

SUPREME COURT COPY

Case No. S222329

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED

OCT 07 2015

926 NORTH ARDMORE AVENUE, LLC,
Plaintiff-Appellant

Frank A. McGuire Clerk

v.

COUNTY OF LOS ANGELES,
Defendant-Respondent.

Deputy

After a decision of the Court of Appeal,
Second Appellate District, Division Seven,
On Appeal from the Superior Court, County of Los Angeles
The Honorable Rita Miller, Judge Presiding
Trial Court Case No. BC 476670
Court of Appeal Case No. B248356

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND
BRIEF OF AMICUS CURIAE INSTITUTE FOR PROFESSIONALS IN
TAXATION IN SUPPORT OF PLAINTIFF/APPELLANT 926 NORTH
ARDMORE AVENUE, LLC**

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**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF
AMICUS CURIAE INSTITUTE FOR PROFESSIONALS IN TAXATION IN
SUPPORT OF PLAINTIFF/APPELLANT 926 NORTH ARDMORE
AVENUE, LLC**

STATEMENT OF INTEREST OF AMICUS CURIAE

Pursuant to rule 8.200(c) of the California Rules of Court (“CRC”), the Institute for Professionals in Taxation (“IPT”) hereby requests permission to file the attached *amicus curiae* brief in support of Plaintiff and Appellant 926 North Ardmore Avenue, LLC (“Ardmore”). The brief was authored entirely by counsel for IPT. There are no disclosures to be made under CRC, rule 8.200(c)(3).

I. Interest of Amicus Curiae

IPT is a non-profit educational organization formed in 1976 under the laws of the District of Columbia. Its offices are located in Atlanta, Georgia. IPT’s

organizational purposes include the promotion of uniform and equitable administration of income, ad valorem, and sales and use taxes. It has more than 4,400 members representing more than 1,400 businesses across the United States and in Canada. Represented within IPT's membership are numerous small businesses and most of the Fortune 500 companies. Member representation spans the industry spectrum, including aerospace, agriculture, manufacturing, wholesale and retail, communications, health care, financial, oil and gas, hospitality, transportation, and other sectors.

IPT members pay documentary transfer taxes and other taxes and routinely file tax returns, amended returns, and refund claims in jurisdictions in which they operate, including California.

IPT has an interest in this matter because its members own substantial amounts of real property in California, and in particular Los Angeles County, as part of their corporate asset holdings. To date, Los Angeles County, as well as other jurisdictions in California, have not amended their documentary transfer tax laws to include, nor have they collected, documentary transfer taxes on transfers of interests in business entities. The actions by Los Angeles County in this case severely impact the ability of IPT members to transact business within the jurisdiction. Further, extra-jurisdictional actions by an out of state business entity are implicated by the new practice of Los Angeles County in its attempted exaction of the documentary transfer tax on entity interest transfers where there is no actual transfer of realty between entities or individuals.

II. Purpose of the Amicus Curiae Brief

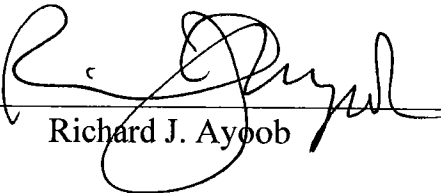
On behalf of IPT, I have reviewed all the briefs filed in this case. IPT is vitally interested in the law governing these types of transactions which occur regularly for its members. I believe the proposed analysis and IPT's unique perspective will focus the issues before this Court and will simplify the Court's analysis. IPT's brief will assist the Court in deciding this matter by highlighting

the context of the original enactment of California's and Los Angeles County's Documentary Transfer Tax ("DTT") provisions. Further, IPT will outline a number of absurd results that will flow from the imposition of the DTT on property tax changes in ownership pursuant to Revenue & Taxation Code § 64.¹

Therefore, IPT respectfully requests that the Court accept the attached amicus curiae brief for filing. Doing so is an appropriate exercise of the Court's discretionary authority.

Dated: September 30, 2015

RICHARD J. AYOOB
CHRISTOPHER J. MATARESE
GREGORY BROEGE
AJALAT, POLLEY, AYOOB & MATARESE

By:  _____
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¹ All section references are to the California Revenue & Taxation Code unless otherwise noted.

