Feds To The Rescue: 2019 California Transfer Tax Update

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I. INTRODUCTION

California Assessor-Recorders require the payment of a tax on most instruments that transfer an interest in real property.[1] The documentary transfer tax is not a fee paid in connection with the recordation of deeds or other documents evidencing transfers of ownership of real property. Rather, it is an excise tax on the privilege of conveying real property by means of a written instrument.[2] Such taxes typically become due on execution and delivery of the document transferring title. Federal, state, and local laws must be reviewed before execution and delivery of the transfer document to determine whether the transfer is subject to taxation, if an exemption is available, or when the payment becomes delinquent.

An introduction to California's transfer tax laws first appeared in 2005 in the California Real Property Journal.[3] An update, which addressed indirect entity transfers and exemptions from transfer tax in greater depth, appeared in Spring 2015, entitled *2015 Update: Transfer Taxes in California*.[4]

This article has three aims. These are:

- Discuss the 2017 California Supreme Court decision on legal entity transfers found in *926 North Ardmore Avenue, LLC v. County of Los Angeles*, 3 Cal. 5th 319 (2017) ("*Ardmore*"). This case, although mentioned in the 2015 update, had not been finally decided at the time the update was published.
- Discuss the repeal of the technical termination rules in the "Tax Cuts and Jobs Act,"[5] and its impact on the Continuing Partnership Exemption contained in California Revenue & Taxation Code section 11925.[6]
- Provide an abbreviated update on all charter county and city transfer tax ordinances. A complete listing of all charter city and county transfer tax ordinances is available to members of the Real Property Section of the California Lawyers Association ("CLA") on the CLA's website at https://calawyers.org/transfer-tax-table.

II. CALIFORNIA TRANSFER TAX

In 1967, the California Legislature enacted the Documentary Transfer Tax Act[7] ("DTTA") to replace the Federal Stamp Tax Act on Conveyances ("Federal Stamp Act").[8] The Federal Stamp Act was repealed in 1965.[9] The California Legislature modeled the DTTA after former section 4361 of the Federal Stamp Act, and the DTTA applies to conveyances of stock and realty.[10] The Legislature did not, however, incorporate the Federal Stamp Act's language on transfers of stocks and bonds from subchapter B of chapter 34 of the Federal Stamp Act. The repeal of the stamp tax on transfers of capital stock became effective January 1, 1966; the repeal of the stamp tax on the sale of realty became effective January 1, 1968.[11]

The DTTA does not expressly require that it be construed in the same manner as the Federal Stamp Act, but the DTTA employs language nearly identical to that found in the former federal statute. Courts infer from this fact that the California Legislature intended to perpetuate the federal administrative interpretations of the DTTA.[12] In fact, numerous counties and cities, including but not limited to, San Francisco,[13]

Alameda,[14] Contra Costa, [15] San Diego,[16] and Ventura[17] state in their transfer tax acts:

> In the administration of this ordinance the recorder shall interpret its provisions consistently with those Documentary Stamp Tax Regulations adopted by the Internal Revenue Service of the United States Treasury Department which relate to the Tax on Conveyances and are identified as Sections 47.4361-1, 47.4361-2 and 47.4362-1 of Part 47 of Title 26 of the Code of Federal Regulations, as the same existed on November 8, 1967, except that for the purposes of this ordinance, the determination of what constitutes "realty" shall be determined by the definition or scope of that term under state law.

Some counties, especially in Northern California, have transfer tax ordinances that distinctly differ from the DTTA. Others simply incorporate by reference some or all of the exemptions contained in the DTTA. What qualifies as "realty sold" and available tax exemptions can only be determined by a thorough review of the transfer tax provisions in the jurisdiction where the property is located. Exemptions available in county ordinances are not necessarily available under city code sections, and vice versa.[18]

III. WHAT IS A CHANGE IN OWNERSHIP FOR TRANSFER TAX PURPOSES AFTER *ARDMORE*?

In one of the most important transfer tax cases occurring since the landmark decision, *Thrifty Corp. v. County of Los Angeles* ("*Thrifty*"),[19] the California Supreme Court in *Ardmore* held that a transfer tax can be imposed when there is a conveyance of the beneficial ownership in real property, directly or indirectly. Thus, unless an exemption applies, transfer tax must be paid when an interest in a legal entity is conveyed and the legal entity owns real property in California. The Court's decision turned on the definition of "realty sold" as used in California Revenue & Taxation Code section 11911.

A. Ardmore Factual Background

In 1972, Mr. and Mrs. Averbook established a family trust that owned several assets, including an apartment building at 926 North Ardmore Avenue, Los Angeles, California. When Mr. Averbrook passed away in 2007, the property transferred into an administrative trust for Mrs. Averbook's benefit. The couple's two sons were the named trustees of the administrative trust.

The sons, the new trustees, first formed two entities: 926 North Ardmore Avenue, LLC ("Ardmore LLC") and BA Realty LLP ("BA Realty"). The administrative trust was the sole member of Ardmore LLC and that trust held a 99% limited partnership interest in BA Realty. Then events grew complex.

- In August 2008, the administrative trust conveyed the apartment building to Ardmore LLC.
- The administrative trust then transferred its membership interest in Ardmore LLC to BA Realty.
- In December 2008, the family trust distributed its limited partnership interest in BA Realty to four subtrusts: 65% to the Survivor's Trust; 10% to the Bypass Trust; 1% to the Exempt Marital Trust; and 24% to the Non-Exempt Marital Trust. All of the subtrusts were established for Mrs. Averbook's benefit.
- In January 2009, Mrs. Averbook directed several of the subtrusts to sell approximately 90% of the partnership interests in BA Realty to two irrevocable trusts she created for her sons, Allen's Trust and Bruce's Trust.
- The sales agreements between the Survivor's Trust and the marital trusts, on the one hand, and the sons' trusts, on the other, required the trustees of the sons' trusts to issue promissory notes to the transferors in an amount ascertained by an appraisal firm. The sales were memorialized with master transfer agreements, promissory notes, security agreements, and partial guarantees.[20] The transactions did not involve the execution of a deed or other instrument transferring title. The agreements did not mention the building or its location, nor were the agreements recorded.[21] Following this transaction, Allen's Trust and Bruce's Trust each held a 44.6% interest in BA Realty; the Bypass Trust held a 9.8% interest in BA Realty; and BA Realty Management LLC continued to hold the remaining 1% general partnership interest in BA Realty.[22]

The trusts reported the sale of the interests in BA Realty to the California State Board of Equalization ("BOE") on BOE Form 100-B.[23] The transaction was not described as constituting a change in ownership for transfer tax purposes. The BOE later reported the transfer to the Los Angeles County Assessor, who then reassessed the property.[24] Because more than 50 percent of the interests in the apartment

building were cumulatively transferred to the sons' trusts, the county held that a change of ownership had occurred under section 64(d). The county then reassessed 926 North Ardmore Avenue for property tax purposes.

