

Case No.: S266590

IN THE SUPREME COURT OF CALIFORNIA

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

Appellant

v.

JEFFREY PRANG, Los Angeles County Assessor

Respondent

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

APPELLANT'S REPLY IN SUPPORT OF OPENING BRIEF

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I. Introduction

The Court of Appeal erred in failing to apply the test established in *Yamaha Corp. of America v. State Board of Equalization* (“*Yamaha I*”) (1998) 19 Cal.4th 1, 10 in determining whether to defer to the State Board of Equalization’s (“State Board”) quasi-legislative regulation and six agency interpretations that uniformly define the standard for identifying changes in ownership (*i.e.*, “ownership interests”) using voting stock alone. Respondent argues that the Court of Appeal did not need to conduct the *Yamaha I* analysis because the relevant statute, Revenue and Taxation Code section 62, subdivision (a)(2) (“Section 62(a)(2)”), includes the term “stock” in a list of examples of corporate control and, according to the Respondent, thus unambiguously indicates that all forms of stock are used in measuring “ownership interests.” Respondent is incorrect for three reasons.

First, Respondent does not contest that State Board Rule 462.180 (“Rule 462.180”) is quasi-legislative and entitled to the “dignity of statutes” or that the State Board’s agency interpretations are entitled to “great weight” because the “situational” factors in *Yamaha I* are met here. (*Yamaha I*, 19 Cal.4th at 10, 12.) Nor does Respondent offer any authority that *Yamaha I* is ignored where, as here, the relevant state agency has established the meaning of a statutory standard that the Legislature delegated to “the contemporaneous construction . . . of the administrative agency.” (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245.)

Second, and more fundamentally, Respondent and the Court of Appeal overlook the standard of “ownership interests” that is used throughout the framework to identify changes in ownership and instead focus on the term “stock” in Section 62(a)(2) to coin a new definition of ownership interests that is unique to Section 62(a)(2). The term “stock” is included in a subordinate clause of Section 62(a)(2) to distinguish among the various ways control is exerted over a corporation (*i.e.*, stock versus an executive position or membership on the board of directors), and not as the standard for identifying a change in ownership. The State Board has recognized this: “Control of a corporation exists, of course, at a variety of levels” including “chief executive officers” and “the corporation’s board of directors,” but “the ultimate control of the corporation rests with its stockholders, and this is the level of control referred to in subdivision (c) [of Revenue and Taxation Code section 64 (‘Section 64’)]” by referencing “voting stock.” (State Board Legal Opinion dated February 20, 1985 at p. 2, attached as Ex. 1 to Appellant’s concurrently filed Motion for Judicial Notice (“MJN”).)

Third, until the Court of Appeal’s decision in this case, corporate “ownership interests” have always been measured using voting stock alone throughout the statutory framework governing changes in ownership, including in Section 62(a)(2), Section 64(c), and the “original co-owners” exception in Section 64(d). Respondent claims Section 64 “is totally irrelevant here” (Answering Brief (“AB”) at p. 28), but this ignores a key similarity between Section 62(a)(2), Section 64(c), and Section

64(d): they all measure corporate “ownership interests” in determining if a change in ownership occurs. There is no basis to create one definition of corporate ownership interests that applies when a corporate buyer and seller of *realty* have the same “ownership interests” (under Section 62(a)(2)) and another definition that applies when a buyer of the same “ownership interests” obtains sufficient control to generate a change in ownership (under Sections 64(c) or 64(d)).

The State Board’s quasi-legislative regulation and agency interpretations are dispositive here because they uniformly define corporate “ownership interests” using voting stock alone. Respondent attempts to distinguish this authority as “irrelevant” because it “does not evaluate a situation where the corporation has both voting and nonvoting shares.” (AB at p. 26.) However, the State Board resolved any confusion by intervening in this case to explain that it “consistently interpreted ‘stock’ in Section 62(a)(2) to mean ‘voting stock’” (Ex. B at p. 39)¹ and it strains credulity to believe that the State Board focused solely on voting stock and entirely omitted mention of non-voting stock in Rule 462.180 and six agency interpretations issued over decades if non-voting stock were at all relevant to measuring corporate “ownership interests.” Respondent’s position also ignores the many legal conclusions reached in the State Board guidance that state, “[f]or corporations, the ownership interests for measuring

¹ The references to exhibits in this brief are to the exhibits attached to Appellant’s Opening Brief.

changes in control and *proportionality of ownership* are represented by voting stock” (Ex. F at p. 79),² which would be erroneous if the analysis differed for companies with voting and non-voting stock.