**BRIEF OF AMICUS CURIAE
INSTITUTE FOR PROFESSIONALS IN TAXATION
IN SUPPORT OF PLAINTIFF/APPELLANT 926 NORTH ARDMORE
AVENUE, LLC**

SUMMARY OF THE ARGUMENT

I. Neither the Legislature, Nor the County, When Enacting the Documentary Transfer Tax Law in 1968 Could Have Intended for the Law to Apply to Property Tax Legal Entity Changes in Ownership Because Property Tax Legal Entity Changes in Ownership Did Not Exist in 1968

As the County of Los Angeles (the “County”) notes in its answer brief, the Legislature enacted the DTT effective January 1, 1968, which authorized counties to enact a DTT in conformity with the statutory DTT. (Respondent’s Answer Brief “RAB” p. 11.) The county codified its DTT ordinance effective January 1, 1968.² (RAB p. 11.)

“The basic rules of statutory construction are well established. When construing a statute, a court seeks to determine and give effect to the intent of the enacting legislative body.” (*Catlin v. Superior Court* (2011) 51 Cal.4th 300, 304, emphasis ours.) Therefore, when construing Section 11911 *et seq.*, this Court must determine the intent of the Legislature in 1968 and whether the 1968 Legislature intended for the DTT to encompass property tax legal entity changes in ownership under Section 64 (something that did not exist in 1968).

It was quite literally impossible for the Legislature to intend to cover property tax legal entity changes in ownership in 1968 because Section 64 was not enacted until 1979, over a decade after the Legislature and the County enacted the DTT. (Stats. Ch. 242 § 4, effective July 10, 1979.) The Legislature could not have intended for the DTT to cover something that did not exist at the time of the

² Los Angeles County Ordinance 9443, enacted November 14, 1967, essentially mirrors the DTT found in the Revenue & Taxation Code.

enactment of the DTT. Therefore, this Court must hold that the DTT does not apply to property tax legal entity changes in ownership under Section 64.

II. Section 11925 Is in Conflict with Section 64, and Therefore Precludes the Application of Section 64 Changes in Ownership from Being Subject to the DTT

The County argues that Section 11925, which provides for the imposition of the DTT upon a termination under Section 708 of the Internal Revenue Code of 1986 (“IRC 708”) of a partnership or other entity treated as a partnership for federal tax purposes, authorizes the County to impose the DTT when a property tax legal entity change in ownership occurs. (RAB p. 16-17.) The County states that transfers of legal entity interests are personal property, not real property, but insists that the specific exception making technical terminations under IRC 708 subject to the DTT permits the County to impose the DTT on other transfers of legal entity interests that do not result in technical terminations under IRC 708. (RAB p. 17.) As explained below, this is an absurd proposition.

A. A Technical Termination under IRC 708 Is the Only Instance in Which the County May Impose the DTT on the Transfer of Legal Entity Interests

A technical termination is the only place in the state statute or county code which authorizes the imposition of the DTT on the transfer of legal entity interests. (Section 11925; Los Angeles County Code (“LACC”) § 4.60.080.) The authorization found in Section 11925 and LACC § 4.60.080 to impose the DTT on the transfer of legal entity interests is a very specific authorization (there must be a technical termination of a partnership or entity taxed like a partnership under IRC 708).

Section 11925(b) provides that a technical termination under IRC 708 is deemed a transfer of real property. Section 11925(b) states that an IRC 708 technical termination “shall be treated as having executed an instrument whereby

there was conveyed...all realty held by the partnership or other entity at the time of the termination.”

Section 11925(b) evidences that the Legislature understood that transfers of interests in legal entities are not transfers of real estate. Section 11925(b) further evidences that the Legislature understood that even an IRC 708 technical termination is not a transfer of realty, but the Legislature decided to treat this specific fact pattern as if it was a transfer of realty. The logical conclusion is that the Legislature did not intend to impose the DTT on transfers of interests in legal entities except in the specific circumstance of an IRC 708 technical termination.

B. The Legislature Has Chosen Not to Amend the DTT to Make Property Tax Legal Entity Changes in Ownership under Section 64 Subject to the DTT

As the County noted, Legislature amended Section 11925 in 1999 to make clear that Section 11925 applied to legal entities other than partnerships that are taxed like partnerships. Section 64 had been in existence for over 20 years in 1999. The Legislature could have easily amended Section 11925 in 1999 to include Section 64 property tax changes in ownership as subject to the DTT. (*People v. Turner* (2000) 78 Cal.App.4th 1131, 1141, [“We presume the Legislature in enacting a law ‘is deemed aware of the statutes...already in effect and to have enacted the new statute in light thereof.’”].)

