

No. S222329

SEP -4 2015

IN THE SUPREME COURT OF CALIFORNIA

Frank A. McGuire Clerk

Deputy

926 NORTH ARDMORE AVENUE, LLC,

Plaintiff and Appellant

v.

COUNTY OF LOS ANGELES,

Defendant and Respondent.

After A Decision By The Court of Appeal,
Second Appellate District, Division Seven, Case No. B248356
Los Angeles County Superior Court, No. BC 476670
The Honorable Rita Miller, Judge Presiding

**926 NORTH ARDMORE AVENUE, LLC'S MOTION FOR JUDICIAL
NOTICE IN SUPPORT OF ITS REPLY BRIEF ON THE MERITS;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF DANIEL M. KOLKEY**

LEMOINE SKINNER III (SBN 55363)
LSkinner@fisherbroyles.com
FISHERBROYLES, LLP
1334 8th Avenue
San Francisco, CA 94122
Telephone: (415) 566-1365

*DANIEL M. KOLKEY (SBN 79102)
DKolkey@gibsondunn.com
JULIAN W. POON (SBN 219843)
JPoon@gibsondunn.com
LAUREN M. BLAS (SBN 296823)
LBlas@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-2933
Telephone: (415) 393-8200
Facsimile: (415) 393-8306

Attorneys for Plaintiff and Appellant 926 North Ardmore Avenue, LLC

No. S222329

IN THE SUPREME COURT OF CALIFORNIA

926 NORTH ARDMORE AVENUE, LLC,

Plaintiff and Appellant

v.

COUNTY OF LOS ANGELES,

Defendant and Respondent.

After A Decision By The Court of Appeal,
Second Appellate District, Division Seven, Case No. B248356
Los Angeles County Superior Court, No. BC 476670
The Honorable Rita Miller, Judge Presiding

**926 NORTH ARDMORE AVENUE, LLC'S MOTION FOR JUDICIAL
NOTICE IN SUPPORT OF ITS REPLY BRIEF ON THE MERITS;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF DANIEL M. KOLKEY**

LEMOINE SKINNER III (SBN 55363)
LSkinner@fisherbroyles.com
FISHERBROYLES, LLP
1334 8th Avenue
San Francisco, CA 94122
Telephone: (415) 566-1365

*DANIEL M. KOLKEY (SBN 79102)
DKolkey@gibsondunn.com
JULIAN W. POON (SBN 219843)
JPoon@gibsondunn.com
LAUREN M. BLAS (SBN 296823)
LBlas@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-2933
Telephone: (415) 393-8200
Facsimile: (415) 393-8306

Attorneys for Plaintiff and Appellant 926 North Ardmore Avenue, LLC

MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 451, 452, and 459 and California Rules of Court, rule 8.520(g), Appellant 926 North Ardmore Avenue, LLC (“Ardmore”) respectfully requests that this Court take judicial notice of the following former statutory enactments and legislative history, which are referenced in Ardmore’s reply brief on the merits and are relevant to the interpretation of Revenue and Taxation Code section 11911—the subject of this proceeding:

I. Statutory Provisions

- (1) Former Federal Stamp Act, Revenue Act of 1862, Ch. 119, 12 Stat. 432.
- (2) Former Revenue and Taxation Code section 11931, Stats. 1967, Ch. 1332, p. 3164, § 1, repealed by Stats. 1968, Ch. 17, p. 161, § 7.

II. Legislative History

A. House of Representatives Bill No. 312

- (3) Schedule B from House of Representatives Bill No. 312, 37th Cong. (1862), as introduced March 3, 1862.

B. Assembly Bill No. 561

- (4) Assembly Committee on Local Government, Analysis of Assembly Bill No. 561 (2013-2014 Reg. Sess.), as amended Apr. 30, 2013.

C. Senate Bill No. 78

(5) Letter from H.F. Freeman, Executive Secretary,
California State Board of Equalization, to Governor Ronald Reagan
regarding Senate Bill No. 78 (1967-1968 Reg. Sess.), dated April 5, 1968.

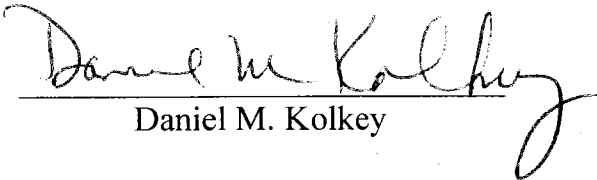
(6) Senate Bill No. 78 (1967-1968 Reg. Sess.) dated
January 18, 1968.

Dated: September 4, 2015

Respectfully submitted,

FISHERBROYLES, LLP

GIBSON, DUNN & CRUTCHER LLP

By: 
Daniel M. Kolkey

Attorneys for Plaintiff and Appellant 926
North Ardmore Avenue, LLC

TABLE OF CONTENTS

	<u>Page</u>
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. ARGUMENT.....	2
A. ITEMS ONE AND TWO ARE PROPER SUBJECTS OF JUDICIAL NOTICE BECAUSE THEY ARE ADMISSIBLE FORMER STATUTES UNDER EVIDENCE CODE SECTION 452.....	2
B. ITEMS THREE THROUGH SIX ARE PROPER SUBJECTS OF JUDICIAL NOTICE BECAUSE THEY ARE ADMISSIBLE LEGISLATIVE HISTORY UNDER EVIDENCE CODE SECTION 452.	3
CONCLUSION.....	5
DECLARATION OF DANIEL M. KOLKEY	7

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Hutnick v. U.S. Fid. & Guar. Co.</i> (1988) 47 Cal.3d 456.....	6
<i>Pac. Gas & Elec. Co. v. State Dep't of Water Res.</i> (2003) 471 F.2d 1373	6
<i>Quintano v. Mercury Cas. Co.</i> (1995) 11 Cal.4th 1049	6

STATUTES

Evid. Code §452.....	2, 3
Revenue Act of 1862, 12 Stat. 432	3
Revenue Act of 1862, 12 Stat. 475	3
Revenue Act of 1862, 12 Stat. 481	3
Stats. 1967, Ch. 1332, p. 3164, § 1	3

OTHER AUTHORITIES

Assembly Committee on Local Government, Analysis of Assembly Bill No. 561 (2013-2014 Reg. Sess.), as amended Apr. 30, 2013	4
H.F. Freeman, Executive Secretary, California State Board of Equalization, letter to Governor Ronald Reagan re: Senate Bill No. 78 (1967-1968 Reg. Sess.), dated April 5, 1968	4
H.R. Bill No. 312 (1862), as introduced March 3, 1862	4
Legis. Counsel's Dig., Sen. Bill No. 78 (1967-1968 Reg. Sess.) Stats. 1968, p. 1.	5

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action concerns whether Revenue and Taxation Code section 11911—which is part of the Documentary Transfer Tax Act of 1967 (Rev. & Tax Code, § 11901 et seq.) (“DTTA”)—authorizes a county to impose a documentary transfer tax based on a change in ownership or control of a legal entity that directly or indirectly holds title to real property.

The DTTA was patterned on the former federal Stamp Act, and many of its provisions, including section 11911, are virtually verbatim texts of their federal progenitors.

This motion seeks judicial notice of (i) former federal Stamp Act of 1862 upon which the DTTA is patterned, (ii) former Revenue and Taxation Code section 11931, which was enacted in conjunction with section 11911 in 1967, (iii) selected legislative history for the Federal Stamp Act of 1862, (iv) selected legislative history of a proposed amendment to section 11911, and (v) selected legislative history of former section 11931. These materials are referenced in the accompanying reply brief of Appellant 926 North Ardmore Avenue, LLC (“Ardmore”) and confirm that the California Legislature intended section 11911 to impose a documentary transfer tax only on writings that convey realty and not transfers of legal interests in entities that own (directly or indirectly) real property.

As shown herein, these materials satisfy the requirements for judicial notice under the California Rules of Court, rules 8.520(g) and 8.252(a) because the materials to be noticed are relevant to this proceeding; the materials are proper subjects of judicial notice; these items were not presented to the lower courts because they have only become relevant to address the Court of Appeal's interpretation of section 11911, but they are subject to judicial notice under Evidence Code section 452; and the materials to be noticed do not relate to proceedings occurring after the judgment that is the subject matter of this proceeding.

II. ARGUMENT

Ardmore requests that this Court take judicial notice of items 1 through 6 in order to aid the Court in its interpretation of section 11911. These items were not before the lower courts but have become relevant in view of the Court of Appeal's interpretation of section 11911.

A. ITEMS ONE AND TWO ARE PROPER SUBJECTS OF JUDICIAL NOTICE BECAUSE THEY ARE ADMISSIBLE FORMER STATUTES UNDER EVIDENCE CODE SECTION 452.

Item one is the original federal Stamp Act enacted in 1862 and helps demonstrate that the Court of Appeal improperly construed section 11911, without considering its original federal predecessor upon which section 11911 is patterned. The Stamp Act of 1862 imposed the tax in question on the "vellum, parchment, or paper" upon which were written or

printed the “deed[s], instrument[s], or writing[s]” that “granted, assigned, transferred, or otherwise conveyed” “any lands, tenements, or other realty sold.” (Kolkey Decl., Ex. A, Revenue Act, 12 Stat. 432, 475, 481.)

Item two is former Revenue and Taxation Code section 11931. When California’s DTTA was first enacted in 1967, former section 11931 required the Board of Equalization to “furnish, upon request of any recorder, adhesive stamps in suitable denominations to be affixed to the deeds, instruments and writings subject to tax.” (Kolkey Decl., Ex. B, Stats. 1967, Ch. 1332, p. 3164, § 1.) This evidences that the writings subject to the DTTA were those intended to be suitable for recording the conveyance of realty.

These items are admissible under Evidence Code Section 452(c).

**B. ITEMS THREE THROUGH SIX ARE PROPER SUBJECTS OF
JUDICIAL NOTICE BECAUSE THEY ARE ADMISSIBLE
LEGISLATIVE HISTORY UNDER EVIDENCE CODE SECTION
452.**

Items three through six contain relevant legislative history. Item three is schedule B from the original bill introduced in Congress leading up to the adoption of the first Federal Stamp Act, Revenue Act of 1862, Ch. 119, 12 Stat. 432. The language of this original bill read “lands, tenements, or other *things* sold....” In the course of enacting the first Federal Stamp Act, Congress narrowed the original proposed language to “lands,

tenements, or other *realty* sold,” evincing its intention to limit the tax to realty sold. (Kolkey Decl., Ex. C, H.R. Bill No. 312 (1862) as introduced March 3, 1862, italics added.)

