deemed to change ownership.

In this case, since the "change in ownership occurs as the result of the acquisition of ownership interests in a legal entity," the purchase price presumption that is relentlessly argued by the Assessor simply does not apply.

Rule 2(c)(2) directly contradicts the Assessor's positions and the methodology in LTA 99/87 and in the Assessor's Handbook, and (as

binding law) disposes of any argument that the purchase price presumption under Section 110 applies in this case.

This case is not the first time that an (advisory) Assessor's Handbook was in conflict with a (binding) regulation adopted by the SBE. "[I]n any conflict between the handbooks and the regulations, the latter must govern." *Prudential Insurance Co., supra,* 191 Cal. App.3d at 1155.

Respondents note, however, that the full cash value provision of Section 110(a) is applicable even though the purchase price presumption under Section 110(b) does not apply.

Section 62.1(c) defines a deemed change of ownership of real property to occur when a membership in RG, Inc. or SSV, Inc. is sold. The change of ownership is of a pro rata portion of the total real property of the RG Park or SSV Park.

In order to properly calculate the reassessment using the pro rata fraction defined in the statute, it is necessary to ascertain the full cash value (fair market value) of the total real property of the mobilehome park.

This what the AAB did and the Court of Appeal affirmed. As the Court of Appeal stated: "*the Board expressly determined the* ***full cash value*** *of the* ***total real property of the Parks*** *prior to applying the pro rata fraction.*" (Opinion, p.14; emphasis added.)

Thus, Section 110(a) was followed, and the full cash value of the real property being reassessed in this matter was expressly determined.

2. Section 51(d) and the Appraisal Unit.

Citing Section 51(d), the Assessor argues that the appraisal unit must be set by what trades commonly in the marketplace, and that that means what the Assessor calls a "mobilehome" (meaning a mobilehome coach and an underlying mobilehome space).

This argument is another variation of the Assessor's factual contention that members own individual mobilehome spaces. The entire line of argument fails due the falsity of the factual contention.

Section 62.1(c) defines what changes ownership for purposes of this case: a pro rata portion of the total real property of the mobilehome park. Therefore, the appraisal unit is the total real property of the mobilehome park. This was valued by appraisal in the AAB proceedings. Mobilehome parks can and do trade in the marketplace. Use of fair market rent and actual expenses assured that a fair market value for the rental mobilehome park property was ascertained.

The Court of Appeal properly upheld the AAB's selection of the total real property of the mobilehome park as the appraisal unit.

E. Response to Assessor's Constitutional Arguments

Beginning on page 1 of the Petition for Review, the Assessor misstates the California Constitution's requirements relating to taxation of property – by failing to properly distinguish between the requirements applicable to *real property* and those relating to *personal property*.

In fact, the Legislature has wide authority pursuant to Article XIII, Section 2 of the Constitution concerning the taxation and/or

Thus, some mobilehomes (registered prior to July 1980) are generally exempt from any property taxation, while other mobilehomes (registered on or after July 1, 1980) are subject to property taxation. And for those mobilehomes subject to property tax and located on rented or leased land, Section 5803(b) provides that the NADA Guide value is to be used to establish the assessed value of the mobilehome, rather than the actual sales price.

None of these legislative decisions set forth in the *Revenue and Taxation Code* presents any sort of constitutional problem.

The Assessor inaccurately characterizes *personal property* as *real property*, however, and attempts to apply real property assessment and appraisal principles where they do not apply.

The Assessor's constitutional arguments translate into specific arguments relating to full cash value, purchase price presumption and appraisal unit under what it calls the "acquisition cost system."

Because the factual contentions on which the Assessor builds these arguments are false and because the Assessor inaccurately confuses real property and personal property concepts and rules, the Assessor's constitutional arguments collapse under the weight of their own contradictions.

What the Opinion does is affirm the AAB's valuation of the pro rata portions of the total real property of the mobilehome park that were deemed to change ownership, using the full cash value of the mobilehome park in such calculations – consistent with Sections 62.1 and 110.

As such, there is no constitutional infirmity relating to full cash value or the purchase price presumption.

