

S 205876

Court of Appeal 2nd Civil No. B229656

IN THE
SUPREME COURT
OF THE
STATE OF CALIFORNIA

SUPREME COURT
FILED

MAY - 3 2013

Frank A. McGuire Clerk

Deputy

ASSESSOR FOR COUNTY OF SANTA BARBARA
Plaintiff & Appellant

vs.

ASSESSMENT APPEALS BOARD NO. 1
Defendant & Respondent

After Decision By The Court Of Appeal
Second Appellate District, Division 6
No. B229656

Appeal from the Superior Court of California, County of Santa Barbara
The Hon. James W. Brown, Judge (case number 1244457)

**APPELLANT'S MOTION
REQUESTING JUDICIAL NOTICE**

SANTA BARBARA COUNTY COUNSEL

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Attorneys for Appellant

ASSESSOR FOR COUNTY OF SANTA BARBARA

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that pursuant to CRC Rule 8.252(a) and California Evidence Code Section 452, Appellant/Assessor for County of Santa Barbara, hereby requests that this Court take judicial notice of the following three documents pursuant to Evidence Code Section 452, subdivisions (c), (g) and (h).

1. Initial Statement of Reasons issued by the State Board of Equalization (“SBE”) for the 1991 amendment of Property Tax Rule 2 that added subsection (c) (2).
2. Final Statements of Reasons issued by the SBE for the 1991 amendment of Property Tax Rule 2.
3. Bill Tracking Summary for Senate Bill No. 1585 (“SB 1585”) published by Deering’s California Advance Legislative Service.

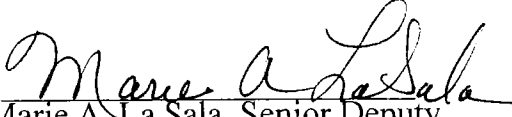
The documents are described, and indicated, under penalty of perjury, to be true and correct copies of the originals in the declaration of Marie A. LaSala, attached hereto. This request is made on the following grounds:

1. The Evidence Code authorizes this Court to Take judicial notice of the documents offered by Appellant/Assessor; and
2. The documents offered by Appellant/Assessor are relevant to the issues raised in Respondents’ Joint Answer and addressed in Appellant/Assessor’s Reply.

This request is based on this Notice, the accompanying Memorandum of Points and Authorities, the supporting Declaration of Marie A. LaSala, Exhibits A, B and C to the declaration and such other matters as may properly come before the Court.

Date: May 1, 2013

Respectfully submitted,
DENNIS A. MARSHALL,
COUNTY COUNSEL

By: 
Marie A. La Sala, Senior Deputy
Attorneys for Appellant,
Assessor for the County of
Santa Barbara

MEMORANDUM OF POINTS AND AUTHORITIES

Appellant/Assessor requests that this Court take judicial notice of the following three documents pursuant to Evidence Code Section 452, subdivisions (c), (g) and (h).

1. Initial Statement of Reasons issued by the State Board of Equalization (“SBE”) for the 1991 amendment of Property Tax Rule 2 that added subsection (c) (2);
2. Final Statements of Reasons issued by the SBE for the 1991 amendment of Property Tax Rule 2; and
3. Bill Tracking Summary for Senate Bill No. 1585 (“SB 1585”) published by Deering’s California Advance Legislative Service.

I

The Initial and Final Statements of Reasons Issued by the SBE & the Bill Tracking Summary for Senate Bill No. 1585 are Relevant to the Arguments Presented in Respondents’ Joint Answer

The Initial and Final Statements of Reasons were issued by the SBE as part of its rule making authority. These documents were issued to the public to explain the factual basis and legal purpose of proposed amendments to Property Tax Rule 2, including subsection(c) (2) upon which Respondents rely. The Initial and Final Statements of Reasons for a proposed Property Tax Rule or amendment are part of

the SBE's standard rulemaking files. SBE rulemaking files for 2009 through 2013 are available online from the SBE's website.

Rulemaking file documents for years prior to 2009 are available by contacting the SBE's Disclosure Office.

The Initial and Final Statements of Reasons contained in the rulemaking file for the 1991 amendments to Property Tax Rule 2 are particularly relevant to the argument presented on pages 52-55 of the Joint Answer filed by the Respondents because they are the only official documents that provide context to the narrow exemption from the "purchase price presumption" Respondents ask this Court to rely on.

Respondents cite to no reported case, annotation, Letter to Assessors, Assessor Handbook provision or treatise to support the application of exemption stated in subsection (c)(2) to the transfer of a resident-owned mobilehome. Moreover, a comprehensive search by the Appellant/Assessor confirms the lack of any such supporting authority. Therefore, unless the Initial and Final Statements issued by the SBE are afforded judicial notice, this Court may have no way to test the validity of Respondents' novel argument.

