SUPREME COURT COPY

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

926 NORTH ARDMORE AVENUE, LLC,	)	Supreme Court Case No. **S222329**
	)	
Plaintiff and Appellant,	)	Court of Appeal, Second District
	)	Case No. B248536
vs.	)	
	)	Los Angeles County Superior Court
COUNTY OF LOS ANGELES,	)	Case No. BC476670
	)	
Defendant and Respondent.	)	
	)	

SUPREME COURT
FILED

OCT 16 2015

Frank A. McGuire Clerk

Deputy

REVISED MOTION FOR JUDICIAL NOTICE

(Evid. Code, § 459; Cal. Rules of Court, rules 8.520(g) and 8.252)

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Pursuant to Evidence Code section 459 and California Rules of Court, rules 8.520(g) and 8.252(a), the above-captioned *amici curiae* hereby request that the Supreme Court take judicial notice of the following documents. None of these materials were presented to the trial court, and the materials do not relate to proceedings occurring after the order or judgment that is the subject of the appeal. **(Cal. Rules of Court, rule 8.252(b)(2)(B), (D).)**

1. **United States Internal Revenue Service regulatory and interpretive documents relating to the former federal Documentary Stamp Tax), attached hereto as Exhibits "A" through "N" (Evid. Code, § 452, subds. (b)-(c); Cal. Rules of Court, rule 8.252(b)(2)(C)), more particularly set forth as follows:**

Exhibit "A" - Revenue Ruling 57-580 (1957)

Exhibit "B" - Revenue Ruling 59-165 (1959)

Exhibit "C" - Revenue Ruling 59-282 (1959)

Exhibit "D" - Revenue Ruling 58-511 (1958)

Exhibit "E" - Revenue Ruling 59-166 (1959)

Exhibit "F" - Internal Revenue Service General Counsel Memo 20898 (Internal Revenue Cumulative Bulletin 1938-2, p. 414)

Exhibit "G" - Internal Revenue Service General Counsel Memo 24450 (Internal Revenue Cumulative Bulletin 1944, p. 650)

Exhibit "H" - Internal Revenue Service General Counsel Memo 33134 (1965) 1965 WL 13576

Exhibit "I" - Internal Revenue Service General Counsel Memo 37079 (1977) 1977 WL 46532

Exhibit "J" - Internal Revenue Service General Counsel Memo 21702 (Internal Revenue Cumulative Bulletin 1939-2, p. 383)

Exhibit "K" - Internal Revenue Service General Counsel Memo 23295 (Internal Revenue Cumulative Bulletin 1942-2, p. 271)

Exhibit "L" - Internal Revenue Service, S.T. 865 (Internal Revenue Cumulative Bulletin 1937-2, p. 528)

Exhibit "M" - Internal Revenue Service, M.T. 24 (Internal Revenue Cumulative Bulletin 1946-2, p. 182)

Exhibit "N" - Internal Revenue Service, S.T. 860 (Internal Revenue Cumulative Bulletin 1937-1, p. 341)

The foregoing materials demonstrate the Internal Revenue Service's interpretation and application of the former Documentary Stamp Tax, which is the predecessor to the Documentary Transfer Tax provisions at issue in this matter. These documents support the argument advanced in the accompanying *amicus curiae* brief that the Stamp Tax was applied flexibly to include transactional documents that – common law labels aside – sold a "bundle of rights approximating" those of real property ownership. **(Cal. Rules of Court, rule 8.252(b)(2)(A).)**

2. **Legislative history materials and advisory reports pertaining to the Excise Tax Reduction Act of 1965, Pub.L. No. 89-44, attached hereto as Exhibits "O" through "Q" (Evid. Code, § 452, subd. (c); see *Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 926, fn. 6; Cal. Rules of Court, rule 8.252(b)(2)(C)), more particularly set forth as follows:**

Exhibit "O" - Hearings before Sen. Com. on Finance on H.R. No. 8371, 89th Cong., 1st Sess., p. 39 (1965), testimony of Secretary of the Treasury Henry Fowler

Exhibit "P" - Congressional Record, Volume 111, page 13573 (June 17, 1965)

Exhibit "Q" - United States Advisory Commission on Intergovernmental Relations, The Intergovernmental Aspects of Documentary Taxes, Report No. A-23 (1964)

The foregoing materials demonstrate the intent of Congress relating to the repeal of the federal Stamp Tax and contemporaneous adoption of transfer taxes at the local level. These documents support the argument advanced in the accompanying *amicus curiae* brief that contemporary lawmakers clearly understood the longstanding interaction between transfer taxes and state property taxes. **(Cal. Rules of Court, rule 8.252(b)(2)(A).)**

3. **Legislative history materials pertaining to Statutes 2009, chapter 622 (Senate Bill 816) and Statutes 2011, chapter 320 (Assembly Bill 563) (Evid. Code, § 452; *Kaufman & Broad Communities, Inc.*, (2005), 133 Cal.App.4th at pp. 32-35; Cal. Rules of Court, rule 8.252(b)(2)(C)), more particularly set forth as follows:**

Exhibit "R" - Sen. Rev. & Tax. Comm., analysis of Sen. Bill No. 816 (2009-2010 Reg. Sess.) as introduced

Exhibit "S" - Assem. Comm. on Rev. & Tax., analysis of Assem. Bill. No. 563 (2011-2012 Reg. Sess.) as introduced

The foregoing materials demonstrate the intent of Legislature in adopting amendments to the Revenue and Taxation Code facilitating collection of Documentary Transfer Tax from transactions consisting of changes in control of legal entities that own real property. These documents support the argument advanced in the accompanying *amicus curiae* brief that the Legislature intends such transactions to be taxable, thereby clarifying any ambiguity in the applicable statutes on this subject. **(Cal. Rules of Court, rule 8.252(b)(2)(A).)**

Dated: October 14, 2015

Respectfully submitted,

ARTHUR J. WYLENE
TEHAMA COUNTY COUNSEL

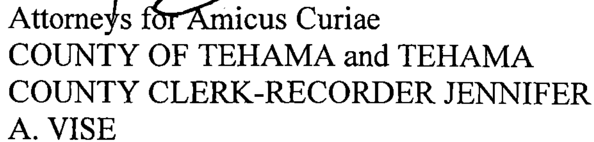

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EXHIBIT A

from one point in the United States to another. Under the provisions of section 4272 (a) of the Code, the tax applies only to amounts paid to a person engaged in the business of transporting property for hire, including amounts paid to a freight forwarder, express company, or similar person, but not including amounts paid by a freight forwarder, express company, or similar person for transportation with respect to which a tax has previously been paid.

It is held that since the association makes the arrangements with various firms for (1) the consolidation of various commodities into barge shipments, and (2) the transportation, unloading, and segregation of the barge shipments, and is liable to these various firms for payment of their charges, it is a "similar person" within the meaning of section 4272 (a) of the Code. Accordingly, the amounts paid to the association are subject to the tax on the transportation of property. However, the payments made by the association to the other carriers are regarded as settlements between carriers and are, therefore, not subject to the tax. When the charges are paid to the other carriers, the association should certify on the appropriate shipping papers to the effect that it has collected or will collect the tax from the shippers.

CHAPTER 34.—DOCUMENTARY STAMP TAXES

SUBCHAPTER A.—ISSUANCE OF CAPITAL STOCK AND CERTIFICATE OF INDEBTEDNESS BY A CORPORATION

PART I.—ISSUANCE OF CAPITAL STOCK AND SIMILAR INTERESTS

SECTION 4301.—IMPOSITION OF TAX

(Also Sections 4321, 4331, 4361.) Rev. Rul. 57-580

Applicability of the documentary stamp tax to various transactions involved in the merger of a state bank into a national bank which continues under the national bank charter.

Advice has been requested concerning the applicability of the documentary stamp tax with respect to transactions involved in the merger of a state bank into a national bank which continues under the national bank charter.

A national bank and a state bank agreed to merge into and continue under the charter of the national bank as a national banking association, as provided by section 3 of the Act of Congress of November 17, 1918, as amended, 12 U. S. C. 34a, relating to the consolidation of state banks with national banks. Prior to the merger, the national bank had issued and outstanding 90,000 shares of common stock having a par value of $40 per share, and the state bank had issued and outstanding 15,000 shares of $20 par value stock. After the merger, the capital stock of the association is represented by 98,000 shares of common stock of the par value of $40 each. The 90,000 shares of the national bank remained outstanding, and, under the merger agreement, the shareholders of the state bank were issued 8,000 shares of the association's $40 par value common stock for their state bank shares.

Section 4301 of the Internal Revenue Code of 1954 provides that a tax shall be imposed on each original issue of shares or certificates of stock, issued by a corporation, whether on organization or reorganization.

Section 4321 of the Code provides that a tax shall be imposed on each sale or transfer of shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation.

Section 4331 of the Code provides that a tax shall be imposed on each sale or transfer of any certificates of indebtedness, issued by a corporation.

Section 4361 of the Code provides that a tax shall be imposed on each deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser or purchasers, or any other person or persons, by his, her, or their direction when the consideration or value of the property conveyed exceeds $100.

Section 113.24(h) of Regulations 71, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954-2, 47, provides that stock issued in connection with a merger by the continuing corporation to the stockholders of the merging corporation is subject to documentary stamp tax.

Section 113.33(h) of Regulations 71 provides that a transfer upon a merger from the name of a merging corporation of stock owned by it to the name of the continuing corporation is subject to documentary stamp tax.

Section 113.33(i) of Regulations 71 provides that the transfer of rights to receive stock is subject to documentary stamp tax.

Section 113.34(i) of Regulations 71 provides that in a merger of corporations the surrender of stock of both merging and continuing corporations in exchange for stock of the continuing corporation is not subject to documentary stamp tax.

Where two or more corporations combine and continue business through a newly created corporation, a "consolidation" is effected. Where two or more corporations combine under the amended charter of one of the corporations, which is a party to the agreement and is to continue, a "merger" is effected. See S. T. 610, C. B. XI-2, 523 (1932). Under the above statement of facts, the union of the state bank and the national bank constitutes a "merger" as distinguished from a "consolidation."

Accordingly, under the circumstances stated, it is held that:

(1) Neither the issue tax nor the transfer tax imposed by sections 4301 and 4321 of the Code, respectively, was incurred in the merger with respect to the shares of common stock of the national bank, which shares are the same shares that were outstanding before the merger and which are held by the same stockholders.

(2)(a) However, the issuance by the association of the 8,000 of its $40 par value shares to the stockholders of the state bank is subject to the original issue tax. See section 113.24(h) of Regulations 71; also O. D. 83, C. B. Sales Tax Rulings, page 72, which provides that stock issued by the merging corporation (continuing corporation) in exchange for stock of the merged corporation is subject to tax as an original issue.

(b) If the new shares of the association were issued direct to the state bank and then distributed by such bank to its stockholders, a transfer tax also is incurred under section 4321 of the Code upon such distribution.

(c) On the other hand, if the new shares of the association were issued directly to the stockholders of the state bank, the transfer tax would still be due, based, however, on the transfer by the state bank of its right to receive such shares. See *American Processing & Sales Co.* v. *Campbell*, 164 Fed. (2d) 918; *U. S. Industrial Chemicals Inc.* v. *Johnson*, 181 Fed. (2d) 413; and *Raybestos-Manhattan Inc.* v. *U. S.*, 296 U. S. 60, Ct. D. 1039, C. B. XIV-2, 400 (1935).

(3) The surrended for cancellation and extinguishment of the state bank shares by its stockholders is not taxable under the provisions of section 4321 of the Code. See section 113.34(i) of Regulations 71.

(4) If the state bank owned any stocks and/or bonds of other corporations which were transferred to the association, a transfer tax is incurred with respect to such tranfers under the provisions of sections 4321 and 4331 of the Code. See sections 113.33(h) and 113.63 of Regulations 71, also G. C. M. 8050, C. B. IX-1, 396 (1930), to the same effect.

(5) In the event title to any real estate is conveyed by the state bank to the association, no documentary stamp tax will be incurred on the delivery of the deed or deeds, since the realty in this type of transaction is not considered to have been sold within the meaning of section 4361 of the Code. See G. C. M. 24450, C. B. 1944, 650.

Stock certificates issued by a fishermen's cooperative association in payment of a patronage refund. See Rev. Rul 57-520, page 777.

SUBCHAPTER B.—SALES OR TRANSFERS OF CAPITAL STOCK AND CERTIFICATES OF INDEBTEDNESS OF A CORPORATION

PART I.—SALES OR TRANSFERS OF CAPITAL STOCK AND SIMILAR INTERESTS

SECTION 4321.—IMPOSITION OF TAX

(Also Section 4331.) Rev. Rul. 57-349

Sales or transfers of corporate securities to or by a State, or a political subdivision thereof, are subject to the documentary stamp tax. If the State or political subdivision thereof is acting in a governmental capacity in the sale or transfer, it is immune from the tax but the nonexempt party to the transaction is liable for the tax.

Advice has been requested whether the documentary stamp tax applies to the sales or transfers of corporate securities to or by a State or a political subdivision thereof.

Section 4321 of the Internal Revenue Code of 1954 imposes a tax on each sale or transfer of shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation. Section 4331 of the Code imposes a tax on each sale or transfer of any certificates of indebtedness, issued by a corporation.

EXHIBIT B

Rev. Rul. 59-165, 1959-1 C.B. 443, 1959 WL 12533 (IRS RRU)

Internal Revenue Service (I.R.S.)

Revenue Ruling

Published: 1959

26 CFR 43.4361-1: Imposition of tax.

Instruments that transfer any interest in the ownership of real property are subject to the documentary stamp tax imposed by section 4361 of the Internal Revenue Code of 1954. Accordingly, with respect to realty located in the State of Minnesota, a sheriff's 'certificate of sale' delivered to a foreclosure purchaser and a 'certificate of redemption' delivered to a judgment debtor (redemptioner) are subject to the tax imposed by section 4361 of the Code.

Advice has been requested concerning the applicability of the documentary stamp tax on conveyances of real property, imposed by section 4631 of the Internal Revenue Code of 1954, to a sheriff's 'certificate of sale' delivered to a foreclosure purchaser and to a 'certificate of redemption' delivered to a judgment debtor (redemptioner) with respect to realty located in the State of Minnesota.

Section 4361 of the Code, as amended by the Excise Tax Technical Changes Act of 1958, Public Law 85-859, C.B. 1958-3, 92, imposes a stamp tax on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds $100.

Section 43.4361-1(a)(2) of the Documentary Stamp Tax Regulations provides that a conveyance of realty subject to an equity of redemption is taxable when made, not when the time for redemption expires. Section 43.4361-1(a)(4)(ii) of the regulations provides that the term 'sold' imports transfer of an interest for a valuable consideration, which may involve money or anything of value.

In the foreclosure of a real estate mortgage in Minnesota, the realty subject to the mortgage is sold at public auction by a county sheriff, who then issues and delivers to the foreclosure purchaser a sheriff's certificate of sale, subject to redemption within one year. If redemption is made within one year by the judgment debtor or his grantee, a certificate of redemption is issued.

Under the laws of the State of Minnesota, the purchaser of realty at a sheriff's foreclosure sale does not acquire full title to the property foreclosed at that time but only a conditional right to obtain title to the premises at the expiration of the redemption period provided by law. See Morgan v. Joslyn, 97 N.W. 449. In Minnesota the sheriff's certificate of sale becomes a deed at the expiration of one year. The assignment of the interest or right of the foreclosure purchaser during the redemption period is a conveyance of real estate within the meaning of the recording act. If such interest or right is assigned, the title, when it passes by lapse of time and nonredemption, vests in the assignee of such interest. See *Berryhill* v. *Smith*, 61 N.W. 144.

Section 507.01, Chapter 507, of the Minnesota Statutes provides that the term 'purchaser' embraces every person to whom any estate or interest in real estate is conveyed for a valuable consideration and every assignee of a mortgage, lease, or other conditional estate. The word 'conveyance' includes every instrument in writing whereby any interest in real estate is created, aliened, mortgaged, or assigned, or by which the title thereto may be affected in law or in equity.

In view of the foregoing, in Minnesota a foreclosure purchaser takes such an interest in the real estate as to constitute an estate in such realty. The fact that legal title does not pass from the

mortgagor to the purchaser until the expiration of the redemption period results in there being two estates in the same land at the same time, a fee-simple title in the mortgagor and a separate and distinct estate or interest in the foreclosure purchaser. The purchaser at the sale acquires an interest in the real estate which is subject to defeasance.

There is no provision of law or regulations which restricts the application of section 4361 of the Code to instruments conveying estates in fee simple. Instruments that transfer any interest in the ownership of real property are subject to the documentary stamp tax. The fact that in the State of Minnesota a sheriff's certificate of sale does not convey a fee-simple estate is immaterial in determining its liability for the tax imposed by this section of the Code.

Accordingly, with respect to realty located in the State of Minnesota, since in a foreclosure sale an interest in real estate passes to the foreclosure purchaser upon delivery to him of the sheriff's certificate of sale, it is held that the documentary stamp tax imposed by section 4361 of the Code is applicable to the sheriff's certificate of sale at the time of delivery of such certificate and not when the redemption period expires. It is further held that, since the certificate of redemption conveys, for a valuable consideration, the interest in the real estate acquired by the foreclosure purchaser, the subsequent delivery of a certificate of redemption to the judgment debtor or redemptioner is also subject to the documentary stamp tax.
Rev. Rul. 59-165, 1959-1 C.B. 443, 1959 WL 12533 (IRS RRU)

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EXHIBIT C

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Obsoleted by Revenue Ruling, IRS RRU, January 1, 1970

Rev. Rul. 59-282 (IRS RRU), 1959-2 C.B. 332, 1959 WL 12344

Internal Revenue Service (I.R.S.)
Revenue Ruling

Published: 1959

SECTION 4361.—IMPOSITION OF TAX

*1 Where assignors of certain interests in oil, gas, and mineral leases reserved to themselves the right to production payments, they retained an interest in the oil, gas, and minerals in place, the sale of which is subject to the tax on conveyances of realty imposed by section 4361 of the Internal Revenue Code of 1954.

Advice has been requested as to the applicability of the documentary stamp tax imposed by section 4361 of the Internal Revenue Code of 1954 to conveyances for valuable consideration of production payments reserved from a transfer of oil, gas, and mineral interests.

Owners of certain interests in oil, gas and mineral leases assigned their interest in such leases to an oil company for a cash consideration, reserving to themselves a 'Primary Production Payment,' payable out of 90 percent of all the oil, gas, and hydrocarbons and other minerals that may be produced from the property. They also reserved a 'Secondary Production Payment,' which is payable out of 90 percent of all the oil, gas, etc., produced from the leased properties from and after the time the Primary Production Payment is fully liquidated and discharged. On the day the assignment to the oil company was executed, the assignors sold to other parties the retained Primary Production Payment and the retained Secondary Production Payment.

Section 4361 of the Internal Revenue Code of 1954 imposes a tax on each deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100. Section 43.4361-1(a) of the Documentary Stamp Tax Regulations provides, in part, as follows:

> (3) For purposes of the tax imposed by section 4361, the determination of what constitutes 'realty' is not controlled by the definition or scope of that term under State law. State law determines the character of the rights conveyed by an instrument, but whether such conveyance constitutes a conveyance of 'realty' is to be determined under Federal law.

See G.C.M. 23295, C.B. 1942-2, 271; and *Phillips Petroleum Co.* v. *Jones*, 176 Fed.2d) 737, Ct. D. 1733, C.B. 1950-2, 135.

It has been held that the leasing of oil and gas property, which creates in the lessee an interest in the natural resource content of the land, is a conveyance of realty within the meaning of section 4361 of the Code and is subject to the tax imposed by that section. See M.T. 16, C.B. 1943, 1170; *Phillips Petroleum Co.* v. *Jones, supra.* To the extent that the assignors reserved to themselves the right to the production payments, they excluded from the assignments of their interests in the leases and retained for themselves interests in the oil, gas and minerals in place. It is held, therefore, that the sale, by the assignors, or such retained interests in the oil, gas and minerals in place is a conveyance of realty sold within the meaning of section 4361 of the Code and is subject to the tax imposed under that section.

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*2 It should be noted in this connection that the Supreme Court of the United States in *Commissioner* v. *P. G. Lake, Inc., et al.*, 356 U.S. 260, Ct. D. 1823, C.B. 1958-1, 516, proceeded on the premise that 'oil payments are interests in land,' while holding that the consideration received for oil payment rights is taxable as ordinary income subject to depletion.

Because the Internal Revenue Service has previously ruled that similar conveyances are not subject to the stamp tax, and under the authority contained in section 7805(b) of the Code, this ruling will not be applied prior to August 31, 1959, the date of its publication in the Internal Revenue Bulletin.

Rev. Rul. 59-282 (IRS RRU), 1959-2 C.B. 332, 1959 WL 12344

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EXHIBIT D

Section 4361 of the Code imposes a tax on each deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers when the consideration or value of the interest or property conveyed, exclusive of the value of any liens or encumbrance remaining thereon at the time of sale, exceeds $100.

Section 4383 of the Code provides that the documentary stamp tax shall be paid by any person who makes, signs, issues, or sells any of the documents or instruments subject to tax, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any agency or instrumentality thereof shall not be liable for the tax with respect to an instrument to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

In the instant case, it is held that, since there is only one conveyance and one deed, that being from the trustee to the Federal Housing Administration, only one conveyance tax is imposed and that is based on the amount of the consideration supporting such conveyance, namely, $500,000, the amount of the bonds issued by the Federal Housing Administration for the property. Since the Federal Housing Administration is an agency of the United States, it is not liable for the documentary stamp tax with respect to a conveyance of real property acquired by it in a foreclosure proceeding. However, this does not relieve the other party to the transaction from his liability for such tax in view of the dual liability provisions of section 4383 of the Code, under which the tax is payable by and collectible from the grantor or the grantee, unless otherwise specifically exempt. See Rev. Rul. 57-373, C. B. 1957-2, 775; and Rev. Rul. 57-72, C. B. 1957-1, 415.