Item four is the Assembly Committee on Local Government’s Analysis of Assembly Bill No. 561 (2013-2014 Reg. Sess.), as amended Apr. 30, 2013. (Kolkey Decl., Ex. D.) Assembly Bill No. 561 died in committee and sought to amend section 11911 to include “any acquisition or transfer of ownership interests in a legal entity” constituting “a change in ownership of that legal entity’s real property.” (Kolkey Decl., Ex. D, Assembly Committee on Local Government, Analysis of Assembly Bill No. 561 (2013-2014 Reg. Sess.), as amended Apr. 30, 2013.) This further reinforces that transfers of ownership interests in legal entities are not covered under section 11911.

Item five is a letter to Governor Ronald Reagan from H.F. Freeman, Executive Secretary of the California State Board of Equalization, regarding Senate Bill No. 78 dated April 5, 1968. Senate Bill No. 78 repealed former Revenue and Taxation Code section 11931, and this letter demonstrates that its repeal is not material to the proper interpretation of the Documentary Transfer Tax Act. (Kolkey Decl., Ex. E, H.F. Freeman, Executive Secretary, California State Board of Equalization, letter to Governor Ronald Reagan re: Senate Bill No. 78 (1967-1968 Reg. Sess.), dated April 5, 1968.)

Item six is a copy of Senate Bill No. 78. The bill includes the Legislative Counsel's Digest, which states that Senate Bill No. 78 removes the requirement that payment of a documentary transfer tax "must be evidenced by documentary stamps supplied by the State Board of Equalization on the instrument of transfer and, instead, requires that the amount of tax shall be shown on the face of the instrument of transfer or on a separate paper prior to the time such an instrument is recorded." (Kolkey Decl., Ex. F, Legis. Counsel's Dig., Sen. Bill No. 78 (1967-1968 Reg. Sess.) Stats. 1968, p. 1.) This is relevant to show the reason for the repeal of former Revenue and Taxation Code section 11931.

These types of items are admissible legislative history. (See Evid. Code §452(c); *Quintano v. Mercury Cas. Co.* (1995) 11 Cal.4th 1049, 1062, fn. 5; *Hutnick v. U.S. Fid. & Guar. Co.* (1988) 47 Cal.3d 456, 465, fn. 7; *Pac. Gas & Elec. Co. v. State Dep't of Water Res.* (2003) 112 Cal.App.4th 477, 482.)

CONCLUSION

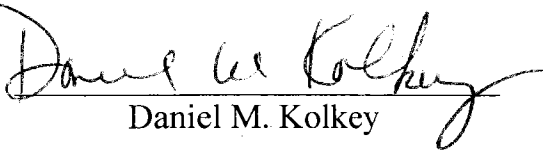
For the foregoing reasons, Ardmore respectfully requests that the Court grant its Motion for Judicial Notice in Support of Its Reply Brief on the Merits.

Dated: September 4, 2015

Respectfully submitted,

FISHERBROYLES, LLP

GIBSON, DUNN & CRUTCHER LLP

By: 
Daniel M. Kolkey

Attorneys for Plaintiff and Appellant 926
North Ardmore Avenue, LLC

DECLARATION OF DANIEL M. KOLKEY

I, Daniel M. Kolkey, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am a partner in the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Appellant 926 North Ardmore Avenue, LLC (“Ardmore”). I have personal knowledge of the facts stated herein unless indicated otherwise, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of Ardmore’s Motion for Judicial Notice.

2. At my direction, attorneys at my firm retained Legislative Intent Services (“LIS”) to obtain the legislative history for the former Federal Stamp Act, the Revenue Act of 1862, Ch. 119, 12 Stat. 432. Exhibits A and B are true and correct copies of relevant portions of the former statute and legislative history provided by LIS in the form provided by LIS.

3. Attached hereto as Exhibit A is a true and correct copy of the relevant portion of the former Federal Stamp Act, Revenue Act of 1862, as provided to my firm by LIS.

4. Attached hereto as Exhibit B is a true and correct copy of Statutes. 1967, Ch. 1332, § 1, which includes former Revenue and Taxation Code Section 11931 (on page. 3164), repealed by Stats. 1968, Ch. 17, p. 161, § 7, as provided to my firm by LIS.

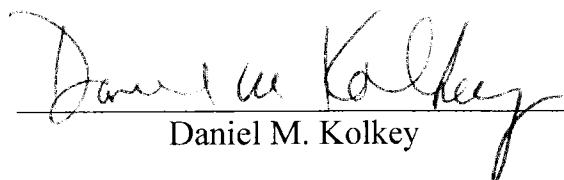
5. Attached hereto as Exhibit C is a true and correct copy of Schedule B from House of Representatives Bill No. 312, 37th Cong. (1862), as introduced on March 3, 1862, as provided to my firm by LIS.

6. Attached hereto as Exhibit D is a true and correct copy of the Assembly Committee on Local Government's Analysis of Assembly Bill No. 561 (2013-2014 Reg. Sess.), as amended Apr. 30, 2013, and was accessed by an attorney at my firm under my supervision. It is available at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB561.

7. Attached hereto as Exhibit E is a true and correct copy of a letter from H.F. Freeman, Executive Secretary, California State Board of Equalization, to Governor Ronald Reagan regarding Senate Bill No. 78 (1967-1968 Reg. Sess.), as provided to my firm by LIS.

8. Attached hereto as Exhibit F is a true and correct copy of Senate Bill No. 78 (1967-1968 Reg. Sess.) dated January 18, 1968, as provided to my firm by LIS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on this 4th day of September 2015 in San Francisco, California.


Daniel M. Kolkey

proper corporation, company, or association, to record the same on the books or records, in the same manner as if transferred or assigned by the person or party holding the same, to issue new certificates of stock therefor in lieu of any original or prior certificates, which shall be void whether cancelled or not; and said certificates of sale of the collector or deputy collector, where the subject of sale shall be securities or other evidences of debt, shall be good and valid receipts to the person or party holding the same, as against any person or persons, or other party holding, or claiming to hold, possession of such securities or other evidences of debt.

Certificates of sales.

SEC. 93. *And be it further enacted*, That it shall be the duty of all persons of lawful age, and all guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or other fiduciary capacity, to make return in the list or schedule, as provided in this act, to the proper officer of internal revenue, of the amount of his or her income, or the income of such minors or persons as may be held in trust as aforesaid, according to the requirements hereinbefore stated, and in case of neglect or refusal to make such return, the assessor or assistant assessor shall assess the amount of his or her income, and proceed thereafter to collect the duty thereon in the same manner as is provided for in other cases of neglect and refusal to furnish lists or schedules in the general provisions of this act, where not otherwise incompatible, and the assistant assessor may increase the amount of the list or return of any party making such return, if he shall be satisfied that the same is understated: *Provided*, That any party, in his or her own behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act, or that he or she has been assessed elsewhere and the same year for an income duty, under authority of the United States, and shall thereupon be exempt from an income duty; or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, he or she may be permitted to declare, as aforesaid, the amount of his or her annual income, or the amount held in trust, as aforesaid, liable to be assessed, as aforesaid, and the same so declared shall be received as the sum upon which duties are to be assessed and collected.

Each person to make return of income.

Post, p. 718.

Provision in case of neglect or refusal.

Provido.

STAMP DUTIES.

SEC. 94. *And be it further enacted*, That on and after the first day of October, eighteen hundred and sixty-two, there shall be levied, collected, and paid, for and in respect of the several instruments, matters, and things mentioned, and described in the schedule (marked B) hereunto annexed, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed, by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several duties or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.

Stamp duties on articles in Schedule B.

Post, p. 561.

SEC. 95. *And be it further enacted*, That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind, or description whatsoever, without the same being duly stamped for denoting the duty hereby imposed thereon, or without having thereupon an adhesive stamp to denote said duty, such person or persons shall incur a penalty of fifty dollars, and such instrument, document, or paper, as aforesaid, shall be deemed invalid and of no effect.

Penalty for making, &c., instrument without using stamp.

1862, ch. 163, § 24. Post, p. 560.

Post, pp. 734, 736.



Stamps to be used only for designated duty.

SEC. 96. *And be it further enacted*, That no stamp appropriated to denote the duty charged on any particular instrument, and bearing the name of such instrument on the face thereof, shall be used for denoting any other duty of the same amount, or if so used the same shall be of no avail.

Stamped paper, &c. to be so used.

SEC. 97. *And be it further enacted*, That no vellum, parchment, or paper, bearing a stamp appropriated by name to any particular instrument, shall be used for any other purpose, or if so used the same shall be of no avail.

Forging or counterfeiting stamps, or dies, &c., how punished.

SEC. 98. *And be it further enacted*, That if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp or die, or any part of any stamp or die, which shall have been provided, made, or used in pursuance of this act, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression, or any part of the impression, of any such stamp or die, as aforesaid, upon any vellum, parchment, or paper, or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, parchment, or paper, with any such forged or counterfeited stamp or die, or part of any stamp or die, as aforesaid, with intent to defraud the United States of any of the duties hereby imposed, or any part thereof, or if any person shall utter, or sell, or expose to sale, any vellum, parchment, or paper, article or thing, having thereupon the impression of any such counterfeited stamp or die, or any part of any stamp or die, or any such forged, counterfeited, or resembled impression, or part of impression, as aforesaid, knowing the same respectively to be forged, counterfeited, or resembled; or if any person shall knowingly use any stamp or die which shall have been so provided, made or used, as aforesaid, with intent to defraud the United States; or if any person shall fraudulently cut, tear, or get off, or cause or procure to be cut, torn, or got off, the impression of any stamp or die which shall have been provided, made, or used in pursuance of this act, from any vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the duties hereby imposed, then, and in every such case, every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting in committing any such offence as aforesaid, shall be deemed guilty of felony, and shall, on conviction thereof, forfeit the said counterfeit stamps and the articles upon which they are placed, and be punished by fine not exceeding one thousand dollars, and by imprisonment and confinement to hard labor not exceeding five years.

Using a forged stamp, &c.

Persons using certain stamps to mark them.

Act, p. 721.

Penalty for neglect.

Certain persons may furnish their own stamps, &c.

Stamp, how destroyed.