In 2009, the California Legislature amended California Revenue & Taxation Code section 408 to provide the county recorders access to assessor records to determine whether to impose a documentary transfer tax.[25] The Legislature later added section 408.4 to allow a city tax administrator access to the assessor records.[26]

In August 2011, more than two years after the subtrusts' transfer of interests to Allen's Trust and Bruce's Trust, the Los Angeles County Registrar-Recorder sent a "Notice and Demand for Immediate Payment of Documentary Transfer Tax" to the property-owning entity. The county's notice cited both section 11911 and Los Angeles County Code section 4.60.020. It asserted that $2,160.40 in documentary transfer tax was owed to the county and $8,838.00 was owed to the City of Los Angeles based on the value of the property as of the date of the transfer. Ardmore LLC, as plaintiff, paid the taxes under protest, claiming that no tax was due and payable on the basis of "a Transfer of Realty Held by a Continuing Partnership (RTC § 11925; LA CC § 4.60.080),"[27] and then promptly filed refund claims.

Ardmore LLC based its claim for a tax refund on several theories. First, it contended that no taxes were due because transfer tax is a tax on the sale of real property and not a tax on the sale of interests in entities, except for sales of interests in partnerships holding real property that result in the termination of the partnerships under IRC § 708. Second, it claimed, in the alternative, that the sale of membership interests in BA Realty did not qualify as a termination of the partnership under section 708, and that no reassessable event had occurred to trigger the DTTA. No tax was due because (1) BA Realty, the entity transferred, did not hold legal title to the apartment building; (2) [Ardmore] LLC, which held title to the property, was not transferred; and (3) legal title to the property did not change. Stated another way, Ardmore LLC argued that the only provision that possibly could apply to the transfers was section 11925; and even that section did not apply because under federal grantor trust rules,[28] Mrs. Averbook was the owner of the Allen and Bruce Trusts. Therefore, the partnership had not technically terminated. No transfer tax was due and owing.[29]

B. 2013 Trial Court Decision

After the county rejected the tax refund claims on January 10, 2012, Ardmore LLC filed a complaint against the county and the city in Los Angeles Superior Court seeking a refund of the paid taxes. Ardmore LLC again argued that documentary transfer tax could only be imposed on the sale of real property and not on the sale of interests in legal entities (except for sales that result in a termination of the partnership under section 11925).

Ardmore LLC also argued that although section 11925 permitted the recorder to impose a tax on transfers of controlling interests in partnerships that "hold realty," section 11925 did not apply because BA Realty did not hold title to any realty; instead, it owned an LLC that held title to real property.[30] Ardmore LLC also argued that there was no sale of a "controlling interest" in BA Realty because Mrs. Averbook qualified under federal law as the legal and beneficial owner of the subtrusts and the Allen and Bruce Trusts. She had retained the right to reacquire any property within those trusts and replace it with property of equal value.[31]

In its statement of decision, the trial court found that there was no dispute as to any material facts. It ruled in favor of the county, on the ground that a transfer of more than a 50 percent interest in a partnership permitted the recorder to collect a documentary transfer tax on real property owned by a "lower tier entity" of the partnership. Therefore, a transfer tax could be assessed and collected even though the building was owned by the lower tier entity of the partnership (Ardmore LLC) rather than the partnership (BA Realty) itself.[32] After entry of a judgment of dismissal, Ardmore LLC appealed the decision to the Second District Court of Appeal.

C. 2014 Appellate Court Decision

The Second District Court of Appeal affirmed the trial court's decision. The Court of Appeal agreed with Ardmore LLC that the DTTA was patterned after the portion of the Federal Stamp Act applying to conveyances of real property. But the court disagreed with Ardmore LLC concerning Ardmore LLC's argument that its interpretation of section 11911 rested only on federal laws and cases interpreting them. The court held that "realty sold" as used in section 11911 was "sufficiently similar" to the definition of "change in ownership" in sections 64(c) and (d) that the two should have the same meaning."[33] Quoting *Thrifty*, the court stated that "'under principles of statutory construction, similar terms used 'in the same code and governing … analogous subject(s)' should generally 'be defined consistently' unless 'countervailing indications required otherwise.'"[34]

With respect to section 11925's Continuing Partnership Exemption, the Court of Appeal agreed with Ardmore LLC that the exemption did not apply. BA Realty, the partnership

whose interests were transferred, did not own the apartment building. The building was owned by a limited liability company that was owned by the partnership.[35] The Court of Appeal denied Ardmore LLC's petition for rehearing. Subsequently, the California Supreme Court granted review.

D. 2017 California Supreme Court Decision

The Supreme Court, in a 6-1 decision, joined by all but Justice Leondra Kruger, affirmed the decision in the lower court and held that the sale of the interests to Allen's and Bruce's Trusts required Ardmore, LLC to pay documentary transfer tax.

1. Amicus Briefs

In addition to the arguments raised in the lower courts, amicus curiae briefs in support of the taxpayer were filed by, among others, the California Alliance of Taxpayer Advocates,[36] the California Council on State Taxation,[37] the California Taxpayers Association,[38] the Institute for Professionals in Taxation,[39] and the California Society of Certified Public Accountants.[40] In support of the County of Los Angeles, various county assessor-recorders also filed a brief.[41] The arguments raised by amici curiae are interesting, raising issues not addressed in the lower courts' decisions:

(a) Imposition of the Tax Violates Propositions 218 and 26

Three amici, California Alliance of Taxpayer Advocates, the California Council on State Taxation, and the California Taxpayers Association (collectively, the "Taxpayer Organization Amici"), in their separate amicus briefs, asserted that it was unconstitutional to impose a tax on the transfers in *Ardmore.* The three Taxpayer Organization Amici observed that Proposition 218[42] establishes that no new or expanded taxes can be imposed except under four specified circumstances, none of which applied in *Ardmore*. The Taxpayer Organization Amici also contended that under Proposition 26[43] no new taxes could be imposed without voter approval.

With respect to Proposition 218, amici curiae asserted that the application of the tax to legal entity transfers did not fall within the four exceptions. First, documentary transfer tax is not an ad valorem property tax; rather it is an excise tax.[44] Second, the tax is not a "special tax" as defined in article XIII D, section 2(e).[45] Third, the tax is not an "assessment" as defined in article XIII D, section 2(b).[46] Lastly, the tax is not a fee or charge for a "property related service" as defined in Article XIII D, section 2(h). Thus, reinterpretation of section 11911 to include indirect transfers of interests in real property violates Proposition 218.