Rev. Rul. 58-511

Where a "Declaration of Taking" is filed pursuant to the provisions of 40 U. S. C. 258(a) for taking of real property in eminent domain proceedings by the United States or any agency or instrumentality thereof, the documentary stamp tax imposed by section 4361 of the Internal Revenue Code of 1954 is incurred on the date the "Declaration of Taking" is filed and is based upon the amount finally awarded.

Advice has been requested concerning the applicability of the documentary stamp tax imposed by section 4361 of the Internal Revenue Code of 1954 with respect to "Declarations of Taking" filed by agencies of the United States Government when real property is taken for public use.

Section 4361 of the Code imposes a tax on each deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers when the consideration or value of the interest or property conveyed, exclusive of the value of any liens or encumbrances remaining thereon at the time of sale, exceeds $100.

Section 4383 of the Code provides that the documentary stamp tax shall be paid by any person who makes, signs, issues, or sells any of the documents or instruments subject to tax, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any

agency or instrumentality thereof is not liable for the tax with respect to an instrument to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

Where real property is acquired by the United States or any agency or instrumentality thereof in condemnation proceedings, the instrument whereby title is vested in the condemnor is subject to the documentary stamp tax imposed by section 4361 of the Code. A "Declaration of Taking" which is sometimes filed in a condemnation proceeding, is an instrument or writing whereby title to realty sold is vested in the condemnor and the documentary stamp tax is payable with respect thereto by the condemnee, the non-exempt party to the condemnation proceeding. See Revenue Ruling 57-72, C. B. 1957-1, 415. Specific questions relating to "Declarations of Taking" filed pursuant to the provisions of the Act of February 26, 1931, Public Law 736, 71st Cong., 46 Stat. 1421, 40 U. S. C. 258 (a), and the answers thereto, are as follows:

Question 1. When does the tax attach?

Answer: Section 258 (a) of Title 40 of the United States Code provides, in part, that upon the filing of a "Declaration of Taking" and of the deposit in the court, to the use of the persons entitled thereto, of the estimated compensation stated in such declaration, title to lands in fee simple absolute shall vest in the United States of America, and such lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and the compensation shall be ascertained and awarded in the proceeding and established by judgment therein.

Section 258(b) of Title 40 of the United States Code provides that no appeal in any cause under section 258 of that title nor any bond or undertaking given therein shall operate to prevent or delay the vesting of title to such lands in the United States.

In the case of *United States* v. *Sunset Cemetery Co.*, 132 Fed. (2d) 163, the Court of Appeals for the Seventh Circuit held that, under the above-mentioned sections, condemnation of land for public use is effected and title completely vested in the government by the mere filing of the "Declaration of Taking", and judgment adjudging title in the government is unnecessary. The court said, "Thereafter the court had only jurisdiction to determine what was just compensation for the tract, ..."

In *United States* v. *243.22 Acres of Land Situate in Village of Farmingdale, Town of Babylon, Suffolk County, State of New York et al.*, 41 Fed. Supp. 469, it was stated that in a condemnation proceeding by the United States title to the property vested in the United States on the date of filing of the "Declaration of Taking", pursuant to section 258(a) of Title 40 of the United States Code, and depositing with the clerk of the court the estimated just compensation.

In view of the foregoing, it is held that the tax attaches on the date the "Declaration of Taking" is filed, since that is the date that title to the property vests in the United States. The filing of an appeal by a taxpayer to a higher court would not affect the government's title to such property.

Question 2. What is the basis for the tax?

Answer: Section 113.82(c) of Regulations 71, made applicable to the 1954 Code by Treasury Decision 6091, C. B. 1954–2, 77, provides that the tax is based upon net value where the amount of the consideration is indefinite, or is left open to be fixed by future contingencies. Therefore, the amount finally awarded by the court as the value of the property is the basis for the tax.

Question 3. Where should the stamps be affixed?

Answer: Section 113.85 of the regulations provides that the stamps must be affixed to the deed, instrument, or other writing by which realty is conveyed. Accordingly, the stamps must be affixed to the "Declaration of Taking" since that is the instrument by which title is vested in the United States.

Rev. Rul. 58–558

Where an individual who owned land needed by the city for street improvements agreed to sell such realty to the city for a certain price and to remove a building from the land for an additional amount, the agreement constitutes an indivisible contract to transfer the land free of any building thereon and the consideration upon which the documentary stamp tax is imposed is the total amount received for the land and for the removal of the building.

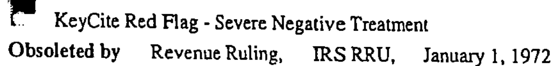
Advice has been requested as to the basis upon which the documentary stamp tax imposed by section 4361 of the Internal Revenue Code of 1954 should be computed where an individual who owned land needed for city street purposes agreed to sell such realty to the city for a certain price and to remove a building from the land for an additional amount.

An individual owned a parcel of land, upon which his residence was located, that was needed by the city for widening, opening, and extending streets. The owner submitted an offer in writing to the city whereby he agreed to sell the land for $500 and to accept $12,000 for moving the residence located thereon to another location for his own benefit. The city, by resolution of its common council, agreed to accept the owner's offer. The recorded deed disclosed the figure of $12,500 as the net consideration for the land.

Section 4361 of the Code imposes a tax on each deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers when the consideration or value of the interest or property conveyed, exclusive of the value of any liens or encumbrances remaining thereon at the time of sale, exceeds $100.

In the instant case, the city wanted the land for street purposes. It did not want the building, but only the physically unencumbered property and the property owner in effect undertook to sell the land free of the building. The agreement, therefore, constitutes an indivisible contract to transfer land free of any building thereon. In exchange for the physically unencumbered land the city agreed to pay the owner $12,500. On the other hand, the property owner asked for and received $12,500 in return for transferring title to only his land. Even though the agreement showed an apportionment of the consideration which the city paid to the owner, the total amount was apparently considered a fair value for the land acquired. Accord-

EXHIBIT E



Rev. Rul. 59-166 (IRS RRU), 1959-1 C.B. 444, 1959 WL 12534

Internal Revenue Service (I.R.S.)
Revenue Ruling

Published: 1959

*1 The documentary stamp tax imposed by section 4361 of the Internal Revenue Code of 1954 is not applicable where a 'Surrender of Lease' is delivered by a lessee after a number of buildings and improvements were erected by him on property he leased for a period of 75 years without the privilege of extending such lease.

Advice has been requested whether the documentary stamp tax imposed by section 4361 of the Internal Revenue Code of 1954 is applicable to the delivery of an instrument called 'Surrender of Lease,' where the lease was for a period of 75 years and was granted for the purpose of erecting, maintaining, and operating a housing project. The lease was surrendered by the lessee after a number of buildings and improvements were erected on the leased property.

In the instant case, a lease was executed in 1952 by the Secretary of the Air Force and a construction company wherein Government land within an Air Force base was leased to the construction company for a period of 75 years (without privilege of renewal) for the purpose of erecting, maintaining, and operating a housing project. The lease provided that the lessee shall pay to the Government rental in the amount of $100 per year; that the buildings and other improvements erected by the lessee, constituting such housing project, shall become, as completed, real estate and part of the leased premises, and property of the United States, leased to the lessee and subject to the terms of the lease; that an application for mortgage insurance under Title VIII of the National Housing Act be made; that the lessee shall lease all units of the housing project to military and civilian personnel of the Armed Forces assigned to duty in the area where the property is located; that the lessee shall not transfer or assign the lease without the written approval of the Secretary of the Air Force; that the lessee shall exercise due diligence in the protection of the leased premises, including the buildings and other improvements constituting the housing projects; and that the lessee shall pay all taxes, assessments, and similar charges which, at any time during the term of the lease, may be assessed or imposed upon the Government or upon the lessee with respect to the leased premises.

Pursuant to the provisions of Public Law 1020, 84th Congress, 70 Stat. 1111, 40 U.S.C. 1954, in 1957 a 'Surrender of Lease' and a 'Purchase Agreement' were executed on the same date by and between the lessee and the United States Government, acting through the Secretary of the Air Force, wherein the lease was terminated and all of the lessee's interest in the housing project was transferred and sold to the United States Government, which assumed the payments called for by a certain note that was secured by mortgages.

Specifically, the question is whether liability for documentary stamp tax was incurred when the 'Surrender of Lease' and the 'Purchase Agreement' were delivered and, if so, whether the tax is computed on the basis of the equity interest owned by the lessee or whether it is this amount plus the amount of the mortgage assumed by the Government.

*2 Section 4361 of the Code imposes a tax on each deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100.

Under the lease executed in 1952, the lessee acquired a leasehold interest in Government lands. Upon completion of the buildings and other improvements erected on such lands which constituted the housing project, they became real estate, a part of the

leased premises, and property of the United States, leased to the lessee. Therefore, upon execution of the 'Surrender of Lease,' no question arises with regard to a conveyance of buildings and improvements separate and apart from a conveyance of a leasehold interest in land, since such buildings and improvements were an integral part of the leasehold interest surrendered. Therefore, it follows that unless the interest acquired by the lessee under the 1952 lease was sufficient to constitute 'realty' within the meaning of the statute, the surrender, under the 'Surrender of Lease,' of such interest, augmented as it was by the buildings and improvements erected on the leased land, for valuable consideration could not be said to be a conveyance of 'realty sold' and, therefore, taxable.

The 1952 lease being a lease for a fixed period of 75 years and granting no right to extend the term by renewal or otherwise did not convey an interest in land of sufficient duration to constitute 'realty' within the meaning of section 4361 of the Code. The lessee's interest in the buildings and improvements erected on the leased land is of no greater duration. Accordingly, it is held that no interest in 'realty' was conveyed when the 'Surrender of Lease' was delivered. Therefore, liability for the documentary tax stamp imposed by section 4361 of the Code was not incurred upon the delivery of the 'Surrender of Lease' or 'Purchase Agreement.'

Rev. Rul. 59-166 (IRS RRU), 1959-1 C.B. 444, 1959 WL 12534

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EXHIBIT F

In *Stokely* v. *State* (115 So., 563 (1928)) the Supreme Court of Mississippi passed upon the question whether a board of trustees for a State hospital had the power under State law to execute an oil and gas lease on lands owned by the hospital. The board had executed an oil and gas lease in respect of the lands for a consideration of $1 and an agreement to develop the land for oil and gas, the board retaining a royalty of one-eighth of the oil produced. The court said:

> * * * Under this instrument the title to seven-eighths of the oil in the land is vested in the grantee, while she is given the exclusive right to purchase all gas produced therefrom at a fixed and unchangeable price. Under the provisions of the instrument the rights conferred thereby continue so long as oil or gas, or either of them, is produced on said land, provided drilling was commenced by a fixed date. Under this provision, the termination of the grant is wholly uncertain, and the rights granted may endure forever.
>
> From a practical standpoint, the rights of the grantee under an instrument which conveyed the oil and gas under the land and granted the exclusive right to conduct operations to produce and dispose of the same, or under an instrument which leased, demised, and let the land for the same purpose, would be no other, different, or greater than the rights of the grantee in the instrument here involved, and we are of the opinion that this instrument is, in legal effect, a lease of the land and a conveyance of an interest therein. * * *

The conclusion so reached was approved by the Circuit Court of Appeals for the Fifth Circuit in *Oil Products Corporation of Mississippi* v. *Conner et al.* (83 Fed. (2d), 985 (1936)). See also section 3146, Mississippi Code, 1930, as amended in the 1933 supplement.

In view of the foregoing, it is held that the "royalty deed" in question constitutes a conveyance of realty subject to the stamp tax imposed by Schedule A–8 of Title VIII of the Revenue Act of 1926, as added by section 725 of the Revenue Act of 1932.

REGULATIONS 71, ARTICLE 84: What constitutes real property determinable by law of State where located.

1938–52–9654
G. C. M. 20898

> A grant of perpetual flowage rights to the United States with respect to lands in Louisiana constitutes a conveyance of realty subject to stamp tax.

An opinion is requested whether the grant of certain flowage rights with respect to land in Louisiana by A to the United States in connection with the control of floods of the Mississippi River and its tributaries constitutes a conveyance of realty subject to the stamp tax imposed by Schedule A–8 of Title VIII of the Revenue Act of 1926, as added by section 725 of the Revenue Act of 1932.

The law imposes a stamp tax on any "* * * Deed, instrument, or writing * * * whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers * * * when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 * * *." What constitutes "lands, tenements, or other realty" is determinable by the law of the State in which the property is situated. (Article 84, Regulations 71.)

Pursuant to the provisions of the Act of May 15, 1928 (45 Stat., 534), as amended by the Act of June 15, 1936 (49 Stat., 1508), the United States has been acquiring flowage easements on lands located in Louisiana in connection with the project for controlling floods of the Mississippi River and its tributaries.

The deed whereby A conveyed certain flowage rights on land located in Louisiana recites that A does grant, bargain, sell, convey, transfer, assign, set over and deliver to the United States or its assigns "the full, complete and perpetual right, power, privilege and easement of entry upon the lands described below, and of unimpeded overflow of said lands and improvements thereon by diversion of floodwaters of the Mississippi River and its tributaries * * * to have and to hold the said above described rights, easements, privileges and servitudes unto the United States of America, or its assigns forever." The deed further provides that A expressly reserved for himself, his heirs and assigns all such rights and privileges in and to the lands as may be used and enjoyed without interfering with or abridging the privileges, rights, easements and servitudes conveyed to the United States, and that the conveyance should not confer upon the United States or its assigns any authority to execute engineering works such as the excavation of channels, the building of levees, the clearing of timber or other works upon the lands involved. The consideration for the conveyance is in excess of $100.

Under the instrument in question, A conveyed to the United States the rights, easements, privileges, and servitudes described therein. An easement, denominated in the civil law as a servitude, is an interest in land created by grant or agreement, express or implied, which confers a right upon the owner thereof to some profit, benefit dominion, or lawful use out of or over the estate of another. (*Los Angeles Terminal Land Co.* v. *Muir* (Calif., 1902), 68 Pac., 308, 312.) Easements are of two general classes—appurtenant easements and easements in gross. An appurtenant easement is one which is attached not to a person but to another estate, which is called the dominant tenement, while an easement in gross is an easement which attaches to a person. (2 Tiffany, Real Property (2d ed., 1920), section 350.) Both types of easements are interests in real property, and if the term for which the easement is to last is for life, for an indefinite period, or forever, the easement constitutes "lands, tenements, or other realty."

In Louisiana, where the civil law, as distinguished from the common law, prevails, an easement is called a servitude, and servitudes are of two general classes—real or predial servitudes and personal servitudes. The real or predial servitude takes the place of the common-law appurtenant easement and is so called because it is attached to another estate. The personal servitude takes the place of the common-law easement in gross and is so called because it attaches to a person, not to another estate. It is immaterial whether the servitude described in the deed be considered a real or a personal servitude. In either case it is an interest in real property and a real obligation (as distinguished from a personal obligation of the grantor), and it is to last forever. (See *Frost-Johnson Lumber Co.* v. *Salling's Heirs* (La., 1922), 91 So., 207, 214, 245.) So far as is here material, the only difference between a real servitude and a personal servitude is that

the former is in favor of an estate while the latter is in favor of a person. The interest created in the land which is burdened by the servitude is the same in either case. Consequently, articles 731 and 817 of the Louisiana Civil Code (Dart, 1932), dealing with real servitudes, are pertinent:

731. *Owners under disability incapable of establishing.*—It is not sufficient to be an owner in order to establish a servitude; one must be master of his rights and have the power to alienate; for the creation of a servitude is an alienation of a part of the property.

Thus minors, married women, persons interdicted, can not establish servitudes on their estates, except according to the forms prescribed for the alienation of their property.

* * * * * * *

817. *Release required to be in writing—Capacity to execute.*—The express release must be made in writing, and is confined to what is clearly expressed in the act containing it, because one is not easily presumed to have renounced his right.

Besides, the owner who makes the release must be capable of disposing of immovables; this release of a servitude being a real alienation.

It is evident that a flowage right is an easement or servitude under the laws of Louisiana. The grant of such rights in the instant case is unlimited in duration—perpetual rights—and, therefore, constitutes an alienation of a part of the property.

For the reasons stated, it is the opinion of this office that the grant of the flowage rights in question constitutes a conveyance of realty sold subject to the stamp tax imposed by Schedule A-8 of Title VIII of the Revenue Act of 1926, as added by section 725 of the Revenue Act of 1932.

J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

EXHIBIT G

SECTION 3482, AS AMENDED BY SECTION 1 OF THE REVENUE ACT OF 1939, SECTIONS 209 AND 210 OF THE REVENUE ACT OF 1940, AND SECTIONS 505 AND 521(a)(24) OF THE REVENUE ACT OF 1941.—CONVEYANCES.

REGULATIONS 71 (1941), SECTION 113.81: "Sold" defined.

1944–23–11901
G. C. M. 24450

The transfer of real estate in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation, as the case may be, does not constitute a transfer of "realty sold" within the meaning of section 3482 of the Internal Revenue Code, as amended, and is not subject to stamp tax under that section.

G. C. M. 22955 (C. B. 1941–2, 308) revoked.

An opinion is requested whether the transfer of realty in a statutory merger or consolidation of two or more corporations constitutes a transfer of "realty sold" subject to stamp tax under section 3482 of the Internal Revenue Code, as amended by section 1 of the Revenue Act of 1939, sections 209 and 210 of the Revenue Act of 1940, and sections 505 and 521(a) (24) of the Revenue Act of 1941.

Section 3482 of the Internal Revenue Code, as amended, imposes a tax on—

Conveyances. Deed, instrument, or writing, * * * whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, * * *.

Section 113.81 of Regulations 71 (1941 Ed.) provides:

* * * * * * *

(*a*) The term "deed" includes any instrument or writing whereby realty is assigned, transferred, conveyed to, or vested in, the purchaser or, at his direction, in any other person.

(*b*) The term "sold" imports transfer of title for a valuable consideration which may involve money or anything of value.

In *United States* v. *Seattle-First National Bank* (321 U. S., 583, Ct. D. 1605, page 653, this Bulletin), which involved the consolidation of a State bank and a national bank under the charter of the national bank, pursuant to the provisions of section 3 of the National Banking Act (12 U. S. C., section 34(a)), it was held that the documentary stamp tax did not apply to the transfer of real property to the national bank. The basis of the decision was that in view of the provisions of section 3 of the Banking Act, the realty was not conveyed to or vested in the consolidated bank by any deed, instrument, or writing, nor was the realty "sold" or vested in a "purchaser or purchasers" within the ordinary meaning of those terms.

It is the opinion of this office that the holding of the Supreme Court, to the effect that the transfer of realty in carrying out the statutory consolidation made in the Seattle-First National Bank case was not a conveyance of realty "sold" to a "purchaser" within the ordinary meaning of those terms, is likewise applicable to transfers of realty in statutory mergers or consolidations under State statutes.

In view of the foregoing, G. C. M. 22955 (C. B. 1941–2, 308), in which a contrary conclusion was reached, is revoked.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

EXHIBIT H

GCM 33134 (IRS GCM), 1965 WL 13576

Internal Revenue Service (I.R.S.)
General Counsel Memorandum

Published: November 18, 1965
Date: November 18, 1965

***1 CC:I:I-1889**

Br4:SDK
Harold T. Swartz

Assistant Commissioner (Technical)

Director, Miscellaneous Tax Division

Reference is made to your memorandum dated August 27, 1965, transmitting to this office, for concurrence or comment, the proposed technical advice memorandum to the District Director, * * *

The issue involved is whether a sheriff's certificate of sale, issued at a foreclosure sale of real property located in * * * is subject to the documentary stamp tax under section 4361 of the Internal Revenue Code of 1954. You also requested advice as to whether G.C.M. 11276, dated November 18, 1932, in re: * * * on which you base your conclusion, can be reconciled with Rev. Rul. 59-165, C.B. 1959-1, 443.

The proposed technical advice memorandum holds that the documentary stamp tax applies to the sheriff's deed conveying legal title at the expiration of the statutory redemption period, but not to the sheriff's certificate of sale.

We do not concur in the conclusion reached in the proposed technical advice memorandum. It is our view that the proper rule is that set forth in Rev. Rul. 59-165. We are also of the opinion that G.C.M. 11276 is in direct conflict with Rev. Rul. 59-165. The latter holds that the documentary stamp tax imposed by section 4361 of the Code is applicable to sheriff's certificates of sale issued to foreclosure purchasers in * * * even though such certificates do not convey legal title to the realty.

Copies of various documents in the administrative file in this case reveal the following pertinent facts. The transfers of realty involved resulted from two foreclosure sales in the state of * * *. The first property was sold under execution, and a sheriff's certificate of sale was issued to the purchaser, * * * on November 2, 1961. Thereafter, on May 4, 1962, a sheriff's deed was issued to * * * and on the same day, * * * conveyed the property to the Federal Housing Administration. The second property was sold on April 5, 1962, on which date a certificate of sale was issued to * * *. On July 30, 1962, * * * conveyed its interest to the Veterans Administration. On October 24, 1962, a sheriff's deed was issued to the Veterans Administration.

Section 1626 of Title 12 of the Arizona Revised Statutes of 1956 provides:

substituted to and acquires all the right, title, interest and claim of the judgment debtor thereto.
B. When the estate is less than a leasehold of two years unexpired time, the sale is absolute. In all other cases, including sales under order of court in foreclosure suits, the property is subject to redemption.

C. The officer shall give to the purchaser a certificate of sale, setting forth a full description of the real property sold, the price bid and paid for each parcel if sold in lots or parcels and whether subject to redemption or not.