SEC. 99. *And be it further enacted*, That in any and all cases where an adhesive stamp shall be used for denoting any duty imposed by this act, except as hereinafter provided, the person using or affixing the same shall write thereupon the initials of his name, and the date upon which the same shall be attached or used, so that the same may not again be used. And if any person shall fraudulently make use of an adhesive stamp to denote any duty imposed by this act without so effectually cancelling and obliterating such stamp, except as before mentioned, he, she, or they shall forfeit the sum of fifty dollars: *Provided, nevertheless*, That any proprietor or proprietors of proprietary articles, or articles subject to stamp duty under schedule C of this act, shall have the privilege of furnishing, without expense to the United States, in suitable form, to be approved by the Commissioner of Internal Revenue, his or their own dies or designs for stamps to be used thereon, to be retained in the possession of the Commissioner of Internal Revenue, for his or their separate use, which shall not be duplicated to any other person. That in all cases where such stamp is used, instead of his or their writing, his or their initials and the date thereon, the said stamp shall be so affixed on the box, bottle, or package, that in opening the same, or using the contents thereof, the said stamp shall be effectually destroyed; and in default thereof shall

LEGISLATIVE INTENT SERVICE (800) 666-1917

be liable to the same penalty imposed for neglect to affix said stamp as hereinbefore prescribed in this act. Any person who shall fraudulently obtain or use any of the aforesaid stamps or designs therefor, and any person forging, or counterfeiting, or causing or procuring the forging or counterfeiting any representation, likeness, similitude or colorable imitation of the said last-mentioned stamp, or any engraver or printer who shall sell or give away said stamps, or selling the same, or, being a merchant, broker, peddler, or person dealing, in whole or in part, in similar goods, wares, merchandise, manufactures, preparations, or articles, or those designed for similar objects or purposes, shall have knowingly or fraudulently in his, her, or their possession any such forged, counterfeited likeness, similitude, or colorable imitation of the said last-mentioned stamp, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to all the penalties, fines, and forfeitures prescribed in section ninety-three [eight] of this act.

Private stamps.
Penalty for forging, &c.

Post, p. 718.

SEC. 100. *And be it further enacted*, That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, or shall accept or pay, or cause to be accepted or paid, with design to evade the payment of any stamp duty, any bill of exchange, draft or order, or promissory note for the payment of money, liable to any of the duties imposed by this act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the duty hereby charged thereon, he, she, or they shall, for every such bill, draft, order, or note, forfeit the sum of two hundred dollars.

Penalty for making, &c., bills of exchange &c., without stamps, &c.

SEC. 101. *And be it further enacted*, That the acceptor or acceptors of any bill of exchange or order for the payment of any sum of money drawn, or purporting to be drawn, in any foreign country, but payable in the United States, shall, before paying or accepting the same, place thereupon a stamp indicating the duty upon the same, as the law requires for inland bills of exchange, or promissory notes; and no bill of exchange shall be paid or negotiated without such stamp; and if any person shall pay or negotiate, or offer in payment, or receive or take in payment, any such draft or order, the person or persons so offending shall forfeit the sum of one hundred dollars.

Acceptors of bills of exchange to place stamps thereon.

Penalty for paying, &c. without stamp.

SEC. 102. *And be it further enacted*, That the Commissioner of Internal Revenue, he, and is hereby, authorized to sell to and supply collectors, deputy collectors, postmasters, stationers, or any other persons, at his discretion, with adhesive stamps or stamped paper, vellum, or parchment, as herein provided for, upon the payment, at the time of delivery, of the amount of duties said stamps, stamped paper, vellum, or parchment, so sold or supplied, represent, and may thereupon allow and deduct from the aggregate amount of such stamps, as aforesaid, the sum of not exceeding five per centum as commission to the collectors, postmasters, stationers, or other purchasers; but the cost of any paper, vellum, or parchment shall be added to the amount, after deducting the allowance of per centum, as aforesaid: *Provided*, That no commission shall be allowed on any sum or sums so sold or supplied of less amount than fifty dollars. *And provided, further*, That any proprietor or proprietors of articles named in schedule C, who shall furnish his or their own die or design for stamps, to be used especially for his or their own proprietary articles, shall be allowed the following discount, namely: on amounts purchased at one time of not less than fifty nor more than five hundred dollars, five per centum; on amounts over five hundred dollars, ten per centum. The Commissioner of Internal Revenue may from time to time make regulations for the allowance of such of the stamps issued under the provisions of this act as may have been spoiled or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been paid in error or remitted; and such allowance

Commissioner to sell stamps to certain officials and other persons.

Post, p. 718.

Commission.

Post, p. 718.

Proviso.

Discount to persons furnishing their own stamps.

Post, p. 718.

Allowance to be made for stamps rendered useless, &c.



shall be made either by giving other stamps in lieu of the stamps so allowed for, or by repaying the amount or value, after deducting therefrom, in case of repayment, the sum of five per centum to the owner thereof.

Commissioner
may decide
whether any in-
strument is liable
for stamp duty.

SEC. 103. *And be it further enacted*, That it shall be lawful for any person to present to the Commissioner of Internal Revenue any instrument, and require his opinion whether or not the same is chargeable with any duty; and if the said commissioner shall be of opinion that such instrument is not chargeable with any stamp duty, it shall be lawful for him, and he is hereby required, to impress thereon a particular stamp, to be provided for that purpose, with such word or words or device thereon as he shall judge proper, which shall signify and denote that such instrument is not chargeable with any stamp duty; and every such instrument upon which the said stamp shall be impressed shall be deemed to be not so chargeable, and shall be received in evidence in all courts of law or equity, notwithstanding any objections made to the same, as being chargeable with stamp duty, and not stamped to denote the same.

Special stamp
in a case.

Telegraph
companies not to
send, &c., mes-
sages, unless, &c.

SEC. 104. *And be it further enacted*, That on and after the date on which this act shall take effect, no telegraph company or its agent or employee shall receive from any person, or transmit to any person, any despatch or message without an adhesive stamp denoting the duty imposed by this act being affixed to a copy thereof, or having the same stamped thereupon, and in default thereof shall incur a penalty of ten dollars: *Provided*, That only one stamp shall be required, whether sent through one or more companies.

Express com-
panies not to
receive articles
for transportation
without stamp.

SEC. 105. *And be it further enacted*, That on and after the date on which this act shall take effect, no express company or its agent or employee shall receive for transportation from any person any bale, bundle, box, article, or package of any description, without either delivering to the consignor thereof a printed receipt, having stamped or affixed thereon a stamp denoting the duty imposed by this act, or without affixing thereto an adhesive stamp or stamps denoting such duty, and in default thereof shall incur a penalty of ten dollars: *Provided*, That but one stamped receipt or stamp shall be required for each shipment from one party to another party at the same time, whether such shipment consists of one or more packages: *And provided, also*, That no stamped receipts or stamp shall be required for any bale, bundle, box, article, or package transported for the government, nor for such bales, bundles, boxes, or packages as are transported by such companies without charge thereon.

Articles in
schedule C sub-
ject to provisions
of this act.

SEC. 106. *And be it further enacted*, That all the provisions of this act relating to dies, stamps, adhesive stamps, and stamp duties, shall extend to and include (except where manifestly inapplicable) all the articles or objects enumerated in schedule marked C, subject to stamp duties, and apply to the provisions in relation thereto.

Drugs, cos-
metics, &c., not
to be sold, &c.,
without stamp.
Post, pp. 727,
728.

SEC. 107. *And be it further enacted*, That on and after the first day of August, eighteen hundred and sixty-two, no person or persons, firms, companies, or corporations, shall make, prepare, and sell, or remove for consumption or sale, drugs, medicines, preparations, compositions, articles, or things, including perfumery, cosmetics, and playing-cards, upon which a duty is imposed by this act, as enumerated and mentioned in schedule C, without affixing thereto an adhesive stamp or label denoting the duty before mentioned, and in default thereof shall incur a penalty of ten dollars: *Provided*, That nothing in this act contained shall apply to any uncompound medicinal drug or chemical, nor to any medicine compounded according to the United States or other national pharmacopoeia, nor of which the full and proper formula is published in either of the dispensatories, formularies, or text-books in common use among physicians and apothecaries, including homoeopathic and eclectic, or in any pharmaceutical journal now used by any incorporated college of pharmacy, and

Provided.



not sold or offered for sale, or advertised under any other name, form, or guise, than that under which they may be severally denominated and laid down in said pharmacopœias, dispensaries, text-books, or journals, as aforesaid, nor to medicines sold to or for the use of any person, which may be mixed and compounded specially for said persons, according to the written recipe or prescription of any physician or surgeon.

SEC. 108. *And be it further enacted*, That every manufacturer or maker of any of the articles for sale mentioned in schedule C, after the same shall have been so made, and the particulars hereinbefore required as to stamps have been complied with, who shall take off, remove, or detach, or cause or permit, or suffer to be taken off, or removed or detached, any stamp, or who shall use any stamp, or any wrapper or cover to which any stamp is affixed, to cover any other article or commodity than that originally contained in such wrapper or cover, with such stamp when first used, with the intent to evade the stamp duties, shall for every such article, respectively, in respect of which any such offence shall be committed, be subject to a penalty of fifty dollars, to be recovered, together with the costs thereupon accruing, and every such article or commodity as aforesaid shall also be forfeited.

Penalty on makers of drugs, &c., for removing, &c., stamp; Post, pp. 727, 728.

SEC. 109. *And be it further enacted*, That every maker or manufacturer of any of the articles or commodities mentioned in schedule C, as aforesaid, who shall sell, send out, remove, or deliver any article or commodity, manufactured as aforesaid, before the duty thereon shall have been fully paid, by affixing thereon the proper stamp, as in this act provided, or who shall hide or conceal, or cause to be hidden or concealed, or who shall remove or convey away, or deposit, or cause to be removed or conveyed away from or deposited in any place, any such article or commodity, to evade the duty chargeable thereon, or any part thereof, shall be subject to a penalty of one hundred dollars, together with the forfeiture of any such article or commodity: *Provided*, That medicines, preparations, compositions, perfumery, and cosmetics, upon which stamp duties are required by this act, may, when intended for exportation, be manufactured and sold, or removed without having stamps affixed thereto, and without being charged with duty, as aforesaid; and every manufacturer or maker of any article, as aforesaid, intended for exportation, shall give such bonds and be subject to such rules and regulations to protect the revenue against fraud as may be from time to time prescribed by the Secretary of the Treasury.

for selling without stamp.

In cases of exportation

SEC. 110. *And be it further enacted*, That every manufacturer or maker of any of the articles or commodities, as aforesaid, or his chief workman, agent, or superintendent, shall at the end of each and every month make and sign a declaration in writing that no such article or commodity, as aforesaid, has, during such preceding month, or time when the last declaration was made, been removed, carried, or sent, or caused, or suffered, or known to have been removed, carried, or sent from the premises of such manufacturer or maker, other than such as have been duly taken account of and charged with the stamp duty, on pain of such manufacturer or maker forfeiting for every refusal or neglect to make such declaration one hundred dollars; and if any such manufacturer or maker, or his chief workman, agent, or superintendent, shall make any false or untrue declaration, such manufacturer or maker, or chief workman, agent, or superintendent, making the same, shall forfeit five hundred dollars.