With respect to Proposition 26, amici curiae argued the decision to enforce payment of the tax was unlawful since Los Angeles County voters had not approved it. Proposition 26, adopted by the voters in November 1996, expressly limits the methods by which local governments can exact revenue from taxpayers without their consent. It states:

> Any change in state statutes which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

Thus, the Taxpayer Organization Amici argued that the county could not retroactively rewrite section 11911 to convert its transfer tax ordinance to include transfers of interests in legal entities that own real property.

The county responded to these claims in its Consolidated Answer to Amici Curiae Briefs Supporting Appellant. It argued that applying the tax to transfers of interests in legal entities owning real property was "entirely within the ambit and consistent with the spirit of the 1967 DTT Act and the Legislature's recent work in this area." Thus, imposing the tax was allowed and could be enforced without a vote of the electorate.

(b) Applying Sections 64 and 11925 Leads to Absurd Results

Another amici, the Institute for Professionals in Taxation, asserted in its amicus curiae brief that incorporating section 64's definition of "a change in ownership" with respect to entity transfers leads to absurd results when applying section 11925's Continuing Partnership Exemption.

The Court of Appeal in *Ardmore* held that section 11925 did not apply because a partnership did not own the apartment building, a single-member LLC did.[47] The transfer of the interests into the sons' trusts resulted in transfer tax and reassessment of property tax. Had BA Realty directly owned the building, the property may have been reassessed, but BA Realty would not have had to pay transfer tax.

Under Ardmore LLC's reasoning, an entity or an individual selling real estate by recorded deed cannot avail itself of section 11925's exemption and may be fully taxed, but the same sale involving a continuing partnership would be tax-

free if it met section 11925's requirements. Thus, the mere existence of the exemption allows "form" to take precedence over "substance."

(c) The Tax is a Tax on Recordation and Is Not a General Realty Transfer Tax

One of the three Taxpayer Organization Amici, the California Taxpayers Association, asserted that recordation of a document is an essential predicate to the imposition of a transfer tax and the method of tax collection. It referred the court to sections 11932 and 11933.

Section 11932 requires that "every document subject to the tax *which is submitted for recordation* shall show on the face of the document the amount due."[48] Section 11933 states that "the recorder shall not ***record*** any deed, instrument, or writing subject to the tax … *unless the tax is paid at the time of recording*."[49]

The county, in its Answer to the Petition for Review, asserted that section 11932 "only prescribes a precondition for recordation. This section does not deal with the imposition of the tax nor does it specify when the liability for the tax accrues."[50]

The county also argued that *City of Huntington Beach v. Superior Court* ("*Huntington Beach*")[51] supported its contention that a transfer tax is a tax on the event of selling, conveying, or transferring real property, and not on recordation. Although *Huntington Beach* did not distinguish between "transferring" and "recordation," it specifically held that the city's transfer tax was "a tax on the exercise of the right or privilege of transferring property and not a tax on real property."[52]

2. The California Supreme Court Majority Opinion

Affirming the lower court's opinion, the California Supreme Court held that taxing authorities may impose California's documentary transfer tax on transfers of interests in legal entities holding title to real property, as long as there is a written instrument reflecting an actual transfer of the legal beneficial interest for consideration. This rule applies even if the instrument does not directly reference the real property and is not recorded.[53] The majority began its analysis with the following question: What was the intent of the Legislature when it adopted its transfer tax ordinance?

To determine intent, the Court looked to the county's transfer tax ordinance as a whole. "The words of a statute 'must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must, to the extent possible, be harmonized.'"[54] Addressing the arguments raised by Ardmore LLC and the amici curiae, the Court looked at the language contained in sections 11911, 11911.1, 11932, and 11933. With respect to interpretation of section 11911, the Court concluded that section 11911, in isolation, was ambiguous.[55] It also concluded that although sections 11911.1, 11932, and 11933 may (i) require that documents submitted for recording contain assessor parcel numbers,[56] (ii) state the amount of tax owed and whether the property is located within the incorporated or unincorporated area of the county,[57] and (iii) prohibit the recording of any document unless the tax is paid at the time of recording,[58] these sections shed no light on whether unrecorded transactions are subject to taxation.[59]

The Supreme Court's majority opinion that the Legislature intended to tax unrecorded conveyances of interests in legal entities that own real property rests largely on the Court's interpretation of section 11925.[60] Section 11925, the Court held, "creates a conditional *exemption* from the documentary transfer tax for realty held by specified entities when interests in those entities are transferred."[61] Without discussing section 708 of the Internal Revenue Code or the "entity" vs. "aggregate" treatment of partnerships under both tax and non-tax law,[62] the Court determined that section 11925[63] was an "exemption," signifying an intention to apply the tax to transfers of interests in entities. Quite simply, if the Legislature did not intend to tax legal entity transfers, the partnership exemption would have been unnecessary.[64]

The Court also noted that the Legislature patterned the DTTA after the former Federal Stamp Act. The majority opinion acknowledged Ardmore LLC's argument that the Legislature deliberately decided not to adopt the federal stamp tax on the transfer of corporate stock (Federal Entity Transfer Tax).[65] However, except for stating that LLC interests did not exist when the DTTA was adopted in 1967, and that tax laws created disincentives for small businesses to take the corporate form,[66] the majority did not explain why the decision not to impose a Federal Entity Transfer Tax had no bearing on whether the Legislature intended to tax legal entity transfers. Instead, the majority focused its attention on federal authorities interpreting the former Federal Stamp Act, including *United States v. Seattle-First National Bank* ("*Seattle Bank*").[67]

The Court concluded that in determining whether the substance of the transaction warranted imposing a tax, the "critical factor" in determining whether the tax could be imposed is whether there had been a sale resulting in a

transfer of the beneficial ownership of real property. Ardmore LLC had argued that the critical factor in *Seattle Bank* lay in the absence of any formal instruments directly referencing the real property. But the majority disagreed. It concluded that the decision in *Seattle Bank* was based on the fact that the transfer did not involve the purchase or sale of property owned by the bank.[68]

In support of this conclusion, the Court cited three decisions. In *Carpenter v. White* ("*Carpenter*"),[69] two business trusts had transferred real property to a third business trust in consideration for shares in the third trust. Transfer tax was found to be due and owing because there was a complete change in the legal title and the beneficial ownership of the property. Similarly, *Socony-Vacuum Oil Co. v. Sheehan* ("*Socony*")[70] and *United States v. Niagara Hudson Power Corporation* ("*Niagara*")[71] involved situations where no tax was due, since only the legal title to the properties was transferred. Functional ownership, the majority asserted, remained in both instances with the sellers. Relying on these decisions and the Legislature's decision in 1999 to amend section 11925 to add subsection (d),[72] the Court concluded that it was proper to look to the "change of ownership" rules contained in Revenue & Taxation sections 60 and 64(c) and (d) to distinguish "true ownership changes" from "paper" ones,[73] even though they were enacted after the DTTA was enacted.