The Bill Tracking Summary for SB 1585 published by Deering's California Advance Legislative Service is relevant to the purported subdivided/unsubdivided distinction and citation to Civil Code Section 798 presented on pages 9-10 of Respondents' Joint Answer. Specifically, the stated legislative intent expressed in the Bill Tracking Summary for SB 1585 directly defeats the subdivided/unsubdivided distinction and the application of Civil Code Section 798 advocated on pages 9-10 of Respondents Joint Answer.

II

Judicial Notice of the Initial and Final Statements of Reasons and the Bill Tracking Summary for SB 1585 was Not Requested the from the Superior Court

Judicial notice of the Initial and Final Statements of Reasons issued by the SBE was not requested from the Superior Court because Respondents' attempt to take advantage of the narrow exemption from the "purchase price exemption" provided by subsection (c) (2) of Property Tax Rule 2 was not an issue presented to the Superior Court. Nor was it presented in Respondents' Joint Brief to the Court of Appeal. [See, Appendix, Vol. 2, Tab 19, Table of Authorities, 00289-290 and Vol. 2, Tab 27, Table of Authorities, 00461-462.] Respondents' Property Tax Rule 2 argument first appeared in Respondents' Joint Answer to Petition for Rehearing filed with the Court of Appeal on June 7, 2012. However, it was not cited in the Opinion on Rehearing issued by the Second District Court of Appeal on August 30, 2012.

Judicial notice of the Bill Tracking Summary for SB 1585 was not requested from the Superior Court because the application of Civil Code Section 798 was not raised in that proceeding. Review of the Tables of Authorities for the Joint Briefs filed with the Superior Court by the Real Parties and the Respondent confirms the fact that the application of the Mobilehome Residency Law set forth in Civil Code Section 798 was not an issue presented to the Superior Court. [See, Appendix, Vol. 2, Tab 19, Table of Authorities, 00289-290 and

III

Judicial Notice of the Initial and Final Statements of Reasons for Amendments to Property Tax Rule 2 and the Bill Tracking Summary for SB 1585 are Needed to Fully Address the Arguments Presented in Respondents' Joint Answer Brief

As addressed above, the information contained in the Initial and Final Statements of Reasons for amendments to Property Tax Rule 2 provide needed clarification that explains when and why the exemption from the “purchase price presumption” applies. These official SBE documents categorically defeat the misguided and unsupported arguments presented in the Joint Answer. Specifically, the Initial Statement of Reasons provides in pertinent part as follows:

“The second exemption [subsection (c)(2)] is for transfers of real property when the consideration is wholly or partially in the form of ownership interests in a legal entity, such as shares of stock, or the change in ownership occurs as the result of the acquisition of ownership interests in a legal entity. Based on the experience of county assessors who are required to reappraise real property in the described types of situations, it was concluded that application of the presumption in these situations is inappropriate since typically there is little or no relationship between the price paid and the value of the real property which changed ownership. For example, where a stock holder already owns 45 percent of the voting stock of a corporation which may own real property as well as other assets, and the stockholder acquires control of the

corporation through the purchase of an additional 10 percent of the stock thus triggering a reappraisal of the real property, there is no logical relationship between the price paid for the 10 percent stock interest and the value of any real property owned by the corporation.”

[See pages 3-4 of the Initial Statement of Reasons, Section 2. – The Value Concept issued by the SBE to explain the proposed amendments adding subsections (c)(1), (c)(2) and (c)(3) to Property Tax Rule 2, attached hereto as Exhibit A and the Final Statement of Reasons, attached hereto as Exhibit B.]

The information contained in the Bill Tracking Summary for SB 1585 provides needed clarification regarding the Legislature’s intent to treat all subdivided and unsubdivided resident-owned mobilehomes the same way. It directly defeats Respondents’ misguided application of Civil Code Section 798 to support the illusory subdivided/unsubdivided distinction advocated on pages 9-10 of Respondents’ Joint Answer.

IV

The Initial and Final Statements of Reasons and the Bill Tracking Summary for SB 1885 are Entitled to Judicial Notice Pursuant to Evidence Code Section 452

The Initial and Final Statements of Reasons and the Bill Summary are entitled to judicial notice pursuant to Evidence Code Section 452, subdivisions (c), (g) and (h) which provide as follows:

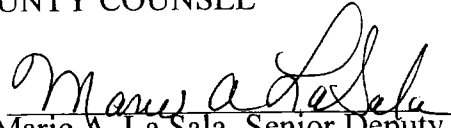
“(c) Official acts of the legislature, executive, and judicial departments of the United States and of any state of the United States.

