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Case No. S266590

In the

Supreme Court

of the

State of California

JEFFREY PRANG, Los Angeles County Assessor,
Plaintiff and Respondent,

v.

LUIS A. AMEN et al., as Trustees, etc.,
Real Party in Interest and Appellant.

AFTER A PUBLISHED DECISION OF THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION FIVE, CASE NO. B298794
LOS ANGELES SUPERIOR COURT, THE HONORABLE JAMES C. CHALFANT, CASE NO. BS173698

ANSWER BRIEF ON THE MERITS

MICHAEL K. SLATTERY, ESQ. (107303)*
THOMAS G. KELCH, ESQ. (100709)
LAMB & KAWAKAMI LLP
333 South Grand Avenue, Suite 4200
Los Angeles, California 90071
(213) 630-5500 Telephone
(213) 630-5555 Facsimile
mslattery@lkfirm.com
tkelch@lkfirm.com

RODRIGO A. CASTRO-SILVA, ESQ. (185251)
COUNTY COUNSEL
PETER M. BOLLINGER, ESQ. (241752)
ASSISTANT COUNTY COUNSEL
RICHARD GIRGADO, ESQ. (174359)*
SENIOR DEPUTY COUNTY COUNSEL
JUSTIN Y. KIM, ESQ. (274568)
DEPUTY COUNTY COUNSEL
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012-2713
(213) 974-0809 Telephone
(213) 617-7182 Facsimile
rgirgado@counsel.lacounty.gov

Attorneys for Plaintiff and Respondent Jeffrey Prang

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Appellee Jeffrey Prang, in his capacity as the Los Angeles County Assessor ("Respondent"), respectfully submits this Answer Brief on the Merits ("Answer").

I.

INTRODUCTION

The disputed issue is whether a transfer of real estate was a "change in ownership" under the property tax laws. A change in ownership authorizes the county Assessor to reassess the property at its fair value at the time of transfer. Constitution Article XIIIA §2.

This case turns on these undisputed facts:

- On December 5, 2014, Super A Foods, Inc. ("Super A") sold 5235-5247 Lincoln Avenue, Highland Park CA and 2925 Division Street and 2101-2123 Cypress Avenue, Los Angeles CA (the "Properties") to the Appellant Amen Family 1990 Revocable Trust (the "Trust"). AR at 277-78.

- Super A's shareholders were the Trust and at least four others. There are two classes of stock: 100,000 shares of voting stock and 100,000 shares of nonvoting stock. AR at 277-79.

- The Trust is the only voting shareholder of Super A (AR at 203); it has two beneficiaries.

- All of Super A's shareholders have exactly the same economic interests in Super A, *i.e.,* the right to dividends and proceeds of liquidation. AR at 278.

The general rule is that transfer of real property from one legal entity to another is a change of ownership. Revenue & Taxation Code ("R&TC") § 60; Property Tax Rule 462.180(a), 18 Cal. Code Regs. § 462.180. This case turns on an exception to that general rule. Under R&TC § 62(a)(2), a transfer between entities is not a change of ownership if "… proportional ownership interests of the transferors and transferees, whether represented

by stock, partnership interest or otherwise, in each and every piece of real property transferred, remain the same after the transfer."

Respondent's position, which was adopted by the Superior Court and the Court of Appeal, is that a transfer from an entity owned by five persons to an entity owned by only two persons cannot possibly have preserved the proportional ownership interests in those entities.
The Appellant claims that the transfers in question meet this proportionality exception even though there were at least five owners of the entity owning the real estate prior to the transfer and two owners of the entity that owned the real estate after the transfer. The Appellant also claims, contrary to the clear and plain meaning of this provision that the term "stock" in this provision means "voting stock." The plain meaning of § 62(a)(2) makes clear that proportional ownership must be identical ("the same") before and after the transfer of the real property for this exception to apply, and that is not what happened in this case. Further, as will be shown in detail below, the plain meaning of this provision uses the term "stock" to mean all forms of stock, voting and nonvoting, since the legislature has made clear that it understands and uses the distinct terms "stock" and "voting stock" throughout the R&TC to mean different things.

Appellant relies for the substance of its argument to overturn long held rules of statutory interpretation, to fundamentally alter the structure and meaning of the R&TC and to alter established corporate law, on the Assessor's Handbook ("AH"), Legal Opinions of the Board of Equalization ("BOE") and Letters to Assessor that are not the law, but are only advisory authority. Moreover, as both of the courts below expressly held, none of these opinions, examples or letters deal with the situation involved in this case—transfer of real estate by a corporation owned by voting and nonvoting stockholders having identical economic rights in the corporation and its property.

The argument of the Appellant is also founded on misunderstandings of both corporate law and the R&TC. First, an owner of stock can have one or both of the following kinds of rights—voting rights controlling certain decisions relating to the corporation and economic rights in the property of the corporation represented by a right to dividends and/or the right to some portion of the assets of the corporation in the event of liquidation. Under the California Corporations Code and corporate law in general different classes of stock can be created with any combination of these rights desired by the board of directors and stockholders. In other words, classes of stock can be created with voting rights and economic rights, or only voting rights, or only economic rights.

Second, the Appellant argues, contrary to principles of statutory interpretation, that the term "stock" in § 62(a)(1) means "voting stock" although the legislature has carefully used these two terms to mean two different things throughout the R&TC. The Appellant ignores that it is the economic interests of stockholders that determine whether proportional interests remain the same after transfer from a corporation to another entity. Stock of a corporation having economic rights represents shareholders' economic interests in dividends and corporate property in its potential liquidation. Voting rights of stock have nothing to do with the rights of shareholders in the property of a corporation.

At bottom, the Appellant's arguments rest on confusion of the two types of changes in ownership— transfer of the real estate itself under § 60 and transfer of ownership of interests in the business entity that owns the real property under § 64. The Appellant relies in substantial part on authorities relating to § 64, the second type of transfer, having nothing whatever to do with the transfer of real estate that is the subject matter of this appeal.

Amicus briefs have been filed by Ajalat, Polley, Ayoob & Matarese (the "Ajalat Brief"), Charles J. Moll (the "Moll Brief"), the California Board of Equalization (the "BOE Brief") and the California State Association of Counties (the "CSAC") and the California Assessor's Association (the "CAA"). The latter amicus brief (the "CSAC Brief") fully supports the Respondent.

II.

STATEMENT OF FACTS

Appellant is a revocable trust, and Louis Amen and Delores Amen are its trustees and beneficiaries. Super A had at least five shareholders and perhaps six— the Trust, Louis Amen, James Amen, David Rann, Joud Tedemori and Jeanne Amen Miller. AR at 277-79.

On its face, the transfer changed the proportional ownership of the Properties. The only issue here is whether Super A's nonvoting shareholders had an "ownership interest" represented by "stock" in the Properties. Super A's Amended Articles of Incorporation (the "Amended Articles") make it clear that the nonvoting shareholders do have those ownership interests: "[e]xcept with respect to all voting rights being vested exclusively in the holder of the Voting Common Shares, as herein provided, the Voting Common Stock and the Nonvoting Common Stock shall be equal in all other respects including, but not limited to, dividend and liquidation rights." AR at 176. Therefore, ***all common stock of Super A has exactly the same economic rights—the only difference between the two classes of stock is that the nonvoting stock does not have voting rights*.**

Section E. of the Appellant's Opening Brief ("Opening Brief"), pages 24-25, accurately describes the outcome of the proceedings before the Assessment Appeals Board, the Superior Court, and the Court of

Appeal. This brief will address the common arguments that have been made earlier in this proceeding, the soundness of the Court of Appeal's decision and the new arguments that Appellant has made before this Court, which are largely based on the dissenting opinion below.

III.

SUMMARY OF COURT OF APPEAL OPINION

The Court of Appeal's majority opinion (the "Opinion") relied on the plain meaning rule. The term "stock"—unqualified—in §62(a)(2) refers to all types of stock. The Legislature's use of the terms "stock" and voting "stock" in serval parts of the R&TC shows the Legislature knew the difference between the terms and made a conscious choice to use the broader term in §62(a)(2). The panel rejected Appellant's argument that a BOE regulation applied to this case and, like the Superior Court, decided that the BOE's guidance which Appellant relies on are "not particularly helpful" since none of them address a situation where a corporate transferor has both voting and nonvoting stock. Opinion page 13, footnote 10.

IV.