In addition, and somewhat separately, the Assessor argues that there is no rational basis for "why resident-owned mobilehomes located in parks held by stock cooperatives or condominium associations should be assessed based on their actual purchase prices while similar homes located in parks held by non-profit corporations escape full taxation" and therefore "the Opinion violates the federal and state guaranties of equal protection of the law." (Petition for Review, p. 20).

This argument is hard to fathom: in a stock cooperative or condominium, individuals own a direct, fee interest in "specific identifiable real property" (as the legislative history documents and LTA 89/13 recognize and expressly state), while in a rental mobilehome park individuals do not own a direct, fee interest in any real property. Obviously, there is a rational basis for the difference in treatment given the differences in real property ownership, and no violation of constitutional guaranties of equal protection of the law.

F. Response to Assessor's Other Miscellaneous Arguments

The Assessor attempts to argue that the Court of Appeal majority acted in excess of jurisdiction, by commenting on what the Legislature's intent was and was not. Petition for Review, at p. 27-29. The Court of Appeal majority's comments are backed up by the legislative history discussed above. As such, the "excess of jurisdiction" argument completely fails. [21]

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[21] To the extent that the Assessor's "excess of jurisdiction" argument is an attempt to state a "ground for review" under Rule 8.500(b)(2), the argument fails. The Court of Appeal had jurisdiction in this case, as discussed in footnote 11.

In a related argument much earlier in the Petition for Review (at p. 5), the Assessor asserts that the Opinion constitutes an implied repeal of Section 110 and Section 51(d) and quotes the Opinion at p. 9 in the process of making an argument about harmonizing statutes to avoid an implied repeal. The Assessor's argument is without merit, because the SBE's interpretation of Section 62.1(c) is contrary to the plain meaning and legislative intent for Section 62.1(c). In fact, as discussed in Part D, above, the AAB's valuations and the Opinion follow Sections 110 and 51(d). As such, there is no issue of an implied repeal of Sections 110 and 51(d).

At pages 7 and 9 of the Petition for Review, the Assessor makes arguments based on the convenience of the Assessor in carrying out reassessments of a pro rata portion of the total real property of the mobilehome parks. The Assessor exaggerates the difficulty of complying with Section 62.1(c). Rental mobilehome parks have stable values over time and a pro rata portion therefore could readily be valued when memberships transfer.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Petition for Review be denied.

DENNIS A MARSHALL,
COUNTY COUNSEL,
COUNTY OF SANTA BARBARA

Dated: October 29, 2012

By _____
Jerry F. Czuleger
Deputy County Counsel
Attorneys for Respondent
ASSESSMENT APPEALS BOARD

Dated: October 29, 2012

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and Respondents RANCHO GOLETA
LAKESIDE MOBILEERS, INC. and
SILVER SANDS VILLAGE, INC.

CERTIFICATE OF WORD COUNT

The undersigned certifies that, as counted by the word-processing program used to generate this brief, the number of words in the text of this brief, including footnotes, is 9,644 words.

Dated: October 29, 2012

David C. Fainer Jr.

David C. Fainer, Jr.
Attorney for Real Parties
in Interest and Respondents
RANCHO GOLETA LAKESIDE
MOBILEERS, INC. and
SILVER SANDS VILLAGE, INC.

SENATE BILL No. 1885

Introduced by Senator Craven

February 2, 1988

An act to amend Section 62.1 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1885, as introduced, Craven. Property taxation: change in ownership.

Existing property tax law requires the reassessment of real property upon a change in ownership and specifies what transfers of property do and do not constitute a change in ownership. It excludes from a change in ownership, and hence from reassessment, any transfer made, on or after January 1, 1985, and prior to January 1, 1994, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, or other entity formed by the tenants of the park for the purpose of purchasing the park.

This bill imposes a condition upon that exclusion for parks transferred on or after January 1, 1989, that requires that individual tenants who were renting at least 51% of the spaces in the park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51% of the voting stock of, or other ownership or membership interests in, the entity acquiring the park.

This bill would also provide that, if the transfer of a mobilehome park has been excluded from a change in ownership under either existing law or existing law as modified by this bill and if the park has not been converted to condominium or stock cooperative ownerships, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity acquiring the park shall be a change in ownership of a pro rata portion of the real property, as defined, of the park

unless the transfer is for the purpose of converting the park to condominium or stock cooperative ownership or is otherwise excluded from a change in ownership under other specified provisions of law.