(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

Date: May 1, 2013

Respectfully submitted,
DENNIS A. MARSHALL,
COUNTY COUNSEL

By: 
Marie A. La Sala, Senior Deputy
Attorneys for Appellant,
Assessor for the County of
Santa Barbara

DECLARATION OF MARIE A. LASALA

[CRC 8.54(a) (2)]

1. I am an attorney licensed to practice before the Courts of this state and am a senior deputy county counsel employed by the Office of County Counsel for the County of Santa Barbara, counsel for Appellant/Assessor for the County of Santa Barbara.
2. I have personal knowledge of the foregoing facts and, if called as a witness, would competently testify to their truth.
3. I secured true and correct copies of the Initial Statement of Reasons, Section 2. The Value Concept (Exhibit A) and the Final Statement of

Reasons (Exhibit B) on behalf of the Appellant/Assessor from the California State Board of Equalization.

4. The documents were provided by Glenna Schultz, Senior Specialist Property Appraiser for the California State Board of Equalization via email. They are considered public records.
5. I personally printed true and correct copies of the SBE documents (Exhibits A and B) sent to the Appellant/Assessor and me via email by Ms. Schultz on April 30, 2013.
6. I personally downloaded and printed the Bill Tracking Summary for SB 1585 published by Deering's California Advance Legislative Service from the commonly used Lexis.com online database on April 30, 2013 as confirmed by the footer of the website pages attached hereto as Exhibit C.
7. The Appellant/Assessor previously requested that the Court of Appeal for the Second District take judicial notice of the Bill Tracking Summary for SB 1585 on November 8, 2011. That request was denied on February 3, 2012.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 1st day of May, 2013, at Santa Barbara, California.



Marie A. LaSala

Exhibit A

Memorandum

To : Ms. Michele Dahilig

Date July 11, 1990

From : Richard H. Ochsner *RHO*

Subject: Initial Statement of Reasons - Rule 2

As requested, attached is the Initial Statement of Reasons for Rule 2 - The Value Concept.

RHO:mw
2525D

Attachment

INITIAL STATEMENT OF REASONS

SECTION 2. - THE VALUE CONCEPT

Problem

Revenue and Taxation Code Section 401 requires that every county assessor assess all property subject to general property taxation at its "full value". This provision carries out the basic mandate of Section 1, Article XIII, of the California Constitution which provides, in part, that all property is taxable and shall be assessed at the same percentage of fair market value. It also provides that all property so assessed shall be taxed in proportion to its "full value".

Revenue and Taxation Code section 110 defines the terms "full cash value" or "fair market value" as the price property would bring if exposed for sale on the open market. Section 110 further provides that the purchase price of real property transferred for a consideration is rebuttably presumed to be the "full cash value" if the transfer was an arms length transaction. The section also provides that the presumption shall not apply if the taxpayer fails to provide certain prescribed information on the change in ownership statement.

Revenue and Taxation Code section 110.1 provides that for purposes of subdivision (a) of section 2, Article XIII A, of the California Constitution, the "full cash value" of real property means the "fair market value" as determined pursuant to section 110 for either the 1975 lien date or, for property which thereafter changed ownership or was newly constructed, on the date of change in ownership or the date on which new construction is completed.

These three sections operate in conjunction with each other to specify the valuations standards generally applicable to California property for purposes of property taxation. These provisions are interpreted and made specific by section 2, "The Value Concept".

Section 2 provides a definition of the terms "full cash value" and "fair market value" which parallels the basic definition found in Section 110. It also includes within the definition other terms such as "full value", as used in section 401, as well as "cash value" and "actual value". The section also contains a rebuttable presumption that the purchase price is the full cash value, etc., of real property purchased in an arms length transaction. This presumption was added by amendment effective September 20, 1985. It is similar, but not identical, to the presumption added by amendment to Section 110 by Chapter 1519 of the Statutes of 1988 (AB 3382, Quackenbush).

In Dennis v. County of Santa Clara (1989) 215 Cal.App.3d 1019, the California courts construed the presumption provisions of Section 110, as added by Chapter 1519 of the Statutes of 1988, and concluded that even where it is established that the sale was an arms length transaction the presumption may be rebutted by evidence that the market value of the property is more or less than the price paid for it. Further, the California courts in Carlson v. Assessment Appeals Board No. 1 (1985) 167 Cal.App.3d 1004, determined that the term "full cash value" is the market value of the unencumbered or unrestricted fee simple interest in the property subject only to legally enforceable governmental restrictions.

The present form of Section 2, The Value Concept, does not reflect the amendment of Section 110 by Chapter 1519 of the Statutes of 1988. It also does not reflect the conclusions reached by the courts in Dennis v. County of Santa Clara, supra, and Carlson v. Assessment Appeals Board No. 1, supra.