Finally, Respondent mischaracterizes Appellant’s position and misapprehends existing law to claim that “the financial system of the United States, if not the global financial system, would collapse” if the Court confirms the State Board’s longstanding interpretation of Section 62(a)(2). (AB at p. 39.) Appellant is not arguing that non-voting stock is “valueless and contingent,” as Respondent claims (*id.*), but instead that corporate ownership interests are measured using voting stock alone throughout the statutory framework and State Board guidance. This is a matter of statutory interpretation, in which Section 62(a)(2) should be harmonized with the framework, and has nothing to do with the value of non-voting stock. Also, it will not “fundamentally alter” the law to adhere to the interpretation used by the State Board for forty years. (AB at p. 11.)

Thus, the Court should reverse the decision of the Court of Appeal and hold that corporate “ownership interests” in Section 62(a)(2) are measured by voting stock alone, consistent with the State Board’s quasi-legislative rule and agency interpretations.

² All emphasis is added unless otherwise indicated.

II. Courts Must Afford the “Dignity of Statutes” to the State Board’s Quasi-Legislative Rule and “Great Weight” to its Agency Interpretations that Corporate “Ownership Interests” are Measured by Voting Stock Alone

Respondent claims that the Court must entirely ignore the longstanding regulation and interpretive guidance of the government agency tasked with creating, interpreting, and enforcing the change in ownership framework because “the plain meaning of [Section 62(a)(2)] uses the term ‘stock’ to mean all forms of stock.” (AB at p. 11.) Respondent thus seeks to evade the standards established by this Court in *Yamaha I* for deferring to quasi-legislative rules and agency interpretations.

“Quasi-legislative rules have the *dignity of statutes*” (*Yamaha I*, 19 Cal.4th at p. 10), and can only be discarded if “the classification is ‘arbitrary, capricious, or [without] reasonable or rational basis’” (*id.* at p. 11, quoting *Wallace Berrie and Co. v. State Board of Equalization* (1985) 40 Cal.3d 60, 65). At the other end of the spectrum, “agency interpretations” are entitled to “great weight” (*Yamaha I*, 19 Cal.4th at p. 12) and “will not be overturned unless clearly erroneous” (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1014) where, as here, there has been “careful consideration by senior agency officials,” the agency “consistently maintained the interpretation,” the interpretation was “contemporaneous with the . . . statute being interpreted,” and the agency followed the Administrative Procedures Act. (*Yamaha I*, 19 Cal.4th at p. 12-13.)

The Court is presented with two issues under *Yamaha I*: (i) whether the State Board’s definition of “ownership interests” in the quasi-legislative Rule 462.180 governing Revenue and taxation Code section 62 (“Section 62”) and section 64 (“Section 64”) is “arbitrary, capricious, or [without] reasonable or rational basis” (*Yamaha I*, 19 Cal.4th at p. 11); and (ii) whether the State Board’s longstanding, consistent, and contemporaneous interpretation that corporate “ownership interests” in Section 62(a)(2) are measured using voting stock alone is entitled to “great weight” where all of *Yamaha I*’s “situational” factors are established.

Respondent does not contest that Rule 462.180 is a quasi-legislative regulation entitled to the “dignity of statutes” or that the State Board’s Assessors’ Handbook, legal opinions, and letters to assessors are entitled to “great weight” because all the *Yamaha I* situational factors are met here. Nor does Respondent cite a case stating that *Yamaha I* may be ignored where, as here, the relevant state agency has established the meaning of a statutory standard that the Legislature delegated to “the contemporaneous construction . . . of the administrative agenc[y].” (*Amador Valley*, 22 Cal.3d at p. 245.) The cases Respondent cites in support of the plain meaning rule do not involve *Yamaha I* or the analysis of quasi-legislative regulations or agency interpretations, like those at issue here. (See *Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378, 1381-1382 [interpreting the government code to determine if a firefighter has the right to review and respond to negative comments in a

supervisor’s daily log, without mentioning *Yamaha I* or relevant agency regulations or interpretations]; *River Garden Retirement Home v. Franchise Tax Bd.* (2010) 186 Cal.App.4th 922, 942 [refusing to consider legislative history in interpreting unambiguous tax statute, without mentioning *Yamaha I* or relevant agency regulations or interpretations].) And the controlling decisions of this Court that establish and apply the standard of deference to government agencies—*Yamaha I* and *Ramirez v. Yosemite Water Co. Inc.* (1999) 20 Cal.4th 785—do not mention the plain meaning rule in deferring to a State Board legal opinion (in *Yamaha I*)³ or the Industrial Welfare Commission’s quasi-legislative regulation (in *Ramirez*).

A court must “independently judge the text of the statute, taking into account and respecting the agency’s interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation.” (*Yamaha I*, 19 Cal.4th at p. 1034.)