ARGUMENT

A. THE ISSUES RAISED IN THE TRIAL AND APPELLATE COURT

1. There is No Ambiguity in § 62 and Therefore There Can be No Inquiry Beyond the Language of the Statute

Under the plain meaning rule, unless there is ambiguity in a statute, the "plain meaning" of a statute controls its interpretation. *Poole v. Orange Cty. Fire Auth.* (2015) 61 Cal.4th 1378, 1385; *River Garden Retirement Home v. Franchise Tax Bd.* (2010) 186 Cal.App.4th 922, 942. Ambiguity requires real ambiguity, not just a disagreement between parties, as noted by Supreme Court Justice Thomas: "A mere disagreement among litigants

over the meaning of a statute does not prove ambiguity; it usually means that one of the litigants is simply wrong." *Bank of Am. Nat. Trust and Sav. Ass'n v. 203 North LaSalle Street Partnership* (1999) 526 U.S. 434, 435-36 (Thomas, J., concurring) (interpreting the Bankruptcy Code). Moreover, where there is no ambiguity there is no need to look at any sources outside the language of the statute, including administrative interpretations of the statute. *Gunn v. State Bd. Of Equalization* (1954) 123 Cal.App.2d 283, 288 (where there is no ambiguity the Court will not consider administrative agency interpretations of a statute); *People v. Licas* (2014) 41 Cal.4th 362, 367 ("In other words, if there is 'no ambiguity or uncertainty in the language, the Legislature is presumed to have meant what it said,' and it is not necessary to 'resort to legislative history to determine the statute's true meaning.' (*People v. Cochran* (2002) 28 Cal.4th 396, 400–401 []").

Appellant points to Property Tax Rule 462.240 to claim ambiguity alleging the use of "stock" and "voting stock" interchangeably. This rule states: "any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the *voting stock* in the employer corporation" is not a change in ownership. 18 Cal. Code Regs. § 462.240. The reference to "stock" simply states that an employee benefit plan can acquire "stock" in a corporation including both voting and nonvoting stock, but the triggering event for the exclusion stated later is not simply the purchase of "stock" but acquiring control—more than 50% of the "voting stock." This is a case where the two terms are meticulously used by the legislature—the first reference recognizes that an employee benefit plan can obtain both voting and nonvoting stock as investments and the later reference creates an exclusion when the employee benefit plan attains a certain level of ownership of voting stock.

Appellant also claims that there is ambiguity in the statute because §§ 64(b) and (c)(1) use the term “stock” to mean “voting stock.” Appellant argued that the language of Section 64(b) supported its argument. That language is the following: "[f]or purposes of this subdivision, ‘affiliated group’ means one or more chains of corporations connected through stock ownership with a common parent corporation if both of the following conditions are met: (1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations." Appellant claims that this section uses the term "stock" to mean "voting stock." This is incorrect; the use of the term “stock” here simply recognizes the fact that corporations can be “connected through stock ownership” through owning voting and nonvoting stock, and the initial use of the term "stock" recognizes that the relationship between corporations can be through both voting and nonvoting stock. The later reference to “voting stock” distinguishes the kind of stock that is considered relevant under the affiliate transfer provisions. This is a case where the general term “stock” is appropriately used to describe all kinds of stock and the later reference to a particular kind of stock, namely “voting stock,” is utilized to create a particular rule.

Appellant also claims that the following shows ambiguity and that “stock” is used to mean "voting stock" in § 64(c)(1): “When a corporation . . . obtains control through direct or indirect ownership or control of more than 50 percent of the ***voting stock*** of any corporation . . . the purchase or transfer of ***that stock*** or other interest shall be a change of ownership of the real property owned by the corporation . . . .” (R&TC § 64(c)(1) [emphasis added]. This language does not in any way indicate that "stock" is used to mean "voting stock." Rather the sentence in question is simply an example of the use of normal English grammar——the first reference is to "voting

stock" and the second is grammatically referring back to that reference with the words “that stock." And rules of grammar are to be considered and used by courts in interpreting statutes; in fact, a comma can be the deciding factor in a case. *U.S. v. Ron Pair Enterprises* (1989) 489 U.S. 235, 235-36.

It must also be recognized that if Appellant were correct, the legislature has used the term “stock” and “voting stock” to mean the same thing within just a few words of each other. What these examples actually demonstrate is that the legislature was very clear in distinguishing “stock” from “voting stock” in using the different terms within just a few words of each other.

The Ajalat Brief argues that the plain meaning rule does not apply because the term “stock” is ambiguous since Black’s Law Dictionary has four general definitions of stock (only two of which have to do with corporate stock and do not reveal any ambiguity in the term as discussed below) and many “specialized” definitions. Ajalat Brief at 6. The term “stock” in Black’s is not ambiguous and, in fact, Black’s makes clear that the Court of Appeal was correct in determining that the term “stock” means all of the stock of a corporation, including nonvoting stock. The breadth of the definition of the term does not show ambiguity; instead, it proves that the plain meaning of “stock” is precisely what Respondent says—all forms of stock.

The BOE Brief similarly argued that because there are many subcategories of stock listed in the definition of “stock” like “capital stock” or “treasury stock” the term is somehow ambiguous. The fact that there are subcategories of the general term “stock” does not show ambiguity, rather it again reveals that the Court of Appeal was correct in determining that “stock” includes all stock, *i.e.*, including all subcategories. “Stock” is the most general term used in the R&TC to refer to corporate securities and other forms of stock referred to in the statute are all subsets of the general

term "stock." The R&TC itself meticulously and distinctly identifies a number of subcategories of stock: voting stock (§ 64 (as well as a number of other sections of the R&TC)), stock (§ 23361), capital stock (§§ 212 and 24406.6), treasury stock (§§ 24942 and 25120), common stock (§ 23040.1), preferred stock (§ 23040.1), qualified small business stock (§ 18038.4), and corporate stock (§ 64). Trial Court Opening Brief at 6, JA at 75; Notice of Errata re Opening Brief at 2, JA at 427.

The rule of statutory interpretation on ambiguity requires that a party show that there is **ambiguity *in the statutory language*** before one can go outside the plain meaning of the statute. *Poole, supra* at 1385; *River Garden Ret. Home, supra* at 942. Finding some document somewhere in the universe that uses a term ambiguously does not terminate application of the plain meaning rule to that term in a statute. So even if the definition of "stock" in Black's were ambiguous, which it is not, it would be irrelevant to application of the plain meaning rule in the present case; it does not show ambiguity in R&TC § 62(a)(2).

Since none of the briefs supporting the Appellant have shown any ambiguity in the term "stock" in R&TC § 62(a)(2), the plain meaning of the term "stock," a general term referring to all kinds of stock including voting and nonvoting stock, controls, and this compels affirmance of the Court of Appeal decision.

2. Under Principles of Statutory Interpretation § 62(a)(2) Proportionality is Determined by Looking at Voting and Nonvoting Stock

Established rules of statutory interpretation, including the plain meaning rule, require that proportionality analysis under § 62(a)(2) be performed taking into consideration both voting and nonvoting stock.

Absent ambiguity a statute will be interpreted under the plain meaning rule. *Poole, supra* at 1385; *River Garden Retirement Home, supra*

at 942. In performing plain meaning interpretation, the Court is to give language its ordinary, everyday meaning. *Ramirez v. City of Gardena* (2018) 5 Cal.5th 995, 1000; *Woosley v. State of California* (1992) 3 Cal.4th 758, 775; *River Garden Retirement Home* at 942. To determine the ordinary, everyday meaning of words, it is appropriate to use dictionary definitions. *People v. Whitlock* (2003) 113 Cal.App.4th 456, 462 ("[t]o ascertain the common meaning of a word, 'a court typically looks to dictionaries.'" quoting *Consumer Advocacy Group, Inc. v. Exxon Mobil Corp.* (2002) 104 Cal.App.4th 438, 444); *Licas, supra* at 369 (uses dictionary to define the term "at"); *Gunn, supra* at 286 (uses dictionary to determine the meaning of "Code").

In describing the exclusion for transfers where proportional ownership is identical before and after a transfer, and for determining the proportionality of ownership, § 62(a)(2) expressly refers to "proportional ownership interests of the transferors and transferees . . . represented by stock," without any qualification or limitation of the term "stock" to voting stock. The commonly accepted and ordinary meaning of the term "stock" includes both voting and nonvoting stock. Investopia, *Stock*, https://www.investopedia.com/terms/s/stock.asp (last visited Nov. 6, 2019) (states that preferred stock, as distinguished from common stock, generally does not have voting rights, making clear that the term "stock" refers to stock with or without voting rights); *see also* discussion of the term "stock" in Black's Law Dictionary above in this section of the Answer. That § 62(a)(2) refers to all forms of stock, including voting and nonvoting stock, is made unmistakable by the fact that the more specific term "voting stock" is used in § 64, revealing that the legislature made a conscious distinction between voting and nonvoting stock in the property tax provisions of the R&TC, and that the general term "stock" refers to all forms of stock including nonvoting stock.