However, the Legislature chose not to do so and this Court should not usurp the role of the Legislature by adding language to the DTT statutes that is not there. (*Id.* at 1140, [“In interpreting any provision of a statute, we do not insert words into it as such would ‘violate the cardinal rule that courts may not add provisions to a statute.’”].) Courts are called upon to construe statutes and ordinances and not rewrite them for the Legislature or the County. (*ITT Gilfillan, Inc. v. City of Los Angeles* (1977) 72 Cal.App.3d 421, 432.)

Finally, construing the DTT to include property tax legal entity changes in ownership under Section 64 would violate the well-established rule that “a tax can

never be extended by construction to things not named or described in the statute as the subject of taxation.” (*Merced County v. Helm & Nolan* (1894) 102 Cal. 159, 165; see also *Gould v. Gould* (1917) 245 U.S. 151, 153, [“in the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out.”].) When construing statutes levying taxes, tax statutes “are construed most strongly against the government, and in favor of the [taxpayer].” (*People v. Duntley* (1932) 217 Cal. 150, 165.)

C. IRC 708 and Section 64 Treat the Same Fact Patterns Differently and Therefore Cannot Be Applied Together for DTT Purposes

The Court cannot interpret Section 11925(b) to permit the DTT on property tax legal entity changes in ownership under Section 64 because they do not result in cohesive outcomes.

IRC 708 provides that a technical termination occurs if there is a transfer of 50% of partnership capital and profits within a 12-month period. Section 64(c)(1) provides that a change in ownership occurs if a person, directly or indirectly, acquires over 50% of the ownership interests of a legal entity. Section 64(d), which only applies in limited circumstances, provides that a change in ownership occurs when over 50% of the original coowners’ interests in the legal entity transfer.³ There is no time frame in which Section 64(d) is limited to. Therefore, as illustrated by the examples below, a transfer can be a IRC 708 technical termination, but not a Section 64 property tax change in ownership and vice versa.

³ Section 64(d) only applies if there was a previous transfer to the legal entity which currently owns the real property in which the property was excluded from reassessment by Section 62(a)(2) (also known as a proportional interest transfer). Therefore, if there was not a prior Section 62(a)(2) transfer, Section 64(d) does not apply.

For example, assume A and B together own 100% of a limited liability company (“LLC”), taxed as a partnership, and Section 64(d) does not apply. A husband and wife then purchase 100% of the ownership interests in the LLC from A and B as community property (therefore, each would own 50% of the ownership interests in the LLC). This transfer is a technical termination under IRC 708 because 50% or more of the interests of the LLC transferred in a 12-month span. However, this transaction is not a change in ownership for property tax purposes under Section 64(c)(1) because no one person acquired over 50% of the ownership interests of the LLC. (Cal. Code of Regs., tit. 18, § 462.180, Example 7; *Ocean Avenue LLC v. County of Los Angeles* (2014) 227 Cal.App.4th 344, 351-352.)

Conversely, assume A and B each own 50% of a partnership. If A transfers 1% of the partnership to B, B will now own 51% of the partnership. This 1% transfer does not result in the imposition of the DTT under Section 11925 because there is no IRC 708 technical termination. However, this 1% transfer of a partnership interest does trigger a property tax change in ownership under Section 64(c)(1) because B acquired over 50% of the partnership. Section 11925(b) could not have been intended to cover changes in ownership under Section 64 because the two sections do not treat identical factual scenarios the same.

Another example further evidences the conflict between IRC 708 and Section 64. Assume in 1995 A and B own real property 50/50 as tenants in common. In 1995, A and B transfer the real property to a partnership. A owns 50% of the partnership and B owns 50% of the partnership. This transaction is excluded from reassessment by Section 62(a)(2), however this transaction triggers the applicability of Section 64(d).

In 1998, A transfers 25% of his partnership interests to his son. In 2005, B transfers 25% of his partnership interests to his daughter. In 2012, A transfers 1% of his partnership interests to his niece. This 1% transfers triggers a Section 64(d) property tax change in ownership. However, there is no IRC 708 technical termination and therefore no DTT under Section 11925(a).

If, however, the partnership in the example above was a corporation and the transfers were of voting stock, under the County's position the 1% transfer of voting stock in the corporation in 2012 would trigger the DTT (an excise tax on the privilege of transferring realty) because a Section 64(d) change in ownership occurred (Section 11925 does not apply to transfers of corporate stock).