Here, however, the Court of Appeal did not find that the State Board’s quasi-legislative regulation was “arbitrary, capricious, or [without] reasonable or rational basis” (*id.* at p. 11) or that its “long-standing, consistent” agency interpretations were “clearly erroneous,” as *Yamaha I* requires when a court decides to depart from the “administrative construction of a

³ After *Yamaha I*, on remand, the court deferred to a State Board annotation (legal opinion), holding it was entitled to “great weight,” also without mentioning the plain meaning rule or whether the statute was ambiguous. (*Yamaha Corp. of Am. v. State Bd. of Equalization* (2000) 73 Cal.App.4th 338, 354.)

statute by those charged with its administration” (*id.* at p. 21). The State Board’s regulation and legal conclusions remain good law (apparently) even after the Court of Appeals’ decision because it did not conduct a *Yamaha I* analysis and, as such, they will continue serving as guidance for counties in taxpayers.

To prevent confusion like this from arising, the Court should hold that the Court of Appeal erred in failing to conduct the analysis required under *Yamaha I* where the State Board had established a longstanding, uniform definition of the statutory standard, “ownership interests,” in the framework governing changes in ownership.

III. The Court of Appeal and Respondent Overlook the Standard to Measure Changes in Ownership by Focusing on “Stock” rather than on the Key Phrase “Ownership Interests” in the Statutory Framework

The root cause of the Court of Appeal’s error and Respondent’s incorrect position here is that they both overlook the standard for identifying changes in ownership—*i.e.*, “ownership interests”—in favor of the term “stock,” which is not the standard and is found in a subordinate clause of Section 62(a)(2) listing non-exclusive, general examples of ownership interests in a variety of different legal entities. Section 62(a)(2) unambiguously identifies changes in ownership using the same standard, “ownership interests,” that is used throughout the

framework and is always measured for corporations using voting stock alone.⁴

The correct standard is clear from the statute. Section 62(a)(2) determines whether a transfer of real estate is a change in ownership by measuring whether “the proportional *ownership interests* of the transferors and transferees . . . remain the same after the transfer.” The statute provides several examples of ownership interests, explaining that they may be “represented by stock, partnership interest, or otherwise.” However, “stock” is included in a subordinate clause that lists general examples of ownership interests and ends with the open-ended phrase “or otherwise,” indicating that these are non-exclusive examples and are not the standard for identifying a change in ownership. The examples are included because Section 62(a)(2) identifies a variety of legal entities that might be involved in “[a]ny transfer . . . between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy.” Section 64(c) employs the same pattern, listing a variety of legal forms (*i.e.*, “a corporation, partnership, limited liability company, other

⁴ Respondent mistakenly contends that Appellant is relying on several statutes and regulations to demonstrate “ambiguity” (see AB at pp. 15-16), but several of these authorities are not even mentioned in the Opening Brief or Petition for Review (*i.e.*, Property Tax Rule 462.240 and Section 64(b)) and the other (*i.e.*, Section 64(c)(1)) is used to show that “ownership interests” uniformly means voting stock for corporations in the change in ownership framework, not that “stock” in Section 62(a)(2) is ambiguous. This portion of Respondent’s brief appears to be taken from lower court proceedings.

legal entity, or any other person”) followed by a list of examples of legal interests (*i.e.*, “corporate stock, partnership, or limited liability company interest”). This pattern suggests interpreting the statutes together, not in isolation, and giving “ownership interests” a uniform meaning.

Like the Respondent, however, the majority opinion below did not address the phrase “ownership interests” or its uniform meaning in the statutory framework governing changes in ownership (as discussed in Section IV below). In doing so, the Court of Appeal *coined a new standard* that gives different meanings to the same phrase (“ownership interests”) in the same statutory framework.

The Court of Appeal’s conclusion is not required by the text of Section 62(a)(2), which indicates that corporate “ownership interests” are measured using “stock,” as opposed to some other indicia of corporate control (*i.e.*, an executive position or membership on the board of directors). But the reference to “stock” does not require ownership interests to be represented by “all the stock of the corporation.” The State Board has recognized that “stock” in Section 64(c) is intended to distinguish among the various ways control is exerted over a corporation:

Control of a corporation exists, of course, at a variety of levels. For example, the chief executive officers of a corporation normally controls [*sic*] the day-to-day operation and policies of the company. But that officer serves at the pleasure of the corporation’s board of directors. Thus, the board of directors, or its majority, has the

power to control the corporation through the chief executive officer. It is well recognized, however, that the ultimate control of the corporation rests with its stockholders, and this is the level of control referred to in subdivision (c).

(MJN Ex. 1 at p. 2.)