That the legislature knows how to make the distinction between the general term "stock" and the specific term "voting stock" is further revealed by the fact that the term "voting stock" appears in at least 14 sections of the R&TC including §§ 62.1, 62.2, 62.5, 64, 66, 2188.10, 11141.6, 19141.6, 23610.5, 23685, 23695, 23698, 25110 and 25112. Moreover, the legislature has used the more general term "stock" in many provisions of the R&TC, including §§ 17502, 18042, 23102, 23361 and 25105. Since the legislature knows how to use and distinguish the terms "stock" and "voting stock" in property tax legislation, had the legislature intended proportionality under § 62(a)(2) to be determined based on "voting stock" it would have so stated. Moreover, the legislature has had many opportunities to change the term "stock" to "voting stock"—§ 62 has been amended eighteen times. Knowing how to distinguish "stock" from "voting stock" and having had many opportunities to replace "stock" with "voting stock" the legislature did not do so. Therefore, the legislature intended proportionality to be determined based on all of the stock in a corporation.

Note also that provisions of the R&TC enumerated above utilizing the terms "stock" and "voting stock" were originally enacted at numerous points in time ranging from 1949 to 2018. This means that the legislature has been using and scrupulously maintaining the distinction between "stock" and "voting stock" in the R&TC for at least seven decades. Had there been any doubt about this language and the very frequent use of this distinction, the legislature surely would have addressed it in that period of time.

It cannot be more conclusively established that "stock" means all stock than the legislature effectively so stating in § 23361 as expressed by the Court of Appeal. This provision creates a special definition of "stock" for the purposes of two subsections of § 23361 not including "nonvoting stock which is limited and preferred as to dividends." This section, penned

by the California legislature, makes clear that the ordinary meaning of "stock" includes all forms of stock, including nonvoting stock, as is dictated by the term's plain meaning. The legislature recognized that it was required to create a special definition of the term "stock" to exclude nonvoting stock.

As a result, under the plain meaning rule, because the legislature specified "voting stock" in numerous sections of the R&TC and used the broader term "stock" in § 62(a)(2) and other sections of the statute, and even created a special definition of "stock" in a section of the R&TC where nonvoting stock is specifically excluded from the term "stock," the legislature has made transparent that "stock" in § 62(a)(2) means all types of stock, including nonvoting stock. The legislature knows how to refer to "voting stock" and has been scrupulous in maintaining the distinction between different kinds of stock and different levels of generality in describing types of stock. If the general term "stock" in the R&TC were suddenly determined to mean "voting stock" there will be untold unknown implications from such a decision under the R&TC and other statutes.

Moreover, the very fact that § 62 refers to "stock" and § 64 refers to "voting stock" establishes that § 62 cannot be referring to only voting stock. It is a longstanding principle of statutory interpretation that "'"[o]rdinarily, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning." (*Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 497.)' (*Romano v. Mercury Ins. Co.* (2005) 128 Cal.App.4th 1333, 1343 (*Romano*).)" *Roy v. Superior Court* (2011) 198 Cal.App.4th 1337, 1352; *see also* Norman Singer, *Sutherland Statutes and Statutory Construction* (7th ed. 2019) § 46:6. Here § 62 uses the term "stock," as do numerous other provisions of the R&TC, while § 64 and many other

provisions refer to "voting stock." *See i.e.,* R&TC §§ 23361, 23804 and 25105 (using the term "stock"); R&TC §§ 62.1, 62.5 and 2188.10 (using the term "voting stock"). Even more telling and making it apparent that "stock" in § 62 means both voting and nonvoting stock is the fact that ***other sub-provisions of that very section, §§ 62.1 and 62.5, use the different term "voting stock."***

A similar interpretive principle leading to the same conclusion is "Where a statute referring to one subject contains a critical word or phrase, omission of that word or phrase from a similar statute on the same subject generally shows a different legislative intent." [citation omitted] *Roy, supra* at 1352, (quoting *Campbell, supra at* 497 and *Romano, supra* at 1343). Thus, both of these principles of statutory interpretation lead inexorably to the conclusion that the term "stock" in § 62(a)(2) means both voting and nonvoting stock.

In addition, statutes are always to be construed to avoid any interpretation resulting in statutory language being surplusage. *Woosley, supra* at 776. If the Trust's interpretation of the term "stock" to mean "voting stock" were correct, then use of the term "voting" relating to stock in § 64 and other sections of the R&TC would be unnecessary surplusage, since if the term "stock" means "voting stock" there would be no reason to use the term "voting stock" in § 64 and elsewhere in the R&TC.

Statutory language is also to be interpreted to avoid absurd results. *Poole, supra* at 1385. If voting control is the talisman of change in ownership and proportionality then absurd results follow. Under the California Corporations Code three kinds of agreements transferring voting rights in stock are authorized: (1) proxies, including irrevocable proxies (§ 705); (2) voting agreements, including agreements where voting rights in stock are "transfer[ed] . . . to a third party," potentially a party having no economic rights in the corporation (§ 706(a)); and (3) voting trusts where

voting rights are transferred to a trustee (§ 706(b)). If it is the case that change in ownership of real estate and the proportionality exception are determined by voting control over stock, then every time any shareholder gives a proxy, transfers voting power in stock to a third person or enters into a voting trust agreement there could be unforeseen changes in ownership of real estate.

Transfers of voting rights in stock routinely occur and if such transfers resulted in changes in ownership of real estate owned by a corporation these mechanisms might not be utilized, fundamentally changing both corporate and property taxation law. For instance, every year the management of publicly traded companies ask for proxies for voting at their annual meetings and these proxies will frequently give present management voting control over the corporation. Under Appellant's view of § 62(a)(2) *these proxies could result in unforeseen changes in ownership of real property*—voting control of the corporation will have been transferred to present management. This cannot be what was intended by the legislature.

Respondent has demonstrated that the meaning of "stock" in R&TC § 62 includes both voting and nonvoting stock. As a result, the Court need look no further to determine the meaning of "stock."

3. Appellant's Arguments are Based on an Error, Confusing Control Over a Corporation with Ownership of Real Estate and on Authorities that Are Inapposite

The Appellant's primary arguments against the plain meaning of § 62(a)(2) are founded on confusing changes in ownership resulting from transfer of control of a corporation under § 64 with changes in ownership by virtue of transfer of the real estate itself under § 60 and, concomitantly, under the exclusion of § 62(a)(2). Opening Brief at 12, 15-17, 22-24, 30, 31, 33, 34, 38-41 and 44. The problem with this is that § 64 is utterly

irrelevant to the rule at issue in this case—the proportionality exclusion under R&TC § 62(a)(2) pertaining to transfers of real property under § 60. **Section 64 deals with a change in ownership of real property based on change in control of a corporation, while §§ 60 and 62(a)(2) deal with change in ownership of real property based on transfer of an interest in the real property itself.** The relevant transaction in the present case is the latter—a change in ownership by virtue of transfer of real property, not by virtue of a transfer of an interest in corporate stock.

Appellant's argument to the contrary relies primarily on authorities that, unlike those of Respondent, do not have the force of law and are only advisory according to the BOE's *Hierarchy of Property Tax Authorities* (May 29, 2003). Joint Appendix (" JA") at 212-16. Appellant relies on examples in the BOE's Assessor's Handbook ("AH") that do "not have the force of law" and are "advisory only, Letters to Assessor, which are "not legally binding," and on BOE legal opinions that are not the law, though entitled to consideration by courts. Board of Equalization, *Hierarchy of Property Tax Authorities, supra.*

The first evidence of the confusion of change in ownership by transfer of the real property and by transfer of ownership of the owner of the real property is the quotation by the Appellant of a portion of the AH which states: "'[f]or change in ownership purposes, ownership in a corporation is determined by the percentage of ownership or control of a corporation's *voting stock*.'" [emphasis in original] Opening Brief at 17. This quoted material is about transferring an interest in a corporation under § 64 of the R&TC and not about transferring an interest in real property.

Second, note that the quoted material is from a section entitled "Ownership of Legal Entities" that deals with the issue of change in ownership of real property ***by virtue of change in control over an entity, such as a corporation*****,** i.e., where a shareholder or shareholders sell their

stock in a corporation that owns real estate, not the issue of change of ownership ***by virtue of a transfer of the real estate itself*** as in the instant case. AR at 189. An extraordinarily clear example of the Appellant confusing issues under § 64 with issues relating to the relevant sections of the R&TC, §§ 60 and 62, is its discussion of and quotes from Letter to Assessor 2011/16 (April 27, 2011) ("LTA"), Exhibit G to Opening Brief at 85 and 93. The portion of the LTA pointed to by Appellant discusses change in ownership by virtue of change in control of the entity under § 64. Indeed, the quoted material is in a section entitled "Transfer of an Interest in a Legal Entity" making obvious that what is being discussed is § 64 not § 62(a)(2). LTA, Exhibit G at 92.