By including IRC 708 technical terminations in Section 11925(b), and not including Section 64 property tax changes in ownership, the Legislature has explicitly chosen the test to determine when the transfers of legal entity interests are subject to the DTT. The test is found in IRC 708, not Section 64.

D. Applying Section 64 and Section 11925 Together Leads to Absurd Results

Fourth, imposing the DTT on Section 64 changes in ownership while also applying Section 11925 would create havoc. Section 11925 specifically states that transfers of partnership interests do not trigger the DTT unless a technical termination of the partnership occurs under Section 708 of the Internal Revenue Code.

In the Court of Appeal's haste to conclude that a property tax change in ownership triggered the DTT, the Court of Appeal carelessly dealt with Section 11925.

The Court of Appeal held that Section 11925 did not apply to this case because the realty was not held by a partnership but was instead owned by a single-member LLC. (*Ardmore v. County of Los Angeles* (2014) 229 Cal.App.4th 1335, 1364.) The Court of Appeal's narrow interpretation that Section 11925 only applies when a partnership directly holds real property leads to absurd results.

For example, assume a partnership owns real property. Assume further that A owns 50% of the partnership and B owns the other 50% of the partnership. If A transfers 1% to B (so that B now owns 51% of the partnership) there is a property tax change in ownership under Section 64(c)(1). However, there is no DTT under Section 11925 because the transfer is a transfer of a partnership interest in a

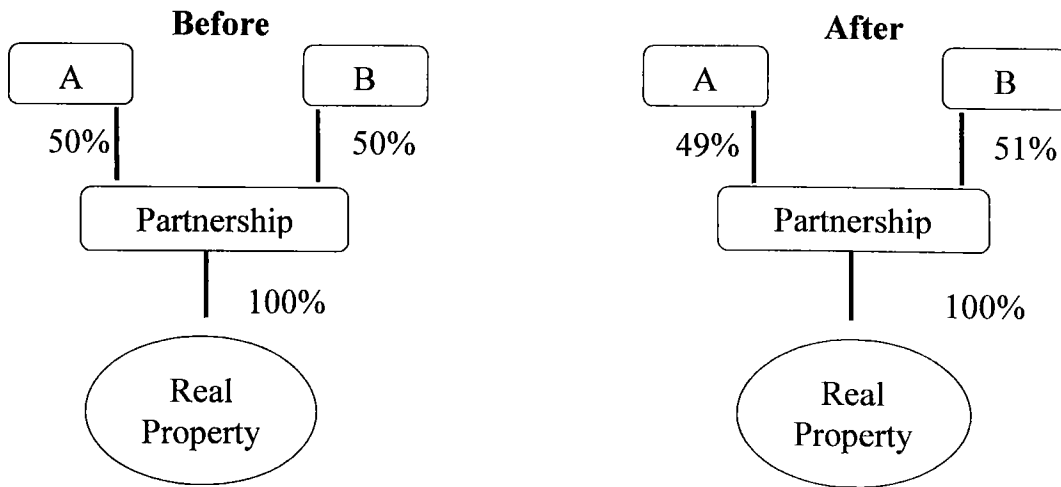
partnership that owns real property and a technical termination under IRC § 708 did not occur.

With one small change in the facts, the Court of Appeals decision leads to a totally different and absurd result. Assume that A and B each own 50% of a partnership. The partnership, instead of owning the real property directly, owns 100% of an LLC. The LLC owns the real property. If A transfers 1% to B, there is a property tax change in ownership under Section 64(c)(1).

