

Case No. S266590

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

JEFFREY PRANG, Los Angeles County Assessor
Petitioner and Respondent,

v.

AMEN FAMILY 1990 REVOCABLE TRUST, et al.,
Real Party in Interest and Appellant.

**[PROPOSED] AMICUS CURIAE BRIEF OF THE
CALIFORNIA STATE ASSOCIATION OF COUNTIES AND THE
CALIFORNIA ASSESSORS ASSOCIATION IN SUPPORT OF
PETITIONER AND RESPONDENT JEFFREY PRANG**

Second Appellate District, Division Five, Case No. B298794

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

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I. INTRODUCTION

The Court of Appeal below addressed a novel issue in our appellate courts: the proper interpretation of the term “stock” in Revenue and Taxation Code section 62(a)(2).¹ The court relied upon the plain meaning of the statute to conclude that “stock” means all stock, and rather than only voting stock. Appellants attempt to undermine the Court of Appeal’s conclusions by steering this Court down two erroneous paths. First, Appellants confuse changing control of a corporation with a transfer of corporate real property, and in so doing are asking this Court to apply law that is not relevant to this case. Second, Appellants attempt to frame this case as primarily a misapplication of the deference required by *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, when in fact the cited administrative materials either deal with a different, and inapplicable, section of the Revenue and Taxation Code, or do not address a factual situation like the one presented in this case. This Court should not be lead astray.

Instead, resolution of this issue fundamentally depends on properly understanding the distinction between two methods of making changes in

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

corporate ownership of real property:

- (1) A change in the control of the corporation, and
- (2) A transfer of interest in property itself.

The statutory structure on its face makes clear that the first situation, corporate control, is determined based on voting stock, while the second situation is determined by stock generally, both voting and non-voting. Unfortunately, Appellants obfuscate this distinction by repeatedly citing to statutory language and interpretive documents related to the first situation, corporate control. But this is not a corporate control case.

At best, the numerous references made by Appellant to examples in the code where consideration of stock is specified as only voting stock serve to prove the Assessor's point — the Legislature clearly knows how to designate voting stock when it so intends. It did not do so in Section 62(a)(2).

Both the Court of Appeal and the trial court therefore correctly found that Section 62(a)(2)'s reference to "stock" includes both voting and non-voting stock. The opinion below should be upheld.

II. ARGUMENT

A. The Court of Appeal correctly distinguished between corporate control and ownership of real property in concluding that "stock" in section 62(a)(2) includes both voting and non-voting stock.

Appellants' arguments largely revolve around statutory provisions

that relate to corporate control, which is determined by voting stock. However, as the Court of Appeal concluded, there is a distinction between the transfer of real property from one entity to another and a change of ownership of the legal entity (a corporation) that owns real property. (*Prang v. Amen* (2020) 58 Cal.App.5th 246, 259.) As the trial court noted, the argument that corporate control is determined by voting stock is a “red herring.” “There is no dispute in this case that a corporation is controlled by its shareholders. Shareholders, however, do not own corporate property; their corporation does. . . . The Trust therefore errs in equating beneficial ownership of real estate with ownership or control of the corporation that owns the real estate.” (Trial Ct Stmt of Decision, pp. 10-11.)

Appellants never come to terms with this distinction. Instead, Appellants continue to argue that because *corporate ownership interests* are measured by voting stock, *beneficial ownership of real estate* should also be determined by voting stock. (See Opening Br., pp. 38-42.) But as the Court of Appeal aptly held, corporate control and ownership of real estate are two separate concepts, and the plain language of the statute related to the latter is based on all stock of the corporation, voting and non-voting. (*Prang, supra*, 58 Cal.App.5th at p. 260.)