Existing property tax law excludes from a change in ownership, and hence from reassessment, transfers of rental spaces in a mobilehome park made on or after January 1, 1985, and before January 1, 1987, to individual tenants of those spaces if certain conditions are met concerning the formation by those tenants of a nonprofit corporation, stock cooperative, or other entity to operate and maintain the park.

This bill would delete those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 62.1 of the Revenue and Taxation Code is amended to read:

62.1. Change in ownership shall not include either of the following:

(a) Any transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, or other entity formed by the tenants of a mobilehome park for the purpose of purchasing the mobilehome park ~~:~~

~~(b) Any transfer or transfers on or after January 1, 1985, and before January 1, 1987, of rental spaces in a mobilehome park to the individual tenants of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a nonprofit corporation, stock cooperative, or other entity, as described in Section 50561 of the Health and Safety Code, to operate and maintain the park. If, on or after January 1, 1985, and before January 1, 1987, an individual tenant or tenants notify the county assessor of the intention to comply with the conditions set forth in the~~

~~preceding sentence, any mobilehome park rental space which is purchased by an individual tenant in that mobilehome park during that period shall not be reappraised by the assessor. However, if all of the conditions set forth in the first sentence of this subdivision are not satisfied, the county assessor shall thereafter levy escape assessments for the spaces so transferred. This subdivision shall apply only to those rental mobilehome parks which have been in operation for five years of more~~, *provided that, with respect to any transfer of a mobilehome park on or after January 1, 1989, subject to this subdivision, the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park.*

(b) If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to subdivision (a) and the park has not been converted to condominium or stock cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a) shall be a change in ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium or stock cooperative ownership or is excluded from change in ownership by the provisions of Section 62, 63, or 63.1.

For the purposes of this subdivision, "pro rata portion of the real property" means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or other ownership or membership interests, transferred divided by the total number of outstanding shares of voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a).

(c) Subdivision (a) shall remain in effect only until

January 1, 1994. ~~Subdivision (b) shall remain in effect only until January 1, 1987.~~

(d) It is the intent of the Legislature that, in order to facilitate affordable conversions of mobilehome parks to tenant ownership, subdivision (a) apply to all bona fide transfers of rental mobilehome parks to tenant ownership, including, but not limited to, those parks converted to tenant ownership as a nonprofit corporation made on or after January 1, 1985, and before the termination date of subdivision (a).

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STATE BOARD OF EQUALIZATION
LEGISLATIVE BILL ANALYSIS

Bill Number: SB 1885 Date Introduced: 2/02/88

Author: Craven Tax: Property

Board Position: _____ Related Bills: _____

BILL SUMMARY:

This bill amends Section 62.1 of the Revenue and Taxation Code to require, under subdivision (a), that at least 51 percent of the individual tenants renting spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park.

Further, it amends subdivision (b) to provide that the transfer of ownership interests, as defined, shall be a change in ownership of a pro rata portion of the real property under certain conditions unless such transfers are otherwise excluded under Section 62, 63 or 63.1.

ANALYSIS:

In General:

Prior to the enactment of SB 298 (Chapter 1344, Statutes of 1987) Section 62.1(a) excluded from change in ownership the transfer of a mobilehome park to a nonprofit corporation, stock cooperative, corporation, or other entity as described in Section 50561 of the Health and Safety Code, formed by the tenants of the park for purposes of acquiring it. Health and Safety Code Section 50561, in turn, provides that mobile home park tenants may form a nonprofit corporation, stock cooperative or other entity for purposes of converting a mobilehome park to condominium or stock cooperative ownership interests and for purchasing the mobilehome park from the management of the park. Thus, in order to qualify under Section 50561, the entity formed by the mobilehome park tenants must have two purposes:

1) To convert the mobilehome park to condominium or stock cooperative ownership interests, and;

2) to purchase the mobilehome park from its management.

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SP-1

APP001266

ATTACHMENT 2

SB 298 amended Revenue and Taxation Code Section 62.1 to delete the reference to Health and Safety Code Section 50561. This raises two problems:

1) As amended, Section 62.1 would permit the acquisition of a park by one or two tenants. In fact, an investor purchasing a mobilehome park might be encouraged to move in and become a tenant solely for the purpose of qualifying for the change in ownership exclusion.