The Opening Brief uses the concept of an "original co-owner" in an effort to link § 64 to § 62(a)(2). Opening Brief at 23-24. This builds on language in a BOE Letter to Assessor's (Exhibit H to the Opening Brief), and requires some additional context to understand. The concept of an "original co-owner" comes up in § 64(d). It deals with multiple transfers of ownership interests in a legal entity:

> (d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62 , then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

Section 64(d) creates an exception to the general rule of § 64(c) that there is no change of ownership unless one person acquires a greater than 50% ownership interest in a legal entity. If original coowners collectively transfer a greater than 50% interest, there is a change ownership even if no transferee receives a greater than 50% interest. Say A and B, original coowners, each have a 50% interest in Corporation X, then A transfer a 25% interest to C and D and B transfers a 25% interest to E and F. . . Under the "normal" rule of §64(c), no change of ownership because no person has acquired a more than 50% interest. But under the special rule for original coowners, A and B's transfers to the four new persons are aggregated together to make a transfer of a 100% interest which causes reappraisal.

Appellant's argument is that Respondent's position is "illogical" because it uses all stock to measure whether the § 62(a)(2) exemption applies but then must use a different standard—just voting stock—to decide whether the original coowners have later made aggregated transfers of a greater than 50% interest. Opening Brief at 24. This argument turns on the false assumption that § 64(d) must be talking about voting shares because that is what § 64(c) talks about. The plain language of the statute compels the opposite result. As has been established, the legislature knows how to use the different terms "stock" and "voting stock" (*see* § IV.A. above) and if it wanted § 64(d) to be measured by voting stock it would have so stated. It does not do so.

Appellant relies on an April 27, 2012 Letter to Assessors which is Exhibit H to its Opening Brief at 23. It does say that § 64(d) looks at subsequent transfers of voting stock. But as with the other BOE materials which Appellant relies on, it does not evaluate a situation where the corporation has both voting and nonvoting shares. The Letter starts out with the qualification that it is just a "brief overview." The paragraph which Appellant quotes focuses on a different nuance altogether—would the

transfer by the original co-owners not also be a change of ownership under the general rule of § 64 (c)(1)? If so, all of the entity's real estate changes ownership; if not, just the property previously excluded under §62(a)(2) is re-assessed.

4. There is no Relevant Administrative Interpretation of "Stock" to Mean "Voting Stock" in §62(a)(2)

The BOE Brief and other briefs have argued that the BOE has previously interpreted "stock" to mean "voting stock. The authorities they cited have nothing to do with § 62(a)(2):

- Property Tax Rule 462.180 nowhere states that "stock" in § 62(a)(2) means "voting stock." The title to this rule, "Change In Ownership—Legal Entities," makes obvious that this rule relates primarily to changes in ownership as a result of transfers of interests in legal entities and is not focused on changes in ownership resulting from transfers of real property which is the issue in this case. The rule does not use the term "voting stock" with respect to § 62(a)(2) or the proportional ownership rule. Rather, the rule uses the term "voting stock" concerning changes in ownership resulting from transfers of interests in legal entities under § 64, a section, unlike § 62(a)(2), that uses the specialized term "voting stock." It does not anywhere state that "stock" means "voting stock" and is irrelevant to the present controversy since it deals in relevant part with § 64, not § 62(a)(2), the subject matter of this appeal.

- Similarly, Former Rule 462 referred to by the BOE Brief deals with changes in ownership resulting from transfers of interests in legal entities, not changes in ownership resulting from transfers of real property which is the issue in this case. Letter to Assessors 81/22 (Feb. 11, 1981) (attaching a proposed Property Tax Rule 462). The BOE Brief argues that this former rule clarified that "shares" in § 64(d) means "voting shares." BOE Brief at 11. Apart from the fact that this case involves § 62(a)(2), not § 64(d), contrary to what the BOE states, the former rule does not even contain the term "voting shares." Moreover, the terms "shares" and "voting shares" are

irrelevant to the present case given that the issue is the meaning of "stock" not "shares."

- AH 401 nowhere states that "stock" means "voting stock." The portions of the AH referred to by the BOE Brief, AH 401 at 38 and 42 (AR at 189, 191; BOE Brief at 13), deal with the control rule for determination of changes in ownership where there are transfers of interests in legal entities, not where there is a change in ownership based on transfer of the real property as is the case here.

- AH 401 Examples 6-10, 6-11 and 6-12 do not define "stock" as "voting stock." Rather, these examples deal with situations where there is no nonvoting stock, with Examples 6-10 and 6-11 explicitly stating that there is only one class of stock which is voting stock. AR at 192-93.

- BOE Legal Opinion*, Exchange, Transfer and Conversion of Interests in a Limited Partnership Owning Real Property* (April 12, 2002) is alleged to say that "ownership interest" in § 64 means voting control over the stock of a corporation. First, it is an opinion relating to § 64 and had nothing to do with a transfer of real estate; rather it is about transfers of interests in a limited partnership under § 64 which, of course, is totally irrelevant here. Second, the section referred to in the opinion by Appellant relates to Rule 462.180 which deals with transfers of interests in legal entities and mistakenly indicates that rule has something to do with§ 62(a)(2), which it does not. Third, the statement is effectively dictum.

- BOE Legal Opinion No. 09-126 (Oct. 30, 2009) nowhere states that "stock" means "voting stock." AR 199-201. The issue addressed in the opinion relates to a merger transaction under § 64(b) having nothing to do with the present case. While the opinion discusses § 62(a)(2) and refers to "voting stock" there is no nonvoting stock involved in the fact situation. While Opinion 09-126 does refer to Class B stock as apparently being voting stock, nowhere does it describe Class A stock as nonvoting (it too could be voting stock) nor does it even state that Class A stock exists—it could, for all we know, have been cancelled, or authorized and never issued and sold.

- BOE Legal Opinion, *Re: Change in Ownership – Transfer from Revocable Trust to Corporation* (May 31, 2007) nowhere states that "stock" means "voting stock." AR at 194- 97. This opinion deals with a transfer of real estate by a husband and wife to a trust, and a subsequent transfer to a corporation. While the opinion refers to "voting stock" it does not deal with a situation where there is a class of nonvoting stock.

- BOE Legal Opinion, *Request for Legal Opinion -BOE-100-B, Statement* (September 30, 2011) does say that voting stock should be used to measure proportionality under § 62(a)(2). This conclusion, contained in a document that is not law, is effectively "dictum," is contrary to the plain meaning of the statue and does not address the issue in this case involving nonvoting stock.

Thus, the Court of Appeal, like the Superior Court, properly determined that none of these authorities address the issue presented here—how is proportionality determined when there is economically valuable common stock some of which is voting stock and some that is not. Opinion at 13, note 10.

5. The Statute is not "Harmonized" by Interpreting Two Different Terms in the Statute to Have the Same Meaning

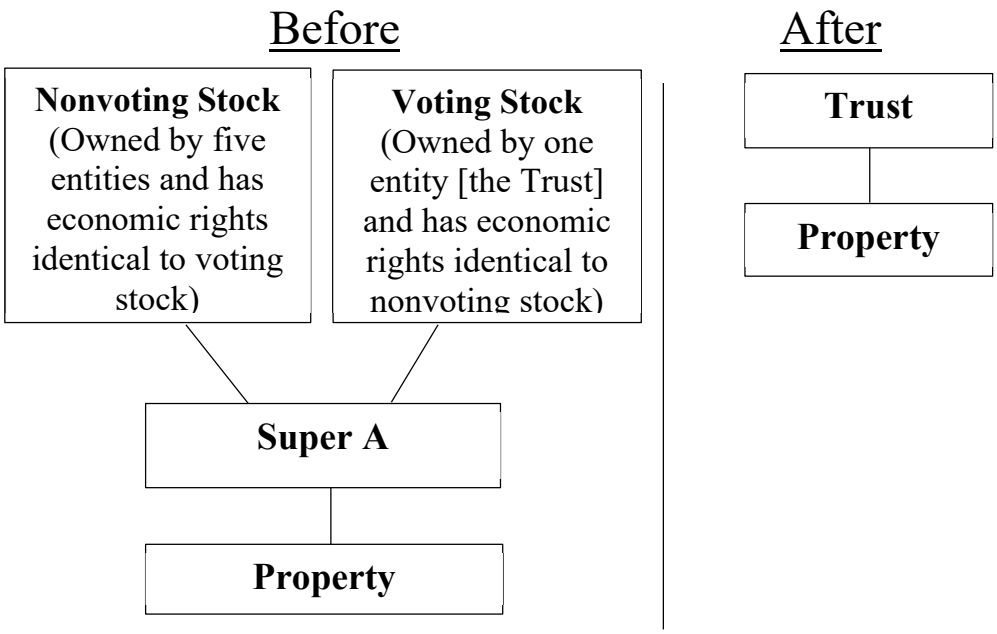
It has been argued that §§ 62(a)(2) and 64 must be "harmonized," asserting that that these provisions should be read together "in harmony" which is claimed to mean that two entirely different terms, "stock" and "voting stock," be read to mean the same thing. BOE Brief at 19-23. The irony of asserting that we "harmonize" two statutory provisions effectively two sections apart in a statute by reading two entirely different terms to mean the same thing can hardly be lost. This is the definition of "disharmony." These two statutory provisions deal with two completely different methods of changing ownership and do not have the same legislative purpose; § 62(a)(2) addresses transfers of real property, while §

64 tackles transfers of interests in legal entities by use of a control rule and these two provisions use different language purposefully to address these different subject matters.