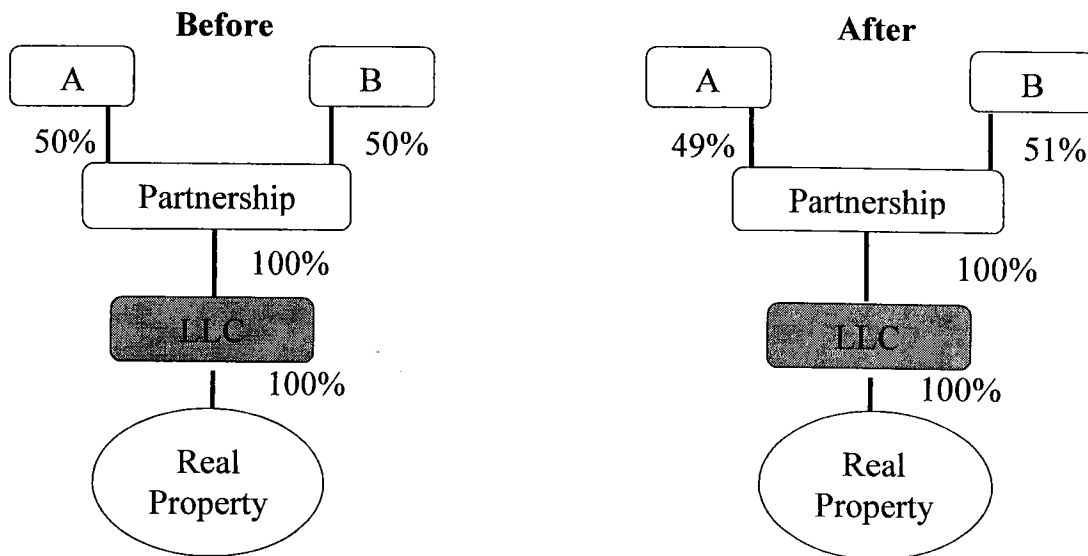
However, unlike the transfer of a partnership interest in the prior example where there was no DTT, this 1% transfer of a partnership interest does result in the imposition of DTT under the Court of Appeal's decision because the real property is wholly-owned by a disregarded single-member LLC instead of a partnership.

Thus, a transfer of a partnership interest a step further removed from the real property is a DTT event, whereas the almost exact identical transaction in the prior example is not a DTT event. This is an absurd result which the Legislature could not have intended. A fundamental rule of statutory construction is that statutes should not be construed in a way that leads to absurd results. (*Amador Valley Joint Union High Sch. Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208, 245.)

The following depicts the foregoing example in graphic format:



Property Tax Change in Ownership (Section 64(c)(1)). No DTT under Section 11925.



Property Tax Change in Ownership (Section 64(c)(1)). DTT event under Court of Appeal's reasoning.

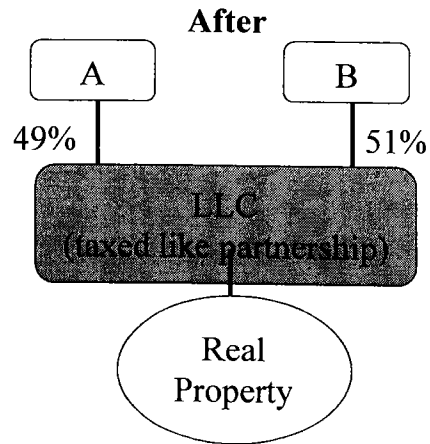
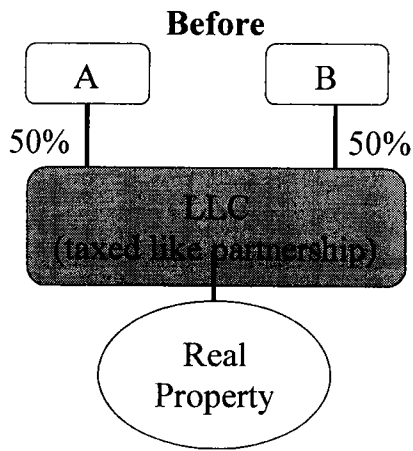
The example above is one of many illogical results. The following example is another absurd result from applying Section 64 and Section 11925 together under the Court of Appeal's reasoning.

Assume an LLC, which is taxed like a partnership, owns real property. A owns 50% of the LLC and B owns 50% of the LLC. If A transfers 1% to B, there is a change in ownership under Section 64(c)(1) because B acquired over 50% of the LLC. However, there is no DTT due because the LLC did not experience a technical termination under IRC 708.

