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December 22, 2004

Honorable Gregory J. Smith  
San Diego County Assessor  
Attn: Mr. David L. Butler  
Chief Deputy Assessor, Valuation  
1600 Pacific Highway, Room 103  
San Diego, CA 92101-2480

***Re: Change in Ownership – Manufactured Homes on Permanent Foundations***

Dear Mr. Butler:

This is in response to your letter dated September 1, 2004, addressed to Assistant Chief Counsel Kristine Cazadd regarding the assessment of leased land when a manufactured home is installed on a permanent foundation and becomes subject to property taxation. You first ask whether the installation of a manufactured home on a permanent foundation on leased land, that is eligible for the homeowners' exemption, results in a reappraisal of the land at current fair market value if the stated lease term is less than 35 years. You also ask whether the transfer of a manufactured home on a permanent foundation on leased land, that is eligible for the homeowners' exemption, results in a reappraisal of the land at current fair market value if the remaining stated lease term is less than 35 years. Finally, you ask whether the installation or transfer of a manufactured home on a permanent foundation on leased land, which is rented and therefore not eligible for the homeowners' exemption, results in a reappraisal of the land at current fair market value.

As discussed below, we conclude that the installation of a manufactured home on a permanent foundation on leased land, that is eligible for the homeowners' exemption, results in a change in ownership of the land, because the lease is conclusively presumed to have written renewal options of at least 35 years. Additionally, we conclude that the transfer of such a manufactured home installed on a permanent foundation on leased land, with a remaining stated lease term of less than 35 years, also results in a change in ownership. Finally, we conclude that the installation or transfer of a manufactured home on a permanent foundation on leased land, which is rented and therefore not eligible for the homeowners' exemption, does not result in a change in ownership of the land if the lease term, including optional renewals, is less than 35 years.

## **Legal Analysis**

Generally, manufactured homes are classified as personal property and are taxed under The Manufactured Home Property Tax Law set forth in Revenue and Taxation Code<sup>1</sup> section 5800 et seq. An exception to this classification is provided in section 5801, subdivision (b)(1), which states that “manufactured home,” as defined under this part, does not include a manufactured home, which has become real property by being affixed to land on a permanent foundation. When a manufactured home is installed on a permanent foundation, it is taxed in the same manner as all other real property.

Upon installation, California Constitution Article XIII A, section 2 requires that the manufactured home’s base-year value be established at the current fair market value. Additionally, any subsequent “change in ownership” of the manufactured home, as discussed below, will result in the reappraisal of the manufactured home at the current fair market value.

Section 60 defines a “change in ownership” as “a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.” Thus, to constitute a change in ownership, a transfer must meet three requirements: (1) a present interest in real property must be transferred; (2) the beneficial use or ownership interest must be transferred; and (3) the value of the interest transferred must be substantially equal to the value of the fee interest.

With respect to leasehold interests in real property, the Legislature determined that leasehold interests of a certain duration are substantially equal to the value of the fee interest in real property and meet the third requirement of section 60. As relevant herein, section 61, subdivision (c)(1) provides that a change in ownership includes:

The creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options) . . . and any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options). . . . For purposes of this subdivision . . . it shall be conclusively presumed that all homes eligible for the *homeowners’ exemption*,<sup>2</sup> other than manufactured homes located on rented or leased land and subject to taxation pursuant to [Revenue and Taxation Code section 5800, et seq.] . . . that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement [footnote and italics added].

Thus, under section 61, subdivision (c)(1), regardless of the lease term stated in the executed lease agreement, it is conclusively presumed that a lease term of at least 35 years is created when a manufactured home is installed on a permanent foundation on leased land, and the home is eligible for the homeowners’ exemption. Consequently, the installation of a manufactured home on a permanent foundation results in a change in ownership of the leased land.

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<sup>1</sup> Unless otherwise specified, all section references are to the Revenue and Taxation Code.

<sup>2</sup> Section 218 provides a homeowners’ property tax exemption in the amount of \$7,000 of the full value of the dwelling. As relevant herein, subdivision (b) of the statute provides that the exemption does not extend to property that is rented.

Property Tax Rule 462.100, the regulation that interprets and implements section 61, subdivision (c), provides that a change in ownership of taxable property subject to a lease results in a reappraisal of the entire property subject to the lease. Therefore, upon the installation of a manufactured home on a permanent foundation, which is eligible for the homeowners' exemption, the leased land must be reappraised at the current fair market value.

We will separately address below each question you have raised.

### **Creation of Leasehold Interest**

Under section 61, subdivision (c)(1), when a manufactured home, eligible for the homeowners' exemption, is installed on a permanent foundation on leased land, the lease is conclusively presumed to have written renewal options of at least 35 years, even if the lessor and lessee entered into a month-to-month tenancy or the executed lease agreement specifically provides a lease term of less than 35 years. The creation of a leasehold interest for a term of 35 years or more constitutes a change in ownership of the leased land, resulting in a reappraisal of leased land. Additionally, upon installation, the base-year value of the manufactured home must also be established based on the current fair market value.

### **Transfer of Leasehold Interest**

The transfer of a manufactured home eligible for the homeowners' exemption, and the assignment of the leasehold interest in the land on which the manufactured home is affixed on a permanent foundation, results in a change in ownership because the lease is conclusively presumed to include written renewal options of 35 years pursuant to section 61, subdivision (c)(1). The purpose of this conclusive presumption and a detailed explanation on its application are contained in the legal opinion in Annotation No. 220.0349, enclosed.

### **Manufactured Homes Not Eligible for Homeowners' Exemption**

If a manufactured home, affixed on a permanent foundation on leased land, is rented and therefore not eligible for the homeowners' exemption, the conclusive presumption provided by section 61, subdivision (c)(1) does not apply. In other words, it is not conclusively presumed that the land is leased for a term of at least 35 years. Thus, under these circumstances, the installment of a manufactured home on leased land with a term of less than 35 years (including renewal options) does not result in a change in ownership of the land. Similarly, a transfer of a leasehold interest having a remaining stated term of less than 35 years (including renewal options) does not constitute a change in ownership. Therefore, if a manufactured home is not eligible for the homeowners' exemption, the creation or transfer of a leasehold interest in taxable real property for a lease term of less than 35 years is not subject to reappraisal.

The views expressed in this letter are only advisory in nature; 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.

Very truly yours,

*/s/ Sophia Chung*

Sophia Chung  
Senior Tax Counsel

SC:jlh

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