6. The Proportionality Exception Does Not Apply

There is only one fact the Court really needs to know to affirm the Court of Appeal—the Super A Amended Articles state: "[e]xcept with respect to all voting rights being vested exclusively in the holder of the Voting Common Shares, as herein provided, ***the Voting Common Stock and the Nonvoting Common Stock shall be equal in all other respects including, but not limited to, dividend and liquidation rights.***" AR at 259. **Therefore, *all common stock of Super A has exactly the same economic rights***—the only difference between the two classes of stock is that the nonvoting stock does not have voting rights. Indeed, Colin Fraser, the attorney for the Amen Family Trust, admitted in the AAB hearing that the economic rights of the nonvoting stock are exactly the same as the voting shares. AR at 333-334. These economic rights of the nonvoting Super A stock described by Mr. Fraser are exactly the same as the economic rights of the voting stock as the Articles state. This admission makes clear that the nonvoting stockholders are indeed owners of the corporation that must be counted as owners of the Properties for proportionality purposes under § 62(a)(2). How could it be otherwise if the nonvoting stockholders are entitled to proceeds of the liquidation of the Properties as Mr. Fraser has admitted? ***There is no more unambiguous indicia of an ownership interest in property than the right to the proceeds of sale of property.*** The economic interests of the nonvoting and voting stock are exactly the same and their interests count under § 62(a)(2).

That this is the case can be observed in the structure of the transaction at issue. The evidence indicates that the nonvoting stock is owned by at least five entities and the voting stock is owned by the Trust. AR 277-79. Thus, Super A, the original owner of the Properties, was owned by at least five entities. When the property was transferred to the Trust there was exactly one owner of the property, with two beneficiaries, Louis and Delores Amen, each having a 50% interest in the Trust. As a result, the proportionality exception does not apply here since § 62(a)(2) requires that the proportional ownership of the entities owning the property must be identical before and after the transfer. In this case, the property went from having at least five owners to having two—by definition not identical proportionality as is shown by the chart below.



Understandably, the Trust does not address the fact that the Amended Articles concretely establish that the voting and nonvoting stock have identical economic rights and, as a result, the proportionality exception

cannot apply here. The Court should, therefore, affirm the Court of Appeal decision.

7. Based on § 60 and Principles of Corporate Law Both Voting and Nonvoting Stock Must be Considered in Applying § 62(a)(2)

The AAB made several errors in application of corporate law in reaching the conclusion that a § 60 change in ownership has not occurred and that § 62(a)(2) applies in this case. "Change in ownership" under § 60 requires three things: "(1) a transfer of a present interest in real property, (2) including the beneficial use thereof, (3) the value of which is substantially equal to the value of the fee interest." *Pac. Southwest Realty Co. v. Cty. of Los Angeles* (1991) 1 Cal.4th 155, 162; *Zapara v. Cty. of Orange* (1994) 26 Cal.App.4th 464, 468; Assembly Committee on Revenue and Taxation, *Report of the Task Force on Property Tax Administration* (January 22, 1979) at 38 ("Report"). The AAB erroneously concluded that the term "beneficial use" in § 60 somehow pertains to the characteristics of a corporate owner of real property. The Findings state "the beneficial interest in real property owned by a corporation is represented by the right to control the corporation." JA at 23; *see also* Transcript at 7-8, 14, 15, 17.

On its face, this statement makes no sense—how can a "beneficial interest in ***real property,***" which is what is referred to in § 60, be synonymous with the right to control the corporation that owns the property? The right to control a corporation is not any sort of interest in real property—it is a characteristic of a personal property interest in a corporation, *i.e.*, the right to vote shares of stock, which are personal property. Further, the term "beneficial use" in § 60 has absolutely nothing to do with control over the corporate owner of the property. Close attention to the language of § 60 as required by the plain meaning rule reveals that a "change in ownership" involves a transfer of a "present interest in real

property." Based on this language, it cannot be denied that the subject matter of § 60 is the transfer of real estate. Similarly, looking further into the plain language of § 60, the language "a present interest in real property, including the beneficial use thereof" makes clear that the "beneficial use" referred to is a part of [i.e., included in] the "present interest" in real property that is required to be transferred for there to be a change in ownership under § 60. As noted earlier, unlike § 64, § 60 has nothing to do with the nature of ownership interests in the **owner** of real property; **it is solely about the transfer of interests in real estate.**

The case law also establishes that the beneficial use or interest referred to by § 60 is an interest in real property and is not in any way concerned with ownership interests in the owner of the property. In *Pac. Southwest Realty Co.*, the plaintiff conveyed an office complex to an insurance company and took back a lease on the two towers that were sold. The lease provided that the plaintiff controlled 73% of the real property, one tower for 60 years with renewal options, the other for 21 months with renewal options. *Pac. Southwest Realty Co., supra* at 159. The property was reassessed based on this transaction constituting a change in ownership under § 60. *Id.* at 160. The plaintiff argued, among other things, that this transfer did not constitute a transfer of a beneficial interest in the real property under § 60. *Id.* at 163-64. This Court concluded that there had been a transfer of beneficial use of the property. The Court explains that the beneficial interest referred to in § 60 had been transferred to the insurance company since the company had exercised "its beneficial interest by exacting rent from plaintiff" and that the beneficial use of the property was represented by the right to enjoy the value of the real property. The Court further states: "The Legislature intended to find a change in ownership when the ***primary economic value of the land*** is transferred from one person or entity to another." It is, thus, plain that the beneficial interest or

ownership described in § 60 refers to the transfer of the economic interest in real property, not to the nature of the ownership interests in the owner of the property as the Appellant argues.

Further, the Appellant seems to have an erroneous view of the nature of corporations and ownership interests in corporations that led to the flawed AAB conclusion and the arguments of the Appellant that only voting stock is counted under § 62(a)(2). To understand stock interests in a corporation, it is necessary to understand that stockholders may have two kinds of interests in a corporation—voting rights as stockholders and economic rights in the corporation and its property. This idea is codified in § 400(a) of the California Corporations Code which states, in part: "A corporation may issue one or more classes or series of shares or both, with full, limited or no voting rights and with such other rights, preferences, privileges and restrictions as are stated or authorized in its articles." The plain language of this section contains no limit on how voting or other rights can be allocated to different classes or series of stock. It states that shares may have "full, limited or no voting rights" *and* other rights as are stated in a corporation's articles. The portion of the section referring to "other rights" is referring to economic rights of shareholders since these are the rights of stockholders other than voting rights. What this means is that stock may be created that has full, limited or no voting rights and such economic rights as are stated in the corporate articles. Therefore, this section permits a corporation to fashion classes or series of stock with whatever mix of voting and economic rights is decided on by the shareholders and board of directors.

That stock can be created that has no economic rights and only voting rights or just economic rights and no voting rights is well established in corporate law. *Lehrman v. Cohen* (Sup. Ct. Del. 1966) 43 Del.Ch. 222, 233 (Delaware corporations law "permits the creation of stock having

voting rights only, as well as stock having property rights only" and the Delaware corporate statute has language similar to that of California Corporations Code §400: "classes or series [of stock] may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the certificate of incorporation. . . ." Delaware General Corporation Law § 151). Thus, voting rights of a class of stock have nothing to do with the economic rights of stock—both the economic rights and voting rights of classes of stock are determined in the articles of incorporation of a corporation.