The Court of Appeal’s isolated interpretation of Section 62(a)(2) ignores the rule that statutes must be read in context to “harmonize” the statutory framework (*Lungren v. Deukmejian*, 45 Cal.3d 730, 735) and the Legislature’s instruction to courts and the State Board to apply the change in ownership statutes with “uniformity and consistency” (*Pacific Southwest*, 1 Cal.4th at pp. 161-162; see also Ex. A at pp. 24-25, Baker J. diss. opn. [“The Legislature has stated a preference for uniformity in the administration of property tax assessment practices throughout the state—with the Board specifically charged with achieving that end.”].) The Task Force that implemented Proposition 13’s change in ownership framework made a specific recommendation to “identify[] the *primary owner* [of realty] so that only a transfer by him will be a change in ownership.” (*Dyanlyn Two v. County of Orange* (2015) 234 Cal.App.4th 800, 816). This is the opposite of the result reached by the Court of Appeal here in creating multiple “primary owners” of property depending on how it is transferred: the voting stockholders are primary holders for ownership changes resulting from stock transfers but all stockholders are primary owners for ownership changes resulting from real estate transfers.

Thus, Appellant does not contend, as Respondent claims, that “the term ‘stock’ in [Section 62(a)(2)] means ‘voting stock.’” (AB at p. 11; see also *id.* at p. 12.) Nor is Respondent correct that giving “ownership interests” a single meaning in the framework “is the definition of ‘disharmony.’” (AB at p. 29.) Appellant’s position is that corporate “ownership interests” are the standard used throughout the framework to identify changes in ownership and the phrase should have the same meaning throughout.

IV. The Phrase “Ownership Interests” is Measured Using Voting Stock Alone Throughout the Change in Ownership Statutory Framework, including in Section 62(a)(2)

Corporate “ownership interests” are measured using voting stock alone throughout the statutory scheme governing changes in ownership, so Section 62(a)(2) should use the same interpretation. Under Section 64(c), the corporate “ownership interest” used to determine a change in ownership is “ownership or control of . . . voting stock.” Similarly, the “original co-owners” exception in Section 64(d) uses voting stock to measure the “ownership interests” that were originally excluded from being a change in ownership under Section 62(a)(2) in order to determine if subsequent transfers of the same “ownership interests” produce a change in ownership. As the State Board explained: “If Section 62(a)(2) means ‘all stock,’ the exclusion under Section 62(a)(2) would be measured under one standard—all stock—but under a different standard—voting stock—to measure when the exclusion ends under Section 64(d).” (Ex. B at p. 45; accord Brief of *Amicus*

Curiae Charles J. Moll at p. 15; Brief of *Amicus Curiae* Ajalat, Polley, Ayoob & Matarese at p. 16.)

Respondent claims that the “original co-owners” exception in Section 64(d) does not create a conflict with Section 62(a)(2) because “[t]his argument turns on the false assumption that § 64(d) must be talking about voting shares” when the “plain language of [Section 64(d) purportedly] compels the opposite result.” (AB at 26.) However, Rule 462.180 governs both Section 62 and Section 64, and it defines “ownership interests” and “shares” in Section 64(d) to mean “voting shares.”⁵ The State Board has explained multiple times that “the term ‘ownership interests’ used in section 62 and 64 . . . is defined in Property Tax Rule 462.180(d)(1) . . . which . . . defines ‘ownership interests’ as the *voting stock* in a corporation” (Ex. G at 85) and that “Section 64(d) provides that when *voting stock* . . . [is] transferred by any of the original co-owners . . . the real property . . . will be reassessed” (Ex. H at p. 93). “Ownership interests” has the same meaning in both Section 62 and Section 64. This is consistent with former Rule 462, which was enacted contemporaneously

⁵ See Cal. Code Regs., tit. 18, § 462.180, subs. (d)(2) [“When . . . real property is transferred . . . and the transfer is excluded from change in ownership under Revenue and Taxation Code section 62, subdivision (a)(2), and the ‘original co-owners’ subsequently transfer . . . more than 50 percent of the . . . *ownership interests*, as defined in subdivision (d)(1) of this rule . . . there is a change in ownership.”]; *id.* (d)(1) [“When any corporation . . . obtains . . . direct or indirect ownership of control of more than 50 percent of the *voting stock* in any corporation” the “transfer[] constitute[s] [a] change in ownership”]

with the change in ownership framework (Opening Brief at p. 17), and provided that a change in ownership occurs “[w]hen any corporation . . . or any person obtains direct or indirect ownership or control of more than 50 percent of the *voting stock* in any corporation.” (Former tit.18, § 462, subd. (j)(4)(B).)