The proposed amendments have been developed with the assistance of representatives of the California Assessor's Association and the California Taxpayer's Association.

Purpose

The purpose of the proposed amendments to Section 2, The Value Concept, is to interpret and make specific the amendment to Section 110 by Chapter 1519 of the Statutes of 1988, to streamline the definition of "full cash value" to make it more consistent with current law and to incorporate the interpretations of law reflected in the Dennis and Carlson cases.

Factual Basis

(a) As the result of the amendments adding additional language to the regulation it is necessary to divide it into subdivisions for better clarity and understanding. The amendment adds the subdivision (a) designation. It also adds language reflecting the holding in the Dennis case and streamlines the definition by substituting the term "arms length transaction" for more lengthy language which is repetitive of the statute. The term "arms length transaction" better reflects the amended version of Section 110 and the court's interpretation in the Dennis case. The amendment also deletes the remaining language relating to the presumption of value since that language is superceded by Chapter 1519 of the statutes of 1988.

(b) Interprets and makes specific the presumption added by Chapter 1519 of the statutes of 1988 as well as the interpretation of that presumption set forth in the Dennis case. Subdivision (b) makes it clear that the presumption applies when valuing real property (as opposed to personal property) as the result of a change in ownership for consideration. This conforms to the definition of "purchase" as defined in Revenue and Taxation Code section 67. It also makes it clear that the purchase price is to be valued by its cash equivalent. Subdivision (b) provides that the effect of the presumption is to shift the burden of proving the value of the real property by a preponderance of the evidence to the party seeking to overcome the presumption. The subdivision also provides that the presumption may be rebutted by evidence that the full cash value of the property is more or less than the purchase price. This reflects the holding in the Dennis case. Finally, the subdivision adds a standard for determining whether the value is more or less than the purchase price. The standard requires that the difference between the purchase price and the value be more than five percent in order to overcome the presumption. These provisions reflect the experience of California assessors that clarification of the issues addressed in these provisions is needed by California taxpayers. The five percent standard reflects the conclusion of experienced assessors that appraisal judgment deviations of less than five percent are not significant for appraisal purposes.

(c) This subdivision lists all of the exceptions to the presumption provided in subdivision (b). The first exception is for any taxable possessory interest. The subdivision clarifies that it applies only to taxable possessory interests. It also makes the exception easier to identify as the exception contained in Section 110 for possessory interests is easily overlooked. The second exception is for transfers of real property when the consideration is wholly or partially in the form of ownership interests in a legal entity, such as shares of stock, or the change in ownership occurs as the result of the acquisition of ownership interests in a legal entity. Based upon the experience of county assessors who are required to reappraise real property in the described types of situations, it was concluded that application of the presumption in these situations is inappropriate since typically there is little or no relationship between the price paid and the value of the real property which changed ownership. For example, where a stock holder already owns 45 percent of the voting stock of a corporation which may own real property as well as other assets, and the stockholder acquires control of the corporation through the purchase of an additional 10 percent of the stock thus triggering a

reappraisal of the real property, there is no logical relationship between the price paid for the 10 percent stock interest and the value of any real property owned by the corporation. The third exception involves the transfer of real property when the information prescribed in the change in ownership statement is not timely provided. This exception also provides an explanation of an exception contained in Section 110 but which may be easily overlooked. It also is necessary to make the list of exceptions complete.

(d) This amendment merely adds the subdivision designation to the last sentence of the existing regulation.

RHO:mw
2524D

Exhibit B

Regulation 2

FINAL STATEMENT OF REASONS

I. UPDATE OF INFORMATION CONTAINED IN INITIAL STATEMENT OF REASONS

The initial statement of reasons remains unchanged except that the discussions of the purpose of the proposed amendments and of subdivision (a) are updated to read:

"Purpose

The purpose of the proposed amendments to Section 2, The Value Concept, is to interpret and make specific the amendments to Section 110 by Chapter 1519 of the Statutes of 1988, and to incorporate the interpretations of law reflected in the Dennis and Carlson cases.

Factual Basis

(a) As the result of adding additional language to the regulation, it is necessary to divide it into subdivisions for better clarity and understanding. The amendment adds the subdivision designation. It also adds the language of the second paragraph reflecting the holding in the Carlson case that when applied to real property the term "full cash value" is the market value of the unencumbered or unrestricted fee simple interest in the property subject only to legally enforceable governmental restrictions. This amendment is necessary to properly reflect current California law. The amendment also deletes the remaining language relating to the presumption of value since that language is superseded by Chapter 1519 of the Statutes of 1988."

II. LOCAL MANDATE DETERMINATION

The State Board of Equalization has determined that the adopted regulation does not impose a mandate on local agencies or school districts.