Indeed, there are good policy reasons why the Legislature may have elected to determine change in ownership of real estate and proportionality based on all stock as opposed to considering only voting stock. As the

Assessor notes, there are absurdities that result from Appellants' view of the statute, including a change in ownership when proxies grant corporation management voting control over the corporation for voting at annual meetings and the like. (Answer Br., p. 22-23.)² The Court of Appeal deferred to the Legislature's decision on this issue, noting:

Nothing in the record suggests that intrinsic in the nature of corporations is that voting stock must be the sole measure of transfers from a corporation to another form of ownership. Section 62(a)(2) looks at the proportional interests in real property of owners of the transferor and transferee entities, not a change in stock ownership. The Legislature reasonably could use stock or voting stock or other standards as its section 62(a)(2) reassessment yardstick. It chose for corporations "stock," even though, as we have seen, voting stock is used in other situations covered by the Revenue and Taxation Code.

(*Prang, supra*, 58 Cal.App.5th at pp. 15-16.)

The trial court reached a similar conclusion, finding that the "legislative purpose of section 62(a)(2) is to exempt from reassessment those real properties held by a person or legal entity where the transfer results in the same proportional ownership interest. This purpose is not served where the proportional interests turn on control and not ownership."

(Trial Ct Stmt of Decision, p. 12.)

Indeed one reason to consider both voting and non-voting stock in

² Appellants' response in their Reply Brief on this point continues to make the same mistake of conflating two separate legal issues and citing to Board of Equalization opinions that reference Section 64 rather than Section 62. (Reply Br., pp. 27-28.)

the transfer of real estate is that the law requires that if an amendment will be made to corporate articles that negatively impacts a class of stock in designated ways, including eliminating the economic interest in the stock, that change must be approved by the outstanding shares of the impacted stock “whether or not such class is entitled to vote...” (Corp. Code, § 903, subd. (a).) As such, non-voting stock has the same economic rights as voting stock, and those rights cannot be unilaterally eliminated.³

Additionally, policy concerns that ruling in favor of the Assessor will upset settled expectations or create a patchwork of varying interpretations on this issue are unfounded. That would only be true if the statute had always been interpreted as Appellants suggest. But there is no information in the record or known to amici to suggest that the Assessor is an outlier in his interpretation of the statute or that other counties are applying the law differently.

Finally, the Legislature certainly knows how to designate voting stock when that is intended. In fact, the Legislature specifically designated “voting stock” numerous times in the statutory scheme related to change in

³ The corporate articles for the corporation at issue in this case states that except for voting rights, “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.” (Administrative Record at 176.)

ownership and purchase (§§ 60-69.5).⁴ Section 62 has been amended eighteen times since it was enacted, providing the Legislature ample opportunity to specify that section 62(a)(2) means “voting stock” if that is what is intended.⁵ It has not, and the plain meaning of the statute as adopted by the Legislature should prevail.

B. Under well-settled statutory interpretation principles, “stock” means both voting and non-voting stock in section 62(a).

CSAC and CAA agree with Assessor that under well-settled statutory interpretation principles, there is no ambiguity in the statute, and its plain meaning of “stock” is intended to be all stock – voting and non-voting. These interpretation principles are detailed throughout the Assessor’s brief, but in sum:

- **Plain Meaning Rule**: The language in the statute should be given its ordinary, everyday meaning unless the statute itself gives the word a specialized meaning. (*Californians Against Waste v. Department of Conservation* (2002) 104 Cal.App.4th 317, 321.) Here, the term

⁴ Sections 62(a)(1); 62(b)(1)&(2); 62.2(b); 62.5(a); 62.5(b)(1); 64(b)(1)&(2); 64(c)(1); 64(e); and 66(c).

⁵ Stats 1979 ch. 1161 § 3; Stats 1980 ch. 285 § 2.6, ch. 1081 § 2, and ch. 1349 § 1.5; Stats 1981 ch. 615 § 1 and ch. 1141 § 2; Stats 1982 ch. 911 § 1, and ch. 1465 § 4.5; Stats 1984 ch. 1010 § 1; Stats 1985 ch. 186 § 4; Stats 1996 ch. 388 § 2 and ch. 1087 § 9.5; Stats 2002 ch. 775 § 1; Stats 2005 ch. 416 § 2; Stats 2006 ch. 364 § 1.1; Stats 2007 ch. 555 § 2; Stats 2014 ch. 71 § 159; Stats 2019 ch. 685 § 1.