Respondent also claims its position is supported because “the legislature has had many opportunities to change the term ‘stock’ to ‘voting stock’” in Section 62(a)(2) but “did not do so.” (AB at p. 20.) Respondent has it backwards. “Lawmakers are presumed to be aware of long-standing administrative practice and, thus, the . . . *the failure to substantially modify a provision, is a strong indication the administrative practice was consistent with underlying legislative intent.* (Yamaha I, 19 Cal.4th at pp. 21-22, Mosk, J. conc. opn., quoting *Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 862.) Here, the State Board promulgated a single regulation—Rule 462.180—to govern changes of ownership resulting from transfers of property or ownership interests. Section 62 has been amended twenty times since Rule 462.180 was promulgated, eight times since the State Board stated in its April 12, 2002 legal opinion that “Rule 462.180, in effect, *defines ‘ownership interest’ as the voting stock in a corporation’ for purposes of Section 62(a)(2)*” (Ex. G at p. 85), and four times since Assessors’ Handbook Section 401 stated in 2010 that “[f]or change in ownership purposes, *ownership in a corporation is determined by the percentage of ownership or control of a corporation’s voting stock*” (Ex. C at p. 58). The Legislature never objected to the State Board’s interpretation of

Section 62(a)(2), indicating the State Board’s “practice was consistent with the underlying legislative intent” of Section 62(a)(2). (*Yamaha I*, 19 Cal.4th at pp. 21-22, Mosk, J. conc. opn.)

Respondent is also incorrect that “Appellant’s arguments rest on confusion of the two types of changes in ownership—transfers of the real estate itself under § 60 and transfer of ownership interests in the business entity that owns the real property under § 64.” (AB at p. 12.) Respondent ignores a key similarity between Section 62(a)(2), Section 64(c), and Section 64(d): they all measure corporate “ownership interests” in determining if a change in ownership occurs. There is no basis to create one definition of corporate ownership interests that applies in determining whether a corporate buyer and seller of *realty* have the same “ownership interests” (under Section 62(a)(2)) and another definition that applies in determining whether a buyer of “ownership interests” bought enough to constitute a change in ownership (under Sections 64(c) or 64(d)).⁶

Thus, until the Court of Appeal’s decision in this case, the standard for identifying changes in ownership—“ownership

⁶ Respondent also is incorrect that because “[S]ection 64 deals only with juridical entities and provides no rule whatsoever relating to transfers to individuals.” (AB at 44.) Section 64 deals with natural persons. Section 64(c)(1) applies “[w]hen . . . any other *person* obtains control . . . of more than 50 percent of the voting stock of any corporation” and Section 64(d) states that “the ‘*persons*’ holding ownership interests in the legal entity immediately after the transfer shall be considered the ‘original coowners.’”

interests”—had a uniform meaning in the statutory framework and this Court should correct the lower court’s decision to ensure it continues to have a uniform meaning.

V. The State Board’s Quasi-Legislative Regulation and Six Agency Interpretations are Relevant and Dispositive

Respondent contends that all State Board authorities are irrelevant because they “have nothing to do with § 62(a)(2)” (AB at p. 27), “do[] not evaluate a situation where the corporation has both voting and nonvoting shares” (*id.* at pp. 26, 28), and instead address changes in ownership under Section 64 resulting from transfers of corporate ownership interests (*id.* at pp. 27-28; see also *id.* at pp. 23-24.) This is incorrect and Respondent’s attempts to distinguish the cases rely on mischaracterizations of the State Board’s logic and conclusions.

A. The State Board Has Consistently Recognized that Corporate “Ownership Interests” in Section 62(a)(2) are Measured by Voting Stock Alone

The trial court’s conclusion that the State Board guidance is “not particularly helpful” because it purportedly does not evaluate a transfer involving two classes of stock might have some merit—except that the State Board specifically advised the Court of Appeal in its amicus brief that the it “consistently interpreted ‘stock’ in Section 62(a)(2) to mean ‘voting stock’” when “issu[ing] instructions and guidance to assessors to promote uniformity in property taxation throughout the state.” (Ex. B at

p. 39; *id.* at p. 43 [“The exclusion in Section 62(a)(2) should likewise apply when there is no change in the proportional ownership interest as measured by *voting* stock, and BOE has consistently interpreted it as such.”], original italics.) The State Board thus dispelled any confusion. In any event, it strains credulity to believe that the State Board focused solely on voting stock and entirely failed to mention non-voting stock in Rule 462.180, the Assessors’ Handbook, four legal opinions, and one Letter to Assessors (all promulgated over several decades) if non-voting stock were in any way relevant to its determination.