Monthly statement in writing.

SCHEDULE B.

STAMP DUTIES.

Agreement or contract, other than those specified in this schedule; any appraisement of value or damage, or for any other purpose;

Stamp duties.

Agreements.

LEGISLATIVE INTENT SERVICE (800) 666-1917

		<i>Duty.</i>
		Dolla. cts.
	for every sheet or piece of paper upon which either of the same shall be written.....	5
Bank checks.	Bank check, draft, or order for the payment of any sum of money exceeding twenty dollars, drawn upon any bank, trust company, or any person or persons, companies, or corporations at sight or on demand, two cents.....	2
Bills of exchange, inland.	Bill of exchange, (inland,) draft, or order for the payment of any sum of money exceeding twenty and not exceeding one hundred dollars, otherwise than at sight or on demand, or any promissory note except bank notes issued for circulation, for a sum exceeding twenty and not exceeding one hundred dollars, five cents.....	5
Post, p. 720.	Exceeding one hundred dollars and not exceeding two hundred dollars, ten cents.....	10
	Exceeding two hundred dollars and not exceeding three hundred and fifty dollars, fifteen cents.....	15
	Exceeding three hundred and fifty dollars and not exceeding five hundred dollars, twenty cents.....	20
	Exceeding five hundred dollars and not exceeding seven hundred and fifty dollars, thirty cents.....	30
	Exceeding seven hundred and fifty dollars and not exceeding one thousand dollars, forty cents.....	40
	Exceeding one thousand dollars and not exceeding fifteen hundred dollars, sixty cents.....	60
	Exceeding fifteen hundred dollars and not exceeding twenty-five hundred dollars, one dollar.....	1 00
	Exceeding twenty-five hundred dollars and not exceeding five thousand dollars, one dollar and fifty cents.....	1 50
	And for every twenty-five hundred dollars, or part of twenty-five hundred dollars in excess of five thousand dollars, one dollar.....	1 00
Bills of exchange, foreign.	Bill of exchange (foreign) or letter of credit, drawn in but payable out of the United States, if drawn singly, or otherwise than in a set of three or more, according to the custom of merchants and bankers, shall pay the same rates of duty as inland bills of exchange or promissory notes.	
	If drawn in sets of three or more: For every bill of each set, where the sum made payable shall not exceed one hundred and fifty dollars, or the equivalent thereof, in any foreign currency in which such bills may be expressed, according to the standard of value fixed by the United States, three cents.....	3
	Above one hundred and fifty dollars and not above two hundred and fifty dollars, five cents.....	5
	Above two hundred and fifty dollars and not above five hundred dollars, ten cents.....	10
	Above five hundred dollars and not above one thousand dollars, fifteen cents.....	15
	Above one thousand dollars and not above one thousand five hundred dollars, twenty cents.....	20
	Above one thousand five hundred dollars and not above two thousand two hundred and fifty dollars, thirty cents.....	30
	Above two thousand two hundred and fifty dollars and not above three thousand five hundred dollars, fifty cents.....	50
	Above three thousand five hundred dollars and not above five thousand dollars, seventy cents.....	70
	Above five thousand dollars and not above seven thousand five hundred dollars, one dollar.....	1 00

LEGISLATIVE INTENT SERVICE (800) 666-1917



	<i>Duty.</i>	
	Dolls. cts.	
And for every two thousand five hundred dollars, or part thereof, in excess of seven thousand five hundred dollars, thirty cents.	30	Bills of lading.
Bill of lading or receipt, (other than charter-party,) for any goods, merchandise, or effects, to be exported from a port or place in the United States to any foreign port or place, ten cents.	10	
Express. — For every receipt or stamp issued, or issued by any express company, or carrier, or person whose occupation it is to act as such, for all boxes, bales, packages, articles, or bundles, for the transportation of which such company, carrier, or person, shall receive a compensation of not over twenty-five cents, one cent.	1	Expresses.
When such compensation exceeds the sum of twenty-five cents, and not over one dollar, two cents.	2	
When one or more packages are sent to the same address at the same time, and the compensation therefor exceeds one dollar, five cents.	5	
Bond. — For indemnifying any person who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office, and to account for money received by virtue thereof, fifty cents.	50	Bond.
Bond of any description other than such as may be required in legal proceedings and such as are not otherwise charged in this schedule, twenty-five cents.	25	
Certificate of stock in any incorporated company, twenty-five cents	25	Certificates.
Certificate of profits, or any certificate or memorandum showing an interest in the property or accumulations of any incorporated company, if for a sum not less than ten dollars and not exceeding fifty dollars, ten cents.	10	
For a sum exceeding fifty dollars, twenty-five cents.	25	
Certificate. — Any certificate of damage, or otherwise, and all other certificates or documents issued by any port warden, marine surveyor, or other person acting as such, twenty-five cents	25	
Certificate of deposit of any sum of money in any bank or trust company, or with any banker or person acting as such —		
If for a sum not exceeding one hundred dollars, two cents.	2	
For a sum exceeding one hundred dollars, five cents.	5	
Certificate of any other description than those specified, ten cents	10	Post, pp. 720, 721.
Charter-party. — Contract or agreement for the charter of any ship or vessel, or steamer, or any letter, memorandum, or other writing between the captain, master, or owner, or person acting as agent of any ship or vessel, or steamer, and any other person or persons for or relating to the charter of such ship or vessel, or steamer, if the registered tonnage of such ship or vessel, or steamer, does not exceed three hundred tons, three dollars.	3 00	Charter-party.
Exceeding three hundred tons, and not exceeding six hundred tons, five dollars.	5 00	Post, p. 721.
Exceeding six hundred tons, ten dollars.	10 00	
Contract. — Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, ten cents.	10	Contract.
Conveyance. — 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 exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents.	50	Conveyance.



		<i>Duty.</i>
		Dolla. cts.
	When the consideration exceeds five hundred dollars and does not exceed one thousand dollars, one dollar.....	1 00
	Exceeding one thousand dollars and not exceeding two thousand five hundred dollars, two dollars.....	2 00
	Exceeding two thousand five <i>thousand</i> [hundred] dollars and not exceeding five thousand dollars, five dollars.....	5 00
	Exceeding five thousand dollars and not exceeding ten thousand dollars, ten dollars.....	10 00
	Exceeding ten thousand dollars and not exceeding twenty thousand dollars, twenty dollars.....	20 00
	And for every additional ten thousand dollars, or fractional part thereof, in excess of twenty thousand dollars, twenty dollars..	20 00
Despatch, tele-graphic.	Despatch, telegraphic. — Any despatch or message, the charge for which for the first ten words does not exceed twenty cents, one cent.....	1
	When the charge for the first ten words exceeds twenty cents, three cents.....	3
Entry.	Entry of any goods, wares, or merchandise at any custom-house, either for consumption or warehousing, not exceeding one hundred dollars in value, twenty-five cents.....	25
	Exceeding one hundred dollars and not exceeding five hundred dollars in value, fifty cents.....	50
	Exceeding five hundred dollars in value, one dollar.....	1 00
	Entry for the withdrawal of any goods or merchandise from bonded warehouse, fifty cents.....	50
Insurance, life; Post, pp. 719, 721.	Insurance (life). — Policy of insurance, or other instrument by whatever name the same shall be called, whereby any insurance shall be made upon any life or lives — When the amount insured shall not exceed one thousand dollars, twenty-five cents.....	25
	Exceeding one thousand and not exceeding five thousand dollars, fifty cents.....	50
	Exceeding five thousand dollars, one dollar.....	1 00
marine and inland.	Insurance, (marine and inland) — Each policy of insurance or other instrument, by whatever name the same shall be called, by which insurance shall be made or renewed, upon property of any description, whether against perils by the sea or by fire, or other peril of any kind, made by any insurance company, or its agents, or by any other company or person, twenty-five cents..	25
Lease, &c.	Lease, agreement, memorandum, or contract for the hire, use, or rent of any land, tenement, or portion thereof — If for a period of time not exceeding three years, fifty cents....	50
	If for a period exceeding three years, one dollar.....	1 00
Manifest.	Manifest for custom-house entry or clearance of the cargo of any ship, vessel, or steamer, for a foreign port — If the registered tonnage of such ship, vessel, or steamer does not exceed three hundred tons, one dollar.....	1 00
	Exceeding three hundred tons, and not exceeding six hundred tons, three dollars.....	3 00
	Exceeding six hundred tons, five dollars.....	5 00
Mortgage. Post, p. 721.	Mortgage of lands, estate, or property, real or personal, heritable or movable whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time, or previously due and owing or forborne to be paid, being payable; also any conveyance of any lands, estate, or property whatsoever, in trust to be sold or otherwise converted into money, which shall be intended only as security,	



	<i>Duty.</i>	
	Doll. cts.	
and shall be redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; or any personal bond given as security for the payment of any definite or certain sum of money exceeding one hundred dollars, and not exceeding five hundred dollars, fifty cents.....	50	
Exceeding five hundred dollars, and not exceeding one thousand dollars, one dollar.....	1 00	
Exceeding one thousand dollars, and not exceeding two thousand five hundred dollars, two dollars.....	2 00	
Exceeding two thousand five hundred dollars, and not exceeding five thousand dollars, five dollars.....	5 00	
Exceeding five thousand dollars, and not exceeding ten thousand dollars, ten dollars.....	10 00	
Exceeding ten thousand dollars, and not exceeding twenty thousand dollars, fifteen dollars.....	15 00	
And for every additional ten thousand dollars, or fractional part thereof, in excess of twenty thousand dollars, ten dollars.....	10 00	
Passage ticket, by any vessel from a port in the United States to a foreign port, if less than thirty dollars, fifty cents.....	50	Passage ticket. Post, p. 720.
Exceeding thirty dollars, one dollar.....	1 00	
Power of attorney for the sale or transfer of any stock, bonds, or scrip, or for the collection of any dividends or interest thereon, twenty-five cents.....	25	Power of attorney. Post, p. 720.
Power of attorney or proxy for voting at any election for officers of any incorporated company or society except religious, charitable, or literary societies, or public cemeteries, ten cents.....	10	
Power of attorney to receive or collect rent, twenty-five cents.....	25	
Power of attorney to sell and convey real estate, or to rent or lease the same, or to perform any and all other acts not hereinbefore specified, one dollar.....	1 00	
Probate of will, or letters of administration: Where the estate and effects for or in respect of which such probate or letters of administration applied for shall be sworn or declared not to exceed the value of two thousand five hundred dollars, fifty cents.....	50	Probate of will.
To exceed two thousand five hundred dollars and not exceeding five thousand dollars, one dollar.....	1 00	
To exceed five thousand dollars and not exceeding twenty thousand dollars, two dollars.....	2 00	
To exceed twenty thousand dollars and not exceeding fifty thousand dollars, five dollars.....	5 00	
To exceed fifty thousand dollars and not exceeding one hundred thousand dollars, ten dollars.....	10 00	
Exceeding one hundred thousand dollars and not exceeding one hundred and fifty thousand dollars, twenty dollars.....	20 00	
And for every additional fifty thousand dollars, or fractional part thereof, ten dollars.....	10 00	
Protest.— Upon the protest of every note, bill of exchange, acceptance, check or draft, or any marine protest, whether protested by a notary public or by any other officer who may be authorized by the law of any State or States to make such protest, twenty-five cents.....	25	Protest.
Warehouse receipt for any goods, merchandise, or property of any kind held on storage in any public or private warehouse or yard, twenty-five cents.....	25	Warehouse receipt.
Legal documents:		Legal documents.
Writ, or other original process by which any suit is commenced in any court of record, either law or equity, fifty cents.....	50	Writ.