Under * * * foreclosure law until the property is sold, the mortgagor holds both legal and equitable title. When the sale is made, equitable title passes to the purchaser, subject to defeasance by redemption within the statutory period. This equitable interest is subject to levy and sale. If there is no redemption, the sheriff's deed completes the legal title of the purchaser. First Nat. Bank of Yuma v. Maxey, 34 Ariz. 438, 272 P. 641 (1928); Oliver v. Dougherty, 8 Ariz. 65, 68 P. 553 (1902).

*2 Section 4361 of the 1954 Code impose a tax "on each deed, instrument or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed * * *."

G.C.M. 11276 held, under the corresponding provision of prior Arizona law (section 4226 of the Revised Code of Arizona, 1928) that the documentary stamp tax was not applicable to a sheriff's certificate of sale. In the G.C.M. such a certificate of sale was deemed to represent a "mere conditional or qualified conveyance," and it was stated that "the law" (Schudule A-8 of Title VIII of the Revenue Act of 1926, added by section 725 of the 1932 Act) "contemplates an instrument which vests the property in the purchaser". It was then stated that "under the laws of * * * this object is accomplished only by the transfer to the purchaser of both a legal and equitable title."

However, in Rev. Rul. 59-165, it is held, under similar provisions of * * * law, that the documentary stamp tax is applicable to a sheriff's certificate of sale, even though it does not convey legal title. It was three deemed sufficient that the purchaser acquire ANY interest in the realty. It was so held even though the ceritifcate of sale conveyed only a conditional right to obtain title to the premises at the expiration of the redemption period. As stated therein,

> "There is no provision of law or regulations which restricts the application of section 4361 of the Code to instruments conveying estates in fee simple. Instruments that transfer any interest in the ownership of real property are subject to the documentary stamp tax. The fact that in the State of * * * a sheriff's certificate of sale does not convey a fee-simple estate is immaterial in determining its liability for the tax imposed by this section of the Code."

The interest which a foreclosure purchaser takes in * * * is substantially the same as that received in * * *. In both states the purchaser receives only a conditional right to obtain legal title. We believe that in * * *, as in * * * the certificate of sale passes such an interest in the property as to subject it to the stamp tax.

Moreover, the result reached in Rev. Rul. 59-165 would seem to be consistent with section 47.4361-1(a)(2) of the Stamp Tax Regulations, which provides that "a conveyance of realty subject to an equity of redemption is taxable when made, not when the time for redemption expires."G.C.M. 11276 on the other hand would seem to be in direct conflict with this provision of the regulations.

In accordance with the above, the transactions involved are taxable as follows: The certificate of sale covering the first property, issued to * * * on November 2, 1961, is subject to the tax. However, the sheriff's deed issued on May 4, 1962 is not subject to the tax. The deed of same date conveying the property to the Federal Housing Administration is taxable. The certificate of sale covering the second property, issued on April 5, 1962, is also subject to the tax, as is the deed dated July 30, 1962, whereby * * * conveyed its interest to the Veterans Administration. The sheriff's deed of October 24, 1962, issued to the Veterans Administration is not subject to the tax.

*3 G.C.M. 11276 is hereby revoked.

The administrative file is returned herewith.

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Mitchell Rogovin
Chief Counsel
Internal Revenue Service

Enc.

Adm. file

This document is not to be relied upon or otherwise cited as precedent by taxpayers.
GCM 33134 (IRS GCM), 1965 WL 13576

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EXHIBIT I

GCM 37079 (IRS GCM), 1977 WL 46532

Internal Revenue Service (I.R.S.)
General Counsel Memorandum

April 5, 1977

Section 4361 -- (Repealed) Conveyances Tax (Taxable v. Not Taxable)
4361.00-00 (Repealed) Conveyances Tax (Taxable v. Not Taxable)
4361.01-00 Deeds
4361.01-05 Oil Leases, etc.

TA 7704260020E

CC:I-420-76

Br2:DFConley
JOHN L. WITHERS

Assistant Commissioner (Technical)

Attention: Director, Individual Tax Division

The Individual Tax Division (T:I:WEA) requested our concurrence or comment on proposed technical advice memoranda ***, I-420-76) in a memorandum dated September 21, 1976.

ISSUE

Whether documents that grant the right to receive proceeds from sale of a specified percentage of minerals produced from mining activities are instruments that convey interests in 'realty' for purposes of the documentary stamp tax imposed by Int. Rev. Code of 1954, § 4361 [hereinafter cited as Code].

CONCLUSION

Documents that convey valid production payments in practical effect convey an interest in mineral in place. Such documents are subject to the tax imposed by Code § 4361 on instruments that convey an interest in realty.

Documents that establish mere debtor-creditor relationships fail to convey the requisite interest in mineral in place. Such documents are not subject to the tax imposed by Code § 4361.

FACTS

*** is a wholly-owned subsidiary of *** is engaged in the mining of minerals in place. During the period between December, 1963, and December, 1967, *** conveyed certain 'mineral payments' to various grantees pursuant to indentures. Each indenture provides that *** sells, as a mineral payment, the right to receive proceeds from the sale of a specified percentage of all mineral produced by *** from specifically indentified mines until the indenture agreement is satisfied. Each indenture further provides that:

> This instrument shall not constitute a transfer by *** of any interest in any mineral or in any leasehold interest or other mineral interest included in the [property in which *** owns an interest] but shall transfer

to grantee solely a right to receive the payments herein provided for out of the proceeds from the sale of the subject mineral produced therefrom.

Under the provisions of the indentures, *** undertakes several obligations on behalf of its grantees respecting the mining properties. Those obligations include *** promises to pay promptly all rentals with respect to the mining properties; to maintain in full force and effect all easements and rights of way necessary to the mining of the mineral in place; to maintain and operate the properties in a good and workman-like manner; to keep in full repair all mines and quarries; to provide grantees with prompt written notice of every material adverse claim affecting the properties, and to protect and defend such properties against such claims; to pay punctually all taxes on the properties, and to keep the properties free and clear of all liens, charges and encumbrances; to obtain written consent of grantees prior to any sale, assignment, transfer, or abandonment of any interest in the properties; to permit grantees' representatives to make any reasonable inspection of the properties and mining operations as such representatives deem proper.

*2 Each indenture specifically exempts *** from personal liability for discharge of the mineral payments. The indentures require grantees to look exclusively to the specified percentage of mineral produced from the properties for such discharge.

In addition, two other subsidiaries of *** (*** and ***) engaged in substantially similar transactions with various grantees. Because of this similarity, we have limited our discussion to those issues raised by the *** transactions.

ANALYSIS

Code § 4361 [1] imposes a tax on deeds, instruments, or other writings, whereby any lands, tenements, or other realty sold are conveyed to the purchaser, when the consideration for or value of the interest or property conveyed exceeds $100.

Treas. Reg. § 47.4361-1(a)(2) limits the scope of Code § 4361 to conveyances of interests in realty.Code § 4361 does not apply to other conveyances.Treas. Reg. § 47.4361-1(a)(3) provides that:

> For purposes of the tax imposed by section 4361, the determination of what constitutes 'realty' is not controlled by the definition or scope of that term under State law. State law determines the character of the rights conveyed by an instrument, but whether such conveyance constitutes a conveyance of 'realty' is to be determined under Federal law.

Treas. Reg. § 47.4361-1(a)(4) provides that the term 'realty' includes those interests in real property that endure for an unspecified period of time such as an estate in fee simple, life estate, or perpetual easement. The term also encompasses those interests enduring for a fixed period of years that either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consist of a bundle of rights approximating those of a class of interests mentioned above.

The documentary stamp tax has been applied to a variety of typical extractive industry transactions that in substance convey an interest in mineral-bearing real property. [2] One such transaction upon which the documentary stamp tax has been imposed is the conveyance of what is commonly known in the industry as carved-out or retained production payments.

A production payment is a right to receive a specified share of future production from mineral property measured by units of minerals or a stated sum of money. It may be 'carved out' of any mineral interest having a duration greater than the interest conveyed, or it may be 'retained' by the grantor upon assignment of the mineral interest having the greater duration. [3]

In Chevron Oil Company v. United States, 471 F.2d 1373 (Ct. Cl. 1973), the Court of Claims held the documentary stamp tax applicable to a conveyance that provided that grantor did:

'... grant, bargain, sell and convey...' a production payment to [grantee] that was payable out of a specified percentage of crude oil or other hydrocarbons to be '... produced, saved and sold' from specifically identified properties leased by [grantor]. The production payments were '... payable only out of production ...' from the identified properties. Each conveyance provided that [grantee] would receive proceeds from a '... percentage of crude oil herein conveyed ...' plus an additional amount equal to a specified percentage equivalent to interest on the unpaid balance. [471 F.2d at 1376].

*3 Furthermore, grantor was obligated to deliver the oil it produced to the same parties that customarily purchased grantor's production on the usual terms and conditions. Grantor was not to be held personally liable for discharge of the production payments. Grantee was to look exclusively to the percentage of oil produced from the properties for such discharge. The production payments conveyed to grantees were to continue until the gross amount was paid or for a maximum period of 15 years.

The court found that in essence the documents before it conveyed carved-out production payments. The court then accepted the positions of the Service in Rev. Rul. 59-282, 1959-2 C.B. 332, and Rev. Rul. 66-88, 1966-1 C.B. 258 and held the documentary stamp tax applicable to the conveyances before it.

In Rev. Rul. 59-282 the Service reasoned that a mineral lease conveys an interest in the natural resource content of real property. This interest is subject to the tax imposed by Code § 4361 according to Phillips Petroleum Company v. Jones, 176 F.2d 737 (10th Cir. 1949). Inasmuch as retained production payments in an assignment of the balance of grantor's interest in the mineral lease are in essence retained interests in the realty, it follows that the subsequent assignment of such retained interests in realty is likewise a conveyance subject to the tax imposed by Code § 4361.

The Service in Rev. Rul. 66-88 amplified the principle of Rev. Rul. 59-282, and applied it to the conveyance of production payments carved out of grantor's interest in the mineral in place. This result followed because there was essentially no difference in the character of the two interests conveyed.

In the subject case *** apparently argues that the language in the indentures merely assigns to grantees a bare contract right to the proceeds from future sales of minerals. This argument focuses on the formalities of the conveyance itself.

Subject to certain reservations noted later, we generally concur with your position that, based on the practical effect of the submitted indentures, rather than on the particular words of conveyance involved, the *** indentures convey carved-out production payments. Such conveyances are subject to the documentary stamp tax under the rationale of Chevron and Rev. Rul. 66-88.

In our view, *** indentures have conveyed no less an interest in the mineral in place than did the conveyances involved in Chevron.As a practical matter, in each case grantees must look exclusively to mineral produced for satisfaction of their respective production payments. The production is to come from specifically identified mineral property. If sufficient production is not forthcoming from those properties, neither grantor is personally obligated to satisfy the payment from other sources. The risk of nonproduction then is clearly borne by the respective grantees. Security for satisfaction of the respective production payments rests solely in the mineral content of the land allocated to those payments. In our opinion it is this economic reality that establishes the existence of an interest in realty sufficient to support application of the documentary stamp tax.

*4 Although the Chevron conveyances provide that grantees shall 'own' the mineral allocated to the production payment, and the *** conveyances specifically disclaim a similar intention, we believe such distinction is of little significance under the circumstances herein involved. We previously noted that *** has undertaken considerable obligations and duties on behalf of its grantees with respect to the mineral properties. For example, *** could not sell or transfer any interest in the specified properties without written consent of grantees. It could not, of its own accord, abandon the properties. All properties were to be maintained in full repair and operated in a workmanlike manner. Grantor was to keep title to the properties free and clear of all liens, charges and encumbrances. These undertakings militate against a finding that *** has conveyed nothing more than a bare

contract right to share in future proceeds from mining. On the contrary, it is our opinion that the rights intended to be conveyed by the 'ownership' clause of the Chevron documents do not encompass a more significant indication of ownership than do the rights conveyed to grantees by the *** indentures. Certainly it was not contemplated by either of the respective grantors that actual production activity would be undertaken by any party other than those grantors. Nor was it expected in either case that production payments could be satisfied by a tender of raw minerals to grantees, neither of which were involved in the purchase or sale of raw minerals. Rather, in each case grantors obligated themselves to sell raw mineral allocated to production payments to customary purchasers of such raw minerals that commonly did business with the respective grantors. Clearly, it was the expectation of all parties that outstanding production payments would be satisfied out of the proceeds from such future sales.

Generally, we are unable to discover any practical difference in the legal relationships created by the conveyances involved in Chevron and those involved in the present case. The majority of the *** indentures in substance conveyed to grantees an ownership interest in an allocated percentage of certain mineral in place. Under the Chevron rationale, such interest is an interest in realty, the conveyance of which is subject to the documentary stamp tax imposed by Code § 4361.

However, we believe that certain of the indentures involved fail to convey such an interest in realty sufficient to support application of the documentary stamp tax.

We note that the subject indentures conveyed in 1963 through 1965 were previously before this office in another context.[4] SeeG.C.M. 35090 ***, I-4403 (Oct. 26, 1972, supplemented Dec. 15, 1972). The issue addressed therein was whether such indentures conveyed valid 'economic interests' for purposes of the depletion deduction allowed by Code § 611.Code § 611 provides that in the case of mines, oil and gas wells, other natural deposits, and timber, there is allowed as a deduction a reasonable allowance for depletion.Treas. Reg. § 1.611-1(b)(1) provides that such allowance is available only to the owner of an economic interest in mineral deposits. The regulation further provides that an economic interest is possessed in every case in which the taxpayer has acquired by investment any interest in mineral in place and secures, by any form of legal relationship, income derived from the extraction of mineral, to which he must look for a return of his capital.

*5 In *** we took the position that those indentures providing for satisfaction of production payments solely from gross income from mining conveyed valid production payments embodying an economic interest within the meaning of Treas. Reg. § 1.611-1(b)(1). Those providing for payment from non-mining sources of revenue failed to convey such interest because grantees could look to income derived from sources other than extraction of mineral. Rather, these latter indentures are viewed as creating mere debtor-creditor relationships between the respective parties.

Your proposed technical advice memorandum, by implication, takes the position that those instruments characterized as loans, and found not to convey an interest in mineral in place sufficient for purposes of depletion, do nonetheless convey an interest in mineral sufficient for purposes of the documentary stamp. We are unable to find support for such a position.

As you note, 'Section 7361 of the Code indicates that it was the intention of Congress to require the affixing of stamps to instruments, which in substance convey or assign interests in lands, tenements or other realty without regard to the particular legal effects and consequences which may be attached to them by stae law.'In this regard, we believe it is equally clear that Congress did not intend Code § 4361 to apply to instruments found to convey no interest in realty for Federal income tax purposes. Nor has the Service adopted such an interpretation.SeeTreas. Reg. § 47.4361-1(a)(2).

To regard this transaction as possessing characteristics of debt for purposes of depletion, and characteristics of equity investment for purposes of the stamp tax appears to us calculated to produce a result unwarranted under the Code or applicable case law.

However, we acknowledge that it is possible to view the transaction as embodying characteristics of both, i.e. a loan, secured by an interest in mineral in place. Even so, this characterization nets little advantage, for Code § 4362 provides that the tax imposed by Code § 4361 shall not apply to any instrument given to secure a debt. Furthermore, neither Chevron nor Rev. Rul. 66-88 may be relied upon to support such inconsistent tax treatment of these transactions. In both cases it is apparent that the

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documents therein involved would not be characterized as debt instruments for depletion purposes. Finally, we have serious doubt as to the advisability of raising this argument in the context of litigation, where the Service would be put to the task of defending such a contradictory position.

In short, we believe the Service, having once determined that some of the subject indentures constitute mere debt instruments, should maintain that position even at the expense of lost stamp tax revenues. We suggest that the proposed technical advice include a discussion of the inapplicability of the documentary stamp tax to those indentures found to constitute debt obligations rather than conveyances of an interest in realty, in light of the foregoing analysis.

*6 CHARLES L. SAUNDERS, JR.
Acting Chief Counsel

By:

DONALD J. DREES, JR.
Chief, Branch No. 1
Interpretative Division

Attachments:

Admin. files

This document is not to be relied upon or otherwise cited as precedent by taxpayers.

Footnotes

1 26 U.S.C. § 4361 was repealed by the Excise Tax Reduction Act of 1965, Pub. L. 89-44, (June 21, 1965) as of January 1, 1968.

2 See Peck, Federal Documentary Stamp Tax Aspects of Oil and Gas Transactions, 1963 Tulane Tax Inst., 270 (1963).

3 Id. at 283.

4 Your proposed memorandum refers to indentures conveyed through 1967. We are unable to determine from the administrative files whether the 1967 indentures differ materially from the 1963 through 1965 indentures. For purposes of discussion we will assume the absence of such difference.

GCM 37079 (IRS GCM), 1977 WL 46532

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EXHIBIT J

REGULATIONS 71, ARTICLE 84: What constitutes real property determinable by law of State where located.

1939-49-10115
G. C. M. 21702

An oil and gas lease, covering lands in Oklahoma, for a specified term and as long thereafter as oil or gas is produced from the leased lands does not constitute a conveyance of realty subject to stamp tax.

An opinion is requested whether an oil and gas lease, covering lands in Oklahoma, for a specified term and as long thereafter as oil or gas is produced from the leased lands constitutes a conveyance of realty subject to stamp tax under section 3482 of the Internal Revenue Code, as amended by section 1 of the Revenue Act of 1939.

Section 3482, as amended, imposes a stamp tax on any "Deed, instrument, or writing * * * whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, * * * when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 * * *." What constitutes "lands, tenements, or other realty" is determinable by the law of the State in which the property is situated. (Article 84, Regulations 71.)

The Supreme Court of Oklahoma in *State of Oklahoma* v. *Ernest Shamblin* (90 P. (2d), 1053) held that the interest of a lessee in a nonproducing oil and gas lease is not subject to *ad valorem* taxation as real property under the laws of Oklahoma since the definition of real property for *ad valorem* taxation purposes does not include the lessee's interest in such a lease. The court said in part:

> It has been consistently held by this court that an oil and gas mining lease is not real property nor a freehold or corporeal interest therein, and that the execution of such a lease does not constitute a conveyance of lands, tenements or other realty, or of a freehold or corporeal interest therein. This is true of leases having fixed terms, and it is equally true of leases having fixed terms followed by "and as long thereafter as oil or gas is found" or by any similar provision; it being the view and holding of this court that the legal character of an oil and gas lease in Oklahoma is as above stated regardless of the term of the lease, whether fixed or indeterminate. It has also been repeatedly and consistently held that such oil and gas mining leases are chattels real and are therefore personal property. (*Kolachny* v. *Galbreath*, 26 Okla., 772, 110 P., 902, 38 L. R. A., N. S., 451; *Tupeker* v. *Deaner*, 46 Okla., 328, 148 P., 853; *Kelly* v. *Harris*, 62 Okla., 236, 162 P., 219; *White* v. *McVey*, 168 Okla., 19, 31 P. (2d), 850, 94 A. L. R., 656; *Papoose Oil Co.* v. *Swindler*, 95 Okla., 264, 221 P., 506; *Stanolind Crude Oil Purchasing Co.* v. *Busey*, 185 Okla., —, 90 P. (2d), 876.) (Being personal property, such oil and gas mining leases in Oklahoma are not taxable as real property or as conveyances of lands, tenements or other real estate or of a freehold or corporeal interest therein.)

In view of the foregoing decision of the Supreme Court of Oklahoma, it is held that an oil and gas lease, covering lands in Oklahoma, for a specified term and as long thereafter as oil or gas is produced from the leased lands does not constitute a conveyance of realty and is, therefore, not subject to stamp tax under section 3482 of the Internal Revenue Code, as amended.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

EXHIBIT K

(This Treasury decision is issued under the authority of section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., 1940 ed., 3791).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved June 27, 1942.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 29, 1942, 11.56 a. m.)

REGULATIONS 71 (1941), SECTION 113.144: Restrictions on the sale or purchase of stock transfer stamps. 1942–37–11195 T. D. 5169

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 113.—DOCUMENTARY STAMP TAXES.

Regulations 71 amended.—Sale or purchase of stock transfer stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To Collectors of Internal Revenue and Others Concerned:

Regulations 71 (1941 Edition) [Part 113, Title 26, Code of Federal Regulations, 1941 Sup.] are amended by striking out section 113.144 thereof.

(This Treasury decision is issued under the authority of section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., 1940 ed., 3791).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved September 10, 1942.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 11, 1942, 3.26 p. m.)

SECTION 3482, AS AMENDED BY SECTION 1 OF THE REVENUE ACT OF 1939, SECTIONS 209 AND 210 OF THE REVENUE ACT OF 1940, AND SECTIONS 505 AND 521(a)24 OF THE REVENUE ACT OF 1941.—CONVEYANCES.

REGULATIONS 71 (1941), SECTION 113.83: Conveyances subject to tax. 1942–35–11184 G. C. M. 23295

What constitutes " lands, tenements, or other realty " for purposes of determining stamp tax liability under section 3482 of the Internal Revenue Code, as amended, relating to the tax on conveyances, is not controlled by the definition or scope of those terms under State law. State law creates legal interests but the Federal statute determines when and how they shall be taxed. Accordingly, reference will be made to State law to determine the character of the rights conveyed. Whether conveyances of such rights are taxable, however, is to be determined under Federal law. Published rulings not in accordance with the foregoing will no longer be followed.

An opinion is requested whether, in view of recent court decisions, the law of the State in which real property is located is controlling in determining what constitutes " lands, tenements, or other realty "

for the purposes of the stamp tax imposed upon conveyances of realty by section 3482 of the Internal Revenue Code, as amended.