III. RESPONSE TO PUBLIC COMMENT

Pursuant to Government Code Section 11346.7, subdivision (b)(3), a final statement of reasons shall include "[a]

summary of each objection or recommendation made regarding the specific adoption, amendment or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation or the reasons for making no change."

In September 1990 the Board received some 33 public comment letters, all of which contained an essentially uniform text. Rather than to identify each of the 39 commentators individually, these letters will be referred to collectively as the "9/90 comment letters". Similarly, the Board received some 39 letters with essentially the same text in June 1991. This group will be referred to collectively as the "6/91 comment letters".

A. Comments on Subdivision (a), Rule 2

The following are summaries of the objections and recommendations regarding subdivision (a) of Rule 2 and the Board's responses.

1. As originally noticed for public hearing, the proposed amendment to Rule 2 modified the first sentence which contains the basic definition of the term "full value" and its synonyms. The amendment was designed to incorporate the holding of the Carlson case. The amendment also deleted part of the text of the original first sentence. These changes were objected to because they changed the basic "full value" definition which has been in place for many years and has been recognized by the courts as an appropriate statement of the value standard to be applied in valuing all types of property, both real and personal.

See the testimony at the public hearing on September 12, 1990 of David Doerr and public comment letter of Francis H. O'Neill, dated July 27, 1990.

RESPONSE

In accordance with the public comments, the Board revised the final version of subdivision (a) of Rule 2 in order to comply with these objections. The revision restores the first sentence of the rule to its original text and adds a new second paragraph to subdivision (a) which embodies the principles set forth in the Carlson case.

2. Many comments recommended deletion of the portion of subdivision (a) which reflects the holding in the Carlson case. In some instances, the recommendation was accompanied by extensive argument explaining why the commentor felt that the Board should not amend the rule to reflect the "full value" principles set forth in that decision. These discussions set forth various reasons why the commentor believes the Carlson case was wrongly decided.

See the testimony at the public hearing on September 12, 1990 of Jane Relyea and Terrence Rose and public comment letters of Irving Lyons, dated September 7, 1990, Terrence Rose, dated September 10, 1990, 9/90 comment letters, Terrence Rose, dated May 29, 1991, Lucy Lofrumento, dated June 3, 1991, Jane Relyea, dated June 3, 1991, Russell Pratt, dated June 4, 1991, Stanley Friedman, dated June 7, 1991, and the 6/91 comment letters.

RESPONSE

After reviewing all of the comments presented on this issue, the Board retained the portion of subdivision (a) of Rule 2 which reflects the value principles set forth in the Carlson case. The Board concluded that the Carlson case correctly reflects the law in California. The decision has not been overruled or disapproved by any other appellate court in the state. Moreover, it was cited with approval in the Dennis case. The Carlson and Dennis decisions are also consistent with subdivision (d) of Property Tax Rule 8 (18 Cal. Code of Regs. Section 8(d)), which states:

"In valuing property encumbered by a lease, the net income to be capitalized is the amount the property would yield were it not so encumbered, whether this amount exceeds or falls short of the contract rent and whether the lessor or the lessee has agreed to pay the property tax."

The above language is cited with approval in Clayton v. County of Los Angeles (1972) 26 Cal. App. 3d 390 at 396. The Clayton case explains why the California courts have consistently rejected arguments in favor of the interpretation of "full value" recommended by the commentors.

B. Comments on Subdivision (b), Rule 2

The following are summaries of the objections and the

recommendations regarding subdivision (b) of Rule 2 and the Board's responses.

1. Many of the public comments received related to the revision of the rebuttable presumption that the purchase price of real property is its full cash value. The revision makes clear that the presumption may be rebutted by evidence that the full cash value of the property is significantly more or less than the cash value of the purchase price. Commentors suggest that this misinterprets the provisions of subdivision (b) of Revenue and Taxation Code section 110. It is suggested that the presumption may be rebutted only by evidence that the transaction was not an arm's length open market transaction. Where the transaction is an arm's length open market transaction, it is contended the purchase price must be accepted as the full cash value of the property and the presumption may not be rebutted by evidence showing that the true market value of the property is actually something more or less than the price paid. Some comments include an extensive discussion of the Dennis opinion, suggesting that it, too, was wrongly decided.

See the testimony at the September 12, 1990 public hearing of Jane Relyea and public comment letters from Irving Lyons, dated September 7, 1990, Terrence Rose, dated September 10, 1990, 9/90 comment letters, Terrence Rose, dated May 29, 1991, and the 6/91 comment letters.