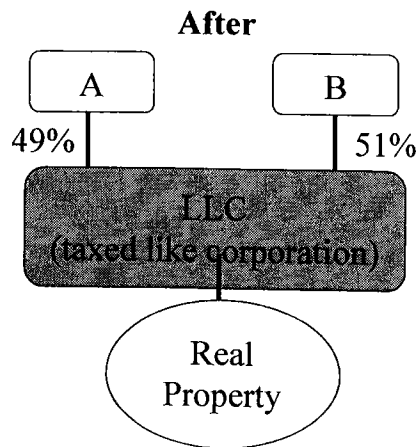
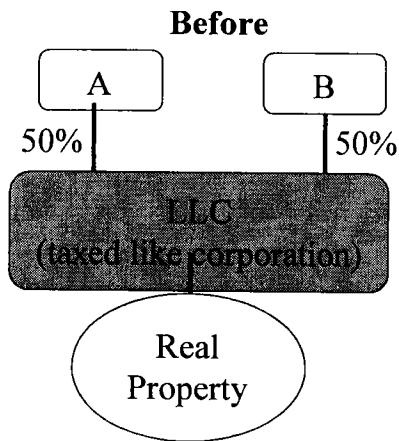
However, if the LLC in the above example had “checked the box,” and elected to be taxed like a corporation, under the reasoning of the Court of Appeal, DTT would be due because the LLC would no longer come under Section 11925.

These two examples are exactly the same. The only difference is the LLC in the second example chose to be taxed differently for federal income tax purposes. How can a federal income tax election that has no effect on the ownership of the real property determine whether or not realty is sold for DTT purposes? The answer is it should not and cannot.

Again, in graphic form:



Property Tax Change in Ownership (Section 64(c)(1)). No DTT under Section 11925.



Property Tax Change in Ownership (Section 64(c)(1)). DTT event under Court of Appeal's reasoning.

Under the reasoning of the Court of Appeal and the County, applying Section 11925 and Section 64 together for DTT purposes leads to absurd results. The proper analysis of Section 11925 is that no legal entity transfers result in the imposition of the DTT unless there is a technical termination of a partnership, or entity taxed like a partnership, under IRC 708.

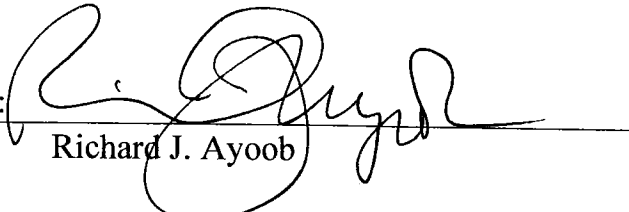
III. Conclusion

The DTT was never intended to be imposed on property tax legal entity changes of ownership under Section 64. Section 64 did not exist when the DTT was enacted and therefore the DTT cannot be interpreted to have intended to tax such transactions. Further, the imposition of the DTT on property tax legal entity changes in ownership is in conflict with Section 11925 and leads to absurd results. Therefore, this court must find that the DTT is not imposed on property tax legal entity changes in ownership under Section 64.

Dated: September 30, 2015

RICHARD J. AYOOB
CHRISTOPHER J. MATARESE
GREGORY BROEGE
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By:


Richard J. Ayoob

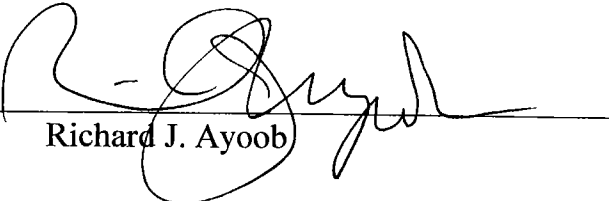
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CERTIFICATE OF WORD COUNT

The text of this brief consists of 2,739 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: September 30, 2015

RICHARD J. AYOOB
CHRISTOPHER J. MATARESE
GREGORY BROEGE
AJALAT, POLLEY, AYOOB & MATARESE

By: 
Richard J. Ayooob

Attorneys for Amicus Curiae,
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PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within action. I am a resident of or employed in the county where the service described below occurred. My business address is 500 N. Brand Blvd., Suite 1870, Glendale, CA 91203. I am readily familiar with this firm's practice for collection and processing correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence collected from me would be processed on the same day, with postage thereon fully prepaid and placed for deposit that day with the United States Postal Service. On October 1, 2015, I served the following:

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BRIEF OF AMICUS CURIAE INSTITUTE FOR PROFESSIONALS IN
TAXATION IN SUPPORT OF PLAINTIFF/APPELLANT 926 NORTH
ARDMORE AVENUE LLC**

by putting a true and correct copy thereof in a sealed envelope, with postage fully prepaid, and placing the envelope for collection and mailing today with the United States Postal Service in accordance with the firm's ordinary business practices, addressed to the individuals listed on the following page.

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

Executed on October 1, 2015 at Glendale, California.



Ninet Mahmoodi

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