The argument that State Board authorities are irrelevant also fails to recognize the legal conclusions reached in the State Board’s guidance that Section 62(a)(2) is measured using voting stock alone. The State Board recognized in its September 30, 2011 legal opinion that “[f]or corporations, the ownership interests for measuring changes in control and *proportionality of ownership* are represented by *voting stock*,” which it supported by citing Section 62(a)(2), Section 64(c)(1), and Rule 462.180(d)(1)(A). (Ex. F at p. 79.) The April 12, 2002 legal opinion states that “the term ‘ownership interests’ used in section 62 and 64 . . . is defined in Property Tax Rule 462.180(d)(1) . . . as the *voting stock* in a corporation.” (Ex. G at p. 85.) And as Respondent acknowledges (see AB at p. 26), the April 27, 2011 Letter to Assessors recognizes that “Section 64(d)” measures “voting stock” to determine if “real property that was previously excluded from change in ownership under section 62(a)(2) will be reassessed” (Ex. H at p. 93), and the October 30, 2009 legal opinion

recognizes that “for the exclusion of section 62, subdivision (a)(2) to apply . . . the shareholder’s interest in [companies 1 and 2] as represented by their *voting stock* must have been the same prior to . . . and after the Merger.” These statements of the law *are* helpful in understanding the issues here, regardless of whether the factual scenarios addressed by the State Board involved dual stock classes, and they would be incorrect if, as Respondent claims, both voting and non-voting stock were relevant in applying Section 62(a)(2). Finally, the October 2009 legal opinion involves two classes of stock but focuses solely on the voting stock, apparently because the disregarded stock is non-voting.

B. Respondent Mischaracterizes the State Board’s Regulation and Agency Interpretations to claim they are “Irrelevant”

Respondent relies on mischaracterizations to distinguish Rule 462.180, the Assessors’ Handbook, and the State Board’s legal opinions and letters to assessors in order to claim that all this authority “ha[s] nothing to do with § 62(a)(2).” (AB at pp. 27-28; see also *id.* at pp. 23-24.)

Respondent claims “Property Tax Rule 462.180 . . . is not focused on changes in ownership resulting from transfers of real property which is the issue in this case,” and that the rule “is irrelevant to the present controversy because it deals in relevant part with § 64, not § 62(a)(2).” (AB at p. 27.) As noted above, the State Board’s guidance repeatedly states that Rule 462.180 defines “ownership interests” for *both* Section 62 and Section 64. (See Ex. G at p. 85 [“While the term ‘ownership interests’ used in

sections 62 and 64 is not defined in the code, it is defined in Property tax Rule 462.180(d)(1) which . . . defines ‘ownership interests’ as the voting stock in a corporation.”]; Ex. F at p. 79 [“For corporations, the ownership interests for measuring changes in control and *proportionality of ownership* are represented by voting stock. (See Rev. & Tax. Code, § 62, subd. (a)(2); § 64, subd. (c)(1); and Rule 462.180, subd. (d)(1)(A).”].) The text of Rule 462.180 and former Rule 462 also shows that this quasi-legislative rule has always applied to transfers of real estate (like that at issue here) because subsection (a) of Rule 462.180 governs “Transfers of Real Property to and by Legal Entities,” subsection (b)(2) specially applies to “Proportional Transfers of Real Property” under Section 62(a)(2) and includes Examples 2-5 to explain how Section 62(a)(2) applies, and subsection (d)(4) also applies to “Proportional Interest Transfers.” Former Rule 462(j)(4)(A)(i) similarly provided that a change in ownership occurs under the “original co-owners” exception of Section 64(d) “[w]hen any corporation . . . obtains . . . than 50 percent of the *voting stock* in a corporation.”

Respondent next claims that the portions of the Assessors’ Handbook (Ex. C) that Appellant relies upon purportedly only “deal with the control over an entity” and not the transfer of real estate. (AB at 24; see also *id.* at 28.) But the handbook explains “there are two types of transfers involving legal entities that may trigger a change in ownership . . . a transfer of real property [and] . . . a transfer of an interest in an entity” (Ex. C at p. 59) in the section that states, “[f]or change in ownership purposes,

ownership in a corporation is determined by . . . voting stock” (*id.* at p. 58.)

Respondent also claims that Examples 6-10, 6-11, and 6-12 in the Assessors’ Handbook are irrelevant because they deal with situations where there is no nonvoting stock.” (AB at p. 28.)

However, these examples are just updated versions of the examples provided in State Board Rule 462.180(b)(2), which the State Board revised in the Assessors’ Handbook to make it clear that Section 62(a)(2) measures “ownership interests” based on voting stock alone. (*Compare* Cal. Code Regs., tit. 18, Rule 462.180(b)(2), Examples 2, 4 *with* Ex. C at 62, Examples 6-10, 6-11.) The State Board’s amicus brief similarly concludes that, “as it relates to the application of Sections 64(d) and 62(a)(2), the Assessors’ Handbook consistently provides guidance to analyze change in ownership of real property held by legal entities based on ‘voting stock.’” (Ex. B at pp. 39-40.)