Section 3482 of the Internal Revenue Code, as amended by section 1 of the Revenue Act of 1939, sections 209 and 210 of the Revenue Act of 1940, and sections 505 and 521(a)24 of the Revenue Act of 1941, imposes a stamp tax on any "Deed, instrument, or writing * * * whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, * * * when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 * * *."

Since the phrase "lands, tenements, or other realty" appearing in section 3482, as amended, is not defined, the question arises as to what interests in land come within the phrase for purposes of the stamp tax imposed by that section. The laws of the several States and judicial decisions vary greatly as to the classification of interests in land. This office has heretofore taken the position that the stamp tax under section 3482, as amended, should be imposed only where the law of the State in which the property was situated classified the interest conveyed as "lands, tenements, or other realty." This position was in accord with article 84(*a*) of Regulations 71 (1932). Regulations 71 (1941) contains no provision similar to article 84(*a*) of Regulations 71 (1932).

The United States Supreme Court has held that in the absence of express or necessarily implied contrary statutory provision, State law is not controlling for purposes of Federal taxation. (*Burnet* v. *Harmel* (1932), 287 U. S., 103; *Morgan* v. *Commissioner* (1940), 309 U. S., 78; *United States* v. *Pelzer* (1941), 312 U. S., 399.)

In *Burnet* v. *Harmel*, supra, the Court said:

> * * * It is the will of Congress which controls, and the expression of its will in legislation, in the absence of language evidencing a different purpose, is to be interpreted so as to give a uniform application to a Nation-wide scheme of taxation. * * * State law may control only when the Federal taxing Act, by express language or necessary implication, makes its own operation dependent upon State law. (See *Crooks* v. *Harrelson*, 282 U. S., 55; *Poe* v. *Seaborn*, 282 U. S., 101; *United States* v. *Loan & Building Co.*, 278 U. S., 55; *Tyler* v. *United States*, 281 U. S., 497; see *Von Baumbach* v. *Sargent Land Co.*, supra, 519.)
> * * * The State law creates legal interests but the Federal statute determines when and how they shall be taxed. * * *

In *Morgan* v. *Commissioner*, supra, the Court used the following language:

> State law creates legal interests and rights. The Federal Revenue Acts designate what interests or rights, so created, shall be taxed. Our duty is to ascertain the meaning of the words used to specify the thing taxed. If it is found in a given case that an interest or right created by local law was the object intended to be taxed, the Federal law must prevail no matter what name is given to the interest or right by State law.

In *United States* v. *Pelzer*, supra, the Court stated:

> * * * But as we have often had occasion to point out, the revenue laws are to be construed in the light of their general purpose to establish a Nation-wide scheme of taxation uniform in its application. Hence their provisions are not to be taken as subject to State control or limitation unless the language or necessary implication of the section involved makes its application dependent on State law.

In *Morrow* v. *Scofield* (C. C. A. 5, 1940) (116 Fed. (2d), 17, certiorari denied (1941), 313 U. S., 573), suit was brought for the refund of

documentary stamp taxes paid by the plaintiff upon the execution of instruments by which certain oil and gas leaseholds on lands situated in Texas were assigned. Under Texas law the leasehold interests assigned constituted interests in "lands, tenements or other realty." The court, in affirming judgment for the defendant collector, nevertheless said:

> We can not agree with appellant. The Texas decisions aside, and they are uniform to the effect that mineral leasehold interests are interests in lands, tenements, or other realty, we think the comprehensive language of the Federal statute makes it quite plain that it was the intention of Congress to require the affixing of stamps to instruments of this kind, instruments which in substance convey interests in lands, tenements or other realty without regard to the particular legal effects and consequences which may be attached to them by the laws of a particular State.
>
> The Treasury regulation, "what constitutes lands, tenements, or other realty is determinable by the laws of the State in which the property is situated" is not a part of the statute but a mere rule of thumb provision for working its application out. It was not intended to, it may not be given effect where the laws of a State do violence to the purport and intent of the taxing statute. If State laws should abolish entirely the concept of lands, tenements or other realty, or declare that a conveyance of land was not a conveyance, it would not, I suppose, be contended that the statute could be nullified in those States, and the Treasury regulation if read as so providing, would be a nullity. All that it amounts to is that where there may be a reasonable difference of opinion as to the legal effect of an instrument, the law of the State where the property is situated, will be looked to as controlling.
>
> Both then, because it is not a part of the statute and because if treated as though it were, it must be given a reasonable construction, it is quite plain that article 84 of Treasury Regulations 71, does not operate at all to impair or invalidate the statute.

In *Jones et al., Trustees*, v. *Magruder* (D. C. Md., 1941) (42 Fed. Supp., 193), the issue was whether an assignment of a lease for 99 years, renewable forever, on land situated in Maryland was subject to the stamp tax imposed by section 725 of the Revenue Act of 1932 (now section 3482, I. R. C.). The Court, in holding that the assignment of the 99-year lease was subject to stamp tax, said in part as follows:

> The legal incidents and characteristics of the ground rent lease are well known to all Maryland lawyers and judges, and have been firmly established for a very long period of years. The estate of the lessee has been uniformly regarded as personal property and upon his death intestate constitutes a part of his personal estate and passes, subject to the payment of debts, to his next of kin and does not descend to his heirs at law. His wife or widow has no inchoate or consummate dower in the leasehold estate; which may be bequeathed by will executed in form sufficient for the passage of personal property as distinct from real estate. There are numerous Maryland cases expressly so holding. [Citations.]
>
> * * * * * * *
>
> The dominant inquiry in the question now presented is, what did Congress intend to include in the phraseology of "deed, instrument, or writing * * * whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed. * * *"

The Court, after referring to *Morgan* v. *Commissioner*, supra, *Burnet* v. *Harmel*, supra, and *United States* v. *Pelzer*, supra, then continued as follows:

> The crucial question is thus seen to be whether the statutory phraseology is sufficiently general and definite to be susceptible of a uniform Nation-wide application, or whether the nature of the subject matter is such that there arises a necessary implication that its application must be dependent on the State law. The taxpayers contend the latter furnishes the rule to be applied in this case. They rely principally on the regulations above quoted. Their argument runs as follows: (1) The words of the statute (lands, tenements or other realty) are technical common law words used to distinguish realty from personalty; (2)

these technical words are applied with different results in different States by reason of particular statutory provisions or court decisions, and (3) local law thus applying, it is clearly established by Maryland law that leases for 99 years renewable forever constitute personal and not real estate and are therefore not within the statutory phrase "lands, tenements or other realty." If the premise that the words must be taken in their technical common law sense and so applied locally is correct, then the conclusion is plausible and logical and especially attractive to Maryland lawyers and judges who have long been familiar with the local decisions that such leasehold estates are personal and not real property.

It is true that technical common law words when used in a statute without definition will generally be construed in that sense unless a contrary intention appears from the context. (2 Sutherland on Statutory Construction, 2d ed. s. 398, p. 757; *Moore* v. *United States*, 160 U. S., 268, 16 S. Ct., 294, 40 L. Ed., 422; *Beazell* v. *Ohio*, 269 U. S., 167, 46 S. Ct., 68, 70 L. Ed., 216.) It is also true that the general import of the statutory phrase is to include conveyances of real property as distinct from personal property. And tested by the technical and sometimes highly artificial rules of the common law of real estate, originating in the system of feudal tenure, the phrase "lands, tenements or other realty" probably would not when strictly applied, include a purely leasehold estate no matter of how long duration, as such an estate would be considered personal property and devolve not on the heir but on the personal representatives of a deceased owner. [Citations.]

The word "tenements," a highly technical term of the common law, has some uncertainty of meaning, but the better view would seem to be that it would not include estates for years. (Challis on Real Property, 3d ed., 1911, pp. 43–48; 1 Tiffany on Real Property (1920), s. 5; Cf. Pollack & Maitland, History of English Law, Vol. 2 (1895), note, p. 117.) The inclusive phrase generally used to designate an owner's whole "bundle of rights" in land was "lands, tenements and hereditaments." In Maryland this phrase has been held not to include leasehold interests for 99 years renewable forever. * * *

It is, however, not probable that Congress intended in this modern taxing Act to use the phrase "lands, tenements, or other realty" in the technical nicety of the common law with respect to interests in lands flowing from a system of feudal tenure which did not exist in this country after the American Revolution. I have been unable to find any legislative history of the statute which throws any light upon the sense in which the words were used; but after considerable reflection I have reached the conclusion that the expression is sufficiently general but nevertheless definite to have a uniform Nation-wide application. If we put aside the technical niceties of meaning of the word "tenements," we nevertheless have in the words "lands, or other realty," an expression which is commonly understood Nation-wide. Indeed one of the dictionary meanings (see Webster's New International Dictionary) of the word "land" includes "an interest or estate in lands." It is a reasonable construction of the statutory words to include therein a conveyance of an interest or estate in land constituting a substantial ownership in whole or in part, as distinguished from a mere license or temporary right of possession such as pertains to an ordinary lease.

Probably in no State of the United States other than Maryland would a deed for a leasehold estate for 99 years *renewable forever* not be considered a conveyance of land or realty at this time. And if the statute is susceptible of general uniform application, we must apply it without deference to the particularity of the Maryland view of the nature of the estate. * * *

* * * * * * *

But while the regulations relied on in this case by the taxpayers should not be lightly regarded, I think they must be considered and applied in subordination to the proper construction of the statute itself. Regulations 71, article 108 that "leases of real estate are not subject to the tax" should fairly be construed as referring to only ordinary leases of real property. And in applying article 84 (*a*) that "what constitutes land, tenements or other realty is determinable by the law of the State in which the property is situated," we must bear in mind that the tax is imposed not on the *subject matter* of lands, tenements or other realty but on the *conveyance* thereof by deed or other written instrument. * * *" [Italics supplied.]

In view of the foregoing, it is the opinion of this office that in determining liability for stamp tax imposed by section 3482 of the Internal Revenue Code, as amended, supra, reference should be made

to State law only to ascertain the character of the rights conveyed, and that recourse should then be made to Federal interpretation of section 3482 of the Internal Revenue Code, as amended, supra, to determine whether conveyances of such rights are subject to stamp tax.

For the purpose of determining liability for the stamp tax imposed by section 3482 of the Internal Revenue Code, as amended, supra, the phrase "lands, tenements or other realty" embraces those interests which endure for a period of time, the termination of which is not fixed or ascertained by a specific number of years, such as an estate in fee simple, life estate, perpetual easement, etc., and those interests enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, convey a bundle of rights approximating those of the class of interests first above mentioned. Thus, for example, a lease of real estate for 999 years, or a lease for 99 years renewable forever or for several succeeding terms is taxable. On the other hand, a lease for five years is not taxable even if the right is granted to renew it for several successive terms.

Published memoranda and rulings to the extent that they are inconsistent with this opinion either in theory or in the conclusion reached should no longer be followed. (See G. C. M. 11732, C. B. XII-1, 439 (1933); G. C. M. 13035, C. B. XIII-1, 427 (1934); S. T. 794, C. B. XIII-2, 418 (1934); G. C. M. 14348, C. B. XIV-1, 427 (1935); G. C. M. 16510, C. B. XV-1, 416 (1936); G. C. M. 16934, C. B. XV-2, 364 (1936); G. C. M. 17026, C. B. XV-2, 366 (1936); S. T. 860, C. B. 1937-1, 341; S. T. 866, C. B. 1937-2, 524; S. T. 868, C. B. 1937-2, 527; S. T. 872, C. B. 1938-1, 546; S. T. 876, C. B. 1938-2, 413; S. T. 881, C. B. 1939-1 (Part 1), 359; G. C. M. 20898, C. B. 1938-2, 414; S. T. 888, C. B. 1939-2, 380; S. T. 890, C. B. 1939-2, 381; G. C. M. 21702, C. B. 1939-2, 383; G. C. M. 22132, C. B. 1940-2, 333; G. C. M. 22393, C. B. 1940-2, 336; S. T. 917, C. B. 1941-1, 466; O. D. 72, Sales Tax C. B. January-June, 1921, 86; O. D. 53, Sales Tax C. B. January-June, 1921, 86; O. D. 158, Sales Tax C. B. July-December, 1921, 64; O. D. 181, Sales Tax C. B. July-December, 1921, 64.)

The conclusions reached in this memorandum will be applied in determining liability for the stamp tax imposed under section 3482 of the Internal Revenue Code, as amended, only with respect to transactions occurring on and after the date of publication of this memorandum in the Internal Revenue Bulletin.

J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

Approved.

Norman D. Cann,
Acting Commissioner of Internal Revenue.

Approved.

John L. Sullivan,
Acting Secretary of the Treasury.

Regulations 71 (1941), Section 113.83: Conveyances subject to tax. 1942-37-11194 M. T. 4

A conveyance of realty to a partnership by a partner as a contribution to partnership assets is subject to stamp tax under section 3482 of the Internal Revenue Code, as amended.

EXHIBIT L

trust. Subsequently all of the assets of the O Company were acquired by the P Company, which company later elected to pay off the balance of the loan. The outstanding land trust certificates were thereupon retired and the property was conveyed to the P Company by the N Company (trustee) in accordance with the provisions of the lease.

The determination of the issue presented requires consideration of the question whether the deed by the M Company to the N Company, as trustee, was given to secure a debt or pursuant to a sale of the property. If the legal effect of the transaction was a sale, the subsequent transfer of the property by the N Company to the P Company was a sale and not merely a release of the N Company's interest in the property.

A similar situation was considered by the Board of Tax Appeals in *City National Bank Building Co.* v. *Commissioner* (34 B. T. A., 93 (1936)). The Board held in that case that the transaction whereby the trustee acquired the property was a sale of real property and not a loan or mortgage. In the course of its decision the Board said:

* * * Thus the transactions in the present case were in law and in fact exactly what they purported to be. The petitioner sold its property, benefited from the method which it used, and now can not deny the fact of sale in order to claim tax benefits which would have resulted from the use of a mortgage or some other form of loan. The test is what was done, not what might have been done. * * *

The Board's decision in the above-named case sustained the Bureau's position that a transaction whereby property is conveyed to a trustee to be held in trust for the owners of land trust certificates, the former owner immediately receiving back a long-term lease with an option to purchase the property, constitutes a sale and not a mortgage. Accordingly, the transaction whereby the M Company conveyed the real estate to the N Company, as trustee, constitutes a sale and not a mortgage. It follows that the subsequent transfer of the real estate by the N Company to the P Company pursuant to the provisions of the lease constituted a sale rather than a release of the mortgage, and that the conveyance effecting such transfer is subject to the stamp tax imposed by Schedule A-8 of Title VIII of the Revenue Act of 1926, as added by section 725 of the Revenue Act of 1932.

EXHIBIT M

Kans., supra; *Hamilton Nat. Bank* v. *United States*, 6 Cir., 99 Fed. (2d), 570; *Central States Life Ins. Co.* v. *Sheehan*, supra; *United States* v. *American Trust & Banking Co.*, 6 Cir., 125 Fed. (2d), 113; *Pennsylvania Co. for Insurances, etc.*, v. *Rothensies*, supra.) The notes here in question meet all the requirements of instruments known generally as corporate securities, and they are taxable under the Act provided they are in registered form within the meaning of section 1801.

The defendants do not contend that the notes under consideration are not prima facie in registered form. Any such claim would be without foundation. The notes are all in the same form and each one contains the provision that—

"This note shall not become or be valid for any purpose until registered by the Mississippi Valley Trust Company, and no transfer hereof shall be valid unless endorsed by the registered holder hereof to a registered transferee, and a new note issued containing the same terms as the within note, and the new note registered by the said Mississippi Valley Trust Company."

And each note is endorsed with a "Registrar's Certificate" reading

"This is to certify that this note has been duly registered in the name of the above holder on the records of the undersigned.

"MISSISSIPPI VALLEY TRUST COMPANY,
"By______________________________
"*Trust Officer.*"

The contention is that the purpose of registration in this instance is unusual; that the notes are registered to protect the creditor banks and trust companies against violation of the subordination clause required by the contracts to be included in the notes. The clause referred to provides that the notes and all claims of the holders thereof "against the Royal Loan Company either as an endorser or guarantor is hereby subordinated to the claim of any Bank or Trust Company that may have extended or may hereafter extend credit to the Royal Loan Company * * *."

Conceding, as defendants must, that the notes are in registered form, their contention, based upon the purpose of the registration, fails because the statute makes no exception for any reason. Corporate securities "with interest coupons or in registered form" are taxable according to the plain terms of the law, and the court is without power to read into the statute a provision which does not exist.

The judgment is affirmed.

SECTION 3482, AS AMENDED BY SECTION 1 OF THE REVENUE ACT OF 1939, SECTIONS 209 AND 210 OF THE REVENUE ACT OF 1940, AND SECTIONS 505 AND 521(a)(24) OF THE REVENUE ACT OF 1941.—CONVEYANCES.

REGULATIONS 71 (1941), SECTION 113.84: Conveyances not subject to tax. 1946–20–12414 M. T. 24

Taxability for stamp tax purposes of a transaction whereby real-estate was transferred in trust, a long-term lease immediately granted thereon, and a subsequent reconveyance of the property made in accordance with the provisions of the lease.

S. T. 865 (C. B. 1937–2, 528) revoked.

Advice is requested whether the conveyance of real estate by the M Company to the N Bank, as trustee, and the subsequent reconveyance of the real estate to the M Company, the lessee, under the following circumstances are subject to the stamp tax imposed by section 3482 of the Internal Revenue Code, as amended.

Certain real estate was conveyed by the M Company to the N Bank, as trustee. The trustee made a declaration of trust which provided that it held legal title to the property for the benefit of such persons as may become parties thereto by the acceptance and holding of land

trust certificates of equitable ownership issued thereunder. The declaration further provided that the N Bank (trustee) had leased the premises to the M Company (lessee) for 99 years renewable forever. The lessee was obligated to pay rent of a specific amount per year, and agreed to pay all taxes and other expenses, including the compensation of the trustee under the declaration. The lessee further agreed to create a depreciation fund by making payments of a specific amount per year to the trustee. The declaration further provided that the equitable ownership and beneficial interest in the trust estate be divided into 800 indivisible equal units evidenced by land trust certificates issued by the trustee, each of which is equal to 1/800 of the equitable interest in the property. The trustee agreed to distribute the rentals received from the lessee to the certificate holders. The lessee had an option to repurchase the property at any time. The trustee had the right to terminate the lease should the lessee default in any of the provisions of the lease. The consideration received for the conveyance was far less than the market value of the property. The rental was equal to an interest payment on a debt of like size to that received for the conveyance and had no relationship to the real rental value of the property. Subsequently the land trust certificates were retired and the real estate was reconveyed to the M Company by the N Bank (trustee).

Section 3482 of the Internal Revenue Code, as amended, imposes a tax on—

> Conveyances. Deed, instrument, or writing, * * * whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, * * *. This section shall not apply to any instrument or writing given to secure a debt.

Section 113.81, Regulations 71 (1941 ed.), provides:

* * * * * * *

> (*b*) The term "sold" imports transfer of title for a valuable consideration which may involve money or anything of value.

Section 113.84 of Regulations 71 sets forth the following as examples where the tax does not apply:

* * * * * * *

> (*a*) The conveyance of realty to secure a debt; also the reconveyance of such realty upon payment of the debt.

* * * * * * *

In *Helvering* v. *The F. & R. Lazarus & Co.* (308 U. S., 252, Ct. D. 1430, C. B. 1939-2, 208), which involved a transaction similar in essential respects to the transaction involved in the instant case, the Supreme Court of the United States affirmed the decision of the United States Circuit Court of Appeals for the Sixth Circuit (101 Fed. (2d), 728), which affirmed the decision of the Board of Tax Appeals (32 B. T. A., 633), holding that, in such a case, the transfer of ownership with a lease back was in reality a mortgage loan secured by the property involved.

It is held that the transaction whereby the M Company under the circumstances hereinbefore stated deeded the real estate to the N Bank, as trustee, constituted a conveyance to secure a debt rather than a sale

and is not subject to the stamp tax imposed by section 3482 of the Internal Revenue Code. It follows that the subsequent reconveyance of the realty by the N Bank to the M Company pursuant to the provisions of the lease constituted a release of the mortgage and likewise is not subject to the stamp tax.

In view of the foregoing, S. T. 865 (C. B. 1937-2, 528), in which a contrary conclusion was reached, is revoked.

TAXES ON OLEOMARGARINE, ADULTERATED BUTTER, ETC.

SECTION 3340.—SHIPMENTS TO THE UNITED STATES.

REGULATIONS 9, ARTICLE 81: Philippine receipts. 1946-18-12391 T. D. 5531

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 310.—TAXES ON OLEOMARGARINE, ADULTERATED BUTTER, AND PROCESS OR RENOVATED BUTTER.

Importation of oleomargarine from the Philippine Islands—Regulations 9 amended.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 9 (1936 edition) [Part 310, Title 26, Code of Federal Regulations] to section 507(b) of the Philippine Trade Act of 1946 (Public Law 371, Seventy-ninth Congress), approved April 30, 1946 [C. B. 1946-1, 334], such regulations, but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4886, approved February 11, 1939 [C. B. 1939-1 (Part 1), 396] [Note, Title 26, Code of Federal Regulations, Cum. Sup., page 8133], are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding article 81 the following:

SEC. 3340. SHIPMENTS TO THE UNITED STATES. (INTERNAL REVENUE CODE.)

(a) TAX IMPOSED IN UNITED STATES.—

(1) AMOUNT.—There shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture.

(2) PAYMENT.—Such tax shall be paid by internal revenue stamp or stamps, to be provided by the Commissioner, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary, shall prescribe.

(b) EXEMPTION FROM TAX IMPOSED IN THE PHILIPPINE ISLANDS.—Such articles, goods, wares, or merchandise shipped from said islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of the Philippine Islands.