Under section 60, a "change of ownership" occurs when there is a "transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." For example, a long-term lease,[74] transfer from a grandparent to a grandchild,[75] or a new income beneficiary succeeding a prior beneficiary of a trust all qualify as a change of ownership.[76]

Under section 64(a), except as provided in subdivisions (c) and (d), the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership interest, are not deemed to constitute a transfer of the real property of a legal entity.

Under section 64(c),

> a change of ownership occurs when a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

The implementing regulations describe this as a "change in control" of the legal entity.[77]

Under section 64(d), if property is transferred to a legal entity in a transaction previously excluded from change in ownership under section 62(a)(2) (proportional interest transfers), and the original co-owners subsequently transfer interests cumulatively representing more than 50 percent of the total interests in the entity in one or more transactions, a change of ownership of that real property owned by the legal entity shall be deemed to have occurred. The implementing regulations describe this as the "Transfers of more than 50 Percent Rule."[78]

Reassessment, the majority asserted, cannot be avoided "via the simple expedient of disguising transfers of realty by means of selling all or a majority of the stock in real estate holding companies."[79] Section 11911 permits the imposition of a documentary transfer tax whenever a transfer of an interest in a legal entity results in a change in ownership of real property within the meaning of sections 64(c) or (d), so long as there is a written instrument reflecting a sale of the property for consideration.[80]

Lastly, the Court challenged Ardmore LLC's statutory construction, giving the following example:

> If A directly transferred real property to B, that deed would be taxable. But, if A created a limited liability company, and executed a deed transferring real property to the company, and the company then executed a deed to B, the tax would not apply.[81]

The Court found that Ardmore LLC's approach would elevate "form" over "substance," and would conflict with the purpose of the DTTA.[82] The Court failed, however, to address Ardmore LLC's and the Taxpayer Organization Amici's assertion that allowing only continuing partnerships an exemption also places form over substance. The rule results in a transfer tax being owed when one share of a

non-partnership entity is transferred, but not when one share of a partnership entity is transferred and there has been no technical termination.

3. The Dissenting Opinion

In a thoughtful, well-reasoned dissenting opinion, Justice Kruger acknowledged the attractiveness of defining "realty sold" using the property tax definition of "change in ownership." However, she found no support in section 11925's language, in the federal cases advanced by the county, or "in the 150-year history of the documentary transfer tax" for incorporating into the DTTA the change of ownership rules found in sections 60 and 64.[83]

First, Justice Kruger found reliance on section 11925's language unavailing:

> "In the case of any realty held by a partnership or other entity treated as a partnership for federal income tax purposes," the tax shall not be imposed "by reason of any transfer of an interest" in the entity if the entity is considered a continuing partnership under 26 United States Code section 708 and continues to hold the realty.[84]

The dissent observed that section 11925(b)'s language undermines the majority's position that "a written instrument conveying an interest in real property may be taxable, even if the instrument does not directly reference the real property and is not recorded."[85] Subdivision (b) provides:

> If there is a termination of any partnership . . . the partnership . . . *shall be treated as having executed an instrument* whereby there was conveyed, for fair market value . . . , all realty held by the partnership . . . at the time of the termination.[86]

This subdivision, the dissent argued, does not tax the instrument effectuating the transfer or the transfer itself. Rather, it deems there to have been an "'instrument whereby … all realty held by the partnership' is conveyed for consideration." This reinforces the conclusion that "the object of the DTTA is … an instrument by which realty, rather than an entity interest, is conveyed."[87]

Second, the dissent challenged the majority's reliance on the federal cases cited as support for the argument that "realty sold" equals "change in ownership." Carpenter, Socony, and Niagara, the dissent argued, did not involve transfers of interests in legal entities that own real property. Those cases only determined one issue: whether the deed or other instrument transferring title to real property was taxable. Those opinions were based on whether there was a change in the beneficial ownership of the property. The dissent asserted that "[t]he question … is not whether the transfer of legal title is a taxable sale in the absence of a transfer of beneficial or equitable ownership. It is whether the transfer of beneficial or equitable ownership, standing alone, is a sale of realty even in the absence of a document transferring legal title."[88]

Third, the dissent asserted that reliance on *Seattle Bank* was also inappropriate. Although there was a change in the beneficial interest in real property owned by the bank, no tax was owed in *Seattle Bank* because (i) there was no formal instrument or writing; and (ii) the property had not been "sold" or vested in a "purchaser or purchasers" within the ordinary meaning of those terms. Thus, under the holding in *Seattle Bank*, a change in beneficial interest of real property, alone, should not result in the imposition of a transfer tax.

Fourth, the dissent also pointed out that documentary transfer tax is an excise tax on the privilege of selling real property. Ownership of an interest in an entity, the dissent argued, does not necessarily "entail the right to possess, use, or alienate the entity's assets."[89]

With respect to amici curiae's assertions that collection of the tax was a violation of Propositions 218 and 26, both the majority and the dissent failed to directly address the issue. One can assume, however, that since the majority interpreted section 11911 of the DTTA as including entity transfers, it necessarily found that the imposition of the tax was not a new or expanded tax under Propositions 218 or 26. Only enforcement was new.

With respect to voluntary payments on entity transfers, the dissent only questioned how these payments shed any light on section 11911's interpretation. No discussion was had on whether the county had been violating Propositions 218 and 26 since it began to collect the tax on entity transfers beginning in 2002.

Lastly, the dissent addressed the majority's concern that adopting Ardmore LLC's approach would elevate "form" over "substance." The dissent asserted that this concern does not aid the court in interpreting the meaning of section 11911. Rules, the dissent argued, exist for addressing sham transactions and transfers that lack economic meaning.[90] In the present case, no one questioned whether the transfers to the trusts lacked economic substance. "To nevertheless apply the DTTA marks a significant expansion of the documentary transfer tax," an expansion better left to the Legislature than the courts.[91]

E. Practical Considerations

Many investors and their accountants and lawyers did not appreciate *Ardmore*. Numerous articles have been published since the decision came down that question the wisdom of defining "realty sold" as a "change in ownership."[92] Authors have also raised questions such as (i) how the tax on entity transfers should be calculated; (ii) from whom it may be collected (the transferor(s) or the property owning entity?); (iii) whether the tax can be imposed on transactions that pre-date *Ardmore*; and (iv) whether *Ardmore* applies to jurisdictions that have language in their transfer tax acts that require their acts to be interpreted consistent with the Federal Stamp Act in effect in 1967.