RESPONSE

After considering all of the comments received, the Board adopted subdivision (b) in its original form without change. The portion of subdivision (b) which permits the presumption to be rebutted by evidence that the value of the property is significantly more or less than the cash equivalent price accurately reflects the Dennis case interpretation of Revenue and Taxation Code section 110(b). The Dennis case has not been disapproved or overruled and represents a controlling appellate decision. The decision is consistent with the Board's understanding of the effect of the presumption language previously contained in Rule 2, which was the model for the language contained in Revenue and Taxation Code section 110(b). The Dennis case interpretation is also consistent with the basic value standard set forth in Revenue and Taxation Code section 110.1, which provides that "full cash value" of

real property for purposes of subdivision (a) of section 2 of Article XIII A of the California Constitution (Proposition 13), means the fair market value as determined by section 110 on any date after March 1, 1975, that the property is purchased, changes ownership or new construction is completed. The interpretation suggested by the commentators who disagree with the Dennis decision could, under certain circumstances, frustrate the legislative intent of section 110.1. The Dennis decision, consistent with section 110.1, assures that the value standard intended by that section will always be applied.

2. Subdivision (b) permits the purchase price presumption to be rebutted by evidence that the full cash value of the property is significantly more or less than the cash equivalent of the purchase price and defines a significant deviation as a deviation of more than five percent of the total consideration. Some comments suggested that the five percent deviation standard is arbitrary and recommended the deletion of this standard.

See public comment letter from Francis O'Neill, dated July 27, 1990, Jane Relyea, dated June 3, 1991 and Robert Andersen, dated May 31, 1991.

RESPONSE

The Board has retained the five percent deviation standard in subdivision (b) after reviewing the public comments. The five percent deviation standard is based upon the general acceptance among appraisers that a difference between the market price of a property and a value indicator of five percent or less is not a significant deviation. None of the information provided by the commentators challenges this premise. Further, no information supporting a different standard has been provided. In the Board's view, therefore, the purchase price presumption cannot be considered to be rebutted where the evidence consists of market indicators reflecting a market value which is within five percent of the price paid.

C. Comments on Subdivision (c), Rule 2

The following is a summary of the objections and recommendations regarding subdivision (c) of Rule 2, and the Board's response.

The public comment letter from Francis O'Neill, dated July 27, 1990 objects to the first and third paragraphs of subdivision (c), which exclude from the purchase price presumption the transfer of any taxable possessory interest and the transfer of real property when the information prescribed in the change in ownership statement is not timely provided.

RESPONSE

The described provisions of subdivision (c) have been retained without change because they reflect the express provisions of Revenue and Taxation Code section 110, subdivisions (b), and (c). The first sentence of subdivision (b) refers to real property "other than possessory interests". Further, subdivision (c) also excludes possessory interests and provides in the last sentence that if a taxpayer fails to provide required change in ownership statement information, the rebuttable presumption provided in subdivision (b) shall not apply.

D. Comments on the Statement of Cost Impact on Private Persons and Small Businesses

The following is a summary of the objections and recommendations regarding the portion of the public hearing notice stating the effect of the proposed rule amendment on small business.

Some public comments stated that the public hearing notice section on the effect on small business was inaccurate because it stated that the proposed amendments would not have a significant adverse economic impact on small businesses. It was suggested that assessing real property on the value of the unencumbered or unrestricted fee simple interest would increase the assessed values and, ultimately, the property taxes borne by small businesses.

See testimony at the September 12, 1990 public hearing of Terrence Rose, and public comment letters from Terrence Rose, dated May 29, 1991, and Russell Pratt, dated June 4, 1991.

RESPONSE

As indicated in the response to the comments on subdivision (a), the amendment of that subdivision is declaratory of existing law as reflected in the Carlson

and Dennis cases. The changes in the subdivision merely reflect the current law of the state and valuation principles currently being applied by California assessors. Comments and testimony received in connection with Rule 2 attest to this fact. Thus, adoption of the amendments which merely reflect existing law cannot have an adverse impact upon small business taxpayers.

IV. ALTERNATIVES CONSIDERED

By its motion, the Board of Equalization has determined that no alternative to adopting the regulation would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted version.

V. SMALL BUSINESS IMPACT

The Board of Equalization has determined that the adopted regulation will not have a significant adverse economic impact on small businesses.

Regulation 2

UPDATED INFORMATIVE DIGEST

Revenue and Taxation Code Section 110 defines "full cash value" or "fair market value" for property tax purposes. In addition, it contains language added by Chapter 1519 of the Statutes of 1988 (AB 3382, Quackenbush), which provides a rebuttable presumption that "full cash value" or "fair market value" is the purchase price paid for property in an arms-length transaction.