EXHIBIT N

13309 of the Compiled Laws of Michigan, 1929. The courts of Michigan have held that the substance of the vendor's rights under a land contract is to receive the money due under the contract and that he holds title as security for the money. In *City of Marquette* v. *Michigan Iron & Land Co.* (132 Mich., 130, 92 N. W., 934), the defendant had contracted to sell land. Balances due the defendant under the contract were held taxable as "credits." The court said in part:

> * * * From the time these contracts are made, the vendor holds the legal title only as trustee for the vendee. * * * The vendor has, in effect, exchanged his property for the unconditional obligations of the vendee, the performance of which is secured by the retention of the legal title. * * *

The court likened the situation to that created by a mortgage. See also *Detroit & Security Trust Co.* v. *Kramer* (247 Mich., 468, 226 N. W., 234) and *In re McBride's Estate* (253 Mich., 305, 235 N. W., 166).

It is clear that the contract in question did not vest title to the realty in the vendee since legal title was retained by the vendor. Consequently, the contract is not a conveyance of realty sold within the meaning of the law and regulations, and is not, therefore, subject to stamp tax. However, notwithstanding that the vendee has a substantial interest in the realty and that the vendor retains legal title merely as security for the payment of the purchase price, if the vendor actually transfers legal title the transaction would be subject to stamp tax as a conveyance of realty. A quitclaim deed by the vendee relinquishing his interest in the realty to the vendor is not subject to stamp tax since no conveyance of legal title is involved.

REGULATIONS 71, ARTICLE 84: What constitutes real property determinable by law of State where located.

XVI-20-8708
S. T. 860

> A conveyance of water rights in California is subject to stamp tax as a conveyance of realty.

Advice is requested whether a conveyance of water rights in California (hereinafter described) is subject to the stamp tax on conveyances imposed by Schedule A-8 of Title VIII of the Revenue Act of 1926, as added by section 725 of the Revenue Act of 1932.

The law imposes a stamp tax on any "* * * Deed, instrument, or writing * * * whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers * * * when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 * * *." What constitutes "lands, tenements, or other realty" is determinable by the law of the State in which the property is situated. (Article 84, Regulations 71.)

The instrument here in question, designated a "grant deed," recites that A, B, and C in consideration of the payment of *x* dollars grant to D "all of the right, title and interest of the grantors in and to all water, and water rights" in a designated locality in the State of California, together with certain equipment, and facilities connected therewith, and rights of way with respect to certain lands.

Section 661, Title 43, United States Code (sections 2339, 2340, R. S.), provides:

* * * Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or right to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by this section. * * *

It is well established that in California a water right is realty. The Supreme Court of California in *Stanislaus Water Co.* v. *Bachman* (152 Cal., 716, 93 Pac., 858) stated in part:

* * * The right to water must be treated in this State as it has always been treated, as a right running with the land and as a corporeal privilege bestowed upon the occupier or appropriator of the soil; and as such, has none of the characteristics of mere personalty. (*Hill* v. *Newman*, 5 Cal., 446, 63 Am. Dec., 140.) The right to have water flow from a river into a ditch is real property; and so also is the water while flowing in the ditch. (*Lower K. R. W. D. Co.* v. *K. R. & F. C. Co.*, 60 Cal., 410.) A wrongful diversion of water flowing in a ditch is an injury to real property. (*Last Chance, etc., Co.* v. *Emigrant D. Co.*, 129 Cal., 278, 61 Pac., 960.) The right to take water from a river and conduct it to a tract of land is realty. (*South Tule, etc., Co.* v. *King*, 144 Cal., 454, 77 Pac., 1032.) The right to have water flow through a pipe from a reservoir to and upon a tract of land is an appurtenance to the land. (*Standart* v. *Round Valley Co.*, 77 Cal., 403, 19 Pac., 689.) An undivided interest in a ditch and in the water flowing therein is real property. (*Hayes* v. *Fine*, 91 Cal., 398, 27 Pac., 772.) A ditch for carrying water is real estate. (*Smith* v. *O'Hara*, 43 Cal., 376; *Bradley* v. *Harkness*, 26 Cal., 77.) And, where one person has water flowing in a ditch and another has the right to have a part of such water flow from the ditch to his land for its irrigation, the right of the latter is a servitude upon the ditch, and is real property. (*Dorris* v. *Sullivan*, 90 Cal., 286, 27 Pac., 216.) * * *

In view of the foregoing, it is held that the water rights conveyed by the "grant deed" in question constitute realty, and that such deed is subject to the stamp tax imposed by Schedule A–8 of Title VIII of the Revenue Act of 1926, as added by section 725 of the Revenue Act of 1932.

REGULATIONS 71, ARTICLE 84: What constitutes real property determinable by law of State where located.
(Also Article 106.)

XVI–26–8788
S. T. 862

Contracts entered into between A, the vendor, and B, the vendee, for the sale of realty in the State of Nebraska, and quitclaim deeds whereby the vendee released to the vendor the interests acquired under such contracts are not conveyances of realty sold and are not subject to stamp tax.

Advice is requested whether contracts for the sale of realty in the State of Nebraska entered into between A, the vendor, and B, the vendee, and quitclaim deeds whereby B released to A the interests acquired under such contracts, are subject to stamp tax under Sched-

EXHIBIT O

89th Congress } COMMITTEE PRINT
1st Session }

EXCISE TAXES

STATEMENTS

OF

SECRETARY OF THE TREASURY
HENRY H. FOWLER

AND

ASSISTANT SECRETARY OF THE TREASURY
STANLEY S. SURREY

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ON

H.R. 8371
AN ACT TO REDUCE EXCISE TAXES
AND FOR OTHER PURPOSES

JUNE 8 AND 9, 1965

PUBLIC LAW 89-44 approved 6/21/65
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House Ways and Means Committee
did not hold hearing 4034

Senator DIRKSEN. And the chances are it will be pressed on the committee and on the floor.

Secretary FOWLER. Yes, sir.

Senator DIRKSEN. Now one general question: What is the likelihood of when these excises go off that the States will put on increased excises because they are always scouring around for money?

Secretary FOWLER. I think that the prospect is quite likely that the States will select some of these excises and reimpose them at the State level. For example, the Advisory Commission on Intergovernmental Relations, in which Federal and State and local tax authorities meet to discuss mutual problems has informed us that they expect some of the States to impose a tax on deeds to replace the one that we would repeal because it ties into State and local real estate transactions.

There undoubtedly will be other areas that we can't really predict but it certainly is true that State and local tax authorities are, you might say, on the prowl for new sources of revenue and I would expect some of that to occur.

I don't believe it will be as major an exercise as one might fear because the general tendency seems to be to deal with the across-the-board type of taxes insofar as this particular type of tax is concerned and, except for a few specialized areas like the documentary stamp tax on deeds, I think the same reasons that cause the Congress to react very adversely to selective excises would cause State legislatures to feel the same way.

Senator DIRKSEN. One other question: Suppose this bill landed on the President's desk for signature, prior to the 1st of July, why shouldn't it become effective the day he signs it?

Secretary FOWLER. We do not wish to take the position in opposition to an amendment to that effect if the committee should be desirous of doing so. We had felt that the postponement of sales of excise taxed items, by and large, except for the ones specifically covered, are not going to be very serious. They are going to be postponements rather than cancellations or losses of business, but it is a marginal question, Senator Dirksen and I think would be for the judgment of the committee. The gross revenue costs would be about $50 million.

Senator DIRKSEN. If Senator Smathers would give me his attention, going back for a moment to what he said about TV, my understanding is that it is not a question of diminished sales in May and June but rather that right now the distributors are calling up and canceling 5 carloads, 10 carloads, 15 carloads of television sets and just saying to the manufacturer "don't ship." So they are in a bind right now, and, of course, all we hope for is retroactivity in the bill or that it be signed as quickly as possible, if it got to the President's desk before the 1st of July.

Senator SMATHERS. I think it might be helpful for the record as long as this is an official document, this is Merchandiser Weekly, January 1965 issue and it shows apparently historically that the worst months for television sets, dryers, things of that type are May, June, and July.

EXHIBIT P

restored the present tax law of 3 cents a gallon on cutting oil and 6 cents a gallon on other lubricating oil. The House bill to which your conferees have agreed in this area, would have eliminated all of the tax on lubricating oil and cutting oil—either by exemption or refund procedure—except in the case of lubricating oil used in highway vehicles. The 3-cent-a-gallon tax on cutting oil under the House bill is eliminated entirely. The 6-cent tax on other lubricating oil would under the House bill, apply generally, but refunds would be available for nonhighway use. Additionally, the House bill would allocate tax collected on lubricating oil to the highway trust fund.

The House conferees felt quite strongly that the $50 million a year from highway use of lubricating oil should be allocated to the highway trust fund. Your conferees, after much discussion on this point, finally agreed to the retention of the tax on lubricating oil insofar as it relates to highway use and for its allocation to the highway trust fund.

This Senator detected that there was considerable sentiment in the House to accept the amendment. It would have taken the 1 percentage point retained by the Douglas amendment and placed it in the highway trust fund to guarantee the completion of highways on schedule. That would have been subject to a point of order by any Member of the House.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. LONG of Louisiana. I yield.

Mr. DOUGLAS. Mr. President, a point of order would most certainly have been raised if the 1 percent had been placed in the highway trust fund by the conferees.

Mr. LONG of Louisiana. That was the point that was made. We had to recognize the validity of it. We did not do that. We saved that 1 percentage point of tax for revenue purposes. Congress can decide in the future how it wants it to be used. The House is not necessarily opposed to using this. They believe that if it should be done, it ought to be done by other committees, and not by the Committee on Ways and Means or by the Senate Committee on Finance.

Mr. MORSE. Mr. President, will the Senator yield?

Mr. LONG of Louisiana. I yield.

Mr. MORSE. Mr. President, will the Senator advise me whether the conference report contains an exemption to a lottery?

Mr. LONG of Louisiana. A Senate amendment provided that a State-owned sweepstake, which is related specifically to the State-owned sweepstake in New Hampshire, would not be subject to the gaming tax.

Mr. MORSE. Mr. President, does the Senator think it makes any difference whether a State or an individual gambles, or whether the State encourages individuals to gamble?

Mr. LONG of Louisiana. That was the decision of the Senate. The Senate voted on that.

As the Senate conferees, it was our duty to urge the House to accept it.

Parimutuels have always been exempted from the tax on gambling. For example, we have two horseracing tracks in the New Orleans vicinity. One is in the city itself and the other is in Jefferson Parish. They are specifically exempt from the tax on gambling.

Mr. MORSE. On the ground that they are a necessity?

Mr. LONG of Louisiana. I do not say that they are a necessity, but they were not regarded as being the kind of corrupt operation that the Kefauver committee referred to when it recommended this kind of legislation.

Mr. MORSE. Could it be on the ground that they are a great educational institution for improving the morals of the young?

Mr. LONG of Louisiana. They are taxed under State laws. Louisiana gets quite a bit of money from the racetracks. The city of New Orleans finds it to be a very important item of revenue.

The same situation exists in Maryland. There are three racetracks, as I recall. There are two racetracks in West Virginia, to my knowledge. Those are not taxed. Those are private operations. They are not taxed by the Federal Government. They are all taxed, so far as I know, by the State. They are taxed rather heavily.

The money derived from the tax from New Hampshire is used exclusively for education. Insofar as I know, a record was made when the amendment was offered by the Senator from New Hampshire [Mr. MCINTYRE] and his colleague the senior Senator from New Hampshire [Mr. COTTON].

They made their case. I would urge the Senator to look at the record. The amendment was objected to by the Senator from Ohio [Mr. LAUSCHE] and the Senator from New Mexico [Mr. ANDERSON]. However, it was debated and was agreed to on a voice vote.

The House felt that in view of the fact that it was entirely a State-owned operation, and that all of the revenue went to education, without any indication that there is any improper use or control of the operation, it would be all right.

Mr. MORSE. The Senator from Louisiana of course understands that the Senator from Oregon is not reflecting on the Senator from Louisiana. However, I do mean to reflect on Congress.

I think it is inescapable that we are adding another exemption—from another source of immorality in our country—to taxes.

Does the Senator believe that if Congress were to legalize immoral houses, some people would say that the income from that source—because it would go to the education of the young—would justify exempting them?

Mr. LONG of Louisiana. That would be a better use for the money than the use that some of it is being used for now. [Laughter.]

Mr. MORSE. Mr. President, we are dealing with a basic question of morals. I am at a complete loss to understand why we give such an operation a tax benefit.

Mr. LONG of Louisiana. Mr. President, I understand the argument of the Senator. I am sure that some agree with him.

I am glad to report that the fifth substantive amendment made by the Senate; namely, the repeal of the 10-cent-per-pound tax on manufactured tobacco—that is, smoking and chewing tobacco, and snuff—was agreed to by the conferees of the other body. As a result, this tax is repealed as of January 1, 1966. The chairman of the Senate Committee on Finance, the distinguished Senator from Virginia, was most effective in persuading the House to agree to this amendment.

In the area of floor stock refunds, the House accepted the two amendments in the Senate bill providing for floor stock refunds; namely, those applicable in the case of playing cards and sporting goods. However, the House conferees refused to go along with the action taken by the Senate in removing the floor stock refund on auto parts and accessories. The wholesalers and retailers in all three of these industries apparently desire floor stock refunds and, therefore, the conferees have agreed to them.

Two other amendments made by the Senate relate to the documentary stamp taxes. First, we would have postponed for 3 years the effective date of the repeal of the tax on real estate conveyances. We believe that this was desirable because the States and local governments depend upon these stamps on real estate conveyances for assessment purposes. Therefore, we were giving the States and local governments an opportunity to impose these taxes if they so desired. The House conferees agreed to this amendment but provided a 2-year, rather than a 3-year, postponement. Thus, this tax will go off on January 1, 1968, rather than January 1, 1969.

The House conferees unfortunately refused, and adamantly refused to accept the second amendment relating to the documentary stamp taxes. This amendment would have advanced by 1 day—to December 31, 1965—the date for the repeal of the documentary stamp taxes on securities.

Other amendments accepted by the House conferees include the following:

First. The amendment relating to light bulbs incorporated as parts in refrigerators, ranges, radios, television sets, and other taxed articles. The tax on these items is removed this June, but the tax on light bulbs remains until January 1, 1966. The Senate amendment prevented the initiation of a new tax on the bulbs incorporated in these appliances merely for this 6-month interval. The House agreed to this amendment.

Second. Another amendment, offered by Senator DIRKSEN, on the floor, would make the club dues tax inapplicable to initiation fees incurred after June 30 in the case of new clubs going into operation after that date. This was necessary to make it possible for new clubs to operate in this period. The House agreed to this amendment.

Third. The House agreed to all of the amendments the Senate made with respect to the tax on truck bodies and truck parts. It agreed that the so-called camper coaches and bodies of mobile

EXHIBIT Q

A COMMISSION REPORT

The Intergovernmental Aspects of Documentary Taxes

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SEPTEMBER 1964
A-23

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PREFACE

This report deals with tax overlapping in a relatively minor area of taxation. The documentary taxes, which contribute some $300 million of the more than $130 billion in taxes collected by all governments, consist primarily of taxes on the issuance and transfer of corporate stocks and bonds, on real estate transfers, and on mortgages.

This is a part of a continuing project the Advisory Commission on Intergovernmental Relations is conducting under its mandate to recommend methods of coordinating and simplifying tax laws and administrative practices in order to achieve a more orderly and less competitive fiscal relationship between the levels of government and reduce the burden of compliance for taxpayers.

Information for this report was initially assembled by Mr. H. Clyde Reeves, Vice President of the University of Alabama, and Consultant to the Commission. The staff work was conducted by Jacob M. Jaffe.

This report was adopted at a meeting of the Commission held on September 17, 1964.

Frank Bane
Chairman

WORKING PROCEDURES OF THE COMMISSION

This statement of the procedures followed by the Advisory Commission on Intergovernmental Relations is intended to assist the reader's consideration of this report. The Commission, made up of busy public officials and private persons occupying positions of major responsibility, must deal with diverse and specialized subjects. It is important, therefore, in evaluating reports and recommendations of the Commission to know the processes of consultation, criticism, and review to which particular reports are subjected.

The duty of the Advisory Commission, under Public Law 86-380, is to give continuing attention to intergovernmental problems in Federal-State, Federal-local, and State-local, as well as interstate and inter-local relations. The Commission's approach to this broad area of responsibility is to select specific, discrete intergovernmental problems for analysis and policy recommendation. In some cases, matters proposed for study are introduced by individual members of the Commission; in other cases, public officials, professional organizations, or scholars propose projects. In still others, possible subjects are suggested by the staff. Frequently, two or more subjects compete for a single "slot" on the Commission's work program. In such instances selection is by majority vote.

Once a subject is placed on the work program, a staff member is assigned to it. In limited instances the study is contracted for with an expert in the field or a research organization. The staff's job is to assemble and analyze the facts, identify the differing points of view involved, and develop a range of possible, frequently alternative, policy considerations and recommendations which the Commission might wish to consider. This is all developed and set forth in a preliminary draft report containing (a) historical and factual background, (b) analysis of the issues, and (c) alternative solutions.

The preliminary draft is reviewed within the staff of the Commission and after revision is placed before an informal group of "critics" for searching review and criticism. In assembling these reviewers, care is taken to provide (a) expert knowledge and (b) a diversity of substantive and philosophical viewpoints. Additionally, representatives of the American Municipal Association, Council of State Governments, National Association of Counties, U. S. Conference of Mayors, U. S. Bureau of the Budget and any Federal agencies directly concerned with the subject matter participate, along with the other

"critics" in reviewing the draft. It should be emphasized that participation by an individual or organization in the review process does not imply in any way endorsement of the draft report. Criticisms and suggestions are presented; some may be adopted, others rejected by the Commission staff.

The draft report is then revised by the staff in light of criticisms and comments received and transmitted to the members of the Commission at least two weeks in advance of the meeting at which it is to be considered.

In its formal consideration of the draft report, the Commission registers any general opinion it may have as to further staff work or other considerations which it believes warranted. However, most of the time available is devoted to a specific and detailed examination of conclusions and possible recommendations. Differences of opinion are aired, suggested revisions discussed, amendments considered and voted upon, and finally a recommendation adopted (or modified or diluted as the case may be) with individual dissents registered. The report is then revised in the light of Commission decisions and sent to the printer, with footnotes of dissent by individual members, if any, recorded as appropriate in the copy.

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THE INTERGOVERNMENTAL ASPECTS OF DOCUMENTARY TAXES

1. Findings and Recommendations

The Federal Government, 17 States, the District of Columbia, and a number of local governments impose a group of taxes known collectively as "documentary taxes." Although generally of minor revenue significance to both the Federal Government and the States, they involve tax overlapping for thousands of taxpayers located in a number of States. Compliance with these taxes often requires the purchase of stamps from two sets of officials and computing the tax liability on differing bases, thus placing them in the "nuisance" category. The problems they pose are of the type the Congress contemplated in its mandate to this Commission:

> ... (to) recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers. 1/

The several Federal documentary taxes fall into two broad groups: (1) those on the issuance or transfer of capital stocks and bonds; and (2) those on the transfer of real property (conveyances). Another, the tax on policies issued by foreign insurers, concerns relatively few persons.

The State and local documentary taxes are patterned, by and large, after the Federal taxes. They include real estate transfer taxes (imposed by 12 States, the District of Columbia, and local governments in 5 States), and securities transfer and issuance taxes (5 States). In addition, a number of States levy documentary taxes on mortgages, which are not subject to Federal taxes.

With few exceptions, the documentary taxes are imposed at relatively low rates. The Federal tax on conveyances, for example, is 55 cents per $500 of the consideration involved in a real estate sale, excluding the value of any assumed mortgages; most of the State real estate transfer taxes carry comparable rates. The Federal stock transfer tax is 4 cents per $100 of market value (with a minimum of 4 cents per sale or transfer and a maximum of

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1/ P. L. 86-380 (sec. 2:7).

8 cents per share); the New York State tax on stock transfers ranges from 1 cent to 4 cents per share (depending upon market value). Except for the portion of the tax on the transfer of securities that is paid through security exchanges and clearinghouses, the documentary taxes are paid through the purchase of stamps which are affixed to the document at the time the transaction is consummated.

The documentary taxes are relatively small revenue producers. The Federal Government's take amounted to $140 million in fiscal year 1963, or 1/10 of 1 percent of its tax collections. About three-fourths of the Federal documentary tax revenue comes from the taxes on the issue and transfer of stocks and bonds. The States obtained $120 million, more than half of which came from New York State's stock transfer tax. Collections from locally imposed taxes are not tabulated. Fragmentary information suggests that they may approach $40 million. In total, Federal, State, and local receipts from documentary taxes account for about $300 million of the $131 billion annual tax collections of these governments.

Of all the documentary taxes, overlapping is in a sense most pervasive in the case of the tax on stock transfers. Although only four States impose such a tax, the fact that New York is one of them means that most stock transactions in the country are subject to both State and Federal taxes, since almost 80 percent of the dollar value of stock transfers occurs in New York City. By virtue of this market concentration, the tax overlapping very largely involves only one State, although its impact is nationwide.

The twofold taxation of stock transfers by the Federal Government and New York State entails little taxpayer compliance burden, because both taxing jurisdictions allow the tax to be paid through a central clearinghouse. This centralized tax payment arrangement provides the stock transfer tax (and the Federal Government's bond transfer tax) with reasonably efficient administration.