1. *How Is the Tax Calculated?*

To determine what amount is owed, practitioners will need to review the jurisdiction's (county or city and county) enabling statute. Although a change of ownership under Revenue & Taxation section 64 triggered property tax reassessment of all the real property transferred to the sons' trusts in Ardmore,[93] Revenue & Taxation section 11911 and Los Angeles County Ordinance section 4.60.020 limit the transfer tax to the "consideration paid for or the *value of the interest or property conveyed* (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale)," calculated at "the rate of fifty-five cents for each five hundred dollars or fractional part thereof."[94] Since the trusts paid no consideration, the tax was likely calculated on the value of the property, excluding personal or intangible property, held by the survivor's trust, the nonmarital trust, and the marital trust, and transferred to the two sons' trusts.[95] Questions arise regarding (i) whether the cost approach is reliable under the circumstances; (ii) what is real property and what is personal property, and the value of each; and (iii) whether one should include going concern value and goodwill when there is a direct transfer or an indirect transfer. In most instances, the answer is a question of fact for a court to determine.

2. *Who Is Responsible for Paying the Tax?*

Who owes the tax? In most instances, the tax is owed by the transferor(s).[96] In some instances, however, it is a joint and several liability of both the transferor(s) and the transferee(s).[97] Although the DTTA states that payment of the tax is a condition for recording,[98] the DTTA does not provide any guidance on when transfer tax is due if no document is being recorded in the official records. Some counties, like the City and County of San Francisco, make clear that the tax is due and payable at the time the written instrument is delivered to the transferee(s), and is delinquent if unpaid 30 days after.[99] Most, however, give no guidance on when the tax becomes delinquent. Some counties, including Los Angeles County, have an alert on their websites informing taxpayers of the need to pay the tax and the need to submit a transfer tax declaration.[100]

Nonpayment may also result in a lien on the real property,[101] the lien potentially impacting a party wholly unrelated to the transfer.[102] As a result, transferees should insist on a provision in the purchase and sale agreement that requires the seller to be responsible for any transfer tax that is a lien on the property resulting from a transfer prior to the sale to the transferee.

3. *Can the Taxing Authority Assess Transfer Tax on Transactions That Closed Prior to Ardmore?*

Should the taxing authority be allowed to review transactions that closed prior to *Ardmore?* Will the taxing authority bill the transferor(s) and/or the current property owner for unpaid taxes, penalties, and interest? The answer is, probably, yes. Some agencies, such as the City of Oakland, make very clear that the statute of limitations is tolled until the city has actual knowledge of the transfer or recordation, "at which time the tax on the unrecorded transfer will relate back to the actual transfer date of the unrecorded transfer."[103] Other agencies will rely on the general rule that since 1982, notices of a change of ownership or control of a legal entity have been required to be reported to the BOE within forty-five days[104] from the date of the change of ownership or control. The statement submitted to the BOE must list all of the counties in which the corporation, partnership, limited liability company, or other legal entity owns real property.[105] If the transferee fails to report the change of ownership or control, penalties and interest will be assessed even if the property is exempt from property tax reassessment.[106] If any person willfully conceals or fails to disclose the change in ownership or control, which results in an assessment lower than that which would otherwise be required by law, the assessor on discovery must reassess the property in the lawful amount and impose penalties in the amount of 75 percent of the additional assessed value as required under California Revenue & Taxation section 503.

Since failure to inform the BOE of the transfer does not prevent the taxing authority from reassessing the real property, courts will likely find that the failure of the taxpayer to self-report does not prevent a county or city from imposing transfer tax upon discovery of the transfer. Whether there are penalties and interest for failing to report and pay the transfer

tax will depend on the local transfer tax act. Whether charter cities and counties will look at transactions occurring before *Ardmore* is also a political question that each county and city will need to address.

4. *Applicability to Jurisdictions That Require Interpretation Under the Federal Stamp Act?*

Ardmore also leaves unanswered whether the California Supreme Court's definition of "realty sold" applies when a jurisdiction has a provision in its transfer tax ordinance that informs the assessor how he or she must interpret the transfer tax act. Many jurisdictions require the assessor to interpret its transfer tax ordinance:

> consistently with those Documentary Stamp Tax Regulations adopted by the Internal Revenue Service of the United States Treasury Department which relate to the Tax on Conveyances and are identified as sections 47.4361-1, 4361-2, and 47.4362-1 of Part 47 of Title 26 of the Code of Federal Regulations, as the same existed on November 8, 1967, except that for the purposes of [the] ordinance, the determination of what constitutes 'realty' shall be determined by the definition or scope of that term under state law.[107]

Is adopting the change in ownership definitions in section 64 consistent with sections 47.4361-1, 4361-2, and 47.4362-1 of the Federal Stamp Act?

The Federal Stamp Act's tax on conveyances did not apply to transfers of interests in legal entities that existed in 1967, as those transfers were governed by other repealed and un-adopted federal statutes.[108] Thus, imposing the tax may be inconsistent with former 26 U.S.C. section 4361, which defined "sold" as importing "a valuable consideration, which may involve money or anything of value." The Federal Stamp Act also defined "deed" as including "any instrument or writing whereby realty is assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, or at his direction, any other person."[109] The Federal Stamp Act set forth in section 47.4361-2(a) a list of transactions that were subject to taxation and in section 47.4361-2(b) a list of transactions that were not subject to taxation. The determination of whether a tax was due rested on whether consideration was paid for the purchase, not on whether there was a change in the beneficial ownership of the property. Thus, imposing a tax when a document reflects an actual transfer of legal beneficial ownership made for consideration may run afoul of the local jurisdiction's "interpretation" provision if the transaction falls within one of the exceptions (and inclusions) contained in the Federal Stamp Act. This is a question for another day.

IV. TRANSFER TAX AFTER THE 2017 PASSAGE OF THE TAX CUTS AND JOBS ACT

A. Tax Cuts and Jobs Act of 2017

On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act of 2017 ("TCJA"). The TCJA made sweeping changes to tax law, including the repeal of the partnership technical termination rules contained in 26 U.S.C. section 708, which was enacted before the repeal of the Federal Stamp Act and had remained unchanged since 1954.[110]

Under 26 U.S.C. section 708, a partnership is considered continuing if it is not terminated.[111] Under the TCJA, a partnership is considered terminated only if: (i) there is a cessation of partnership activities and liquidation, or (ii) the partnership's business activities no longer continue in partnership form. Partnerships no longer "technically" terminate upon a sale or exchange of 50 percent or more of the total interest in partnership capital or profits within a twelve-month period.[112] The elimination of the technical termination rules has a significant impact on section 11925's Continuing Partnership Exemption.

1. *Pre-TCJA*

> Example 1: AB Partnership was formed on January 1, 2005. On that date, the partnership purchased and placed in service rental real estate properties in the City of Los Angeles. On January 5, 2017, partners A and B conveyed 51% of the capital and profits to new partner C within a 12-month period.