Respondent’s attempt to distinguish the State Board’s May 31, 2007 legal opinion (Ex. D) and September 30, 2011 legal opinion (Ex. F) are simply implausible given the similarities to this case. Respondent acknowledges that the 2007 legal opinion “refers to ‘voting stock’ alone in analyzing Section 62(a)(2) but claims the opinion is irrelevant, even though it addresses a transfer between a corporation and a trust owned by a husband and wife—nearly identical facts to this case. (AB at p. 29.) Respondent also acknowledges that the 2011 legal opinion “does say that voting stock should be used to measure proportionality under § 62(a)(2)” but claims the “document . . . is not law.” (AB at

29.) This is too thin a reed and fails to recognize the “great weight” accorded under *Yamaha I*.

Respondent claims that the State Board’s April 12, 2002 legal opinion (Ex. G) has “nothing to do with a transfer of real estate” (AB at p. 28), only concerns “§ 64 which, of course, is totally irrelevant here” (*id.*), and only “discusses change in ownership by virtue of a change in control of the entity under § 64.” (*id.* at p. 25.)⁷ But the legal opinion *does* apply Section 62(a)(2) and states that “ownership interests” are measured using voting stock alone: “the term ‘ownership interests’ used in sections 62 and 64 . . . is defined in Property Tax Rule 462.180(d)(1) . . . as the voting stock in a corporation.” (Ex. G at 85) The legal opinion concludes that “the exclusion in section 62(a)(2) would apply” to the transfer at issue. (*Id.*)

Respondent claims that the State Board’s October 30, 2009 legal opinion (Ex. E) “has “nothing to do with the present case” (AB at p. 28), but the opinion considers “the transfer of [] real property between legal entities” (Ex. E at p. 70), analyzes the transfer under “Section 62, subdivision (a)(2)” (*id.* at pp. 72-73), and concludes that the exclusion did not apply because “the shareholders’ interests in [the companies] *as represented by their voting stock* must have been the same prior to the merger” (*id.* at p. 73).

⁷ Respondent mistakenly refers to this Legal Opinion as a Letter to Assessors issued on April 27, 2011 (see AB at 25), but that Letter to Assessors is attached as Exhibit H to the Opening Brief.

Ultimately, Respondent's refrain that these authorities "nowhere state[] that 'stock' means 'voting stock'" (AB 27-29) mischaracterizes Appellant's argument and Section 62(a)(2), which identifies changes in ownership based on the standard of "ownership interests."

VI. Respondent's Examples of "Negative Results" from a Uniform Definition of "Ownership Interests" Are Inaccurate and Ignore the State Board's 40-Year History of Using Voting Stock Alone

Respondent falsely claims "[a]ll of the arguments of the Appellant are founded on the idea that the nonvoting stock is somehow contingent and valueless" (AB at p. 36) and argues that, "if all of this stock were valueless and contingent . . . it would not be an exaggeration to fear that the financial system of the United States, if not the global financial system, would collapse" (*id.* at p. 39.)

Appellant is not arguing that non-voting stock is valueless. Instead, Appellant argues that the change in ownership statutory framework uniformly measures corporate "ownership interests" using voting stock alone, that the State Board has issued a quasi-legislative rule and six agency interpretations that show a longstanding and uniform understanding that corporate "ownership interests" are measured using voting stock alone, and that Section 62(a)(2) therefore looks solely at voting stock in determining the proportionality of "ownership interests" between a buyer and a seller of realty. This is a matter of statutory interpretation that has nothing to do with the value of non-voting

stock. It will not “fundamentally alter the structure and meaning of the R&TC” (AB at p. 11) if the Court agrees with Appellant because the State Board “has consistently interpreted” ownership interests in “Section 62(a)(2) as meaning ‘voting stock’” since issuing its “contemporaneous rules interpreting the related statutes” when the change in ownership statutes were enacted in 1980 (Ex. B at p. 33.). Respondent’s histrionics are baseless.

Respondent also argues that using a uniform definition of “ownership interests” will mean that “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.” (AB at 23.) This is essentially already the law, so Respondent’s concern with unforeseen consequences is unfounded. The State Board addressed this issue in its February 20, 1985 legal opinion underlying Annotation 220.0120, which states: “the question is whether the acquisition of the voting rights of more than 50% of a corporation’s voting stock through an irrevocable proxy constitutes direct or indirect control of the stock for purposes of the definition of ‘control’ adopted by the Legislature. We conclude that the answer is affirmative.” (MJN Ex. 1 at p. 2.) The State Board reasoned:

The change in ownership test employed by the Legislature in subdivision (c) of Section 64 refers to the ownership or control of a majority of the voting stock and this reference is apparently based upon the control of corporate affairs normally granted to the majority

shareholder. This control arises from the power to elect a majority of the board of directors and to thereby control the operations of the corporation and make other major corporate decisions such as merger, sale of assets, etc. This kind of control is not dependent upon participation in the other normal incidents of common stock ownership, such as participation in dividends or distribution of corporate assets. Thus, where the stock voting rights are separated from these other incidents of stock ownership, we conclude that the Legislature intended that the test follow the voting rights.”