It is not unusual for corporations to issue common and preferred stock, the latter class of stock typically having economic rights superior to common stock in terms of dividends and rights in liquidation, and yet having no or limited voting rights. Harold Marsh, Jr., et al., *Marsh's California Corporation Law* (4th ed. 2019) § 7.03 [A] and [D]. It is also quite common in small or family owned businesses like Super A to have voting and nonvoting stock, both having identical economic rights: "[i]t is not uncommon these days to see family-owned businesses with two classes of stock. Typically, *one class has both voting and economic rights; the other class has only economic rights*." [emphasis added]; Davis Wright Tremaine, LLP, *Stocks in Family Business: Voting or Nonvoting*, https://www.jdsupra.com/legalnews/stocks-in-family-business-voting-or-non-56341/ (last visited Dec. 22, 2018) [emphasis added]. The point of dual class stock of this kind is to delink voting from economic rights. Megan Lisa Jones, *Start Up Opportunities* (2018) 40 Feb. Los Angeles Lawyers 25. This is often done where the owners of a corporation want to give economically valuable stock to children or employees, but want to retain voting control over the corporation—this is achieved by

creating a class of stock having only economic rights and no voting rights. Steven C. Alberty, *2 Advising Small Businesses* (2009) § 20.16. This is precisely what was done in the case of Super A as is evident from the Articles that create two classes of stock, one with voting and economic rights and one with exactly the same economic rights as the voting stock, but no voting rights. ***Since both classes of stock have identical economic rights they both have exactly the same economic interests in Super A and its property.*** This means that both classes of stock had precisely the same interest in the Properties (*i.e.* potential rights to dividends resulting from the income from Properties and in liquidation of the corporation) and since the nonvoting stock in Super A was owned by at least five people prior to the transfer of the real estate to the Trust and the Trust was owned by only two people, the proportionality exception of § 62(a)(2) does not apply and the Assessor properly reassessed the properties.

8. The Nonvoting Stock is Economically Valuable and Ruling for the Appellant Could Have Untold and Enormous Economically Negative Results

All of the arguments of the Appellant are founded on the idea that the nonvoting stock is somehow contingent and valueless—that it has no rights or whatever rights it has can be stripped away at the whim of the voting shareholders without consequence as has occurred here. There are a plethora of reasons that this idea that the nonvoting shares are valueless and somehow contingent, an essential foundation of all of the arguments made on behalf of Appellant, is incorrect. One reason the idea of the contingency of nonvoting shareholder interests is false is that that the Corporations Code explicitly states that the interests of nonvoting shareholders are not contingent and cannot be "eliminated" by voting shareholders. Corporations Code § 903(a) states:

> A proposed amendment [to articles of incorporation] must be approved by the outstanding shares (Section 152) of a class, ***whether or not such class is entitled to vote thereon*** by the provisions of the articles, if the amendment would:
>
> . . . .
>
> 2) ***Effect an exchange, reclassification, or cancellation of all or part of the shares of such class*** …
>
> . . . .
>
> (4) ***Change the rights, preferences, privileges or restrictions of the shares of such class.***

[Emphasis added].

Section 903 establishes that no act negatively affecting the rights of nonvoting stock can be approved without the affirmative vote of the nonvoting shares. It is simply indisputable statutory law that voting shareholders cannot negatively change the rights of nonvoting shares without their consent and, as a result, it is also the case that nonvoting shares, including those in Super A, are not in any sense "contingent" or without value.

As a practical matter, nonvoting shares like those of Super A are a major component of our financial system having an enormous amount of economic value and fueling funding of our financial system. The common use of nonvoting shares in closely held corporations is to give economic, but not voting rights, to family members and key employees. Preferred stock is very common in corporations, particularly large corporations, and typically has no voting rights: "[a] class of stock giving its holder a preferential claim to dividends and to corporate assets upon liquidation but that . . . [usually] carries no voting rights." Black's Law Dictionary, *Preferred Stock* (11th ed. 2019).

There is enormously valuable common stock that is nonvoting. One example of nonvoting stock is Class B stock of Viacom, which closed at $28.71 a share on September 8, 2020, with share volume of 14.503,370, resulting in daily trading of around $416,391,753. Nasdaq, *VIAC* (class B shares), https://www.nasdaq.com/market-activity/stocks/viac (last visited September 8, 2020) Another example are Class C nonvoting shares of Google closing at $1,532.39 a share on September 8, 2020, with share volume of 2,609,175, resulting in daily trading of approximately $3,998,273,678.25. Nasdaq, *GOOG (Alphabet Inc. Class C Capital Stock)*, https://www.nasdaq.com/market-activity/stocks/goog (last visited September 8, 2020).

A further example of the importance of nonvoting stock comes from the banking industry. Banks are permitted to count nonvoting shares as part of the bank's core or Tier 1 capital. Barron's Dictionary, *Preferred Stock* https://www.allbusiness.com/barrons_dictionary/dictionary-preferred-stock-4946131-1.html (last visited June 21, 2020). This quote again reveals that nonvoting stock is of substantial economic value. Indeed, as noted earlier most preferred stock is nonvoting or has limited voting rights and this stock plays a major role in our financial system. Black's Law Dictionary *Preferred Stock* (11th ed. 2019).

If this Court were to accept the arguments of the Appellant on the "nothingness" of the nonvoting stock of Super A, it would effectively be ruling that all of the nonvoting stock described above, not to mention millions and millions of nonvoting shares of other corporations, all of which are exactly the same as Super A nonvoting stock, *i.e.*, economically valuable nonvoting stock created in articles of incorporation, are utterly valueless. The economic implications of such a result are enormous. If this were the law it could result in many banks suddenly failing to meet regulatory capital requirements. But the ramifications go far beyond this—

if all of this stock were valueless and contingent as is argued by the Appellant, it would not be an exaggeration to fear that the financial system of the United States, if not the global financial system, would collapse.

All of the arguments that have been made on behalf of the Trust are ultimately based on the premise that the nonvoting shares have no value and are contingent. This is not, however, the law; nonvoting stock is valuable, non-contingent and a foundational pillar of our financial system.

9. Analyzing Proportionality is Simple following the Plain Meaning of § 62(a)(2) while Impossible Using a "Voting Stock" Rule

The Dissenting Opinion of Justice Baker (the "Dissent), the Appellant and the BOE Brief argue that evaluation of the proportional ownership interests of voting stock is relatively straightforward and ascertainable while following the plain meaning of the statute requiring "stock" to be all forms of stock would cause administrative difficulties. Dissent at 2; Opening Brief at 44-45; BOE Brief at 20. The truth, however, is the opposite.

Application of § 62(a)(2) in the present case could not be simpler. There are 100,000 shares of voting and 100,000 shares of nonvoting stock and each share of stock, whether voting or nonvoting, has the same economic rights as every other share of stock under the Amended Articles of Incorporation of Super A. AR at 80, 92, 106 and 176. Therefore, to apply § 62(a)(2) you simply determine how many shares of stock, whether voting or nonvoting, are owned by each shareholder and use this to determine the percentage of stock (the economic interest) owned by each shareholder. Then to apply § 62(a)(2) proportionality, you determine if the percentage of ownership of each shareholder of Super A is identical to their percentage of ownership of the entity to which the real property was transferred. In the present case for instance, there is evidence in the record that 92.8% of

Super A stock, including both voting and nonvoting stock, was owned by Louis Amen (likely this actually meant the Trust) and the remainder by at least four other parties.[1] *See* A.R. at 137-44; Opening Brief at 2, JA at 71. So, if before and after the transfer of the real estate the Trust (or Louis Amen depending on the actual facts) owned 92.8% of the entity owning the real estate and the remaining owners of the transferring entity owned precisely the same percentage of the transferee entity as they did of the transferor, then the exclusion of § 62(a)(2) would apply. As a result, there is not the slightest difficulty applying § 62(a)(2) to this case—simply determine what percentage of the total stock (voting and nonvoting) of Super A each shareholder owned before the transfer and determine if after the transfer these shareholders owned the identical percentage of the transferee entity. Thus, all that is necessary is to determine who owns the economically valuable interests of the entities owning the transferred real property before and after the transfer of the real property. In the present case there was no proportionality—before the transfer, the real property was owned by an entity having at least five owners of the economically valuable stock of Super A and after the transfer the real estate was owned by an entity having two owners.

On the other hand, using voting stock to measure proportionality under § 62(a)(2) would be entirely unworkable. Voting rights can be divided up among different classes of stock, stock can be created having no economic rights and only voting rights, and stock can be created having voting rights only on certain issues. Corporations Code § 400(a) ("A corporation may issue one or more classes or series of shares or both, with full, limited or no voting rights and with such other rights, preferences,

[1] Whether these percentages are accurate is irrelevant for present purposes—this is just an example of how the proportionality calculation would work in the present circumstances.

privileges and restrictions as are stated or authorized in its articles."); Ronald C. Lease, *The Market Value of Differential Voting Rights in Closely held Corporations*, 57 Journal of Business 443, 448, 451(discussing differential voting rights in classes of stock and stock having voting rights in the event of takeover attempts); Securities Exchange Commission, *Description of Capital Stock*, https://www.sec.gov/Archives/edgar/data/1393818/000119312519186655/d27713dex991.htm (last visited August 26, 2020) (describing a particular class voting structure where one class of stock had a right to vote separately from another class of stock on amendments to the certificate of incorporation relating to par value of stock.)