LEGISLATIVE INTENT SERVICE (800) 666-1917



party requesting the hearing shall have requested a postponement. If, after request for a hearing, the commissioner does not hold a hearing within the fifteen (15) days or does not render a decision within forty-five (45) days after submission of the matter, the order is rescinded.

CHAPTER 1331

An act to amend Section 554 of the Streets and Highways Code, relating to state highways.

[Approved by Governor August 23, 1967. Filed with Secretary of State August 23, 1967.]

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

SECTION 1. Section 554 of the Streets and Highways Code is amended to read:

554. Route 254 is the Avenue of the Giants, comprising a portion of the former Redwood Highway through and connecting a number of state parks, from Route 101 near the Sylvan-dale interchange to Route 101 one-tenth of a mile north of Jordan Creek.

CHAPTER 1332

An act to add Part 6.7 (commencing with Section 11901) to Division 2 of the Revenue and Taxation Code, relating to a real property transfer tax.

[Approved by Governor August 23, 1967. Filed with Secretary of State August 23, 1967.]

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

SECTION 1. Part 6.7 (commencing with Section 11901) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 6.7. DOCUMENTARY STAMP ACT

11901. This act is known and may be cited as the "Docu-mentary Stamp Act."

11902. "Board" means the State Board of Equalization.

11903. "County" shall include a city and county.

11904. "Recorder" means the recorder of a county.

CHAPTER 2. AUTHORIZATION FOR TAX

11911. (a) The board of supervisors of any county or city and county, by an ordinance adopted pursuant to this part, may impose, on each deed, instrument, or writing by which any lands, tenements, or other realty sold within the county 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 one hundred dollars (\$100) a tax at the rate of fifty-five cents (\$.55) for each five hundred dollars (\$500) or fractional part thereof.

(b) The legislative body of any city which is within a county which has imposed a tax pursuant to subdivision (a) may, by an ordinance adopted pursuant to this part, impose, on each deed, instrument, or writing by which any lands, tenements, or other realty sold within the city 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 one hundred dollars (\$100), a tax at the rate of one-half the amount specified in subdivision (a) for each five hundred dollars (\$500) or fractional part thereof.

(c) A credit shall be allowed against the tax imposed by a county ordinance pursuant to subdivision (a) for the amount of any tax due to any city by reason of an ordinance adopted pursuant to subdivision (b). No credit shall be allowed against any county tax for a city tax which is not in conformity with this part.

11912. Any tax imposed pursuant to Section 11911 shall be paid by any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued.

CHAPTER 3. EXEMPTIONS

11921. Any tax imposed pursuant to this part shall not apply to any instrument in writing given to secure a debt.

11922. The United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, or the District of Columbia shall not be liable for any tax imposed pursuant to this part with respect to any deed, instrument, or writing to which it is a party, but the tax may be collected by assessment from any other party liable therefor.

11923. Any tax imposed pursuant to this part shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment—

(a) Confirmed under the Federal Bankruptcy Act, as amended;

(b) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;

(c) Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of

Section 506 of Title 11 of the United States Code, as amended; or

(d) Whereby a mere change in identity, form or place of organization is effected.

Subdivisions (a) to (d), inclusive, of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval or change.

11924. Any tax imposed pursuant to this part shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if—

(a) The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

(b) Such order specifies the property which is ordered to be conveyed;

(c) Such conveyance is made in obedience to such order.

11925. (a) In the case of any realty held by a partnership, no levy shall be imposed pursuant to this part by reason of any transfer of an interest in a partnership or otherwise, if—

(1) Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and

(2) Such continuing partnership continues to hold the realty concerned.

(b) If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this part, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

(c) Not more than one tax shall be imposed pursuant to this part by a county, city and county or city by reason of a termination described in subdivision (b), and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

CHAPTER 4. ADMINISTRATION

11931. The State Board of Equalization shall furnish, upon the request of any recorder, adhesive stamps in suitable denominations to be affixed to the deeds, instruments and writings subject to tax pursuant to this part. The board shall sell such stamps to county recorders at the actual cost to the board of printing and distributing the stamps. The board shall not furnish stamps to any county or city and county which does not impose a real property transfer tax in conformity with the provisions of this part.

11932. If the legislative body of any city imposes a tax pursuant to subdivision (b) of Section 11911 equal to one-half the amount specified in subdivision (a) of Section 11911, the county in which such city is located shall grant a credit against the county tax in the amount of the city tax if the city's tax conforms to this part. The county shall collect all taxes imposed pursuant to this part and the county auditor shall allocate the proceeds as follows:

(1) All money which relates to transfers of real property located in unincorporated areas of the county or in a city and county shall be allocated to the county or city and county, as the case may be.

(2) All money which relates to transfers of real property located in a city which imposes a tax on transfers of real property pursuant to this part shall be allocated one-half to such city and one-half to the county.

(3) All money which relates to transfers of real property located in a city which imposes a tax on transfers of real property not in conformity with this part shall not be credited against the county tax and the entire amount collected by the county shall be allocated entirely to the county.

(4) All money which relates to transfers of real property in a city which does not impose a tax on transfers of real property shall be allocated entirely to the county.

11933. If a county has imposed a tax pursuant to this part, the county recorder shall sell the stamps at their denominated values, and shall report no information to the State Board of Equalization with respect to sales of stamps.

11934. If a county has imposed a tax pursuant to this part, the recorder shall not record any deed, instrument or writing subject to the tax imposed pursuant to this part, unless the stamps described in Section 11931 are affixed thereto. If the party submitting the document for recordation so requests, the stamps shall be affixed to the document by the recorder after the permanent record is made and before the original is returned as specified in Section 27321 of the Government Code. However, the failure to affix any such stamp shall not affect the constructive notice otherwise imparted by recording such deed, instrument or writing.

11935. Claims for refunds of taxes imposed pursuant to this part shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of this code.

SEC. 2. No city or county shall directly or indirectly impose a tax on transfers of real property which is not in conformity with this part. As used in this section, "city" does not include a chartered city and "county" does not include a city and county.

SEC. 3. The provisions of this act shall be operative on and after 12:01 a.m. on January 1, 1968.

SEC. 4. Notwithstanding the provisions of Section 3, if the Congress of the United States provides for a tax on

transfers of real property on or before January 1, 1968, this act shall have no operative effect. If the Congress of the United States imposes a tax on transfers of real property after January 1, 1968, this act shall have no operative effect on and after the first day of the fiscal year which follows the date such federal tax is imposed.

CHAPTER 1333

An act to amend Section 9260 of the Vehicle Code, relating to foreign commercial vehicle permits.

[Approved by Governor August 23, 1967. Filled with Secretary of State August 23, 1967.]

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

SECTION 1. Section 9260 of the Vehicle Code is amended to read:

9260. (a) The fee for a temporary registration issued under Section 4004 is one-quarter of the annual fees in Division 3 (commencing with Section 4000) of this code and Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code, for the period that the vehicle is to be operated in this state.

(b) The fee for a trip permit issued under Section 4004 is five dollars (\$5) for each vehicle.

(c) A fee of five dollars (\$5) shall be paid for each reciprocity permit issued under Section 8008.

CHAPTER 1334

An act to amend Section 19559.5 of the Education Code, relating to school property.

[Approved by Governor August 23, 1967. Filled with Secretary of State August 23, 1967.]

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

SECTION 1. Section 19559.5 of the Education Code is amended to read:

19559.5. The board shall prescribe instructions specifying the manner in which property, real or personal, being replaced through the apportionment, shall be disposed of, and compliance with the instructions shall be a condition upon the making of the apportionment. The net proceeds derived from such a disposition shall be contributed in reduction of any apportionment. Any school district affected shall comply with instructions prescribed by the board. The board may require a district to transfer to the state, by any instruments deemed appropri-

16 or maker, or chief workman, agent, or superintendent, making
 17 the same, shall forfeit five hundred dollars.

SCHEDULE B.
 STAMP DUTIES.