Since a technical termination occurred under former 26 U.S.C. section 708(b)(1)(B), all of AB Partnership's depreciable assets are considered contributed to a new partnership on January 6, 2017. The new partnership keeps the same name and taxpayer ID.[113] The partnership would file a final return for the short period ending on the partnership termination date, January 5, 2017. The new partnership would file a short-period return beginning January 6, 2017.

With respect to transfer tax, section 11925[114] contains an exemption from taxation for "any realty held by a partnership." As originally enacted in 1967, the section stated:

(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 the termination.[115]

In 1999, the California Legislature amended section 11925 in two significant ways.[116] First, it expanded the exemption to include legal entities treated as a partnership for federal income tax purposes.[117] Second, the Legislature added subdivision (d) to section 11925, which states:

> No levy shall be imposed pursuant to this part by reason of any transfer between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership interests in the realty, whether represented by stock, membership interest, partnership interest, cotenancy interest, or otherwise, directly or indirectly, remain the same immediately after the transfer.[118]

In the above example, and although AB Partnership continues to hold title to the Los Angeles rental properties, since the partnership is not a continuing partnership—sales and exchanges of greater than 50 percent interests in capital and profits occurred within a 12-month period—the exemption from transfer tax was not available, and the partnership owed transfer tax on all of the real property it owned.

2. Post-TCJA

> Example 2: Assume AB Partnership was formed on the same date as above and purchased the same assets. But, assume that on January 5, 2018, partners A and B conveyed 51% of the capital and profits of AB Partnership to new partner C.

No termination occurred, since the TCJA repealed technical terminations for tax years beginning after December 31, 2017. The partnership would not file a short-period return for tax year 2018, and because AB Partnership is considered a continuing partnership under 26 U.S.C. sections 708(a) and (b), AB Partnership can take advantage of section 11925's exemption. No transfer tax is owed even though more than 50 percent of the interests in the legal entity have been transferred or conveyed.

> Example 3: Assume AB Partnership was formed on the same date as above; however, it purchased rental properties in the City of San Francisco. Assume that on January 5, 2018, partners A and B conveyed 51% of the capital and profits of AB Partnership to new partner C.

As in Example 2 above, the transfer of more than 50 percent of the interests in the capital and profits of AB Partnership did not cause a termination of the partnership. The partnership continues to operate and manage the rental property and it has not ceased doing business as AB Partnership.

San Francisco's Real Property Transfer Tax Ordinance section 1114(b) specifically defines "realty sold" as including "any acquisition or transfer of ownership interests in a legal entity that would be a change of ownership of real property under California Revenue and Taxation Code Section 64." The ordinance also has a Continuing Partnership Exemption, section 1108. The language is, for the most part, identical to the current Revenue & Taxation section 11925, except that it contains an additional provision, (d). Section 1108(d) states that "[n]otwithstanding any other language in this Section 1108, nothing in this Section shall exempt from the tax imposed under this Article 12-C any 'realty sold' as described in Section 1114(b)." Thus, since a change of ownership has occurred under section 64 (partner C obtained a majority ownership interest in the partnership), AB Partnership would be required to pay a transfer tax based on the value of the properties conveyed to C.[119] It could not avail itself of the Continuing Partnership Exemption.[120]

Practitioners will likely see the advantage of structuring real property purchases as indirect purchases of real estate (the acquisition of interests in a legal entity that owns real estate), rather than as direct purchases of real estate. Unlike Ardmore LLC, they will make sure that the legal entity they are buying an interest in is the property-holding entity. They will also make sure that no one person has more than 50 percent of the capital and profits of the legal entity,[121] so they do not fall within the definition of a "change of ownership" under sections 64(c) and (d).

It is also anticipated that there will be taxpayer challenges to any attempt to impose transfer tax on legal entity transfers that qualify under 26 U.S.C. section 708 as continuing partnerships. Since most counties and cities in the state do not have ordinances similar to San Francisco's "limited" Continuing Partnership Exemption, section 1108(d), if the other cities and counties want to continue to impose transfer tax on legal entity transfers, they will need to seek approval from their constituencies to revise or eliminate their Continuing Partnership Exemption, as required under Proposition 28.

V. CONCLUSION

Many view *Ardmore* as a tax grab in violation of Proposition 13. But the decision by the federal government to eliminate the technical termination rules has, for the most part, expanded the Continuing Partnership Exemption. It is imperative that business entities engaged in mergers, acquisitions, and restructuring review their transactions carefully to determine whether their transaction structure will trigger a documentary transfer tax obligation. Knowledge of the relevant transfer tax act and its many exemptions, coupled with creative deal structuring, can often achieve substantial tax savings. Similarly, the understanding of local customs and practices will reduce the risk of recording rejections and help assure smooth and timely closings.

Endnotes

1 *City of Cathedral City v. Cty. of Riverside*, 163 Cal. App. 3d 960, 962 (1985).

2 *People ex rel. Dept. of Pub. Works v. Cty. of Santa Clara*, 275 Cal. App. 2d 372, 375 n.6; *926 North Ardmore Ave. LLC v. Cty. of L.A.,* 3 Cal. 5th 319, 332, 337 (2017).

3 *See* Cruz and Rogers, *A Practical Guide to Transfer Taxes in California*, 23 Cal. Real Prop. J. 13 (2005).

4 33 Cal. Real Prop. J. 5. For copies of the 2005 and 2015 transfer tax articles, please contact the CLA Real Property Section, RealProperty@calawyers.org.

5 Pub. L. No. 115-97 (2017).

6 All statutory references are to the Cal. Rev. & Tax Code unless otherwise specified.

7 Cal. Rev. & Tax. Code § 11901.

8 Former 26 U.S.C. §§ 4361, 4363.

9 Pub. L. 89-44, tit. VIII, § 802(a)(2), 79 Stat. 159 (June 21, 1965). *See*, *In re 995 Fifth Ave. Assocs., L.P.*, 963 F.2d 503, 510 n.3 (2d Cir. 1992).

10 *Thrifty Corp. v. Cty. of L.A.*, 210 Cal. App. 3d 881 (1989).

11 *926 North Ardmore Ave., Inc. v. Cty. of L.A.*, 229 Cal. App. 4th 1335 (2014).

12 *Thrifty*, 210 Cal. App. 3d at 884.

13 Art. 12-C, Real Property Transfer Tax, § 1114.

14 Tit. 2, ch. 2.04, § 2.04.150.

15 Div. 64, ch. 64-6, § 64-6.818.

16 Tit. 2, div. 2, ch. 3, § 22.314.

17 Div. 1, ch. 5, art. 2, § 1561.

18 The transfer tax code or ordinance applicable to a subject property is typically found in the Revenue & Taxation sections of the applicable city and/or county's codes. Most are available online. To help in that regard, a review of all charter county and city transfer tax laws, with citations to the applicable code sections, is available to members of the real property section at http://calawyers.org/transfer-tax-table.