From the viewpoint of national policy considerations, a case can be made for the proposition that the States (chiefly New York) relinquish the stock transfer tax and vacate the field for exclusive Federal use. Since the tax is paid on security transactions in all parts of the country, its revenue yield logically belongs to all of them, i.e., their national government. While logical, the suggestion is not practical. New York could not be induced to relinquish its documentary tax, except by constitutional amendment, and would not voluntarily give up a lucrative tax source paid in large part by nonresidents. It has been suggested that the Federal Government might persuade New York to relinquish the tax by reimbursing it for the amount of revenue involved. However, the other 49 States whose

residents pay the tax, would doubtless claim a share, making the cost of the tax simplification too high.

The Commission concludes that no action is indicated with respect to the overlapping of State and Federal documentary taxes on stock transfers. The duplication is largely limited to one State (New York). The compliance burden for taxpayers is minimized by the collection of both taxes through security exchanges and clearinghouses. On the other hand, State withdrawal from the field could be "purchased" only at substantial cost to the U. S. Treasury.

The situation is different with respect to the other important documentary taxes -- the Federal tax on conveyances (real estate transfers) and the State and local real estate transfer taxes. Although secondary as revenue producers ($35 million Federal and perhaps $70 million State and local), these taxes involve thousands of individual transactions at the county courthouse level and, in those cases where State and local taxes are also levied, involve overlapping taxation. They create the image of unnecessary Federal-State duplication in the minds of individuals (lawyers and realtors) required to purchase stamps at two different windows and to compute relatively small tax liabilities two different ways.

The Commission's concern with the real estate transfer tax, however, extends beyond tax overlapping. It stems from the possible usefulness to the States of the by-product information on the sales price of property that can be derived from the Federal stamps attached to deed documents.

The relationship between the assessed value and the sales price of real property, a measure that is being developed in many States by means of assessment-sales ratio studies, is a valuable tool for improving the administration of property tax assessment. In its recent report on strengthening the property tax, this Commission strongly endorsed periodic State assessment ratio studies and enumerated a number of uses to which such studies can be put. 1/ These include: disclosure of the degree of compliance with the legal basis of assessment; guidance for the individual taxpayer in determining the equity of his assessment; disclosure of full value of taxable property as one index of community fiscal ability; aid in

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1/ Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax, (A-17), June 1963, Vol. 1, p. 51.

the development of reliable measurement standards that use taxable valuations as a base; guidance for the equalization of State and local assessing; and indication of interarea nonuniformity in assessment to permit equitable distribution of taxes in taxing districts identified with more than one assessing area, and to permit also equitable distribution of State aid.

The shortcomings of the Federal conveyance tax stamps as an indication of the selling price of property have long been recognized by State officials conducting assessment-sales ratio studies. In the Federal tax system geared to self-assessed income taxes, enforcement of an extraneous revenue source like the conveyance tax falls by the wayside. Except for an occasional check of large property transfers in connection with income tax or inheritance and estate tax audits, the Treasury Department relies upon the voluntary purchase of tax stamps and their attachment to deed documents. Appeals by State tax administrators to Internal Revenue officials for stepped-up enforcement of the conveyance tax are doubtless sympathetically received. However, they have not had and, in the nature of the case, can not be expected to have a significant effect on the quality of compliance. As the conveyance tax is presently constituted, it is unlikely that the Internal Revenue Service can allocate adequate enforcement resources to it.

The inadequate enforcement of the conveyance tax impairs its usefulness for assessment-sales ratio studies since the amount of the affixed stamps often bears no true relationship to the selling price. Analyses in connection with ratio studies have uncovered numerous cases that range from complete noncompliance to under- or over-stamping.

Another factor impairing the validity of the Federal tax stamps for establishing the selling price of realty is the limited base of the tax. 1/ Since the tax liability is computed net of assumed mortgages, it is necessary to make a detailed search of the records to determine whether the transfer involved assumption of a mortgage, and if so, to ascertain the amount of the assumed mortgage.

1/ During the Civil War, both a mortgage tax and conveyance tax were levied. Both taxes were employed also during the Spanish-American War and when the legislation which became the Revenue Act of 1914 was introduced, it also included both. The mortgage tax, however, was dropped before the legislation was enacted.

Our findings with respect to the real estate transfer tax can be summarized as follows:

(1) State-Federal overlapping is significant;

(2) Enforcement of the Federal tax is weak and taxpayer compliance is spotty;

(3) Federal tax enforcement effort is not likely to be increased because it is tangential to the mainstream of Internal Revenue activity (geared to the income tax) and the revenue yield is minor;

(4) The principal consideration supporting the retention of this tax has been its alleged by-product value for assessment-sales ratio studies to improve property tax administration; and

(5) Because of inadequate enforcement and the exclusion of assumed mortgages from the tax base, the stamp value frequently bears little relationship to actual selling price, and this, in turn, severely limits its usefulness for assessment-sales ratio studies.

The deficiencies of the Federal real estate transfer tax for establishing the sales price of realty could be overcome only by shifting enforcement responsibility to the States. To accomplish this, Congress would need to provide the States with fiscal incentives bordering on the coercive.

One possible vehicle is the conditional shared tax arrangement. Under this plan, the Federal tax base would be broadened to include the amount of the assumed mortgage, and under certain conditions the revenue be turned over to the States. In return for all or a substantial share of the proceeds, the States would be required to enact legislation directing appropriate local officials to withhold recordation of real estate transfer documents in the absence of strict compliance with the Federal real estate transfer tax law.

Since this conditional shared tax plan would dedicate virtually all the proceeds of the tax to purchase State and local enforcement responsibility, it might well be argued that the Federal Government would be better advised to step aside and leave both the imposition and the administration of the tax to the States.

The occasion of the Federal Government's withdrawal from the field might be utilized to encourage the States to avail themselves of the by-product utility of such a tax for assessment-sales ratio studies. This might be accomplished by the enactment of a transition tax credit plan. Under this arrangement, the Federal real estate transfer tax would be repealed prospectively to be effective, for example, 3 years after enactment of the plan. During the 3-year phasing out period, a credit would be allowed against the Federal tax for all State real estate transfer taxes. In other words, the requirement of a Federal documentary stamp tax could be fully satisfied with a State stamp.

By adopting the credit device, the Federal Government would be inviting the States to enact their own real estate transfer taxes without adding to the tax burden of their own taxpayers. Since the taxpayers' liability would be the same whether the State imposed the tax or not, the availability of the Federal credit would exert a strong compulsion on the States to impose their own transfer taxes.

Consideration of either the conditional shared tax or transition tax credit plan raises a basic question as to the lengths to which the Congress should go in encouraging the States to obtain reliable data on the sales price of real property. As a basic proposition, intergovernmental fiscal coercion should always be restricted to the attainment of those important national objectives that can be realized in no other way. Moreover, a coercive approach becomes even less tolerable when it is applied to a tax, such as the real estate transfer tax, the existence of which is justified primarily by informational rather than regulatory or revenue purposes.

By the same token, this Commission cannot justify urging the Treasury Department to assign to the stamp tax on conveyances the amount of resources that would be needed to enforce it adequately. Effective Federal enforcement of this tax might well require extensive audit of the deed records at county courthouses throughout the nation. The cost of such auditing would probably be prohibitive in the light of the insignificant revenue return it would yield. We conclude, therefore, that in the interest of tax simplification and the elimination of one area of tax overlapping, the Federal stamp tax on real estate transfers should be repealed.

Recommendation No. 1. The Commission recommends that Congress amend Chapter 34 of the Internal Revenue Code to repeal the stamp tax on conveyances, such repeal to be effective 3 years after its

enactment. [1/]

Repeal of the Federal stamp tax on conveyances will rid the Internal Revenue Code of a "nuisance" tax. When the Federal conveyance tax was first imposed in the early days of the Republic it was needed to finance various crises (Civil War, Spanish-American War, etc.). It has long since stopped serving a revenue purpose, which is now the function of the income tax. Neither does it serve any regulatory purpose.

The existence of the Federal tax gives the States a false sense of security in the reliability of assessment-sales ratios computed on the basis of the tax stamps. Since the Internal Revenue Service has little revenue incentive to enforce the tax, and also because assumed mortgages are not in the tax base, the validity of these computations is severely limited. The States can obtain the necessary market value information by other means, such as the enactment of their own real estate transfer taxes or the use of buyer-seller questionnaires and appraisals. The Commission's recommendation to defer repeal of the Federal tax for three years will give the States time to enact their own taxes or develop other means of obtaining real estate market data.

State and local governments are showing a rising interest in real estate transfer taxes. Four of the 12 States using these taxes have enacted them since 1951, and an increasing number of local governments have been authorized to do so since Washington enabled its counties to impose a 1 percent real estate sales tax (1951).

Some of the interest in State and local realty transfer taxes stems from their by-product use in property tax administration. On the other hand, the revenue potential of the tax is attractive to rapidly growing urban communities where property values are rising and a relatively large number of properties change hands. New York City, Washington, D. C., Baltimore, and Montgomery County, Maryland have imposed such taxes as revenue measures in the past five years.

1/ Secretary Dillon comments on this recommendation, as follows: "Our complex Federal excise tax system requires a thorough-going revision, and the Treasury is now cooperating with the Congress in a comprehensive study looking toward this objective. Although in this review repeal of the Federal conveyance tax should and will be carefully considered, until evaluation of the entire excise tax structure has been completed it would be premature for me to join in advocating repeal of any particular excise tax."

Recommendation No. 2. The Commission recommends that when the Federal tax on real estate transfers is repealed, those States without such a tax consider it for use at either the State or local level. The States considering real estate transfer taxes are urged to fortify tax administration by requiring local officials charged with the recordation of transfers of title to verify that the transfer tax had been paid.

Repeal of the Federal conveyance stamp tax would leave the field clear for exclusive State and local use. Some States will want to consider a State tax, some authorizing locally imposed taxes and some may prefer to make this revenue source available to their local governments by sharing a State tax with them, in part as an incentive for the local governments to render effective enforcement services. The recommended 3-year delay in repeal of the Federal tax provides for an orderly transition from Federal to State or local taxation.

The tax on real estate transfers is one of the very few that can be enforced effectively at the local level. Most real estate transactions are recorded by county recorders, many of whom are elected officials. Since the States have it within their means to require such local officials to enforce their laws, the administrative support that local officials can give the tax is available for the enforcement of either State or local taxes.

2. The Federal Documentary Taxes

The Federal documentary stamp taxes, imposed by Chapter 34 of the Internal Revenue Code, embrace a variety of transactions involving: the issue of a certificate of stock or a bond and its transfer, and the securities transactions in connection with corporate reorganizations, mergers, consolidations, recapitalizations, dissolutions and reincorporations, the settlement of estates and the creation, modification and extension of trusts, and the modification and renewal of bond issues; real estate transactions; and insurance and reinsurance contracts. Their rate provisions are as follows:

1. The issuance of capital stock is taxed at the rate of 10 cents per $100 value, or major fraction thereof. The rate on certain regulated investment companies is 4 cents per $100.

2. The issuance of corporate certificates of indebtedness is taxed at the rate of 11 cents per $100 value, or fraction thereof.

3. The sale or transfer of capital stock is taxed at 4 cents per $100 value, or major fraction thereof, but not more than 8 cents per share nor less than 4 cents on any sale or transfer.

4. The sale or transfer of corporate certificates of indebtedness is taxed at 5 cents on each $100 value, or major fraction thereof.

5. The transfer of real estate (conveyances) valued in excess of $100 is taxed 55 cents on each $500 value, or fraction thereof. The value of liens and encumbrances included in the transfer is exempted.

6. Premiums on casualty insurance policies and indemnity bonds issued by foreign insurers are taxed 4 cents on each $1 and premiums on life, sickness, accident and annuity policies of foreign insurers are taxed at 1 cent on each $1.

With some exceptions, payments of these taxes are evidenced by affixing stamps to the relevant documents. The stamps are produced by

the Bureau of Engraving and Printing and are available at local offices of the Internal Revenue Service, at Post Offices, and from agents designated by the Secretary of the Treasury. They are printed in 34 denominations, from one cent to $10,000.

History

The taxation of conveyances is an English inheritance. Stamp taxes levied by the British Parliament on documents required of ships clearing ports in the American Colonies were the source of the incidents of 1765. In the English tradition the imposition of fees on legal processes was supported by common usage and such taxes were among the last to require consent by representation. The American Colonies imposed taxes on legal processes to raise colonial revenues.

Prior to the 16th Amendment the Constitution of the United States required that direct Federal taxes be laid in proportion to population. Direct taxes were unpopular. 1/ Alexander Hamilton recommended a schedule of documentary stamp taxes in 1794 and Federal taxes on carriages and auction sales were then imposed. Congress first levied documentary stamp duties in 1814. 2/

The Federal documentary stamp taxes were repealed after the close of the War of 1812, but were reimposed during the Mexican War. This time they remained in effect until well after the Civil War (having been increased substantially to help finance that war). They were again levied to help finance the Spanish-American War but were promptly repealed. Re-institution occurred in 1914 with the imposition of the capital stock tax, a tax on the issuance of corporate certificates of indebtedness, and a tax on conveyances, setting a pattern for the documentary stamp taxes which has continued to the present without major modification (table 1). Also imposed in 1914, but since repealed, were documentary taxes on sales of produce for future delivery and on a variety of legal documents, including promissory notes and powers of attorney.

The documentary stamp taxes have been an insignificant source of Federal revenue in recent times. Since the beginning of World War II, documentary stamp tax receipts have accounted for considerably less than 1 percent of internal revenue collections. In the fiscal

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1/ David A. Wells, The Theory and Practice of Taxation, N.Y., Appleton, 1900, p. 351.

2/ Davis R. Dewey, Financial History of the United States, N. Y., McGraw-Hill, 1936, p. 139.

TABLE 1. - FEDERAL DOCUMENTARY STAMP TAX RATES, 1914 - 1964

Title of tax	Revenue Act of -					
	1914	1916	1917	1918	1921	1926
Issues of capital stock	5¢/$100 face value or fraction.	Repealed.	5¢/$100 face value or fraction or if without face value, 5¢/share. If actual value is over $100, 5¢/$100 of actual value or fraction.	No change.	5¢/$100 face value or if without face value: (a) If actual value is less than $100, 1¢ on each $20 or fraction; (b) if actual value is over $100, 5¢ on each $100 or fraction.	No change.
Sales or transfers of capital stock	2¢/$100 face value or fraction.	Repealed.	2¢/$100 face value or fraction or if without face value, 2¢/share. If actual value is over $100, 2¢/$100 of actual value or fraction.	No change.	2¢/$100 face value or fraction or if without face value, 2¢/share.	No change.
Issues of corporate certificates of indebtedness	5¢/$100 face value or fraction.	Repealed.	5¢/$100 face value or fraction.	No change.	No change.	No change.
Sales or transfers of corporate certificates of indebtedness	....	....	....	....	....	....
Transfer of real estate (conveyances)	50¢/$500 or fraction of the consideration if in excess of $100 (exclusive of instruments given to secure a debt).	Repealed.	50¢/$500 or fraction of the consideration if in excess of $100 (exclusive of instruments given to secure a debt).	No change.	No change.	Repealed.
Foreign insurance policies other than life and indemnity, fidelity or surety bonds (excluding reinsurance)	....	....	....	3¢/$1 or fraction of premium.	No change.	No change.
Foreign life, sickness, accident, and reinsurance policies	....	....	....	....	....	....

TABLE 1. - FEDERAL DOCUMENTARY STAMP TAX RATES, 1914 - 1964 (Cont'd)

Title of tax	Revenue Act of -				
	1932	1940	1942	1958	Jan. 1, 1964
Issues of capital stock (Cont'd)	10¢/$100 face value or if without face value: (a) If actual value is less than $100, 2¢ on each $20 or fraction; (b) if actual value is over $100, 10¢ on each $100 or fraction.	11¢/$100 face value or if without face value: (a) If actual value is less than $100, 3¢ on each $20 or fraction; (b) if actual value is over $100, 11¢ on each $100 or fraction.	No change.	10¢/$100 or major fraction of actual value (No distinction made between par value and no par or face value stock).	No change.
Sales or transfers of capital stock (Cont'd)	4¢/$100 par or face value or fraction; or if without par or face value, 4¢ per share. If selling price is $20 or over, whether with or without par or face value, rate is 5¢.	5¢/$100 par or face value or fraction; or if without par or face value, 5¢/share. If selling price is $20 or over, whether with or without par or face value, rate is 6¢.	No change.	4¢/$100 or major fraction of actual value (no distinction made between par value or no par or face value stock).	No change.
Issues of corporate certificates of indebtedness (Cont'd)	10¢/$100 face value or fraction.	11¢/$100 face value or fraction.	No change.	No change.	No change.
Sales or transfers of corporate certificates of indebtedness (Cont'd)	4¢/$100 face value.	5¢/$100 face value.	No change.	No change.	No change.
Transfer of real estate (conveyances) (Cont'd)	50¢/$500 or fraction of the consideration if in excess of $100 (exclusive of instruments given to secure a debt).	55¢/$500 or fraction of the consideration if in excess of $100 (exclusive of instruments given to secure a debt).	No change.	No change.	No change.
Foreign insurance policies other than life and indemnity, fidelity or surety bonds (excluding reinsurance) (Cont'd)	No change.	4¢/$1 or fraction of premium.	No change.	No change, but includes indemnity bonds.	No change.
Foreign life, sickness, accident, and reinsurance policies (Cont'd)	....	....	1¢/$1 or fraction of premium.	No change.	No change.

Source: Annual Reports of the Secretary of the Treasury, 1940, 1950, 1962, and 1963.

year 1963 they yielded $140 million, about 1/10 of 1 percent of internal revenue collections (table 2).

Compliance

By custom, documentary stamp taxes are paid by the seller (grantor), although all parties to a taxable transaction are equally liable. 1/ The stamps representing the tax imposed on the issuance of stock are required to be affixed to the stock books or corresponding records. In the issuance of corporate bonds or other certificates of indebtedness the stamps are affixed either to the instruments or to the identure under which they are issued. In the case of the transfer of stocks or bonds the stamps are required to be affixed to the certificate being transferred if it is endorsed to a named transferee or to the memorandum of sale if the certificate is endorsed in blank. The Internal Revenue Code provides an alternative procedure for paying the tax on stock and bond transfers, without stamps. Under this procedure, a member of a securities exchange may appoint the exchange or a clearinghouse as his agent for the purpose of paying the tax. The securities dealer reports daily to the exchange or the clearinghouse the amount of tax due on his transactions. The exchange and clearinghouse, in turn, make daily tax payments directly to the District Director of Internal Revenue. 2/ Deed documents conveying real estate and policies issued by foreign insurers are required to have the stamps affixed. The regulations allow considerable latitude, 3/ and affixing practice varies.

No studies of the cost of administering documentary taxes have apparently been made, either within or outside the Treasury Department. Because the amount of revenue involved is small, the Internal Revenue Service devotes minimal effort to the enforcement of documentary stamp taxes. Payment of the tax by corporations on the issuance of securities is checked when "package" audits are made for income and other tax purposes. Security brokers on rare occasions have been checked and are presumed by Federal authorities to be complying with the law. As mentioned above, in many instances the security transfer tax is paid by the stock exchange or a clearinghouse which charges the broker's account, and the transfer memorandum issued by the

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1/ Internal Revenue Service, Documentary Stamp Taxes, Document No. 5286, (12-62).

2/ Internal Revenue Service, Internal Revenue Bulletin, No. 1962-18, April 30, 1962, pp. 13,709 - 13,712.

3/ Ibid.

TABLE 2. - FEDERAL INTERNAL REVENUE COLLECTIONS, TOTAL AND DOCUMENTARY STAMP TAXES, SELECTED YEARS, 1916 - 1963

(Dollar amounts in millions)

Year	Total	Documentary stamp taxes 1/	
		Amount	Percent of total
1916	$ 512.7	$ 38.1	7.4
1918	3,699.0	21.9	0.6
1923	2,621.7	61.5	2.4
1933	1,619.8	53.4	3.3
1943	22,371.4	37.4	0.2
1953	69,686.5	82.6	0.1
1963	105,925.4	140.4	0.1

1/ Excludes stamp taxes on playing cards and silver bullion transfers.

Source: Annual Report of the Secretary of the Treasury, 1943; Annual Reports of the Commissioner of Internal Revenue, 1953 and 1963.

broker bears an indicia indicating tax payment. Foreign insurers of consequence are few and also enjoy a presumption of compliance.

Compliance with the requirements of the documentary tax on real estate transfers is diffused. Generally, realtors and lawyers who write deeds and financial institutions that make real estate mortgage loans know the law and endeavor to see that the tax is paid. Some purchasers, particularly commercial operators, systematically verify compliance by the seller. Deed recorders frequently make some effort to ascertain that stamps are affixed. Typically when deeds are recorded by photographic processes the recordings show the affixed stamps. It is common practice in other recordings to indicate the amount of stamps affixed. These practices, however, are extra-legal. 1/ Compliance, in fact, is almost completely voluntary and non-compliance and violations may be considerable.

Objective measures of the degree of tax compliance are not available. No record is compiled of delinquent taxes collected on the issuance of corporate securities resulting from audits. Attempts to correlate tax payments with other indices are thwarted by the fact that the same stamps are used for the various types of documentary taxes and receipts from the several taxes as annually reported by the Secretary of the Treasury and the Commissioner of Internal Revenue are necessarily combined. 2/ Endeavoring to apply rates to national

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1/ A century ago the documentary stamp tax regulations attempted to invalidate instruments without stamps (Stamp Duties Regulation 1 in George S. Boutwell, A Manual of the Direct and Excise Tax System of the United States, 1863). This was promptly set aside (McBride v Doty, (1867) 23 Iowa 122 and Craig v Dimock (1868) 47 Ill. 308). Unstamped documents are admissible as evidence (Cole v Ralph, 252 U.S. 286); however, States may make payment of a State tax on mortgages a criterion of admissibility as evidence (Greenwood v Price, 27 P. 2d 822).