“stock” is not qualified in any way in section 62(a)(2), and thus the common understanding of all classes of stock – voting and non-voting – should prevail.

- **Different Terms in the Same Statutory Scheme Are Presumed to**

Have Different Meanings: Courts are required to ascribe different meanings to different words used in the same statutory scheme.

(Regents of University of California v. Superior Court (2013) 220 Cal.App.4th 549, 565.) As noted above, Chapter 2 of Part 0.5 of Division 1 of the Revenue and Taxation Code (§§ 60-69.5) includes numerous provisions that use the words “voting stock.” By contrast, section 62(a)(2) uses the term “stock.” Under this canon of statutory interpretation, these two different terms must be given two different meanings.

- **Omission of a Word or Phrase is Evidence of Different Intent:**

“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.” *(City of Emeryville v. Cohen (2015) 233 Cal.App.4th 293, 309.)* Here, where “voting stock” is used in various provisions in Chapter 2, but “stock” is used in section 62(a)(2), the court should interpret that to mean the Legislature had a different intent in section 62(a)(2) when it omitted the word “voting.”

- **Statutes Are Interpreted to Avoid Surplusage:** “It is an established rule of statutory construction that we must ‘presume[] that every word, phrase and provision used in a statute was intended to have some meaning and to perform some useful office, and a construction making some words surplusage is to be avoided.’”

(*Roland v. Superior Court* (2004) 124 Cal.App.4th 154, 164, quoting *California Sch. Employees Assn. v. Oroville Union High Sch. Dist.* (1990) 220 Cal. App. 3d 289, 294.) If “stock” also means “voting stock,” then the term “voting” is meaningless and unnecessary in those parts of the statute in which it appears, which weighs against such an interpretation.
- **Statutes Should Be Interpreted to Avoid Absurd Results:** “Even unambiguous statutes must be construed to avoid absurd results which do not advance the legislative purpose.” (*Upland Police Officers Assn. v. City of Upland* (2003) 111 Cal.App.4th 1294, 1304.) Here, the plain language version of the statute is reasonable, and it is Appellant’s interpretation that would lead to absurd results, including the unintended consequences outlined in Assessor’s brief at pages 22-23.
- **Exemptions to Taxes Are Narrowly Construed:** “While taxing statutes are to be construed in favor of the taxpayer, exemptions are to be narrowly construed in favor of the state. Other cases state that

statutory exemptions from taxation are to be strictly construed against the taxpayer. As a corollary to these rules, doubt about the applicability of an exemption is resolved against that exemption. Finally, the taxpayer bears the burden of showing that he clearly comes within the exemption.” (*Alpha Therapeutic Corp. v. County of Los Angeles* (1986) 179 Cal.App.3d 265, 270 (citations omitted).)

All of these rules taken together favor the interpretation of “stock” as including both voting and non-voting stock.

Appellants do not refute that these principles apply, or argue that the application of these principles yields an interpretation other than that presented by Assessor. Rather, Appellants cites to other inapplicable code sections that specifically define stock to mean “voting stock,” and assert that such meaning should be presumed in section 62(a)(2) as well. But this argument is contrary to all of the statutory interpretation principles outlined above, and in fact only bolsters Assessor’s argument that the Legislature is very capable of specifying when voting stock should be considered. It did not do so in section 62(a)(2).

C. No extrinsic evidence cited to this Court supports reading the term “stock” in section 62(a)(2) to mean only voting stock.

Appellants proffer examples of State Board of Equalization letters and the Assessors’ Handbook in support of their position, and allege the Court of Appeal erred in failing to rely on these documents. However, as

explained above, reference to extrinsic evidence is unnecessary because the statute is unambiguous when properly interpreted. (*Williams v. Superior Court* (2001) 92 Cal.App.4th 612, 621 [where statute is unambiguous on its face, courts need not consult extrinsic sources].)