Rule 2 supplements the statutory definition of "full cash value" found in Revenue and Taxation Code Section 110 by adding several synonyms for that term. The Rule also adds various conditions under which a sale would be considered to be a market transaction and contains a presumption similar to that added to section 110 by Chapter 1519 of the Statutes of 1988. The proposed amendments to Rule 2 divide the rule into four subdivisions, adding appropriate subdivision designations. It adds to subdivision (a) a separate paragraph which clarifies that the definition of "full value", "full cash value", "cash value", "actual value", and "fair market value", as applied to real property, refers to the value of the unencumbered or unrestricted fee simple interest in the real property subject to any legally enforceable governmental restrictions. This paragraph reflects the holding in Carlson v. Assessment Appeals Board No. 1 (1985) 167 Cal. App. 3d 1004.

The amendments to Rule 2 also revise the presumption that the sales price is full cash value in order to reflect the holding in Dennis v. County of Santa Clara (1989) 215 Cal. App. 3d 1019, that the presumption may always be rebutted by evidence that the market value of the property is more or less than the price paid for it. It includes a standard for determining whether the difference between the purchase price and market value is significant and lists the conditions under which the presumption will not apply. The amendments make other technical or conforming changes.

3372D

Exhibit C

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Citation: **1996 cal als 61**

*1996 Cal ALS 61, *; 1996 Cal SB 1585;
1996 Cal Stats. ch. 61*

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1996 REGULAR SESSION
CHAPTER 61 (Senate Bill No. 1585)

BILL TRACKING SUMMARY FOR THIS DOCUMENT

1996 Cal ALS 61; 1996 Cal SB 1585; 1996 Cal Stats. ch. 61

[Approved by Governor June 10, 1996.]

Urgency legislation is effective immediately, Non-urgency legislation will become effective January 1, 1997

To view the next section, type .np* and TRANSMIT.
To view a specific section, transmit p* and the section number. E.g. p*1

DIGEST:

SB 1585, Craven. Mobilehomes: age requirements.

Existing law provides that the management of a mobilehome park and the ownership or management of a subdivision, cooperative, or condominium for mobilehomes may require that a prospective purchaser comply with any rule or regulation limiting residency based upon age requirements if it complies with the Federal Fair Housing Act, as amended by Public Law 100-430, and implementing regulations.

This bill would require it to comply with this federal law, as amended by Public Law 104-76.

This bill would also extend the applicability of provisions of existing law regarding residency in a mobilehome in a subdivision, cooperative, or condominium to a resident-owned mobilehome park.

The bill would declare that it is to take effect immediately as an urgency statute.

SYNOPSIS:

An act to amend Sections 798.76, 799, 799.1, 799.3, 799.4, 799.5, and 799.7 of the Civil Code, relating to mobilehomes, and declaring the urgency thereof, to take effect immediately.

NOTICE: [A> Uppercase text within these symbols is added <A]

* * * indicates deleted text

TEXT:

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

[*1] SECTION 1. Section 798.76 of the Civil Code is amended to read:
§ 798.76.

The management may require that a prospective purchaser comply with any rule or regulation limiting residency based on age requirements for housing for older persons, provided that the rule or regulation complies with the federal **[A> FAIR HOUSING ACT, AS AMENDED BY PUBLIC LAW 104-76, <A]** and implementing regulations.

[*2] SECTION 2. Section 799 of the Civil Code is amended to read:
§ 799.

As used in this article:

(a) "Ownership or management" means the ownership or management of a subdivision, cooperative, or condominium for mobilehomes**[A> OR OF A RESIDENT-OWNED MOBILEHOME PARK <A]**.

(b) "Resident" means a person who maintains a residence in a subdivision, cooperative, or condominium for mobilehomes **[A> OR A RESIDENT-OWNED MOBILEHOME PARK <A]**.

[*3] SECTION 3. Section 799.1 of the Civil Code is amended to read:
§ 799.1.

This article shall govern the rights of a resident **[A> WHO HAS AN OWNERSHIP INTEREST IN THE SPACE, SUBDIVISION, COOPERATIVE, CONDOMINIUM, OR RESIDENT-OWNED MOBILEHOME PARK <A]** in which his or her mobilehome is located or installed. Articles 1 (commencing with Section 798) to 8 (commencing with Section 798.84), inclusive, shall apply only to a resident of a subdivision, cooperative, or condominium for mobilehomes who rents or leases a space on which his or her mobilehome is located or installed.

[*4] SECTION 4. Section 799.3 of the Civil Code is amended to read:
§ 799.3.

The ownership or management shall not require the removal of a mobilehome from a subdivision, cooperative,**[A> CONDOMINIUM, OR RESIDENT-OWNED MOBILEHOME PARK <A]** in the event of its sale to a third party.

[*5] SECTION 5. Section 799.4 of the Civil Code is amended to read:
§ 799.4.