2/ Annual reports of the Secretary of the Treasury for 1929 and prior years lump all documentary stamp tax receipts. From 1929 through 1952 a different stamp was used to evidence payment of the tax on the transfer of capital stock. Reports of 1930 through 1952 under the head "Bonds, issues of capital stock, deeds of conveyance, etc." included the tax on the premiums of foreign insurance policies and of passage tickets when applicable. A very rough estimate of the $140 million collected in fiscal year 1963 yields the following breakdown, by source:

Source	Amount (millions)	Percent distribution
Securities	$100	71.4
Issues	15	10.7
Transfers	85	60.7
Conveyances	35	25.0
Foreign insurers	5	3.6
Total	$140	100.0

aggregates is equally unproductive for the same reason and additionally because the revenue effects of fractional values and of the exemptions of assumed mortgages from the tax on real estate transfers are not ascertainable.

Some efforts have been made in individual States, in connection with property tax administration, to ascertain the degree of compliance with the tax on deeds of conveyance. One example is Kentucky, which has been concerned with the problem since 1936. A report of a field investigation covering the deed recordings of the first six months of 1953 in eighty-one typical counties, excluding the largest, Jefferson, by the Kentucky Department of Revenue revealed that about 10 percent of the recorded deeds showed no indication of tax payment. Reports on subsequent investigations (1962) verified the earlier results with some outstanding examples of probable violation. In one rural mountain county in an eight-month period, only two recorded deeds evidenced tax payment. In another, only six, and in the latter case at least 200 deeds should have been stamped. 1/ The Kentucky investigations also showed that understamping of deeds was practiced and that subdivision developers and others holding real estate for speculative purposes sometimes overstamped.

1/ Kentucky Department of Revenue, inter-office memorandum, August 2, 1962. This memorandum observes that not more than $1,000 in Federal tax may have been involved.

3. State and Local Documentary Taxes

In addition to the $140 million obtained in fiscal year 1963 by the Federal Government -- mainly (about three-fourths) from taxes on securities transactions -- 18 States and the District of Columbia collected $120 million from a variety of documentary stamp taxes. These consisted of taxes on mortgages, securities transactions, and real estate transfers (table 3). More than half of the total collected by the States accrued to New York from its stock transfer tax. 1/ In 5 States (Maryland, New York, Pennsylvania, Virginia, and Washington) local governments impose real estate transfer taxes; in 4 (Kansas, Maryland, New York, and Oklahoma) local governments collect and retain the proceeds from statewide mortgage taxes. The amount of locally collected and retained documentary taxes is unknown, but may approach $40 million, which would bring the total of Federal, State, and local documentary taxes to the neighborhood of $300 million.

Of the 18 States and the District of Columbia with State documentary taxes in 1963, 13 (including the District of Columbia) levied such taxes on real estate transfers. These taxes are patterned, by and large, after the Federal tax. State tax rates are frequently identical with the Federal rate (at rates of about 1/10 of 1 percent). In 5 States, assumed mortgages are excluded in computing the tax, as in the case of the Federal tax.

With two or three exceptions, the State real estate transfer taxes are not significant revenue producers. The Pennsylvania tax, at 1 percent of the selling price (exclusive of assumed mortgages) produced almost $20 million in 1963, and the 1/2 percent District of Columbia tax yielded $1.7 million. Even in these cases, the amounts are minor relative to these jurisdictions' total tax collections.

As previously indicated, data on Federal documentary stamp tax collections do not provide detail for categories of transactions subject to tax. As a rough indication of the portion that came from the tax on conveyances, the dollar volume of real estate transfers in

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1/ The New York State tax on stock transfers is a flat rate per share graduated according to its selling price: 1 cent per share when the selling price is less than $5, 2 cents when it is $5 to $10, 3 cents from $10 to $20, and 4 cents when $20 or more.

TABLE 3. - FEDERAL AND STATE DOCUMENTARY TAXES, 1963

State and type of tax	Rate Jan. 1, 1964	Use of stamps	Distribution of receipts		Collections 1963 (thousands)[1]
			State	Local	
Federal Government:					
Issuance of capital stock	10¢/$100[2]	Yes	XX	XX	
Transfer of capital stock	4¢/$100	Yes	XX	XX	
Issuance of corporate bonds	11¢/$100	Yes	XX	XX	$140,371
Transfer of corporate bonds	5¢/$100	Yes	XX	XX	
Transfer of real estate	55¢/$500[3]	Yes	XX	XX	
Premium on policies issued by foreign insurers	1¢ or 4¢/$1[4]	Yes	XX	XX	
Alabama:					
Transfer of property	50¢/$500[3]	No	⅔	⅓	
Mortgages	15¢/$100	No	⅔	⅓	
Issuance of stocks and bonds	25¢/$100	No	All		1,448
Transfer of mineral leaseholds	5–15¢/acre[5]	No		All	
Colorado: Transfer of real estate	Repealed in 1963[6]				18
District of Columbia: Transfer of real estate	0.5%	No		All	1,700[7]
Florida:					
Issuance and transfer of stocks and bonds	15¢/$100	Yes	All		18,718
Transfer of real estate	30¢/$100	Yes	All		
Indiana: Transfer of real estate	2%[3]	Yes	All		n.a.
Kansas: Mortgages	25¢/$100	No		All	
Maryland:[8]					
Transfer of property	55¢/$500	Yes		All[9]	56
Mortgages	55¢/$500	Yes		All[9]	
Massachusetts Transfer of real estate	55¢/$500[3] [10]	Yes	All		1,494
Minnesota:					
Transfer of real estate	55¢/$500[3] [11]	Yes	All	([12])	1,206
Mortgages	15¢/$100	No	⅙	⅚	
Mississippi: Transfer of mineral leaseholds	6–8¢/acre[5]	Yes		All	
New York:[13]					
Transfer of stock	1–4¢/share[14]	Yes	All		65,878
Mortgages	50¢/$100	No		All	
Oklahoma: Mortgages	2–10¢/$100	No		All	
Pennsylvania:[15] Transfer of real estate	1%[3]	Yes	All		19,523
South Carolina:					
Issuance of stocks and bonds	10¢/$100	Yes	All		
Transfer of stocks	4¢/$100	Yes	All		1,657
Transfer of real estate	$1/$500[3]	Yes	All		
Tennessee:					
Transfer of real estate	$1.50/$1000	No	All		1,830
Mortgages	10¢/$100	No	All		
Texas: Transfer of stock	3.3¢/$100	Yes	All		284
Virginia:[16]					
Transfer of real estate	15¢/$100	No	All		4,840
Mortgages	15¢/$100	No	All		
Washington:[17] Transfer of real estate	50¢/$500	Yes	All		1,077
West Virginia: Transfer of real estate	$1.10/$500	Yes	All		487
Federal					$140,371
State					120,216
Total					260,587

n.a.—Data not available.
XX—Not applicable.
[1] Excludes amounts collected and retained by local governments. Data are preliminary.
[2] Rate is 4¢/$100 on certain regulated investment companies.
[3] Exclusive of assumed mortgages. The Indiana tax is applicable only to corporations subject to the gross income tax.
[4] Depending on type of policy.
[5] Depending on length of lease.
[6] Rate was 1¢/$100.
[7] Tax went into effect in May 1962.
[8] The city of Baltimore and 7 specified counties are authorized to supplement the State tax.
[9] Except that tax on recordation of instruments granting encumbrances on property situated in two or more counties, as security for corporate bonds of public utilities, are paid to the State.
[10] Rate is $1 on first $500.
[11] Rate is $1.10 on first $1,000.
[12] Except that the tax on mortgages that are secured by property exempt from property taxation is paid to the State.
[13] New York City imposes a tax of 0.5% on transfers of real property where the consideration exceeds $25,000. Assumed mortgages are excluded in computing the tax.
[14] Depending on value per share. See text.
[15] Local governments are authorized to impose a real estate transfer tax up to 1% and more than 700, mainly school districts, have done so.
[16] Counties and cities levy a tax of ⅓ the State tax (5¢/$100).
[17] Counties are authorized to levy a 1% real estate sales tax; all 39 counties have done so.
Source: U.S. Bureau of the Census, *Detail of State Tax Collections in 1963;* and U.S. Commissioner of Internal Revenue, *Annual Report, 1963.* (Pub. No. 55.)

each State for 1962 was estimated from sales data reported by the Bureau of the Census in its 1962 Census of Governments, discounted 10 percent for assumed mortgages, and the Federal rate applied to the residual. This would indicate a maximum Federal take of $35 million from the tax on conveyances. The State-by-State breakdown of that amount (table 4) indicates approximately the amount each State would have obtained from a real estate transfer tax at the Federal rate of 55 cents per $500, exclusive of assumed mortgages.

It is clear that the bulk of the Federal (as well as State) documentary tax revenues is derived from the taxes on securities transactions. Real estate transfer taxes, as currently imposed by the Federal Government and by some States, have little revenue impact. The interest in them derives from their possible usefulness in connection with assessment-sales ratio studies for property tax administration purposes.

TABLE 4. - FEDERAL DOCUMENTARY STAMP TAXES COLLECTED, BY STATE, 1962
(in thousands)

State	Total [1]	Conveyances [2] (deeds)	Other
Alabama	$ 728	$ 308	$ 420
Alaska	66	n.a.	n.a.
Arizona	823	409	414
Arkansas	387	192	195
California	18,138	7,952	10,186
Colorado	1,285	619	666
Connecticut	1,558	387	1,171
Delaware	663	163	500
District of Columbia	397 [3]	180	217
Florida	2,893	1,702	1,191
Georgia	1,336	501	835
Hawaii	315	98	217
Idaho	216	111	105
Illinois	11,413	1,971	9,442
Indiana	1,094	665	429
Iowa	789	321	468
Kansas	654	491	163
Kentucky	747	415	332
Louisiana	1,424	292	1,133
Maine	194	112	82
Maryland	1,611 [3]	756	855
Massachusetts	3,817	808	3,009
Michigan	2,793	1,090	1,703
Minnesota	1,954	677	1,277
Mississippi	354	176	178
Missouri	2,320	832	1,488
Montana	199	114	85
Nebraska	702	247	455
Nevada	299	79	220
New Hampshire	177	96	81
New Jersey	2,770	995	1,775
New Mexico	332	166	166
New York	61,931	2,153	59,778
North Carolina	991	502	489
North Dakota	127	69	58
Ohio	4,358	2,087	2,271
Oklahoma	965	571	394
Oregon	954	373	581
Pennsylvania	5,953	1,551	4,402
Rhode Island	338	113	225
South Carolina	407	176	231
South Dakota	164	83	81
Tennessee	1,065	392	673
Texas	5,273	1,641	3,632
Utah	356	169	187
Vermont	97	56	41
Virginia	1,408	921	487
Washington	2,048	810	1,238
West Virginia	263	128	135
Wisconsin	1,304	485	819
Wyoming	121	59	58
Total	150,572 [4]	35,263	115,242

See footnotes on next page.

TABLE 4.-FEDERAL DOCUMENTARY STAMP TAXES COLLECTED, BY STATE, 1962 (Concl'd)

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n.a. - Data not available.

1/ Excludes receipts from stamp taxes on playing cards and silver bullion transfers.

2/ Estimated on the basis of data in the Census Bureau report, Taxable Property Values, (1962 Census of Governments, Vol. II). The "total" estimated sales price of sold real properties during a six-month period, 1961, for each state was multiplied by two, arbitrarily discounted 10 percent for assumed mortgages, divided by $500 and multiplied by 55 cents.

3/ The District of Columbia and Maryland are reported as a unit by the Commissioner of Internal Revenue. The data are separated on the basis of the 1960 census of population.

4/ Detail does not add to total because of unavailability of data for Alaska.

Source: Commissioner of Internal Revenue, Annual Report 1962, Table 1, pp. 140-141; estimate of conveyance taxes by staff of Advisory Commission on Intergovernmental Relations.

4. The States' Interest in Real Estate Transfer Taxes

The Internal Revenue Code requires that a tax be paid on every piece of real estate that is sold, at the rate of 55 cents per $500 of the consideration, exclusive of any assumed mortgages. As already noted, the tax is paid by the purchase of Internal Revenue stamps, which must be affixed to the deed.

When the tax is computed accurately and the proper amount of stamps attached to a deed document the stamps provide an indication -- usually the only indication on the deed -- of the price (or transfer consideration) paid for real estate. This selling price information is useful to tax administrators concerned with the assessment of real estate for property tax purposes.

The most widespread use by the States of the Internal Revenue stamps attached to deed documents is in connection with assessment-sales ratio studies. In essence, an assessment ratio study compares the selling price of real estate with its assessed value in order to estimate the level in relation to "fair" or "market" value at which real property is assessed for property tax purposes in a particular taxing jurisdiction. This measure is called the "assessment ratio." Although almost all State property tax laws require uniform assessment, usually at full value, this requirement is more often than not honored in the breach. Thus, even in the same State, assessment ratios for local jurisdictions vary considerably. This problem is discussed in some detail in another report of this Commission. 1/

This interjurisdictional variation in assessment levels poses numerous problems, the solution of which can be aided by the data that result from assessment ratio studies. Their usefulness for improving the property tax has long been recognized by State tax administrators. This Commission has enumerated some of the uses to which the findings of assessment ratio studies can be put, including: disclosure of the degree of compliance with the legal basis of assessment; guidance for the individual taxpayer in determining the equity of his assessment; disclosure of full value of taxable property as one index of community fiscal ability; aid in the development of reliable measurement standards that use taxable valuations as a base; guidance for the equalization of State and local assessing; and

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1/ Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax, (A-17), June 1963, Vol. 1.

indication of interarea nonuniformity in assessment to permit equitable distribution of taxes in taxing districts identified with more than one assessing area, and equitable distribution of State aid. 1/ The national organization of State Tax Administrators has elaborated on the "equalization" aspects of assessment ratio studies. 2/

Railroads and other public utilities, whose property holdings are generally assessed on a unitary basis by the States but are taxed at local property tax rates, have long been concerned with the inter-area differences in assessment levels. 3/ They have usually contended that the States assess public utility properties at close to full value while the local jurisdictions' property tax rates are levied on the basis of various fractional values, and that as a result the utilities are relatively overtaxed. Much litigation has resulted from these contentions and the utilities have themselves conducted assessment ratio studies to bolster their case.

Over the past several decades the courts have come to recognize that officials may not achieve uniform assessments and the legal requirements of full value and they have increasingly granted judicial relief to taxpayers able to demonstrate systematic and substantial relative overassessment. The quest for equality in assessment has been spurred by the recent increases in property tax rates and litigation clarifying the right of overassessed taxpayers has developed in practically every State.

The usefulness, indeed the necessity, of measuring the level of local assessments is thus widely acknowledged and such measurements are now being developed routinely by many States. There are two generally accepted methods of accomplishing this: either by comparing the assessments of properties selected at random from among the various classes of property with the independent and professional

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1/ Ibid., p. 51.

2/ National Association of Tax Administrators, Equalization Programs and Other State Supervisory Activities in the Property Tax Field, Federation of Tax Administrators, Chicago, 1957, footnote 17, table III.

3/ For explanation and discussion, see Committee on Unit Valuation, National Association of Tax Administrators, Appraisal of Railroad and Other Public Utility Property for Ad Valorem Tax Purposes, Federation of Tax Administrators, Chicago, 1954.

market value appraisal of the same properties; or by conducting assessment-sales ratio studies. These methods of computing assessment levels have been compared many times and if capably done either method gives reliable results. The assessment-sales ratio study method, however, is simpler, quicker, and less expensive. 1/ It is therefore most widely used.

In 1956 at least 20 States were conducting statewide assessment ratio studies annually, 3 others biennially, while another State made a special study that year. 2/ Of these, 12 used sales data only, 3 appraisal data only and 9 used both types of data. Statewide and local interest in the use of sales ratio data has been increasing, and more than half of the States and the District of Columbia are now conducting assessment ratio studies on a regular basis (table 5). 3/

An assessment-sales ratio study typically involves drawing a sample of transferred properties from the deed records and developing the necessary sales price and assessed value data pertaining to those properties. Additional information is also needed about each sample transaction, such as the relationship between the buyer and seller, special circumstances surrounding the sale, etc., to make sure it was a bona fide arm's length sale involving a willing buyer and a willing seller. 4/

By tradition, the legal documents filed in connection with realty transfers do not indicate the actual price paid, but merely recite some nominal consideration such as "One dollar and other

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1/ For a recent judicial recognition of this, see: The People *ex rel* Mike Wenzel, County Collector *v* Chicago and North Western Railway Company, Docket Nos. 37584-85-86-87, Supreme Court of Illinois, May 1963.

2/ National Association of Tax Administrators, *Equalization Programs and Other State Supervisory Activities in the Property Tax Field*, Federation of Tax Administrators, Chicago, 1957.

3/ See Advisory Commission on Intergovernmental Relations, *op. cit.*, Vol. 2, for brief accounts of the assessment ratio studies being conducted by the several States.

4/ The procedures are described in detail in Committee on Sales Ratio Data, National Association of Tax Administrators, *Guide for Assessment-Sales Ratio Studies*, Federation of Tax Administrators, Chicago, 1954.

TABLE 5. - STATES CONDUCTING PERIODIC ASSESSMENT RATIO STUDIES

Arizona	Missouri
Arkansas	Nebraska
California	Nevada
Colorado	New Jersey
*Dist. of Columbia	New York
*Florida	North Dakota
Hawaii	Oregon
Illinois	*Pennsylvania
**Indiana	Rhode Island
Kansas	South Dakota
Kentucky	Utah
*Maryland	*Virginia
Michigan	*Washington
*Minnesota	Wisconsin

NOTE: In most instances the States rely on sales data, sometimes supplemented by appraisals. Some States, notably California and Michigan, rely entirely or almost entirely on appraisal data.

*Imposes a real estate transfer tax.

**Imposes a limited real estate transfer tax.

valuable consideration." However, those interested in sales prices for assessment ratio studies quickly discovered that the price could be computed from the tax payment indicated by the Internal Revenue stamps attached to the deed. The fact that assumed mortgages were excluded from the tax computation complicated the procedure, for this necessitated checking mortgage records when the deed indicated assumption of a mortgage.

Investigators examining the deed records for assessment ratio studies have found numerous instances where Internal Revenue stamps should have been attached but were not. And even when stamps were attached, the sales price estimates derived from them often indicated prices that on further investigation were found to be inaccurate.

Since the accuracy of the selling price is crucial to the validity of the findings of an assessment-sales ratio study, effective use of Federal tax stamps to compute the price is limited by poor compliance, as well as by the exemption of assumed mortgages. State tax administrators charged with conducting ratio studies have been concerned with this problem for decades. 1/

Both understamping and overstamping often result from misinterpretation of the assumed mortgage exclusion. In some instances, the value of a mortgage may be excluded whether it is assumed by the purchaser or a new mortgage is placed. In other instances, stamps are attached for the full price, just to be on the safe side. In addition to the discrepancies arising from misunderstanding of the statutes there are cases where the seller has deliberately increased the amount of tax stamps on a transaction to give the impression that the selling price involved is higher than the actual amount paid. When the real estate market is very active and resales of the same property occur frequently, subdivision developers have been known to "overstamp" for the purpose of overstating the price paid for a property.

The Federal Government's tax system is predicated upon self-assessment with spot audits by the Internal Revenue Service. It is reasonable to expect that the enforcement efforts of the Internal Revenue Service are concentrated on those taxes that yield the bulk of the revenue -- personal and corporate income taxes, inheritance and estate taxes, and manufacturers' excise taxes. The insignificant

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1/ For some record of this, see: George W. Mitchell, "Using Sales Data to Measure the Quality of Property Tax Administration," National Tax Journal, Vol. 1, p. 336, Dec. 1948.

yield of the low fractional rate conveyance stamp tax makes it unprofitable to put even token resources into its enforcement which would require auditing efforts in some 3,000 county courthouses. Therefore, reliance is placed upon the voluntary purchase of tax stamps, mainly by lawyers and realtors. The argument that States derive useful by-product information from the tax is poor justification for retaining a tax that has little revenue significance and no regulatory purpose.

Furthermore, States have access to other means of obtaining information on the selling price of real estate. A number of States and the Bureau of the Census obtain the information required, by questionnaire, from the parties to the transaction. This has been found to produce satisfactory results. The questionnaire serves also to obtain other kinds of information needed for the ratio studies, such as the relationship between buyer and seller, the value of any personal property included in the sale, and any unusual circumstances surrounding the sale. For its 1962 Census of Governments, the Census Bureau obtained responses from over 90 percent of the 154,000 parties to real estate transactions it solicited for information. 1/

Another means States have at their disposal is to enact their own real estate transfer taxes. As has been indicated, 12 States and the District of Columbia, as well as a number of local governments in 5 additional States, have done so. A real estate transfer tax is particularly well suited to State administration through local officials. Counties are creatures of the State, and their officials are utilized in many areas as agents in enforcing State laws. Those States that have levied their own real estate transfer taxes can and do require the local recorders to enforce the law. Almost without exception, the State real estate transfer tax laws require the recorder to verify that the State tax has been paid before he can accept the deed for recordation. In many instances there is a penalty for noncompliance.

Pennsylvania, West Virginia, and the District of Columbia require the parties to a real estate transaction to submit a sworn affidavit as to the selling price of the property. The West Virginia law contains the following provision: 2/

1/ U. S. Bureau of the Census, Taxable Property Values, 1962 Census of Governments, Vol. II, p. 16. The questionnaire used by the Census Bureau is reproduced on pages 20 and 21 of that report.

2/ W. Va. Code, Sec. 6, Act 22, Ch. 11.

"When offered for recording...each instrument subject to the tax as herein provided shall have appended on the face or at the end thereof, a statement or declaration signed by the grantor, grantee or other responsible party familiar with the transaction therein involved declaring the consideration paid for or the value of the property thereby conveyed...."