2) Putting a park into a nonprofit mutual benefit corporation ownership could mean that no part of the park would ever be reappraised again, since transfers of individual interests in a nonprofit corporation do not trigger a reappraisal. This would give mobilehome parks much more favorable treatment than the average homeowner.

SB 1885 amends Section 62.1 to address these two problems and to delete portions of the section which are now obsolete because they sunsetted on January 1, 1987.

COMMENTS:

1. The amendment to subdivision (a) of Section 62.1 addresses the first problem by adding a condition that tenants representing at least 51 percent of the mobilehome spaces in the park participate in the excluded transaction. It is our understanding that normally 75 percent participation by the tenants is necessary in order for the conversion to be successful but 100 percent participation is usually not possible.

2. The proposed new subdivision (b) addresses problem 2. The amendment would provide that a transfer of stock or an ownership interest in a mobilehome park is a change in ownership of a pro rata portion of the real property of the park, if the park had previously been in a transaction qualifying under Section 62(a) and it had not been converted to condominium or stock cooperative ownership. The effect of the proposal would be prospective.

   This amendment attempts to parallel as closely as possible the tax treatment accorded condominium and stock cooperatives. A perfect match is not possible, however, because the transfer of a share or membership interest in a nonprofit corporation is not the same thing as a transfer of ownership of a condominium or stock cooperative interest which relates to specific identifiable real property. Thus, rather than following the pattern prescribed in Section 65.1(b), which provides for reappraisal of the specific unit or lot transferred as well as a share of the common area, the amendment provides for a straight pro rata adjustment.

SP-2

ATTACHMENT 2

Thus, any differences in a value between mobilehome spaces in a particular park cannot be recognized under this method. Further, since the allocation is based on the ownership interest in the corporation rather than in specific property, the proposal does not require that any increase in taxes be allocated to the particular tenant-shareholder as required in Section 65.1(b). This should not work any real hardship, however, since the nonprofit corporation, through its bylaws and rental agreements has the power to provide for a pass-on of the tax to the appropriate parties.

3. The strikeout of subdivision (b) and the second sentence in subdivision (c) merely removes obsolete language.

COST ESTIMATE

The cost of this amendment to the Board of Equalization should be insignificant, less than $10,000.

REVENUE ESTIMATE

The purpose of SB 1885 is to close an inadvertent loophole enacted by Chapter 1344, Statutes of 1987. Thus, the effect of this measure would be to negate any property tax revenue loss attributable to Chapter 1344.

Analysis prepared by: Richard Ochsner 445-4588
Gene Palmer 445-6777
Contact: Margaret Shedd Boatwright 322-2376
rj

SP-3

APP001268

ATTACHMENT 2

AMENDED IN SENATE MARCH 24, 1988

SENATE BILL No. 1885

Introduced by Senator Craven

February 2, 1988

An act to amend Section 62.1 of, *and to add Section 2188.10 to,* the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1885, as amended, Craven. Property taxation: change in ownership.

Existing property tax law requires the reassessment of real property upon a change in ownership and specifies what transfers of property do and do not constitute a change in ownership. It excludes from a change in ownership, and hence from reassessment, any transfer made, on or after January 1, 1985, and prior to January 1, 1994, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, or other entity formed by the tenants of the park for the purpose of purchasing the park.

This bill imposes a condition upon that exclusion for parks transferred on or after January 1, 1989, that requires that individual tenants who were renting at least 51% of the spaces in the park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51% of the voting stock of, or other ownership or membership interests in, the entity acquiring the park.

This bill would also provide that, if the transfer of a mobilehome park has been excluded from a change in ownership under either existing law or existing law as modified by this bill and if the park has not been converted to condominium or stock cooperative ownerships, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the

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APP001250

entity acquiring the park shall be a change in ownership of a pro rata portion of the real property, as defined, of the park unless the transfer is for the purpose of converting the park to condominium or stock cooperative ownership or is otherwise excluded from a change in ownership under other specified provisions of law.