	<i>Duty.</i>
1 AGREEMENT OR CONTRACT, other than those specified in this schedule; 2 any <i>appraisal</i> of value or damage, or for any other purpose; for 3 every sheet or piece of paper upon which either of the same shall be 4 written	\$0 05
5 BILL OF EXCHANGE, (inland.)—Promissory note, check, draft, or order 6 for the payment of any sum of money drawn upon any bank, trust 7 company, or any person or persons, companies or corporations, at 8 sight or on demand.....	2
9 BILL OF EXCHANGE, (inland.)—Promissory note, draft, or order, for the 10 payment in any other manner than at sight, or on demand, of any 11 sum of money not exceeding five hundred dollars.....	5
12 Exceeding five hundred, and not exceeding two thousand five hundred 13 dollars	10
14 Exceeding two thousand five hundred dollars.....	25
15 BILL OF EXCHANGE, (foreign,) or letter of credit drawn in, but payable 16 out of, the United States, if drawn singly; or if drawn in a set of 17 three or more, according to the custom of merchants and bankers, 18 for every bill of each set; where the sum made payable shall not 19 exceed five hundred dollars, or the equivalent thereof in any foreign 20 currency in which such bills may be expressed, according to the 21 standard of value fixed by the United States.....	5
22 Exceeding five hundred dollars, and not exceeding two thousand five 23 hundred dollars	10
24 Exceeding two thousand five hundred dollars.....	25
25 BILL OF LADING or receipt, (other than charter party,) for any goods, 26 merchandise, or effects, to be exported from a port or place in the 27 United States to any foreign port or place.....	10
28 BILL OF LADING or receipt for any goods, merchandise, or effects, to be 29 carried from one port or place in the United States to any other 30 port or place in the United States, either by land or water, except 31 when carried by any express company or carrier.....	5
32 EXPRESS.—Any bale, bundle, box, or package of any description, carried 33 by any express company, or carrier, or person, acting as such, if the 34 freight or charge upon the same shall not exceed fifty cents.....	3
35 If exceeding fifty cents, and not exceeding one dollar.....	5
36 Exceeding one dollar.....	10
37 BOND.—For indemnifying any person who shall have become bound or 38 engaged as surety for the payment of any sum of money, or for the 39 due execution or performance of the duties of any office, and to ac- 40 count for money received by virtue thereof.....	50
41 BOND of any description not otherwise charged in this schedule.....	25

LEGISLATIVE INTENT SERVICE (600) 650-1917



	<i>Duty.</i>
42	CERTIFICATE of stock in any incorporated company..... \$0 25
43	CERTIFICATE of profits, or any certificate or memorandum showing an
44	interest in the property or accumulations of any incorporated company..... 25
45	CERTIFICATE.—Any certificate of damage, or otherwise, and all other cer-
46	tificates or documents issued by any port warden, marine surveyor,
47	or other person acting as such..... 25
48	CERTIFICATE of deposit of any sum of money in any bank or trust com-
49	pany, or with any banker or person acting as such—
50	If for a sum not exceeding one hundred dollars..... 2
51	For a sum exceeding one hundred dollars..... 5
52	CERTIFICATE of any other description than those specified..... 10
53	CHARTER PARTY.—Contract or agreement for the charter of any ship or
54	vessel, or steamer, or any letter, memorandum, or other writing be-
55	tween the captain, master, or owner, or person acting as agent of
56	any ship or vessel, or steamer, and any other person or persons for
57	or relating to the freight or conveyance of any goods or merchan-
58	dise on board of such ship or vessel, or steamer, if the registered
59	tonnage of such ship or vessel, or steamer, does not exceed three
60	hundred tons..... 3 00
61	Exceeding three hundred tons, and not exceeding six hundred tons.... 5 00
62	Exceeding six hundred tons..... 10 00
63	CONTRACT.—Broker's note, or memorandum of sale of any goods or mer-
64	chandise, stocks, bonds, exchange, notes of hand, real estate, or
65	property of any kind or description issued by brokers or persons
66	acting as such..... 10
67	CONVEYANCE.—Deed, instrument or writing, whereby any lands, tene-
68	ments, or other things sold shall be granted, leased, assigned, trans-
69	ferred, or otherwise conveyed to, or vested in, the purchaser or pur-
70	chasers, or any other person or persons by his, her, or their direc-
71	tion..... 1 00
72	DESPATCH, TELEGRAPHIC.—Any despatch or message sent by telegraph:
73	<i>Provided</i> , That all messages and despatches sent or forwarded, on
74	the business or for the use of telegraph companies or railroad com-
75	panies, such as may be sent and received free of charge, and such
76	as may be for the use of any fire or police department of any city or
77	town, shall be exempt from duty..... 3
78	ENTRY of any goods, wares, or merchandise at any custom-house, either
79	for consumption or warehousing..... 1 00
80	ENTRY for the withdrawal of any goods or merchandise from bonded ware-
81	house..... 50
82	INSURANCE, (LIFE).—Policy of insurance, or other instrument by whatever
83	name the same shall be called, whereby any insurance shall be made
84	upon any life or lives—
85	Where the sum insured shall not exceed the sum of twenty-five hundred
86	dollars..... 50
87	Exceeding the sum of twenty-five hundred dollars, and not exceeding ten
88	thousand dollars..... 1 00



	<i>Duty.</i>
89 Exceeding the sum of ten thousand dollars	\$2 50
90 INSURANCE, (MARINE AND INLAND.) Policy of insurance, or other instru-	
91 ment, by whatever name the same shall be called, whereby any	
92 insurance shall be made upon any ship or vessel, or upon any goods,	
93 merchandise, specie, or other property on board of any ship or vessel,	
94 or upon the freight of any ship or vessel, or upon any other interest	
95 in or relating to any ship or vessel which may lawfully be insured;	
96 or upon any goods, merchandise, specie, or other property trans-	
97 ported by any conveyance whatsoever from any port or place to any	
98 other port or place—	
99 Where the amount insured shall not exceed the sum of twenty-five hundred	
100 dollars	50
101 Exceeding the sum of twenty-five hundred dollars, and not exceeding ten	
102 thousand dollars	1 00
103 Exceeding the sum of ten thousand dollars	2 50
104 INSURANCE, (FIRE.) Policy of insurance or other instrument, by what-	
105 ever name the same shall be called, whereby any insurance shall be	
106 made of or upon any building, goods, wares, merchandise, or other	
107 property from loss or damage by fire, or arising therefrom, by any	
108 insurance company, or its agent or other person—	
109 Where the amount insured shall not exceed the sum of twenty-five hun-	
110 dred dollars	50
111 Exceeding the sum of twenty-five hundred dollars, and not exceeding ten	
112 thousand dollars	1 00
113 Exceeding the sum of ten thousand dollars	2 50
114 LEASE, agreement, memorandum, or contract for the hire, use, or rent of	
115 any land, tenement, or portion thereof—	
116 If for a period of time not exceeding three years	50
117 If for a period exceeding three years	1 00
118 MANIFEST of part of the cargo of any vessel, (clearance)	25
119 MANIFEST of the cargo of any ship, vessel, or steamer—	
120 If the registered tonnage of such ship, vessel, or steamer does not exceed	
121 three hundred tons	1 00
122 Exceeding three hundred tons and not exceeding six hundred tons	3 00
123 Exceeding six hundred tons	5 00
124 MORTGAGE of lands, estate, or property, real or personal, heritable or	
125 movable whatsoever, where the same shall be made as a security	
126 for the payment of any definite and certain sum of money lent at	
127 the time or previously due and owing or forborne to be paid, being	
128 payable; also any conveyance of any lands, estate, or property what-	
129 soever, in trust to be sold or otherwise converted into money, which	
130 shall be intended only as security, and shall be redeemable before	
131 the sale or other disposal thereof, either by express stipulation or	
132 otherwise; or any personal bond given as security for the payment	
133 of any definite or certain sum of money	1 00
134 NOTARIAL ACT, any whatsoever, not otherwise charged in this schedule..	25



	<i>Duty.</i>	
135	PASSAGE TICKET, by any vessel from a port in the United States to a	
136	foreign port, if less than thirty dollars	\$0 50
137	Exceeding thirty dollars	1 00
138	POWER OF ATTORNEY for the sale or transfer of any stock, bonds, or	
139	scrip, or for the collection of any dividends or interest thereon	25
140	POWER OF ATTORNEY OR PROXY for voting at any election for officers of	
141	any incorporated company or society	10
142	POWER OF ATTORNEY to receive or collect rent	25
143	POWER OF ATTORNEY to sell and convey real estate, or to rent or lease	
144	the same, or to perform any and all other acts not hereinbefore	
145	specified	1 00
146	PROBATE OF WILL, or letters of administration: Where the estate and	
147	effects for or in respect of which such probate or letters of admini-	
148	stration applied for shall be sworn or declared not to exceed the	
149	value of two thousand five hundred dollars	50
150	To exceed two thousand five hundred dollars and not exceeding five thou-	
151	sand dollars	1 00
152	To exceed five thousand dollars and not exceeding twenty thousand	
153	dollars	2 00
154	To exceed twenty thousand dollars and not exceeding fifty thousand	
155	dollars	5 00
156	To exceed fifty thousand dollars and not exceeding one hundred thousand	
157	dollars	10 00
158	Exceeding one hundred thousand dollars	20 00
159	WAREHOUSE RECEIPT, or memorandum of any goods, merchandise, or	
160	property of any kind held on storage in any public or private ware-	
161	house or yard	25
162	LEGAL DOCUMENTS.	
163	Appeal from the decree of any court to a higher or appellate court	50
164	Writ, summons, subpoena, or other original process commenced in any	
165	court of law or equity	50

166 **SCHEDULE C.**

167	MEDICINES, for and upon every packet, box, bottle, pot, phial, or other	
168	enclosure, containing any drugs, herbs, pills, powders, tinctures, po-	
169	tions, cordials, bitters, anodynes, tonics, plasters, liniments, salves,	
170	ointments, drops, waters, essences, spirits, oils, or other preparation	
171	or composition whatsoever, used or applied, or to be used or ap-	
172	plied, externally or internally, as medicines or medicaments, for the	
173	prevention, cure, or relief of any disorder or complaint incident to	
174	or in anywise affecting the human or animal body; which shall be	
175	uttered or sold in the United States, where such packet, box, bottle,	
176	pot, phial, or other enclosure, with its contents, shall not exceed, at	
177	the retail price or value, the sum of twenty-five cents	3
178	Where such packet, box, bottle, pot, phial, or other enclosure, with its con-	
179	tents, shall exceed the retail price or value of twenty-five cents, and	
180	not exceed the retail price or value of fifty cents	5



Date of Hearing: May 8, 2013

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
K.H. "Katcho" Achadjian, Chair
AB 561 (Ting) – As Amended: April 30, 2013

SUBJECT: Taxation: documentary transfer tax.

SUMMARY: Makes changes to the types of transfers of real property that are subject to the Documentary Transfer Tax Act. Specifically, this bill:

- 1) Defines "realty sold" to include, but not be limited to, any acquisition or transfer of ownership interests in a legal entity that would constitute a change in ownership of that legal entity's real property pursuant to current law.
- 2) Repeals the exemption for transfers of interest in partnerships or other entities treated as partnerships for federal tax purposes, as defined by current law.
- 3) Repeals an obsolete provision in existing law pursuant to federal law which has been repealed.
- 4) Makes technical changes.