In addition, even if there were a need to consult extrinsic evidence to interpret section 62(a)(2), as the Court of Appeal noted, “[n]one of the examples cited in these materials addresses the situation in which both voting and non-voting stock are at play in determining ownership under section 62(a)(2).” (*Prang, supra*, 58 Cal.App.5th at p. 13, fn. 10.) The Court of Appeal is correct on this point. None of the examples the Appellants have provided specifically address the facts of this case. Rather, the authorities either address the issue of corporate control rather than ownership of real property, or they discuss examples where transferees and transferors both have voting stock. They are silent on what should occur when there is both voting and non-voting stock involved in the transfer of ownership of real property.

Assessor notes in detail why each reference in the Opening Brief is either irrelevant because it relates to corporate control, or is not instructive because the examples only analyze situations in which all parties have voting stock. (Answer Br., pp. 27-29.) Appellants refute this in their Reply

Brief, asserting that the State Board’s October 30, 2009 legal opinion⁶ addresses both voting and non-voting stock. (Reply Br., pp. 21-22, 25). But this is patently untrue. In fact, the October 30, 2009 letter makes reference to class B stock, which it describes as voting stock. But the letter never mentions class A stock, nor addresses whether class A is voting or nonvoting. The Class A could just as easily have been stock that was previously cancelled, or just a different class of stock that also had voting rights. Appellants assume that Class A stock is non-voting stock (asserting without any basis that “apparently” the other stock was disregarded as non-voting [Reply Br., p. 22]), but the letter itself never specifies whether class A is voting or non-voting, and provides no analysis to suggest that non-voting stock is not considered when determining proportionality for purposes of section 62(a)(2).

Thus, there is no extrinsic evidence that directly guides this Court to a conclusion that “stock” in section 62(a)(2) means only voting stock. To the contrary, Property Tax Rule 462.180 provides evidence that proportional interests in section 62 are determined by *economic interests* in an entity (which is a characteristic of both voting and non-voting stock) and not *control rights* (which is a characteristic of voting stock only). (Cal. Code Regs., tit. 18, § 462.180, subd. (d)(4) [examples 9 and 10].)

⁶ For reference, this letter is available online at: https://www.boe.ca.gov/proptaxes/pdf/220_0067.pdf.

For this reason, Appellants' focus on the proper application of *Yamaha*, which is their first argument and takes up the majority of the argument in their opening brief (Opening Br., pp. 27-38), is misplaced. To be sure, an agency can be entitled to deference when interpreting statutes and regulations within its expertise and technical knowledge. (*Cal Fire Local 2881 v. California Public Employees' Retirement System* (2019) 6 Cal.5th 965, 994, citing *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.) But for administrative interpretative documents to be entitled to some level of deference by the courts, the documents must be relevant to the statute under consideration by citing to and providing proper analysis of the code section at issue in the case. (*De La Torre v. CashCall, Inc.* (2018) 5 Cal.5th 966, 987-988.)

Because the letters and opinions provided in this case lack any explanation as to what happens when there is both voting and non-voting stock and fail to show any consideration of how section 62(a)(2) should be applied to the instant issue, they do not present any reasoning to support Appellants' argument. Whether they are granted deference or not does not aid this Court in resolving the case because they are simply not applicable to the facts at hand. To find that they are requires the same erroneous conflation of control of a corporation with a transfer of corporate real property that is the cornerstone of Appellants' argument. This Court should not repeat that error.

III. CONCLUSION

For all of these reasons, Amici Curiae respectfully request that this Court affirm the Court of Appeal and find in favor of Respondent Jeffrey Prang.

Dated: July 12, 2021

Respectfully submitted,

/s/

By _____
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**CERTIFICATION OF COMPLIANCE WITH
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I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 3,482 words.

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Respectfully submitted,

/s/

By: _____
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STATE OF CALIFORNIA
Supreme Court of California

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