~~Existing property tax law excludes from a change in ownership, and hence from reassessment, transfers of rental spaces in a mobilehome park made on or after January 1, 1985, and before January 1, 1987, to individual tenants of those spaces if certain conditions are met concerning the formation by those tenants of a nonprofit corporation, stock cooperative, or other entity to operate and maintain the park.~~

~~This bill would delete these provisions.~~

Existing property tax law prescribes the conditions under which and the methods by which interests in real property may be separately assessed.

This bill would authorize the separate assessment of any pro rata portion or portions of the real property of a mobilehome park which have changed ownership pursuant to the provisions of this bill and would prescribe the conditions under which and the method by which that separate assessment is to be made. Since this bill would require the assessor to provide for this separate assessment upon a written request by the governing board of the entity owning the park and would impose specified duties on the assessor in implementing this requirement, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

SECTION 1. Section 62.1 of the Revenue and Taxation Code is amended to read:

62.1. Change in ownership shall not include either of the following:

(a) Any transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, or other entity formed by the tenants of a mobilehome park for the purpose of purchasing the mobilehome park , provided that, with respect to any transfer of a mobilehome park on or after January 1, 1989, subject to this subdivision, the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park.

(b) Any transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, or other entity formed by the tenants of a mobilehome park for the purpose of purchasing the mobilehome park.

Any transfer or transfers on or after January 1, 1985, and before January 1, 1987, of rental spaces in a mobilehome park to the individual tenants of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a nonprofit corporation, stock cooperative, or other entity, as described in Section 50561 of the Health and Safety Code, to operate and maintain the park. If, on or after January 1, 1985, and before January 1, 1987, an individual tenant or tenants notify the county assessor of the intention to comply with the conditions set forth in the preceding sentence, any mobilehome park rental space which is purchased by an individual tenant in that mobilehome

park during that period shall not be reappraised by the assessor. However, if all of the conditions set forth in the first sentence of this subdivision are not satisfied, the county assessor shall thereafter levy escape assessments for the spaces so transferred. This subdivision shall apply only to those rental mobilehome parks which have been in operation for five years of more.

(c) (1) If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to subdivision (a) and the park has not been converted to condominium or stock cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a) shall be a change in ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium or stock cooperative ownership or is excluded from change in ownership by the provisions of Section 62, 63, or 63.1.

~~For~~

(2) For the purposes of this subdivision, "pro rata portion of the real property" means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or other ownership or membership interests, transferred divided by the total number of outstanding shares of voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a).

~~(c)~~

(3) Any pro rata portion or portions of real property which changed ownership pursuant to this subdivision may be separately assessed as provided in Section 2188.10.

(d) Subdivision (a) shall remain in effect only until January 1, 1994.

~~(d)~~ *Subdivision (b) shall remain in effect only until January 1, 1987.*

(e) It is the intent of the Legislature that, in order to facilitate affordable conversions of mobilehome parks to

tenant ownership, subdivision (a) apply to all bona fide transfers of rental mobilehome parks to tenant ownership, including, but not limited to, those parks converted to tenant ownership as a nonprofit corporation made on or after January 1, 1985, and before the termination date of subdivision (a).

SEC. 2. Section 2188.10 is added to the Revenue and Taxation Code, to read:

2188.10. (a) Whenever the assessor receives a written request for separate assessment of a pro rata portion of the real property of a mobilehome park which changed ownership pursuant to subdivision (c) of Section 62.1 as the result of the transfer of a share or shares of voting stock or other ownership or membership interest or interests, the assessor shall, on the first lien date which occurs more than 60 days following the request, and on each lien date thereafter, separately assess the portion or portions of real property described in subdivision (b) if the conditions specified in subdivision (c) have been met. Whenever a portion of the real property of a mobilehome park becomes subject to separate assessment, it shall continue to be subject to separate assessment in subsequent fiscal years and once a request for separate assessment is made, it is binding on all future owners of the voting stock or other ownership or membership interests in the entity which owns the park.

(b) The interest that is to be separately assessed is the value of the pro rata portion of the real property of the mobilehome park which changed ownership pursuant to subdivision (c) of Section 62.1.

(c) A separate assessment may not be made by the assessor under this section unless the following conditions are met:

(1) The governing board of the mobilehome park makes the request for separate assessment and certifies that the request has been approved in the manner provided in the organizational documents of the entity owning the mobilehome park.