EXISTING LAW:

- 1) Establishes the Documentary Transfer Tax Act.
- 2) Authorizes cities and counties upon adoption of an ordinance by the board of supervisors, to impose a tax on a deed, instrument, or writing in which any land or other realty sold, based on the value of the real property transfer, if the value exceeds \$100.
- 3) Authorizes counties to impose the tax at a rate of \$0.55 for each \$500 of value.
- 4) Authorizes a city, upon adoption of the tax by the county, to impose a documentary transfer tax at half the rate of the county and apply it as credit against the county rate.
- 5) Provides several exemptions to the tax including most government-owned property, properties of nonprofit organizations, cemetery lots, recipients of foreclosed properties, the division of property between spouses under dissolution of marriage, certain reorganization of corporations under the Federal Bankruptcy Act, transfers between entities where 'underlying' ownership remains unchanged, and transfers of certain partnership properties.
- 6) Authorizes charter cities to enact a real property transfer tax.
- 7) Defines "change in ownership" to mean a transfer of any interest in real property, between a corporation, partnership, or other legal entity and a shareholder, partner or any other person.
- 8) Specifies what constitutes "a change in ownership." Sets forth the general rule that, when real property is owned by a legal entity, the purchase or transfer of ownership interests in that

entity does not trigger a change in ownership of the property, unless a) there is a "change in control" of the legal entity, or b) a cumulative transfer of more than 50% by the "original co-owners." Thus, when any person or entity obtains control, through direct or indirect ownership or control, of more than 50% of the voting stock of a corporation, or a majority ownership interest in any other type of legal entity, a reassessment of real property owned by the acquired legal entity (or any of its subsidiaries) is triggered. Furthermore, when voting stock or other ownership interests representing cumulatively more than 50% of the total interest in a legal entity is transferred by any of the "original co-owners" in one or more transactions, the real property that was previously excluded from reappraisal will be reassessed.

FISCAL EFFECT: None

COMMENTS:

- 1) The Documentary Transfer Tax, established in 1967, is a general tax that authorizes cities and counties to enact taxes on documents that serve to transfer real property valued over \$100. Existing law establishes the tax rate for counties at \$0.55 per \$500 of the property value. All 58 counties have enacted a documentary transfer tax, which then enables cities to levy a tax at half of the county rate. The transfer tax enacted by the city is credited against the amount of the county tax due. In other words, if a city enacts a documentary transfer tax, then they receive one half of the revenue from the countywide rate. If the city does not enact the tax, then the entire revenue goes to the county.

Current law provides several exemptions to the documentary transfer tax including most government-owned property, properties of nonprofit organizations, cemetery lots, recipients of foreclosed properties, the division of property between spouses under dissolution of marriage, certain reorganization of corporations under the Federal Bankruptcy Act, transfers between entities where 'underlying' ownership remains unchanged, and transfers of certain partnership properties.

- 2) This bill makes changes to the types of transfers of real property that a documentary transfer tax can be imposed upon. This bill defines "realty sold" to include, but not be limited to, any acquisition or transfer or ownership interests in a legal entity that would constitute a change in ownership of that legal entity's real property pursuant to the definition of a 'change in ownership' in the Revenue and Taxation Code. This bill deletes an obsolete code section, originally enacted by the Documentary Transfer Tax Act in 1967 before the Federal Public Utility Holding Company Act of 1935 was repealed. This bill also deletes the exemption for transfers of interest in partnerships or other entities treated as partnerships for federal tax purposes. This bill is author-sponsored.
- 3) The author argues that this bill "brings the Documentary Transfer Tax Act into conformance with the definition of 'realty sold' under California property tax law. This clarification is necessary because the change in ownership of a legal entity does not require a recorded instrument that would inform county recorders of the change in ownership and subsequent transfer tax due. This bill would simply ensure that the transfer tax is applied equally across all property owners based on existing definitions in statute, eliminating confusion about when transfer tax is due and streamlining collection efforts."

- 4) The Documentary Transfer Tax Act does not contain a definition of "realty sold". However, the courts have looked to the definitions and interpretation applicable to assessment and reassessment of property taxes to aid in the interpretation of the Transfer Tax Act.

"While the Document Transfer Tax Act does not define 'realty sold' that phrase is sufficiently similar to the phrase 'change in ownership' contained in the same code and governing an analogous subject, to warrant that each phrase be defined to have the same meaning." [*Thrifty Corp. v. County of Los Angeles.*, 210 Cal. App. 3d 881, 889 (1989)].

- 5) A 'change in ownership' is defined in current law as a transfer in real property between a corporation, partnership, or other legal entity, shareholder, or partner. When real property is owned by a legal entity, the purchase or transfer of ownership interests in that entity does not trigger a change in ownership of the property, unless there is a 'change in control' of the legal entity or one person or entity acquires more than 50% of the ownership interest of the entity. In other words, it is only deemed a change of ownership when any person or entity obtains control, through direct or indirect ownership, of more than 50% of the voting stock of a corporation, or a majority ownership interest in any other type of legal entity, that a reassessment of real property owned by the acquired legal entity (or any of its subsidiaries). Furthermore, when voting stock or other ownership interests representing cumulatively more than 50% of the total interest in a legal entity is transferred by any of the 'original co-owners' in one or more transactions, the real property that was previously excluded from reappraisal will be reassessed, due to the definition of change in ownership.
- 6) Current law does not contain an explicit provision which applies the documentary transfer tax to transfers of stock in corporation which hold real property. Utilizing this definition for documentary transfer taxes would allow the tax to be collected on transfers when a change of ownership of real property occurs through stock exchanges. Supporters of the bill argue that this change makes the current tax system more equitable by imposing the tax on all transfers of real property, including those where if enough shares of stock are sold that it constitutes a change of ownership. Opponents of the bill argue that the change of stock is not an instrument evidencing realty sold, so it is not appropriate to impose a transfer tax in these instances.

Opposition argues that "The bill interjects the concept of 'change in ownership' into the sale, transfer or conveyance of real property. Even prior to Proposition 13, when the stock of a company changed hands, the transfer tax was not triggered because there was no 'writing' evidencing 'realty sold'. The legal entity that owned the property didn't change. The bill expands the transfer tax to apply where there is no 'transfer' – the sale of stock is not an instrument evidencing 'realty sold' so the bill arbitrarily expands the definition of 'realty sold' to circumstances where there is no 'transfer'."

The author argues, "In California, *County of Los Angeles v. Southern California Edison Company*, 112 Cal.App.4th 1108, 1122, fn. 7 (2003) and *City of Huntington Beach v. Superior Court*, 78 Cal.App.3d 333, 340-341 (1978) both ruled that the transfer tax is an excise tax on the exercise of the privilege of conveying property, not on the privilege of recording an instrument with the County Recorder."

- 7) The author and supporters of the bill argue that this bill conforms statute with existing practice. Several counties and cities have adopted the "change of ownership" definition interchangeably with realty sold in order to impose documentary transfer taxes.
- 8) According to The California Municipal Revenue Sources Handbook, 2008 Edition, compiled by the League of California Cities, all counties and cities in California imposed a documentary transfer tax. Twenty-two charter cities impose a property transfer tax. The 121 charter cities in California have the ability to consider additional real property transfer taxes beyond the rates general law cities are subject to in existing law. The courts have found that the real property transfer taxes enacted by charter cities do not violate Proposition 13 or Proposition 62, which prohibits a transaction tax on the sale of real property. As a result, some charter cities have not only imposed additional rates, but have made changes to the types of transfers the tax is imposed upon.

According to the Los Angeles County Registrar-Recorder/County Clerk, "The Los Angeles County Registrar-Recorder/County Clerk (RRCC) began enforcing collection of Documentary Transfer Tax on legal entity transfers where no document is recorded, but which resulted a greater than 50% interest in control of the legal entity being transferred. The collection is made pursuant to the Los Angeles County Code, and California Revenue and Taxation Code, and is consistent with case law which defines 'realty sold' as having the same meaning as changes in ownership for property tax purposes. As a result, in an effort to collect the tax, the RRCC will continue to identify, and send notices for, properties where a change of ownership occurred which transferred a greater than 50% controlling interest in the legal entity thereby creating a liability for the Documentary Transfer Tax."

In addition to Los Angeles, the City and County of San Francisco, Santa Clara County, and Napa County have imposed similar changes to provide a definition for "realty sold" consistent with the definition of "change of ownership".

- 9) Constitutional requirements for voter approval of tax measures were initiated with the passage of Proposition 13 in 1978, and solidified with the passage of Proposition 218 in 1996. The latter measure clarified that general taxes for general governmental purposes require approval of a majority of voters, while special taxes for any specified purposes must be approved by two-thirds of voters. The Committee may wish to consider the application of Proposition 218 to transfer taxes.

The author and supporters of the bill argue that this bill conforms statute to existing practice in California. The Committee may wish to ask the author how many counties or cities have adopted the change of ownership definition and at what voter threshold, if any.

The Committee may also wish to consider how this bill is impacted by Proposition 26 (2010) which specifies that an increase in the level of tax should be subject to voter approval. The issue of whether voter approval is necessary at the local level to implement the changes in this bill may be an issue that is ultimately up to the courts to decide. The Committee may wish to consider if this bill will actually achieve the author's stated intent to simply implement current practice and will result in less legal uncertainty for local governments.

- 10) Committee amendment: The Committee may wish to require cities and counties to annually submit information regarding the imposition of documentary transfer taxes to the Board of Equalization.
- 11) Support arguments: Supporters argue that this bill would result in a more consistent and fair tax system and conforms statute to existing practice in California regarding the collection of the documentary transfer tax.

Opposition arguments: Opposition argues that this bill will allow counties and cities to impose a potentially massive tax increase on commercial, industrial, and residential rental property by arbitrarily expanding the definition of 'realty sold' to circumstances where there is no transfer of real property.

- 12) This bill is double-referred to the Committee on Revenue and Taxation.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees (AFSCME)
California Assessors' Association
California Professional Firefighters
California State Association of Counties
County Recorders' Association of California
Service Employees International Union (SEIU)

Opposition

Air Logistics Corporation
Associated Builders and Contractors of America
Associated General Contractors of America
Building Owners and Managers Association of California
California Apartment Association
California Attractions and Parks Association
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Downtown Association
California Healthcare Institute
California Independent Petroleum Association
California Land Title Association
California Mortgage Bankers Association
California New Car Dealers Association
California Retailers Association
California Railroad Industry
California Tank Lines, Inc.
California Taxpayers Association
California Travel Association
Chemical Transfer Co., Inc.

Opposition (continued)

Commercial Real Estate Development Association
Family Business Association
Howard Jarvis Taxpayers Association
International Council of Shopping Centers
National Association of Real Estate Investment Trusts
National Federation of Independent Business
TechAmerica
Tenet Healthcare Corporation
West Coast Leasing, LLC
West Coast Lumber & Building Material Association
Western Manufactured Housing Communities Association

Analysis Prepared by: Misa Yokoi-Shelton /L. GOV. / (916) 319-3958

SB 78

Honorable Ronald Reagan
Governor of California
State Capitol Building

April 5, 1968

Attention: Legislative Section

H. F. Freeman, Executive Secretary

SB 78 (Stiern)

Last year the Legislature enacted the Documentary Stamp Act which authorized cities and counties to impose a tax on real estate sales. This tax, which has been adopted in all 58 counties, uses stamps as a collection device. The law requires that the State Board of Equalization sell the stamps, at actual cost of printing and distribution, to county recorders. County recorders sell the stamps to taxpayers, who affix them to the document of transfer.