The States could, if they were so inclined, tie their real estate transfer taxes directly to assessment-sales ratio studies. 1/ However,

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1/ Colorado did this when it enacted the Realty Recording Act in 1957. The recording fee under this law was nominal -- only 1¢ per $100 of value -- but the law required the county clerk and the county assessor to report each real estate transaction to the Legislative Council which was authorized to conduct assessment ratio studies primarily for the information that was needed in connection with the State school aid program. Section 118-6-31 of the Colorado Revised Statutes, 1953 (1960 Supplement) reads as follows:

> Disposition of records
>
> (1)(a) The clerk and recorder of each county, on or before the fifteenth day of each month:
>
> (b) Shall file with the county assessor all certificates submitted to him pursuant to the provisions of section 118-6-25 together with the daily records provided for in section 118-6-30;
>
> ....
>
> (2)(a) The county assessor for each county, or his deputy, on or before the last day of each month:
>
> (b) Shall enter on the daily records received from the clerk and recorder the assessed value of the real estate listed in such daily records and a certificate subscribed to under oath, that such assessed values are true and correct;
>
> (c) Shall file with the legislative council a copy of each document received from the clerk and recorder in accordance with the provisions of sections 118-6-21 to 118-6-33.

The Colorado Realty Recording Act was repealed by the 1963 Legislature.

even if there is no direct reference in the State real estate transfer tax law to assessment-sales ratio studies, the evidence of tax payment attached to the deed is a matter of public record, and the State or any individual wishing to use this evidence to compute the selling price from the tax is at liberty to do so. Six of the States and the District of Columbia with their own real estate transfer taxes conduct regular assessment-sales ratio studies, utilizing the tax as one tool for this purpose. On the other hand, three of the States that develop outstanding assessment ratio data -- Wisconsin, New Jersey, and New York -- have not found it necessary to rely on tax information, preferring to solicit the selling price and related information directly from the parties to real estate transactions.

To summarize, the States' need for valid real estate market value information (as measured by selling prices) could be met by an adequately enforced, broad-based Federal tax on conveyances. As a practical matter, however, an adequately enforced Federal conveyance tax law is not readily reconciled with rational allocation of enforcement resources. Furthermore, other means are available to the States for obtaining realty market value information, including the use of questionnaires and enactment of their own real estate transfer taxes.

* U.S. GOVERNMENT PRINTING OFFICE : 1965 O—752-511—(268)

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1965 State Legislative Program of the Advisory Commission on Intergovernmental Relations. Report M-24. October 1964. 298 pp., offset.

State Technical Assistance to Local Debt Management. Report M-26. January 1965. 80 pp., offset.

1/ Single copies of reports may be obtained without charge from the Advisory Commission on Intergovernmental Relations, Washington, D. C., 20575. Multiple copies of items marked with asterisk (*) may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C., 20402.

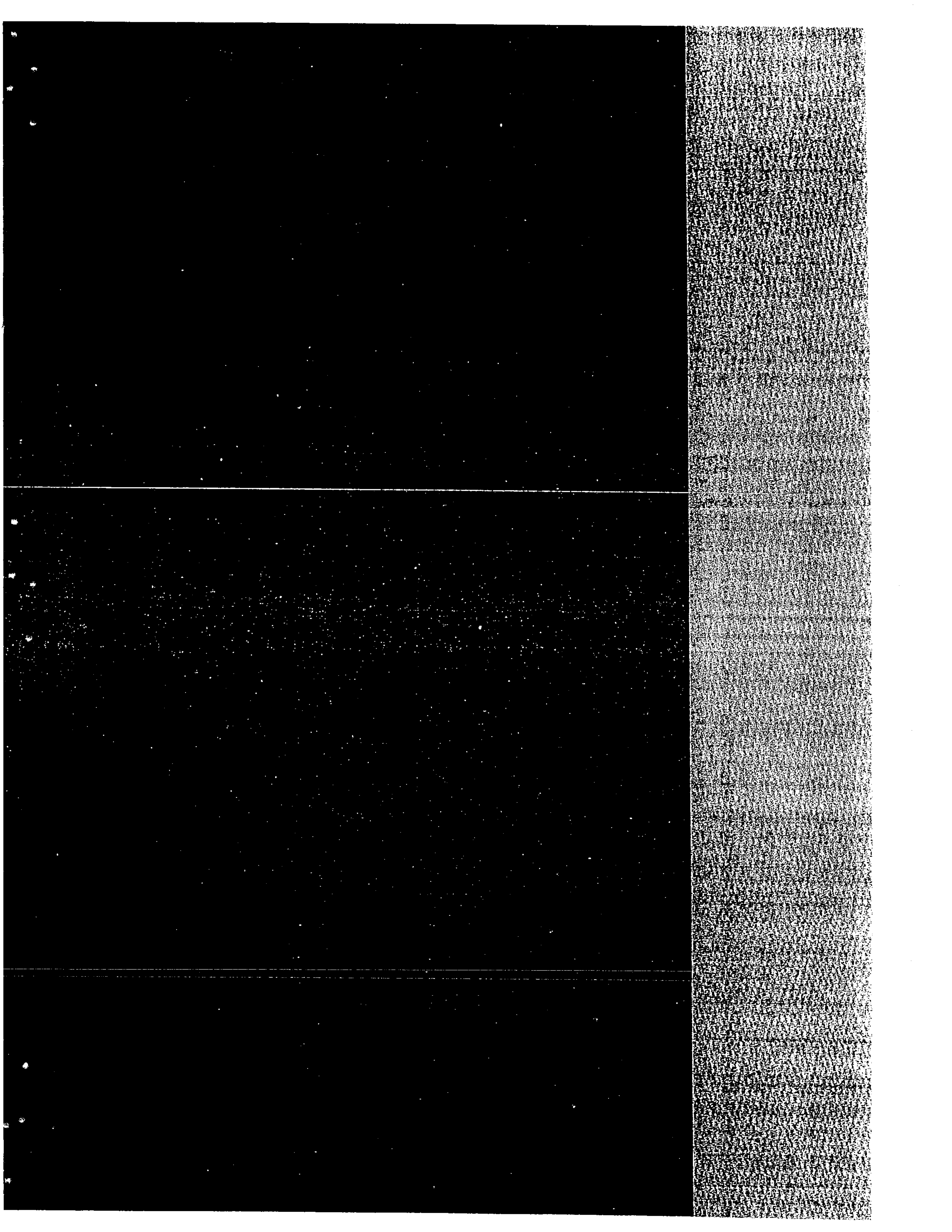

EXHIBIT R

BILL ANALYSIS

SENATE REVENUE & TAXATION COMMITTEE

Senator Lois Wolk, Chair

SB 816 - Ducheny

Introduced: February 27, 2009

Hearing: April 22, 2009 Fiscal: Yes

SUMMARY: Makes Three Changes to Enhance Enforcement and Administration of the Documentary Transfer Tax

I. The Documentary Transfer Tax

EXISTING LAW (California Constitution, Article XIIIA, Section 4) prohibits transaction taxes or sales taxes on transfers of real property; however, the Revenue and Taxation Code authorizes counties to approve an ordinance to impose a documentary transfer tax (DTT), which applies to deeds of transfer of realty within that jurisdiction and is based on the value of the transfer. In counties, the rate is fifty-five cents ($0.55) for each five hundred dollars ($500) of value. All of California's 58 counties apply the tax, which is modeled after the repealed Federal Documentary Stamp Tax.

EXISTING LAW also allows cities to enact ordinances to impose a DTT:

Noncharter cities within a County that impose a DTT may apply its tax at half of the rate of the county and applies as a credit against the county rate.
Charter cities may impose a DTT at a higher rate under the municipal affairs doctrine in the California Constitution (Article XI, Section 5). If they do so

at a higher rate than the non-charter rate, then the city DTT does not serve as a credit against the county tax.

EXISTING LAW provides several exemptions to the tax, including when any public agency acquires land, land acquired as a result of a plan of reorganization or adjustment such as bankruptcy, and certain transfers in lieu of foreclosure, among others.

THIS BILL allows DTT ordinances to include an administrative appeal process to resolve disputes. The measure additionally states that the when this administrative process or a court of law fixes the value of the property for purposes of applying the DTT, that determination does not bind the value for property tax purposes.

II. Assessor Records

EXISTING LAW provides that any information and records in the Assessor's office are not public documents and shall not be open to public inspection, unless specifically exempted by law. Exemptions include information for law enforcement agencies, county grand jury, or the Board of Supervisors.

THIS BILL requires the Assessor to disclose information, furnish abstracts, and permit access to all records to the County Recorder when conducting an investigation to determine whether the documentary transfer tax is due.

II. Change of Ownership Statements

EXISTING LAW requires the person acquiring ownership or control of a corporation, partnership, limited liability

company, or other legal entity to submit a change in ownership statement to the Board of Equalization (BOE), signed under penalty of perjury, listing all the counties in which the firm operates. If the person fails to file the statement within 45 days of a written request from the BOE, a penalty applies of 10% of the taxes applicable to the new base year reflecting the change in ownership or control. However, the penalty is extinguished if the person files a change in ownership statement within 60 days of BOE notification of the penalty.

THIS BILL instead provides that the penalty applies if the person acquiring the corporation, partnership, limited liability company, or other legal entity does not file the change of ownership statement within the earlier of 45 days from the BOE request or 45 days from the date in change of control or ownership. The bill changes two sections of law, the first which applies to changes in control of a firm, the second which applies to changes in ownership.

THIS BILL also deletes the provision requiring the penalty to be extinguished if the person files the statement within 60 days of notification of the penalty.

FISCAL EFFECT:

Committee staff estimates that SB 816 will result in some increased revenue for local agencies as a result of increased DTT collections due to increased application of existing penalties.

COMMENTS:

A. Author's Statement

According to the Author, "SB 816 requires that the existing 10% penalty be applied on taxes due for the year

when a new business owner fails to file a change in ownership statement with the BOE within 45 days of a change of ownership or control. Under current law, the penalty is only applied after a written request for filing is sent from the BOE. This has resulted in multi-year delays in reassessments of business properties and losses of hundreds of millions in taxes to State and Local Governments."

B. The DTT

The Documentary Transfer Tax, enacted in 1967, allows cities and counties to enact taxes on documents that serve to transfer real property. The tax may be used for general or specific purposes, although all DTTs levied thus far are general taxes. The tax is administered by county recorders, who cannot by law record the property transfer until the tax is paid. Counties collect the tax but remit the city tax to the appropriate city. Hundreds of California Cities levy the tax, ranging from the general law city rate of fifty-five cents per $1000 of value up to $15.00 in the City of Oakland.

SB 816 provides a firmer deadline to file change of ownership statements and removes a sixty day grace period, thereby encouraging taxpayers to file the legally required forms, which may or may not trigger the DTT. Additionally,

by providing access to assessor information, SB 816 will help recorders determine whether the DTT applies to certain changes of ownership.

C. Gears and Wheels

When property or control of a firm changes hands, the acquiring person must submit one of two reports. When a new owner acquires property, he or she must attach a Preliminary Change of Ownership Report (PCOR) to with any document effecting a change of ownership to the County Recorder, or pay an additional recording fee of $20;

however, the recorder must record the property change documents if the person pays the additional recording fee. The County Recorder will then share the PCOR information along with grant deeds with the County Assessor, who then determines whether to reassess the property. If the PCOR is not filed, the person must file a Change in Ownership Statement (COS). However, no penalty applies for failing to file the COS unless the assessor asks for one, in which case the person must file the COS within 45 days of the assessor's written request or face a penalty of the greater of $100 or 10% of the taxes applicable to the new base year reflecting the change of ownership, not to exceed $2,500, unless the failure was willful, in which case the penalty reflects the full amount of the taxes applicable to the new base year.

Typically, a person acquiring control or ownership of the firm notes the change when answering specific questions on his or her state income tax forms filed with FTB, which notifies BOE. BOE then notifies the person of the COS requirement, who must file the form with the BOE at its office in Sacramento listing all the counties in which the firm does business. The California Assessors' Association states that only 9% of COSs are filed voluntarily according to BOE, showing that persons usually respond only after prodding from the BOE. After receiving the COS, the BOE then notifies the affected counties of the change in control or ownership of the firm, and assessors determine whether to reassess property owned by that firm as a result of the change in control or ownership. The Assessors state that BOE takes an average of five months, and occasionally up to five years, to inform the person acquiring ownership or control to file a COS, and SB 816 hastens this process by placing an affirmative responsibility on the person acquiring control or ownership of the firm to file the legally-required forms.

Currently, the penalty of 10% of the taxes applicable to the new base year reflecting the change in ownership or control only applies if the person acquiring ownership or control does not file a COS within 45 days of BOE's request. SB 816 instead provides that the penalty applies

from the earlier of 45 days of the BOE's request, or 45 days from the change in control or ownership, meaning that affected persons must now submit the form or face a penalty regardless of whether BOE files a request.

D. Suggested Amendments

On Page 3, Line 10, delete "due" and insert "imposed" to reflect the appropriate verbage of the Documentary Transfer Tax Act.

Support and Opposition

Support:California Assessors' Association

Oppose: None Received

Consultant: Colin Grinnell

EXHIBIT S

BILL ANALYSIS

Date of Hearing: April 4, 2011

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Henry T. Perea, Chair

AB 563 (Furutani) - As Introduced: February 16, 2011

Majority vote. Fiscal committee.

SUBJECT : Property taxation: assessor: disclosure: appraisal information.

SUMMARY : Authorizes city employees to obtain or access otherwise confidential information from the county assessor when the city is conducting an investigation to determine whether the documentary transfer tax (DTT) is imposed. Specifically, this bill :

1)Requires a county assessor to disclose information, furnish abstracts, and permit access to all records in his/her office to employees of a city that is conducting an investigation to determine whether a DTT is to be imposed.

2)Imposes a state-mandated local program and states that, if the Commission on State Mandates determines that this bill contains mandates by the state, reimbursement to local agencies and school districts for the costs shall be made pursuant to the statutory provisions.

EXISTING LAW :

1)Requires assessors to keep certain information confidential. ŸRevenue and Taxation Code (R&TC) Section 408(a)].

2)Provides an exception to the general rule of confidentiality for certain governmental agencies or representatives. Requires the county assessor to disclose information, furnish abstracts, or permit access to all records in his/her office to law enforcement agencies, the county grand jury, and other specified entities, including the county recorder in the case of an investigation to determine whether a DTT is imposed. ŸR&TC Section 408(b)].

3)Allows charter cities to levy a DTT pursuant to a local ordinance and their authority. The locally imposed DTT is generally collected by the county recorder. ŸR&TC Part 6.7 of Division 2 (Sections 11901-11935)].

FISCAL EFFECT : None.

COMMENTS :

1)The Author's Statement . The author states that, "AB 563 would allow for information sharing between County Assessor's Offices' and cities to identify change of ownership legal entity transfers and other real property transfers that may not be currently captured. Enactment of the proposed legislation is estimated to result in improved and increased collection of the Documentary Transfer Tax at a time of fiscal crisis for local governments."

2)Arguments in Support . The City of Los Angeles, sponsor of AB 563, believes that "an information sharing program, modeled after the AB 63/SB 1146 program that was initiated in the Fall of 2001 would prove successful in capturing tax owed to local governments, while maintaining taxpayer confidentiality protections." The sponsor states that, "At a time of fiscal crisis for local governments, this type of program would help result in improved and increased collection of an existing revenue source."

3)DTT . The California Constitution (Article XIIIA, Section 4) prohibits transaction taxes or sales taxes on transfers of real property. However, the DTT law, enacted in 1967, allows cities and counties to enact, by ordinance, taxes on documents that serve to transfer real property. The DTT applies to deeds of transfer of realty within the jurisdiction that imposes a DTT and is based on the value of the transfer. The tax may be used for general or specific purposes, although all DTTs levied thus far are general taxes. The tax is administered by county recorders who cannot, by law, record

the property transfer until the tax is paid. Counties collect the tax but remit the city tax to the appropriate city.

All of California's 58 counties impose the tax, which is modeled after the repealed Federal Documentary Stamp Tax. Hundreds of

California cities also levy the tax, ranging from the general law city rate of $.55 for each $500 of value up to $7.50 in the City of Oakland. Non-charter cities within a county that imposes a DTT may impose its tax at half of the rate of the county, which works as a credit against the county rate. Charter cities may impose a DTT at a higher rate under the municipal affairs doctrine in the California Constitution (Article XI, Section 5). If they do so at a higher rate than the non-charter rate, then the city DTT does not serve as a credit against the county tax. Existing law provides several exemptions to the tax, including when any public agency acquires land, land acquired as a result of a plan of reorganization or adjustment such as bankruptcy, and certain transfers in lieu of foreclosure, among others.

The courts have consistently held that a DTT is an excise tax for the privilege of exercising one of the incidents of property ownership, its conveyance. It is not a property tax because it is imposed solely on the privilege of disposing of one's property and realizing its actual value. Fielder v. City of Los Angeles, 14 Cal.App.4th 137; Fisher v. Alameda County, 20 Cal. App. 4th 120.

4)Access to Records in the County Assessor's Office . Existing law provides that any information and records in the county assessor's office are not public documents and shall not be open to public inspection, unless specifically exempted by law. Exemptions include sharing of information with law enforcement agencies, county grand jury, or the board of supervisors. In 2009, the list of enumerated exemptions was expanded to allow a county recorder access to all records in the assessor's office for purposes of determining whether a DTT is due. (R&TC Section 408(b)). The DTT is administered at the local level by the county recorder, so providing access to assessor information helps recorders to determine whether the DTT applies to certain changes of ownership.

AB 563 would further amend R&TC Section 408(b) to add city employees to the list of agencies that may have access to all records in the assessor's office for purposes of determining whether a DTT is due. AB 563 is sponsored by the City of Los Angeles, a charter city. According to the State Board of Equalization's (BOE) analysis of this bill, the City of Los

Angeles has an agreement with the Los Angeles County for the collection of taxes between the city and county. Apparently, the agreement provides that, if the County is unable to, or does not, collect the DTT when the instrument or writing is presented for recordation, the City has the responsibility to collect the DTT. In order to determine whether the DTT is due, the City may have to conduct investigation and/or perform audits of city revenues related to DTTs, which may require access to assessor's records.

Currently, both California and many cities face difficult budget times. AB 563 aims to increase taxpayer compliance at the local level, thereby generating more revenue to help close budget gaps, consistent with the state's own efforts to close the tax gap.

5)Taxpayer Confidentiality . Generally, critics of information sharing between government entities are concerned about possible unlawful disclosure or inspection of confidential tax information. Thus, often, provisions allowing information sharing contain safeguards against, and penalties for, unlawful disclosure of confidential taxpayers' information. For example, an existing information sharing program between the Franchise Tax Board (FTB) and cities provides for criminal sanctions for unlawful disclosure or inspection of such information, which supplements FTB's institutional commitment to taxpayer information confidentiality. The information possessed by the county assessor's office is considerably less

sensitive than the information found on income tax returns. Nonetheless, the Committee may wish to consider amending AB 563 to include some sort of safeguards against unlawful disclosure of information acquired by city's employees from the county assessor.

6) Similar Legislation.

SB 816 (Ducheny), Chapter 622, Statutes of 2009, made changes in the DTT law relative to city ordinances, assessor records, and change of ownership statements, including allowing county recorders to assess the county assessors' records when investigating if a DTT is due.

SB 1146 (Cedillo), Chapter 345, Statutes of 2008, extended the

sunset date for the program that allows the FTB to share information with tax officials of any city in California until December 31, 2014.

SB 1374 (Cedillo), Chapter 513, Statutes of 2006, extended the program that allows the FTB to provide information to tax officials of any city in California until December 31, 2011.

AB 63 (Cedillo), Chapter 915, Statutes of 2001, extended the circumstances under which the FTB may disclose tax information to tax officials of any city, until December 31, 2008.

REGISTERED SUPPORT / OPPOSITION :

Support

California Tax Reform Association
The City of Los Angeles, Office of the Mayor Antonio R. Villaraigosa (sponsor)

Opposition

None on file

Analysis Prepared by : Oksana Jaffe / REV. & TAX. / (916) 319-2098

CERTIFICATE OF SERVICE

Title of Action: 926 North Ardmore Avenue, LLC
Supreme Court Case No. S222329

I, the undersigned, am employed in the City of Red Bluff, County of Tehama, State of California; my business address is 727 Oak Street, Red Bluff, CA 96080. I am over the age of eighteen years and not a party to the within action. On October 14, 2015 I caused the following documents to be served as follows:

REVISED MOTION FOR JUDICIAL NOTICE

Causing a true copy thereof, enclosed to be delivered to the office of each party shown below at the address indicated and by leaving the same with a person apparently in charge and over the age of eighteen years;

(X) Placing a true copy there, enclosed in a sealed envelope with first-class postage thereon fully paid, in the United States mail at Red Bluff, California, addressed as follows:

Clerk of the Appellate Court
Second District Court
300 S. Springs Street, 2nd Floor
Los Angeles, CA 90013

Honorable Rita Miller
Los Angeles Superior Court,
Dept. 16
111 North Hill Street
Los Angeles, CA 90012

Lemoine Skinner III
Fisher Broyles LLP
1334 8th Avenue
San Francisco, CA 94122

Mark J. Saladino, County Counsel
Albert Ramseyer, Principal Deputy
648 Kenneth Hahn Hall of
Administration
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Daniel M. Kolkey
Julian W. Poon
Lauren M. Blas
GIBSON DUNN & CRUTCHER
555 Mission Street, Suite 3000
San Francisco, CA 94105-2933

I declare under penalty of perjury that the foregoing is true and correct, executed at Tehama County, California, on October 14, 2015.

ARMINDA SEARCY