(2) Information is filed with the assessor listing all of the following:

(A) The total number of outstanding shares of voting stock of, or other ownership or membership interests in, the entity which owns the mobilehome park.

(B) The number of shares of voting stock, or other ownership or membership interests, which have been transferred and resulted in the change in ownership of portions of the real property of the park pursuant to subdivision (c) of Section 62.1, together with the names and addresses of the owners of the transferred voting stock or other ownership or membership interests.

(C) Any other information as the assessor may require.

The entity owning the mobilehome park shall file an annual statement for each succeeding assessment year, on or befcre April 1, with the assessor, setting forth any changes to the required information known to the entity. The information provided pursuant to this section is not a public document and shall not be open to public inspection, except as provided in Section 408.

(d) Nothing in this section shall be construed to require applicants for separate assessments to meet the requirements of the Subdivision Map Act, nor shall the approval of any governmental agency be required for separate assessment except for the assessor's approval.

(e) The assessor shall cumulate all the separate assessments in a mobilehome park and enter the total assessment on the secured roll in the name of the entity which owns the park. The assessor shall notify each owner of a portion of the real property of the park subject to separate assessment under this section of the amount of an increased assessment pursuant to Section 619.

(f) The tax on the total assessment of the mobilehome park shall be a lien on the real property of the park and shall be subject to all provisions of law applicable to taxes on the secured roll.

(g) The tax collector shall send a single tax bill, with an itemized breakdown detailing the taxes and the allocated portion of any fee imposed pursuant to subdivision (i) applicable to each separate assessment, to the entity owning the mobilehome park.

(h) The assessor shall provide to owners of voting stock or other ownership or membership interest in a mobilehome park entity subject to subdivision (c) of Section 62.1, and to the governing board of the park, at that time and in that manner as the assessor deems appropriate, adequate notice of the provisions of this section and other pertinent information relative to the implementation thereof.

(i) The county may charge a fee for the initial cost of separately assessing and implementing subdivision (g), not to exceed the actual cost of the separate assessment and billing. This fee shall be allocated to each owner of a share of voting stock or other ownership or membership interest for which a separate assessment has been made and the fee shall be deposited in the county's general fund.

(j) The governing board of the entity which owns the mobilehome park shall collect the allocated portion of any fee charged pursuant to subdivision (i) and any itemized taxes applicable to a separate assessment from the owner of the voting stock or other ownership or membership interest whose acquisition of the interest resulted in the separate assessment. The fees and taxes resulting from separate assessment shall be deducted from the proportional cost of the fees and taxes collected from the remaining owners or members.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

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STATE BOARD OF EQUALIZATION
LEGISLATIVE BILL ANALYSIS

Bill Number: Senate Bill 1885 Date introduced: 3/24/88

Author: Craven Tax: Property

Board Position: Support Related Bills: _____

BILL SUMMARY:

This bill requires that, when a mobilehome park is transferred to an entity formed by the tenants, at least 51 percent of the tenants must participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park; and, it provides that the transfer of ownership interests, as defined, shall be a change in ownership of a pro rata portion of the real property.

The bill also requires the assessor, upon receipt of a written request, to separately assess those spaces in a mobilehome park that have transferred and been subject to reassessment under subdivision (c) of Section 62.1 of the Revenue and Taxation Code.

ANALYSIS:

In General:

Prior to the enactment of SB 298 (Chapter 1344, Statutes of 1987) Section 62.1(a) excluded from change in ownership the transfer of a mobilehome park to a nonprofit corporation, stock cooperative, corporation, or other entity as described in Section 50561 of the Health and Safety Code, formed by the tenants of the park for purposes of acquiring it. Health and Safety Code Section 50561, in turn, provides that mobile home park tenants may form a nonprofit corporation, stock cooperative or other entity for purposes of converting a mobilehome park to condominium or stock cooperative ownership interests and for purchasing the mobilehome park from the management of the park. Thus, in order to qualify under Section 50561, the entity formed by the mobilehome park tenants must have two purposes:

1) To convert the mobilehome park to condominium or stock cooperative ownership interests, and;

2) to purchase the mobilehome park from its management.