19 *See Thrifty Corp. v. Cty. of L.A.,* 210 Cal. App. 3d 881, 884 (1989).

20 Supreme Court of California, Answer Brief on the Merits for Plaintiff and Respondent, County of Los Angeles, dated July 7, 2015, 2015 WL 5812877.

21 *926 North Ardmore Ave. LLC v. Cty. of L.A.,* 3 Cal. 5th 319, 325-326 (2017).

22 Supreme Court of California, Opening Brief of Plaintiff and Appellant, 926 North Ardmore Avenue, LLC, 2015 WL 4039100.

23 *See* Cal. Rev. & Tax. Code §§ 480.1, 480.2 (which require individuals and entities to file a statement with the Board when a transfer of interests in a legal entity results in a "change of ownership" within the meaning of California Revenue & Taxation Code section 64 subdivisions (c) or (d)).

24 Supreme Court of California, Answer Brief on the Merits for Plaintiff and Respondent, County of Los Angeles, dated July 7, 2015, 2015 WL 5812877.
25 Stats. of 2009, ch. 622, § 1 (Cal. S.B. 809).
26 Stats. of 2011, ch. 320, § 1 (Cal. Assemb. B. 563).
27 *Id.*
28 Subpart E of Part 1 of Subchapter J of Chapter 1 of the Internal Revenue Code of 1986 ("I.R.C."), I.R.C. §§ 671-679.
29 *926 North Ardmore Avenue, Inc. v. Cty. of L.A.,* 229 Cal. App. 4th 1335, 1341-1343 (2014).
30 *Id.* at 1342.
31 *Id.*
32 *Id.* at 1344.
33 *Id.* at 1356-1359.
34 *Id.* at 1356 (citing to *Thrifty Corp. v. Cty. of L.A.*, 210 Cal App. 3d. 881, 886 (1989)).
35 *Id.* at 1364.
36 Supreme Court of California, Brief of Amicus Curiae, California Alliance of Taxpayer Advocates in Support of Plaintiff and Appellant, 926 North Ardmore Avenue, LLC, 2015 WL 7313497.
37 Amici Curiae questioned whether the imposition of the tax on a transfer of interests in legal entities was an unlawful imposition of a tax under California Constitution article XIII D ("Proposition 218").
38 The association argued that the tax could not be imposed without a vote as required under Proposition 26 and that the tax is an excise tax on recordation.
39 The institute (i) argued that the Legislature and the county never intended to include transfer of entity interests when it enacted its transfer tax laws, (ii) pointed out that I.R.C. section 708 and section 64 were incompatible, and (iii) argued that applying section 64 and section 11924 would lead to absurd results.
40 The society argued that the decision in *Ardmore* would upset fifty years of settled reliance and expectation interests.
41 The assessor-recorders argued that the Legislature plainly intended, in 1967 and today, that such transactions are subject to transfer tax.
42 Cal. Const. art. XIII D, § 3, subd. (a).
43 Cal. Const. art. XIII A, § 3, subd. (a).
44 *City of Huntington Beach v. Superior Court*, 78 Cal. App. 3d 333, 341 (1978).
45 *Neilson v. City of Cal. City*, 133 Cal. App. 4th 1296 (2005).
46 *Richmond v. Shasta Cmty. Servs. Dist.*, 32 Cal. 4th 409, 413 (2004).
47 *926 North Ardmore Ave. v. Cty. of L.A.,* 229 Cal. App. 4th 1335, 1364.
48 § 11932 (emphasis added).
49 § 11933.
50 Answer to Petition for Review filed by Defendant and Respondent, County of Los Angeles, dated Nov. 25, 2014, 2014 WL 10010834.
51 *City of Huntington Beach v. Superior Court*, 78 Cal. App. 3d 333 (1978).
52 Id. at 340.
53 Id. at 324.
54 Id. at 330 (citing the decision in *Long Beach Police Officers Assn. v. City of Long Beach*, 46 Cal.3d 736, 746 (1988)).
55 Id. at 330.
56 § 11911.1; L.A. Cty. Ord., ch. 4.60, § 4.60.130 (A).
57 § 11932; L.A. Cty. Ord., ch. 4.60, § 4.60.120 (A), (B).
58 § 11933; LA Cty. Ord., ch. 4.60, § 4.60.120 (A).
59 *Ardmore*, 3 Cal. 5th at 332.
60 Exemptions: Realty held by Partnerships, L.A. Cty. Ord., ch. 4.60, § 4.60.080 (adopted by the county in 1967 by Ordinance 9443, section 8, 1967).
61 *Ardmore,* 3 Cal. 5th at 331 (emphasis added).
62 This argument was raised in the plaintiff and appellant's 2015 Opening Brief on the Merits, 2015 WL 4039100, footnote 8; and in appellant's 2017 Petition for Rehearing, 2017 WL 3719563. In essence, appellant argued that section 11925 was not intended as an "exemption," rather it was intended to address anomalies arising from the then-prevailing "aggregate" approach to partnerships. Under that approach, any change in a partnership's composition dissolved the partnership.
63 *See also*, L.A. Cty. Ord. § 4.60.080.
64 *Ardmore*, 3 Cal. 5th at 331.
65 Former 26 U.S.C. § 4321 (1964).
66 *Ardmore*, 3 Cal. 5th at 334.
67 321 U.S. 583 (1944).
68 *Ardmore*, 3 Cal. 5th at 336. *Seattle Bank* involved a statutory consolidation of two banks under section (e) of the National Banking Act. The Supreme Court concluded that the transfer of real property from one bank to another, which resulted by operation of law from the consolidation, was not subject to the Federal Stamp Act. Although beneficial ownership changed (stockholders traded in stock in one bank for stock in

another), and no formal instruments or writings were used upon which the tax was laid, the Court found that under the realities of the "statutory consolidation process", there was no functional change in ownership. See also, Revenue Ruling 57-580 (1957), which concerned the applicability of the tax to various transactions involved in the merger of a state bank into a national bank. The IRS applied the decision in Seattle Bank, concluding that the critical factor is the substance of the transaction, rather than the form by which it is accomplished.

69 80 F.2d 145 (1st Cir. 1935).

70 50 F. Supp. 1010 (E.D. MO. 1943).

71 53 F. Supp. 796, 801 (S.D.N.Y. 1944). The *Niagara* court expressly disclaimed any holding that the conveyance of real property in that case was not taxable due to the form of the transfer. The court, quoting *Niagara Hudson Power Corporation v. Hoey*, 117 F.2d 414, 416 (2nd Cir. 1941), held that "in legal jargon a change of ownership, terminating rights and other relations in one entity and creating them in another, is the essence of a 'transfer.'" Rather, the court found that there was no taxable "sale" because of the underlying nature of the transaction:

> In the transaction now under consideration the elements characteristic of a 'sale' are lacking; there is no agreement to sell; there is no deed containing the description of the realty. The usual bargaining leading up to and culminating in a sale and fixing the value of the property are absent. The change of title results from the filing of the Certificate of Consolidation; it was a form of transfer, but not a sale.