(*Id.* at p. 3.) The State Board also “recognized that there are a number of exceptions which might apply,” including where “an irrevocable proxy . . . is given in consideration of . . . credit,” in which case it would be excluded from a change in ownership under Section 62(c)(1) as merely the “creation . . . of a security interest,” and noted that “each transaction involving a transfer of voting rights by means of an irrevocable proxy must be carefully examined and our decisions in this area should be made on case-by-case basis.” (*Id.* at 3.) Respondent is also incorrect that “[t]here is only one fact the Court really needs to know to affirm the Court of Appeal . . . all common stock of Super A has exactly the same economic rights” (AB at 30) because the State Board has concluded that “control arises from the power to . . . control the operations of the corporation” and “is *not* dependent upon participation in the other normal incidents of stock ownership, such as participation in dividends or distribution of corporate

assets.” (*Id.*) Respondent’s argument that “using voting stock to measure proportionality under § 62(a)(2) would be entirely unworkable” because “stock can be created having voting rights only on certain issues” (AB at 40-41) fails to recognize that the State Board has always used voting stock for that exact purpose without issue for forty years and advised the Court of Appeal here that “evaluation of the proportional ownership interests of voting stock is relatively straightforward and readily ascertainable” (Ex. B at 46.)⁸

Respondent also claims that Appellant’s and the State Board’s example of one of the loopholes that the Court of Appeal’s decision has opened to allow taxpayers to avoid changes in ownership is incorrect and that the State Board offers “no explanation” for its conclusion. (AB at pp. 42-43.) In the example, a company engineers a transfer of real property without any reassessment by (i) creating and selling a new class of non-voting stock to a third-party (an exempt transaction under Section 64(c)(1) because control is unchanged by the creation of non-voting stock), and (ii) then dissolving the company such that its real property is partially owned by the new non-voting shareholder (an exempt transaction under Section 62(a)(2) because ownership would remain proportional according to the

⁸ Respondent also claims that the theoretical existence of “bonds with voting rights” makes Appellant’s position unworkable but then appears to answer its own question by recognizing that “bonds are not even ‘stock’ under § 62(a)(2)” so they would not be used in measuring corporate ownership interests. (AB at p. 41.)

Court of Appeal’s opinion). (See Ex. B at pp. 47-48.) Respondent claims “there would be a change in ownership under [Appellant’s] 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.” (AB at p. 42.) This is inaccurate, as the State Board explained at length in its amicus brief:

When B purchases the non-voting stock [at step 1], it will not be a change in ownership . . . [because] [c]hange in control is measured by . . . voting stock. (§ 64, subd. (c)(1).) Because the voting stock remains with Corp. and only non-voting stock was purchased by B, there is no change in control, and reassessment is not triggered. If Corp were then to dissolve, transferring a 20 percent interest in [real property] to A, and an 80 percent interest in [real property] to B, there would still be no reassessment if ‘stock’ in Section 62(a)(2) is read to mean ‘all stock.’ This is because, under the ‘all stock’ interpretation, before the transfer, A and B would be considered to own a 20 percent and 80 percent interest, respectively, in [the real property] through their respective percentage ownership of all the stock in Corp. After the transfer, A owns a 20 percent and B owns an 80 percent interest in [real property] . . . and A has successfully avoided reassessment while at the same time transferring 80 percent of [the real property] to a third party.”

(Ex. B at pp. 48-49.) Respondent ultimately seems to acknowledge this, as it states, “this transaction would and should

qualify under the § 62(a)(2) proportionality rule” that exempts it from being a change in ownership. (AB at p. 42.)

Finally, Respondent claims “[n]o evidence was presented that other counties interpret § 62(a)(2) differently than does the County of Los Angeles.” (AB at p. 47.) However, the State Board has promulgated guidance for forty years directing counties to use only voting stock in measuring corporate ownership interests under Section 62(a)(2) and the State Board “is not aware of any dispute over this language since adopting the legal entity change in ownership rules in 1981.” (Ex. B at p. 39.)

VII. Conclusion

The Court should reverse the decision of the Court of Appeal and hold that corporate “ownership interests” in Section 62(a)(2) are measured by voting stock alone, consistent with the uniform interpretation established by the State Board contemporaneously with the implementation of the change in ownership framework.

DATE: June 10, 2021

Respectfully submitted,

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PROOF OF SERVICE

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/s/ Vanessa Hudak

Vanessa Hudak

STATE OF CALIFORNIA
Supreme Court of California

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