SR.9

ATTACHMENT 4

SB 298 amended Revenue and Taxation Code Section 62.1 to delete the reference to Health and Safety Code Section 50561. This raises two problems:

1) As amended, Section 62.1 would permit the acquisition of a park by one or two tenants. In fact, an investor purchasing a mobilehome park might be encouraged to move in and become a tenant solely for the purpose of qualifying for the change in ownership exclusion.

2) Putting a park into a nonprofit mutual benefit corporation ownership could mean that no part of the park would ever be reappraised again, since transfers of individual interests in a nonprofit corporation do not trigger a reappraisal. This would give mobilehome parks much more favorable treatment than the average homeowner.

SB 1885 amends Section 62.1 to address these two problems.

Existing law provides for separate assessment of condominiums, units in stock cooperatives, etc. There is no provision, however, for the separate assessment of spaces in a mobilehome park owned by a nonprofit corporation.

This measure, with the addition of Section 2188.10 to the Revenue and Taxation Code would require the assessor to separately assess the pro rata portion of the real property of a mobilehome park which changes ownership pursuant to subdivision (c) of Section 62.1 in a manner similar to existing provisions for the separate assessment of certain timeshare interests.

COMMENTS:

1. The amendment to subdivision (a) of Section 62.1 addresses the first problem by adding a condition that tenants representing at least 51 percent of the mobilehome spaces in the park participate in the excluded transaction. It is our understanding that normally 75 percent participation by the tenants is necessary in order for the conversion to be successful but 100 percent participation is usually not possible.

2. Subdivision (c) addresses problem 2. The amendment would provide that a transfer of stock or an ownership interest in a mobilehome park is a change in ownership of a pro rata portion of the real property of the park, if the park had previously been in a transaction qualifying under Section 62.1 (a) and it had not been converted to condominium or stock cooperative ownership. The effect of the proposal would be prospective.

SP-10

ATTACHMENT 4

This amendment attempts to parallel as closely as possible the tax treatment accorded condominium and stock cooperatives. A perfect match is not possible, however, because the transfer of a share or membership interest in a nonprofit corporation is not the same thing as a transfer of ownership of a condominium or stock cooperative interest which relates to specific identifiable real property. Thus, rather than following the pattern prescribed in Section 65.1(b), which provides for reappraisal of the specific unit or lot transferred as well as a share of the common area, the amendment provides for a straight pro rata adjustment.

The provisions for the separate assessment of a pro rata portion of the mobilehome park which changed ownership pursuant to Section 62.1(c) permits the assessments and related taxes to be separately identified and requires the collection of the taxes and any processing fee from the owner of the pro rata portion of the property which changed ownership. This collection is the responsibility of the mobilehome park governing board since the total taxes, as a matter of law, are a lien on the entire park. The governing boards can protect the financial interests of all park shareholders through contractual arrangements, security deposits, etc., which will guarantee the payment of all taxes in full.

3. The first paragraph of subdivision (b) of Section 62.1 appears to be included in error. The subdivision should consist only of the second paragraph.

COST ESTIMATE

The cost of this amendment to the Board of Equalization should be insignificant, less than $10,000.

REVENUE ESTIMATE

The purpose of SB 1885 is to close an inadvertent loophole enacted by Chapter 1344, Statutes of 1987. Thus, the effect of this measure would be to negate any property tax revenue loss attributable to Chapter 1344.

Analysis prepared by: Richard Ochsner 445-4588 March 31, 1988
Gene Palmer 445-6777
Contact: Margaret Shedd Boatwright 322-2376
rj

SP-11

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF SANTA BARBARA

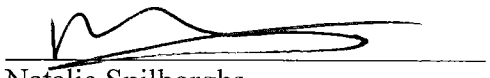
I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen years and not a party to the above titled action. My business address is 1114 State Street, Suite 200, Santa Barbara, California 93101.

On October 29, 2012, I served the foregoing document described as RESPONDENTS' JOINT ANSWER TO PETITION FOR REVIEW on the interested parties in said action by enclosing a copy thereof in sealed envelopes which were addressed as shown on the attached SERVICE LIST, as follows:

☑ By U.S. Mail. I am readily familiar with this office's practice of collection and processing correspondence on the same day with postage thereon fully prepaid at Santa Barbara, California, in the ordinary course of business.

☑ (STATE) I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on October 29, 2012, in Santa Barbara, California.



Natalie Spilborghs

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