



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

February 26, 1999

Mr.

Dear Mr. :

This is in response to your letter of January 7, 1999 to the State Board of Equalization Legal Division, requesting our opinion as to the meaning of the phrase "at least 51 percent of the rental spaces" as used in subdivision (b) of section 62.1 of the Revenue and Taxation Code, pertaining to tenant purchases of lots in a mobilehome park. It is your view that the Legislature presupposed that all affected mobilehome parks would be completely occupied, with no vacant spaces, and that in actuality, it intended the phrase quoted above to mean "at least 51 percent of the *occupied* rental spaces" when some of the rental spaces were not occupied by tenants. Unfortunately, although sympathetic with your intentions to facilitate the tenant acquisition of your mobilehome park, we are of the opinion that neither the language of Section 62.1, nor the legislative history of subdivision (b) of that section, supports the interpretation you advance.

You relate that you reside in the _____ Mobilehome Park, and that since January 1996, there has been an effort to sell the lots or spaces in this park to the tenants of those lots. There are a total of 171 spaces in the park, of which in January 1996, 153 were occupied, and 18 were unoccupied. So far, 76 of the original tenants have purchased their spaces.

As you point out, section 62.1 provides that "Change in ownership [and thus, a reassessment of the property for property tax purposes] shall not include either of the following: [¶] (b) Any transfer or transfers on or after January 1, 1985, of rental spaces in a mobilehome park to the individual tenants of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization as described in subdivision (k) of Section 50781 of the Health and Safety Code, to operate and maintain the park. . . ."¹

The issue you present is the meaning of clause (1) in the above subdivision. Does "at least 51 percent of the rental spaces" mean 51 percent of all of the spaces in the park, occupied or unoccupied, or does it mean 51 percent of the occupied spaces? In the case of your mobilehome park, if the meaning is the latter, the purchase of 78 spaces by tenants meets the requirement,

¹ 1998 legislation removed the language "and before January 1, 2000," following "on or after January 1, 1985," in this subdivision, and made other changes to the section. A copy of the amended section is enclosed for your reference.

which you believe is reasonably possible to accomplish. If the meaning is 51 percent of *all* of the lots, this provision would require the purchase of 87 lots, which you view as unlikely. The consequence of the requirement of this subdivision not being met is that the lots purchased by the tenants would be reassessed for property tax purposes at your approximately \$51,000 purchase prices, rather than remain assessed at the approximate \$23,000 share of the park assessment prior to your purchases.

In interpreting legislation, we are first compelled to review the plain language employed by the Legislature. Here, the Legislature clearly used the language "at least 51 percent of *the rental spaces* are purchased. . .," not "at least 51 percent of *the tenants* purchased the spaces they rented," and not "at least 51 percent of *the occupied rental spaces* are purchased," either of which would have conveyed the intent for which you argue. A firm rule of statutory construction is that a court may not insert qualifying provisions into a statute or rewrite it in an attempt to make it conform to a presumed intention of the legislature not expressed in the statutory language. Code of Civ. Proc. § 1858; *Gcins v. Board of Pension Commissioners* (1979) 96 Cal.App.3d 1005, 1010; *Cemetery Board v. Telophase Society of America* (1978) 87 Cal.App.3d 847, 858. It is our opinion that the language utilized by the Legislature is clear and unambiguous; it requires that 51 percent of the rental spaces, meaning all of the rental spaces in the park, must be purchased by the individual tenants renting their spaces prior to the purchase. It is further our opinion that that language cannot properly be enlarged or supplemented as you suggest.

Our opinion is reinforced by other statutory references. For example, Health and Safety Code section 18214, subdivision (a), defines "mobilehome park", in part, as "any area or tract of land where two or more mobilehome lots are rented or leased, *held out for rent or lease*, or were formerly held out for rent or lease . . ." Thus, the Legislature clearly considers a mobilehome lot as such, whether or not it is currently rented or leased.

Moreover, a review of the legislative history of S.B. 1768, the bill which enacted subdivision (b) of Section 62.1² discloses nothing with respect to the language in question to indicate an intent such as you suggest must have existed, nor anything indicating that other than the plain meaning of the words utilized was intended by the Legislature. The precise issue of the degree of tenant participation appears not to have been an issue in the enactment of this provision. In the occurrence which precipitated the enactment of subdivision (b), the governing document requirement for approval of the transfers required a 60 percent participation, and it was reported that, in fact, 89 percent of the tenants had elected to purchase their units. In any event, subdivision (b) was added to provide parity of treatment to conversions of mobilehome parks to tenant ownership where the nonprofit organization created to operate the park was formed after the conversion, as opposed to prior to the conversion, as was contemplated by subdivision (a) of that section. The parallel language in subdivision (a) is: "provided that . . . the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction . . ." Again, this clearly and unambiguously means tenants renting 51 percent of all of the spaces in the park, further supporting our view that this plain meaning is applicable to the parallel requirement in subdivision (b).

² Stat. 1986, Ch. 447.

You note in your letter that there is no indication in section 62.1 that the residents of a park are expected to purchase vacant or spaces other than their own spaces in order to bring the count of tenant-purchased spaces up to 51 percent. We concur that there is no such requirement; in fact, purchases of spaces by persons who were not tenants renting the spaces purchased prior to the purchase would not be included in the purchases counted to meet this requirement. The statute requires that the qualifying purchases be by "individual tenants renting their spaces prior to the purchase". However, we have previously stated our opinion that it is not necessary to be what you appear to refer to as an "original tenant" as of some date in the past. The language of the subdivision means only that the persons buying the spaces must have been tenants prior to their purchase of the rental space. Therefore, for example, a tenant who moved into the park since January 1996, who subsequently purchased his or her space, would qualify in meeting the 51 percent requirement and would participate in the other provisions of the subdivision.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,



Daniel G. Nauman
Tax Counsel

DGN:jd

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Enclosure

cc:

Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:73

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PROPERTY TAXES