What this means is that a corporation could have the following voting structure: Class A has 10 votes per share, Class B has 1 vote per share and Class C has the right to vote only on mergers, tender offers, or sales of all or substantially all assets of the corporation and Class C must approve any such transaction for the transaction to be valid. How would proportionality be determined based on these voting rights? It is, in fact, not possible since voting rights are divided not just in terms of votes per share, but based on subject matter. Class C has the right to vote only on certain types of transactions before the transaction can be valid. What would be the "proportion" of voting rights attributable to that stock? The answer is that it cannot be determined.

This example can be made even more unworkable. California Corporations Code allows debt instruments to have voting rights. Corporations Code § 204(a)(7). So, add to the example an issue of bonds with voting rights. Now how "straightforward" is measuring proportionality using voting rights? The bonds are not even "stock" under § 62(a)(2). So how is that handled? Again using "voting stock" leads to insoluble difficulties and cannot be what the legislature intended. Instead, what the

plain meaning dictates—that all stock be considered—is the correct and intended result. The legislature presumably knew the law of corporations and never would have drafted § 62(a)(2) to cause these unworkable results.

Thus, it is not viewing "stock" as being a general term representing all stock that causes difficulties in administering § 62(a)(2) proportionality, it is using "voting stock" that can cause insuperable problems.

10. The Example Propounded by Appellant and the BOE Shows that the Court of Appeal Decision is Correct

The BOE Brief provides an example, adopted by the Appellant (Opening Brief at 44), that it claims shows some difficulty in applying the rule demanded by the plain meaning of the statute. The example does no such thing and actually shows how well the Respondent's view of "stock" works under § 62(a)(2). The example provides:

- Step 1: A owns 100 shares of a corporation. 400 shares of nonvoting stock of the corporation are purchased by B. All of the shares of stock have equal economic rights in the corporation. BOE Brief at 21.

- Step 2: The Corporation is dissolved and the real property is distributed to A and B with A owning 20% and B 80%. BOE Brief at 22.

The BOE states that there would be no change in ownership in Respondent's view because proportional ownership is the same at the end of step 2, but there would be a change in ownership under their theory because A originally "owned" the real property through the voting stock and both A and B owned the property after step 2 of the transaction resulting in a lack of proportionality. That this transaction would and should qualify under the § 62(a)(2) proportionality rule is correct—there is proportionality of ownership of the property under § 62(a)(2). Before the

second transaction the property was owned 20% by A and 80% by B based on the economic interests of the parties under *Pac. Southwest, supra*. After the transaction, the ownership interests in the real property are exactly the same and, therefore, § 62(a)(2) proportionality applies. This example is substantively (other than the proportional interests of shareholders in this example) the same as the instant case where the Superior Court correctly applied § 62(a)(2).

The BOE, with no explanation, argues that this result is incorrect and that § 62(a)(2) should not apply here. No support for this view is supplied and the BOE apparently just assumes that its claim is accurate. It is not; § 62(a)(2) properly applies to the BOE example. The only explanation for the error by the BOE is that they ignore the general rule set forth in § 64(a) that the purchase or sale of interests in a corporation do not result in a transfer of real property. Since it is clear that the proportional interests of the parties in the example are precisely the same before and after the transfer, the only explanation for their position is that somehow the initial purchase of the nonvoting stock resulted in a transfer. This is not the law under § 64(a).

The BOE also claims there is some "gamesmanship" involved in this example but provides no explanation for this statement. In the example of the BOE, B purchased for valid consideration an 80% economic interest in the corporation and, indirectly, the real property, with A retaining a 20% interest in the corporation and, indirectly, the real property. The property subsequently was distributed through dissolution in exactly the same proportions of ownership. This is exactly what should occur as a matter of law under corporate law and results in complete proportionality of ownership under § 62(a)(2) before and after the second step of the example. Moreover, that this result is correct is clear from the fact that this result follows directly from the law of corporations—the proportional ownership interests dictated by corporate law are properly analyzed and implemented

in applying § 62(a)(2) to the dissolution—each party gets exactly the proportion of ownership in the real property they had in the corporation. There is no gamesmanship involved—exactly what corporate and property tax law intend occurs in this example.

As a final problem with this example, if proportionality under § 62(a)(2) is determined solely by the rules of § 64 there is no way to determine proportionality here since section 64 deals only with juridical entities and provides no rule whatsoever relating to transfers to individuals. As a result, under the theory propounded by the Appellant there is no rule to apply to this example under § 62(a)(2). This cannot be the law.

B. THE COURT OF APPEAL CORRECTLY AFFIRMED THE TRIAL COURT

1. The Court of Appeal Properly Determined that § 62(a)(2) is not Ambiguous

The Court of Appeal correctly found that § 62(a)(2) is not ambiguous and disposed of arguments made in the Appellant's and amicus briefs as follows:

- To arguments that there were instances in the R&TC and Property Tax Rules of use of the term "stock" to mean "voting stock" it found that the examples given by the Appellants were cases of proper use of the general term "stock" and the more specific term "voting stock" or that the two terms were simply used for grammatical purposes. Opinion at 8-13. Moreover the Court found that the differentiated use of the terms in the statute illustrated that the Legislature intended the terms to have different meanings and deliberately used the terms distinctly. Opinion at 11-12.

- The Court also notes that in R&TC § 23361 the legislature expressly distinguished "stock" and "voting stock." Opinion at 12, note 8. *See also* Section IV.A. of this brief.

- The argument that the existence of many subcategories of "stock" shows ambiguity was appropriately rejected. This simply reaffirms the Court's interpretation of "stock" as meaning all classes of stock. Opinion at 12-13.

2. The Court of Appeal Properly Applied Rules of Statutory Interpretation

The Court of Appeal properly followed rules of statutory interpretation leading to its conclusion that "stock" in § 62(a)(2) means what it says—"all stock." The Court found that there was no ambiguity in the statute after meticulously analyzing and rejecting Appellant's and Amici arguments to the contrary. Opinion at 7-14. The Court then went on to correctly apply the plain meaning rule—the ordinary meaning of "stock" is all forms of stock, not just voting stock. Opinion at 6, 10-11. In coming to this conclusion, the Court notes that the legislature has made clear throughout the R&TC that it knew how to use and distinguish "stock" from "voting stock" and other subcategories of the term "stock." Opinion at 11. Far from following an "oversimplified interpretative approach" as claimed by the Dissent, the Opinion carefully analyzes and applies statutory interpretive provisions having been part of our jurisprudence for over 200 years. Dissent at 2.

3. The Court of Appeal Correctly Determined that Section 64 is not Properly Applied in the Case

The Court below determined that the authorities at the foundation of Appellant's arguments, *i.e.*, authorities pertaining to § 64 are not applicable here. Opinion at 15-16. The Court determined that §§ 62(a)(2) and 64 deal with totally different issues—the former with changes in ownership by virtue of transfer of real estate and the latter with such changes resulting from transfers of control in legal entities. Moreover, the Court also correctly relies on this Court's ruling in *Pacific Southwest* in determining

that under § 60 and § 62(a)(2) proportionality under the latter section must be determined looking at the economic interests of the parties in the property and in this case the economic interests before and after the transfer were not proportional. *Pacific Southwest, supra* at 162

C. SPECIFIC ARGUMENTS RAISED IN APPELLANTS OPENING BRIEF

The Appellant has raised several new arguments and adopted some arguments of Amici in its Opening Brief which are addressed below.