Niagara, 53 F. Supp. at 801.

72 The Proportional Ownership Exemption.

73 *Ardmore*, 3 Cal. 5th at 337.

74 *Pac. Sw. Realty Co. v. Cty. of L.A.*, 1 Cal. 4th 155 (1991); *Auerbach v. Assessment Appeals Bd. No. 1*, 39 Cal. 4th 153 (2006).

75 *Auerbach,* 39 Cal. 4th at 153; note, however, that although there was a change of ownership, the "Grandparent-Grandchild" exemption applied.

76 *Phelps v. Orange County Assessment Appeals Bd. No. 1*, 175 Cal. App. 4th 448 (2009), *reh'g denied*.

77 Cal. Code. Regs., tit. 18, § 462.180(d)(1).

78 § 462.180(d)(2).

79 *926 North Ardmore Ave., LLC v. Cty. of L.A.,* 3 Cal. 5th 319, 337 (1991) (citing *Sav-on Drugs, Inc. v. Cty. of Orange*, 190 Cal. App. 3d 1611, 1617 (1987)).

80 *Ardmore*, 3 Cal. 5th at 337-338.

81 *Id.* at 338.

82 *Id*.

83 *Id.* at 339.

84 *Id.* at 339-341.

85 *Id.* at 332.

86 § 11925(b) (emphasis added).

87 *Id.* at 341. The dissent also offered reasons why the majority's argument that section 11925(a) would be superfluous if the DTTA did not apply to legal entity transfers was untenable.

88 *Id.* at 343.

89 *Id.* at 345.

90 *Id*. at 346.

91 *Id.*

92 Michael Tedesco, "Warning!" California Real Estate Transfer Tax Trap at 926 North Ardmore Avenue", http://www.saltsavvy.com/2017/08/09/warning-california-real-estate-transfer-tax-trap-at-926-n-ardmore-avenue/; Craig A. Becker, Richard E. Nielsen, Breann E. Robowski, Dianne L. Sweeney, "California Supreme Court Decision Changes the Transfer Tax World", https://www.pillsburylaw.com/en/news-and-insights/california-supreme-court-decision-changes-the-transfer-tax-world.html; Deloitte, "CA Supreme Court: Documentary TransferTax May Apply to Transfers of Legal Entity Interests", https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-ca-supreme-court-documentary-transfer-tax-may-apply-to-transfers-of-legal-entity-interest.pdf; Bradley R. Marsh, Cris K. O'Neall, C. Stephen Davis, "California Supreme Court Expands Scope of California Documentary Transfer Tax", https://www.gtlaw.com/en/insights/2017/6/california-supreme-court-expands-scope-of-california-documentary-transfer-tax.

93 §§ 64(c)-(d); Cal. State Bd. of Equalization, rule 462.180

94 § 11911 and Los Angeles County Ordinance section 4.60.020 (emphasis added).

95 *Cty. of L.A. v. S. Cal. Edison Co.*, 112 Cal. App.4th 1108, 1122 (2003).

96 § 11912; *see also,* L.A. Cty. Ord., § 4.60.030; Contra Costa Cty. Ord. 64-6.406.

97 *See, e.g.*, Oakland Mun. Code § 4.20.040; Arcadia Mun. Code § 2682.1.1; City of Industry Mun. Code § 3.32.040.

98 Cal. Rev. & Tax. Code § 11933.

99 S.F. Mun. Code, art. 12-C, § 1103. *See also,* City of Oakland Mun. Code, title 4, ch. 4.20, § 4.20.070, which states that the tax is due within 90 days after acceptance of the interest being conveyed.

100 https://lavote.net/home/records/legal-audits-and-tax-collections/legal-entity-corporate-documentary-transfer-tax-collections and https://lavote.net/docs/rrcc/documents/declaration-of-documentary-transfer-tax.pdf?v=2.

101 *See e.g.*, City of Alameda Mun. Code § 3.58.16; City of Oakland Mun. Code, tit. 4, ch. 4.20, § 4.20.190; City of Arcadia Mun. Code § 2683.7.

102 For example, a party who acquires title to the property after the legal entity transfer but before the transfer is reported to the BOE or the county assessor.

103 City of Oakland Mun. Code, tit. 4, ch. 4.20, § 4.20.070.

104 Changed to ninety days in 2012, Senate Bill 507.

105 Cal. Rev. & Tax. Code §§ 480.1, 480.2.

106 § 482.

107 *See, e.g.*, Alameda Cty. Ord. § 2.04.150; Calaveras Cty. Ord. § 3.04.130; Fresno Cty. Ord. § 4.24.140. Note, however, that the City and County of San Francisco, ordinance section 1114(b), although requiring interpretation consistent with the Federal Stamp Act, specifically includes the acquisition or transfer of ownership interests in legal entities that are a change of ownership under section 64.

108 Former 26 U.S.C. § 4321.

109 Former 26 U.S.C. § 4361-1.

110 Pub. L. 115-97, ch. 736, 68A Stat. 244 (1954).

111 26 U.S.C. § 708(a).

112 Former 26 U.S.C. § 708 (b)(1)(B).

113 Treasury Regulation § 1.708-1(b)(3) states that the partnership's tax year closes for all partners on the date a terminating event takes place.

114 Which is patterned on former United States Code section 4383, titled "Certain Changes in Partnerships."

115 § 11925.

116 Assemb. B. 1428, 1999-2000 Reg. Sess., 1999 ch. 75, § 1, at 1153 (Cal.).

117 § 11925(a).

118 Although most city and county transfer tax acts contain in their documentary transfer tax provisions the "Continuing Partnership" exemption set forth in sections 11925 (a)-(c), numerous city-taxing authorities, including but not limited to, Berkeley, Santa Monica, San Mateo, and Sacramento, and numerous county ordinances, such as Contra Costa, Los Angeles, Orange, San Luis Obispo, Sonoma, and Ventura, do not contain subsection (d) of section 11925. Known as the "Proportional Interest" exemption, section 11925(d) provides an exemption from documentary transfer tax when the transferor and the transferee are directly or indirectly commonly owned.

119 Real Property Transfer Tax Ordinance, City of San Francisco, § 1102.

120 The City of Albany includes as a change of ownership any transaction or transfer of greater than a 5% interest, ownership, or control of stocks or shares in a corporation or interest in a partnership or other legal entity. The city does not have a Continuing Partnership Exemption. City of Albany Mun. Code, ch. IV, § 4-5.

121 *See Ocean Ave. LLC v. Cty. of L.A.*, 227 Cal App. 4th 344 (Ct. App. 2014).