The ownership or management may require the right to prior approval of the purchaser of a mobilehome that will remain in the subdivision, cooperative, or condominium for mobilehomes **[A> OR RESIDENT-OWNED MOBILEHOME PARK <A]** and that the selling resident or his or her agent give notice of the sale to the ownership or management before the close of the sale. Approval cannot be withheld if the purchaser has the financial ability to pay the fees and charges of the subdivision, cooperative,**[A> CONDOMINIUM, OR RESIDENT-OWNED MOBILEHOME PARK <A]** unless the ownership or management reasonably determines that, based on the purchaser's prior residences, he or she will not comply with the rules and regulations of the subdivision, cooperative, or condominium.

[*6] SECTION 6. Section 799.5 of the Civil Code is amended to read:
§ 799.5.

The ownership or management may require that a purchaser of a mobilehome that will remain in the subdivision, cooperative, **[A> CONDOMINIUM, OR RESIDENT-OWNED MOBILEHOME PARK <A]** for mobilehomes, comply with any rule or regulation limiting residency based on age requirements for housing for older persons, provided that the rule or regulation complies with the provisions of the federal **[A> FAIR HOUSING ACT, AS AMENDED BY PUBLIC LAW 104-76, <A]** and implementing regulations.

[*7] SECTION 7. Section 799.7 of the Civil Code is amended to read:
§ 799.7.

The ownership or management shall provide, by posting notice on the mobilehomes of all affected homeowners and residents, at least 72 hours' written advance notice of an interruption in utility service of more than two hours for the maintenance, repair, or replacement of facilities of utility systems over which the management has control within the subdivision, cooperative, **[A> CONDOMINIUM, OR RESIDENT-OWNED MOBILEHOME PARK, IF <A]** the interruption is not due to an emergency. The ownership or management shall be liable only for actual damages sustained by a homeowner or resident for violation of this section. "Emergency," for purposes of this section, means the interruption of utility service resulting from an accident or act of nature, or cessation of service caused by other than the management's regular or planned maintenance, repair, or replacement of utility facilities.

[*8] SECTION 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to conform state requirements for senior mobilehome parks to changes in federal law which were recently enacted by Congress, and to extend the applicability of rights granted to residents of mobilehome subdivisions, cooperatives, and condominiums to residents of resident-owned mobilehome parks, it is necessary that this act take effect immediately.

EXPLANATORY NOTES SENATE BILL 1585:

CC § 798.6. Substituted "Fair Housing Act, as amended by Public Law 104-76," for "Fair Housing Amendment Act of 1988 (P.L. 100-430)".

CC § 799. Added (1) "or of a resident-owned mobilehome park" at the end of subd (a); and (2) "or a resident-owned mobilehome park" at the end of subd (b).

CC § 799.1. Substituted "who has an ownership interest in the space, subdivision, cooperative, condominium, or resident-owned mobilehome park" for "of a subdivision, cooperative, or condominium for mobilehomes who has an ownership interest in the space, subdivision, cooperative, or condominium" in the first sentence.

CC § 799.3. Substituted "condominium, or resident-owned mobilehome park" for "or condominium".

CC § 799.4. (1) Added "or resident-owned mobilehome park" in the first sentence; and (2) substituted "condominium, or resident-owned mobilehome park" for "or condominium" before "unless the ownership" in the second sentence.

CC § 799.5. Substituted (1) "condominium, or resident-owned mobilehome park" for "or condominium" before "for mobilehomes"; and (2) "Fair Housing Act, as amended by Public Law 104-76," for "Fair Housing Amendments Act of 1988 (P.L. 100-430)".

CC § 799.7. Substituted "condominium, or resident-owned mobilehome park, if" for "or condominium, provided that" before "the interruption" in the first sentence of the first paragraph.

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PROOF OF SERVICE
(C.C.P. §§ 1013(a), 2015.5)

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 105 East Anapamu Street, Santa Barbara, California.

On May 2, 2013, I served a true copy of the within **APPELLANT'S MOTION REQUESTING JUDICIAL NOTICE** on the Interested Parties in said action by:

by personally delivering it to the person indicated below:

Jerry Czuleger, Deputy County Counsel
105 East Anapamu Street, Room 201
Santa Barbara, CA 90101

by mail. I am familiar with the practice of the Office of Santa Barbara County Counsel for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with the ordinary course of business, the above mentioned documents would have been deposited with the United States Postal Service on the above date after having been deposited and processed for postage with the County of Santa Barbara Central Mail Room.

See Mail Service List

I declare, under penalty of perjury, that the above is true and correct.

Executed on May 2, 2013, Santa Barbara, California.

Carol Fink

ASSESSOR FOR COUNTY OF SANTA BARBARA

v.

ASSESSMENT APPEALS BOARD NO. 1

Court of Appeal Case Number: B2296564

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