1. The Court of Appeal Properly Analyzed and Rejected "Administrative Guidance"

Section V.A. of the Opening Brief argues that the panel below did not give sufficient weight and deference to the BOE's administrative guidance. The simple answer to this assertion is that it would have been inappropriate for the Court to consider extrinsic sources of any kind since the plain meaning of § 62(a)(2) resolves this dispute. But the claim is also factually incorrect. The panel first considered and rejected that Appellant's argument that Property Tax Rule 462.240, a BOE regulation, applies to this dispute. Next, the panel, like the Superior Court, decided that the Assessor's Handbook, Letters to the Assessor and BOE legal opinions Appellant relies on are "not particularly helpful" because none of them address "the situation in which both voting and nonvoting stock are at play in determining ownership under section 62(a)(2)." Opinion at 13, note 10. But the panel then went on to consider and analyze the BOE Brief, even though it is not a published legal opinion (and obviously not a *contemporaneous* interpretation of a statute). The Opinion noted that the BOE's position is premised on the assumption that section 62 (a)(2) is ambiguous because "there are many subcategories of stock" identified in several R&TC provisions. The Opinion concluded that the several

subcategories actually refuted the BOE's argument: "(T)he statutory references to these various classes of stock reaffirms our interpretation of 'stock" in section 62(a)(2) as meaning all classes of stock, not just voting stock." Opinion at 14. In footnote 11, on page 14 of the Opinion, the Court noted the BOE's role in property tax administration and its amicus brief, then pointed out that the California Assessors' Association, a statewide organization, filed a brief which disagreed, and then concluded that: "[u]ltimately, it is this Court's task to interpret the statute." The Opinion followed with a quote from *Yamaha*, the case Appellant relies on, that courts must respect the agency's interpretation which is "one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. **It may sometimes be of little worth."** [emphasis added]. Opinion at 14, note 11.The panel did the sort of review that *Yamaha* requires, plus more, and decided that the BOE's opinion was incorrect.

2. There are no "Settled Expectations" and Replacing "Stock" with "Voting Stock" Could Create Enormous Difficulties in Administration

The Appellant and the Dissent argue that there could be administrative difficulties and a patchwork of different rules applied under § 62(a) (2) by different counties if the plain meaning of that subsection is followed. There is absolutely nothing in the record on this issue as is admitted by counsel for Appellant, Colin Fraser (Transcript at 10, 15), and this issue was not raised until this case was before the Court of Appeal. No evidence was presented that other counties interpret § 62(a) (2) differently than does the County of Los Angeles. Indeed, the Amicus briefing by the CSAC and CAA, both of which represent all 58 counties in the state, does not indicate that there would be any such patchwork or administrative

difficulties, and they are the entities that administer property taxation in the counties.

The only source Respondent can find for these assertions of upsetting settled expectations or administrative difficulties is an unsworn statement by an attorney for Appellant before the Court of Appeal in response to a question by Justice Baker:

> Justice Baker: Mr. Kelch, let me take advantage of your expertise as relates to the state BOE materials. If this decision comes out in your favor, will we be making the Los Angeles County Assessor an outlier as compared to the rest of the state. In other words, what I want to know is are all the other assessors and all the other counties in this state following the state BOE guidance as interpreted by the other side such that you're essentially asking us to create a one-off here for Los Angeles County.
>
> Kelch: No, the, okay, the guidance that is being referred to by Appellant, it has nothing whatever to do with this particular case.
>
> Judge Moore: That's not the question Justice Baker asked? He's asking as a practical sense, what are other assessors doing?
>
> Kelch: Your honors, I don't know what position they're taking on this …
>
> . . . .
>
> Fraser: Thank you, your honor. I'll be brief. I'll address five specific points. How are assessors acting throughout the state? Except for the Los Angeles Assessor, they're following the state BOE's guidance. That's what it's there for. I've spoken to their legal counsel about this.
>
> Judge Moore: Anything on the record?
>
> Fraser: Nothing in the record. § 64. Opposing counsel argues that it's irrelevant here.
>
> Transcript at 10, 15.

It is odd that Mr. Fraser asserts that all other assessors (except the Los Angeles County Assessor) are following the BOE's guidance, yet the CSAC and CAA are supporting the Los Angeles County Assessor herein. In any event, the entire argument from "settled expectations," "patchwork" results or administrative issues is one that was not raised until this case was appealed (the BOE Brief does refer to possible administrative difficulties, but this is in the course of the appeal) and is wholly unsupported in the record. Therefore, it is not appropriately considered in deciding this case. Further, even if it were appropriate to consider these issues, it has been established that neither administrative difficulties nor unsettled expectations will result from a plain meaning interpretation of § 62(a)(2) as established in Section IV.A. and supported by the CSAC and CAA Brief.

V.

CONCLUSION

The Court of Appeal thoroughly analyzed the issues in this case and based on analysis of established principles of statutory interpretation, relevant case law and advisory guidance correctly concluded that the proportionality exemption of § 62(a)(2) does not apply in this case. For all of the foregoing reasons this Court should affirm the well-reasoned opinion of the Court of Appeal.

Dated: May 14, 2021

Respectfully submitted,

/s/ Michael K. Slattery
Michael K. Slattery
Thomas G. Kelch
Attorneys for Plaintiff and Respondent, Jeffrey Prang

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.504(d)(1) of the California Rules of Court, the enclosed Answer Brief on the Merits is produced using 13-point or greater Roman type, including footnotes, and contains 12,452 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: May 14, 2021 Respectfully submitted,

/s/ Michael K. Slattery
Michael K. Slattery
Thomas G. Kelch
Attorneys for Plaintiff and Respondent, Jeffrey Prang

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County of Los Angeles)
)

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SERVICE LIST

Colin W. Fraser Cris O'Neall Greenberg Traurig, LLP 18565 Jamboree Road, Suite 500 Irvine, CA 92612 frasercw@gtlaw.com	Attorneys for Real Party in Interest and Appellant Amen Family 1990 Revocable Trust, Real Party in Interest
Thomas Parker 648 Kenneth Hahn Hall of Administration 500 W. Temple Street Los Angeles, CA 90012-2713 tparker@counsel.lacounty.gov	Attorneys for Assessment Appeals Board No. 1
Rodrigo A. Castro-Silva Peter M. Bollinger Richard Girgado Justin Y. Kim 648 Kenneth Hahn Hall of Administration 500 W. Temple Street Los Angeles, CA 90012-2713 rgirgado@counsel.lacounty.gov	Attorneys for Petitioner and Respondent Jeffrey Prang, Los Angeles County Assessor
Jennifer Bacon Henning California State Association of Counties 1100 K Street, Suite 101 Sacramento, CA 95814-3941 jhenning@counties.org Don H. Gaekle, President California Assessors' Association Stanislaus County Assessor 1010 10th Street, Suite 2400 Modesto, CA 95354 gaekled@stancounty.com	Attorneys for Amicus Curiae

California State Board of Equalization 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Heather.Hoesterey@doj.ca.gov	Attorneys for Amicus Curiae
Karen W. Yiu Deputy Attorney General Office of the Attorney General, 1515 Clay Street, 20th Floor, Oakland, CA 94612-1492 karen.yiu@doj.ca.gov	Attorneys for California State Board of Equalization
State Board of Equalization Property Tax Department 450 N. Street, MIC 121 P.O. Box 942879 Sacramento, CA 94279-0121 Henry.Nanjo@boe.ca.gov	
Jozel Brunett Chief Counsel, Franchise Tax Board Legal Division PO Box 1720 Rancho Cordova, CA 95741-1720 jozel.brunett@ftb.ca.gov	Attorneys for Proposed Amicus Curiae
Charles Moll, III McDermott Will & Emery 415 Mission Street, Suite 5600 San Francisco, CA 94105-2533 cmoll@mwe.com	Attorneys for Amicus Curiae

Gregory Broege Christopher J. Matarese Richard J. Ayoob Ajalat, Polley, Ayoob & Matarese 500 N. Brand Blvd., Suite 1870 Glendale, CA 91203 greg@apataxlaw.com	Attorneys for Amicus Curiae
Clerk of the Court of Appeal, 2nd District, Division 5 Ronald Reagan State Building 300 S. Spring Street, 2nd Floor, North Tower Los Angeles, CA 90013	

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Michael Slattery Lamb & Kawakami LLP 1073036	mslattery@lkfirm.com	e-Serve	5/14/2021 10:29:53 AM
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Jennifer Bacon Henning 193915	jhenning@counties.org	e-Serve	5/14/2021 10:29:53 AM
Don H. Gaekle	gaekled@stancounty.com	e-Serve	5/14/2021 10:29:53 AM
Heather Hoesterey 201254	Heather.Hoesterey@doj.ca.gov	e-Serve	5/14/2021 10:29:53 AM
Karen W. Yiu 230710	karen.yiu@doj.ca.gov	e-Serve	5/14/2021 10:29:53 AM
Henry Nanjo	Henry.Nanjo@boe.ca.gov	e-Serve	5/14/2021 10:29:53 AM
Jozel Brunett	jozel.brunett@ftb.ca.gov	e-	5/14/2021 10:29:53

		Serve	AM
Charles Moll, III 98872	cmoll@mwe.com	e-Serve	5/14/2021 10:29:53 AM
Gregory Broege 258501	greg@apataxlaw.com	e-Serve	5/14/2021 10:29:53 AM

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Slattery, Michael (1073036)

Last Name, First Name (PNum)

Lamb & Kawakami

Law Firm