Under existing law, the estimated cost of stamps to local governments is about \$25,000 annually. The State Board of Equalization has absorbed the cost required in developing the stamp program, arranging for a suitable producer of the stamps and billing the 58 counties for the stamps. In the future, however, the board will have to charge the counties a small sum for billing, stamp procurement, and monitoring of the program.

SB 78 eliminates the use of stamps as a device for collecting the tax and, thus, relieves state and local government of a small amount of needless expense. The State Board of Equalization has no objection to the adoption of this measure.

RHO

HFF:ph

16

LEGISLATIVE INTENT SERVICE (800) 666-1917



Introduced by Senator Stiern

January 18, 1968

139

REFERRED TO COMMITTEE ON REVENUE AND TAXATION

An act to amend Section 11901 of, to repeal Sections 11902, 11931, 11933 and 11934 of, to amend and renumber Sections 11903, 11904, 11932 and 11935 of, to add Sections 11932 and 11933 to, and to amend the heading of Part 6.7 (commencing with Section 11901) of Division 2 of, and to add a new chapter heading immediately preceding Section 11901 of, the Revenue and Taxation Code, relating to a real property transfer tax, and declaring the urgency thereof, to take effect immediately.

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

- 1 SECTION 1. The heading of Part 6.7 (commencing with
- 2 Section 11901) of Division 2 of the Revenue and Taxation
- 3 Code is amended to read:
- 4
- 5 PART 6.7. DOCUMENTARY STAMP TRANSFER
- 6 TAX ACT
- 7
- 8 SEC. 2. The following chapter heading is added to the
- 9 Revenue and Taxation Code, immediately to precede Section
10. 11901, to read:

LEGISLATIVE COUNSEL'S DIGEST

SB 78, as introduced, Stiern (Rev. & Tax.). Real property transfer taxes.

Adds, amends, repeals various secs., R. & T.C.

Deletes requirement from the authorization to local government to impose a tax on real property transfers that such a tax must be evidenced by documentary stamps supplied by the State Board of Equalization on the instrument of transfer and, instead, requires that the amount of tax shall be shown on the face of the instrument of transfer or on a separate paper prior to the time such an instrument is recorded. To take effect immediately, urgency statute but to become operative on July 1, 1968.

Vote—5; Appropriation—No; Fiscal Committee—No.



CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Sec. 3. Section 11901 of the Revenue and Taxation Code is amended to read:

11901. This act is known and may be cited as the "Documentary Stamp Transfer Tax Act."

Sec. 4. Section 11902 of the Revenue and Taxation Code is repealed.

11902. "Board" means the State Board of Equalization.

Sec. 5. Section 11903 of the Revenue and Taxation Code is amended and renumbered to read:

11903. "County" shall include a city and county.

Sec. 6. Section 11904 of the Revenue and Taxation Code is amended and renumbered to read:

11904. "Recorder" means the recorder of a county.

Sec. 7. Section 11931 of the Revenue and Taxation Code is repealed.

11931. The State Board of Equalization shall furnish upon the request of any recorder, adhesive stamps in suitable denominations to be affixed to the deeds, instruments and writings subject to tax pursuant to this part. The board shall sell such stamps to county recorders at the actual cost to the board of printing and distributing the stamps. The board shall not furnish stamps to any county or city and county which does not impose a real property transfer tax in conformity with the provisions of this part.

Sec. 8. Section 11932 of the Revenue and Taxation Code is amended and renumbered to read:

11932. If the legislative body of any city imposes a tax pursuant to subdivision (b) of Section 11911 equal to one-half the amount specified in subdivision (a) of Section 11911, the county in which such city is located shall grant a credit against the county tax in the amount of the city tax if the city's tax conforms to this part. The county shall collect all taxes imposed pursuant to this part and the county auditor shall allocate the proceeds as follows:

(1) All money which relates to transfers of real property located in unincorporated areas of the county or in a city and county shall be allocated to the county or city and county, as the case may be.

(2) All money which relates to transfers of real property located in a city which imposes a tax on transfers of real property pursuant to this part shall be allocated one-half to such city and one-half to the county.

(3) All money which relates to transfers of real property located in a city which imposes a tax on transfers of real property not in conformity with this part shall not be credited against the county tax and the entire amount collected by the county shall be allocated entirely to the county.

(4) All money which relates to transfers of real property in a city which does not impose a tax on transfers of real property shall be allocated entirely to the county.

Sec. 9. Section 11932 is added to the Revenue and Taxation Code, to read:

11932. If a county has imposed a tax pursuant to this part, every document subject to tax which is submitted for recordation shall show on the face of the document or in a separate paper the amount of tax due and the incorporated or unincorporated location of the lands, tenements or other realty described in the document. If shown on a separate paper, the amount of tax disclosed on the paper shall be available for use by the county auditor and by the county assessor in the scope of their official duties. The separate paper shall not otherwise be available for public reference.

Sec. 10. Section 11933 of the Revenue and Taxation Code is repealed.

11933. If a county has imposed a tax pursuant to this part, the county recorder shall sell the stamps at their denominated values and shall report no information to the State Board of Equalization with respect to sales of stamps.

Sec. 11. Section 11933 is added to the Revenue and Taxation Code, to read:

11933. If a county has imposed a tax pursuant to this part, the recorder shall not record any deed, instrument or writing subject to the tax imposed pursuant to this part, unless the tax is paid. The recorder may rely on the amount of tax shown on the document or in a separate paper in compliance with Section 11932 as the amount of tax due. Failure to collect the tax due shall not affect the constructive notice otherwise imparted by recording a deed, instrument or writing.

Sec. 12. Section 11934 of the Revenue and Taxation Code is repealed.

11934. If a county has imposed a tax pursuant to this part, the recorder shall not record any deed, instrument or writing subject to the tax imposed pursuant to this part, unless the stamps described in Section 11931 are affixed thereto. If the party submitting the document for recordation so requests, the stamps shall be affixed to the document by the recorder after the permanent record is made and before the original is returned as specified in Section 27021 of the Government Code. However, the failure to affix any such stamp shall not affect the constructive notice otherwise imparted by recording such deed, instrument or writing.

Sec. 13. Section 11935 of the Revenue and Taxation Code is amended and renumbered to read:

11935. Claims for refunds of taxes imposed pursuant to this part shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of this code.

1 Sec. 14. This act is an urgency statute necessary for the
 2 immediate preservation of the public peace, health or safety
 3 within the meaning of Article IV of the Constitution and
 4 shall go into immediate effect. The facts constituting such
 5 necessity are:

6 At the 1967 Regular Session of the Legislature, Chapter
 7 1332 of the Statutes was enacted to authorize local government
 8 to impose a uniform real property transfer tax to take effect
 9 upon the repeal of the federal tax on such transfers. In con-
 10 forming the state authorization to the federal law existing at
 11 that time, the Legislature specified that documentary stamps
 12 must be used to establish that the tax on real property trans-
 13 fers had been paid, as was the case under federal law. How-
 14 ever, it has now been established that the use of such stamps
 15 by local government would be an unnecessary expense, as
 16 the same purpose may be carried out as expeditiously by
 17 following the terms of this act. In order to relieve local govern-
 18 ment of this unnecessary financial burden at the earliest pos-
 19 sible date, it is necessary that this act go into immediate effect.

20 Sec. 15. The provisions of this act shall become operative
 21 on July 1, 1968.

AMENDED IN SENATE FEBRUARY 19, 1968

SENATE BILL

No. 78

Introduced by Senator Stiern

January 18, 1968

REFERRED TO COMMITTEE ON REVENUE AND TAXATION

An act to amend Section 11901 and 11922
 of, to repeal Sections 11902, 11931, 11933 and 11934 of, to
 amend and renumber Sections 11903, 11904, 11932 and 11935
 of, to add Sections 11932 and 11933 to, and to amend the
 heading of Part 6.7 (commencing with Section 11901) of
 Division 2 of, and to add a new chapter heading immedi-
 ately preceding Section 11901 of, the Revenue and Taxation
 Code, relating to a real property transfer tax, and declaring
 the urgency thereof, to take effect immediately.

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

- 1 SECTION 1. The heading of Part 6.7 (commencing with
- 2 Section 11901) of Division 2 of the Revenue and Taxation
- 3 Code is amended to read:

LEGISLATIVE COUNSEL'S DIGEST

SB 78, as amended, Stiern (Rev. & Tax.). Real property transfer taxes.

Adds, amends, repeals various secs., R. & T.C.

Deletes requirement from the authorization to local government to impose a tax on real property transfers that such a tax must be evidenced by documentary stamps supplied by the State Board of Equalization on the instrument of transfer and, instead, requires that the amount of tax shall be shown on the face of the instrument of transfer or on a separate paper prior to the time such an instrument is recorded.

Exempts entirely from the real property transfer tax authorized by the Documentary Tax Act, those transfers to which an entity of government is a party, rather than exempting the entities of government from the tax but authorizing the collection from any other party liable therefor.

To take effect immediately, urgency statute but to become operative on July 1, 1968.

Vote—; Appropriation—No; Fiscal Committee—No.



CERTIFICATE OF SERVICE

I, Sherry Tan, declare as follows:

I am employed in the County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, California 94105, in said County and State. On September 4, 2015, I served the within:

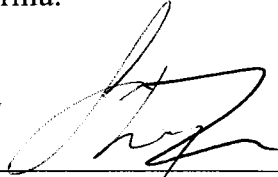
MOTION FOR JUDICIAL NOTICE IN SUPPORT OF REPLY BRIEF ON THE MERITS

to each of the persons named below at the address(es) shown, in the manner described.

SEE ATTACHED SERVICE LIST

- BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated on the attached service list for collection and mailing at my business location, on the date mentioned above, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in the proof of service.

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s), and all copies made from same, were printed on recycled paper, and that this certificate was executed on September 4, 2015, at San Francisco, California.



Sherry Tan

Service List

**Mark J. Saladino, County Counsel
Albert Ramseyer, Principal Deputy County
Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2713**

*Attorneys for
Defendant/Respondent,
County of Los Angeles*

**Clerk of the Court of Appeal
Second District, Division Seven
300 South Spring Street
Room 2217
North Tower
Los Angeles, CA 90013**

**Clerk of the Los Angeles County
Superior Court
Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012**