Case No. S222329

*In the*

# Supreme Court

*of the*

# State 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, DIV. 7, CASE NO. B248356
LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. BC 476670
THE HONORABLE RITA MILLER, JUDGE PRESIDING

## CALIFORNIA SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS' APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND AMICUS BRIEF IN SUPPORT OF 926 NORTH ARDMORE AVENUE, LLC

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TO THE HONORABLE CHIEF JUSTICE TANI GORRE CANTIL-SAKAUYE OF THE CALIFORNIA SUPREME COURT:

The California Society of Certified Public Accountants ("CalCPA") hereby requests leave pursuant to California Rule of Court 8.520, subdivision (f), to file the accompanying *amicus curiae* brief in Support of Appellant and Real Party in Interest 926 North Ardmore Avenue, LLC.

CalCPA is a non-profit membership corporation representing the interests of more than 40,000 members, many of whom are leading business and finance professionals and educators across all parts of California. CalCPA provides continuing education, networking opportunities, and advocacy services for the enhancement of the accounting profession and CalCPA's members. Among CalCPA's primary responsibilities is to provide a single, unified voice for its members when issues regarding accounting standards and practices are debated in the California Legislature or through the regulatory process. CalCPA representatives regularly communicate with state officials to ensure that legislation is consistent with accounting best practices and in the best interest of CalCPA's member professionals and their clients. Similarly, CalCPA monitors legal developments as they arise, taking a particular interest in matters that are likely to significantly impact its members and their clients. CalCPA regularly communicates with its members about political and legal issues that are likely to have such an impact.

With regard to the issues raised in this case, CalCPA has a unique perspective and interest in ensuring that California Revenue and Taxation Code section 11911 is applied consistent with the Legislature's original intent. Moreover, CalCPA members have an ongoing and increasing interest in the appropriate, fair, and effective application of Section 11911 from the standpoint of professionals attempting to counsel their clients on related taxation issues. CalCPA is concerned that the Court of Appeal's

ruling will undermine several decades of clarity and predictability in the interpretation of the statute, which in turn will substantially hinder the efforts of CalCPA members to advise and counsel their clients on the application of Section 11911. Furthermore, CalCPA is concerned that the Court of Appeal's reasoning, if permitted to stand, will lead to further erosion of clarity and predictability in future cases of statutory interpretation.

The proposed *amicus curiae* brief will assist the Court in reviewing this issue by providing CalCPA's unique perspective as the state-wide membership organization for California accounting professionals. CalCPA's analysis of the policy ramifications of the Court of Appeal's decision is informed not only by the relevant statutes and case law, but also by the "real world" experiences of CalCPA's more than 40,000 members. Therefore, CalCPA respectfully asks this Court to allow the filing of the attached *amicus curiae* brief.

No party, counsel for a party, person, or other entity authored the proposed *amicus curiae* brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief.

Dated: October 5, 2015

Respectfully submitted,

By: 

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## CALIFORNIA SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS' *AMICUS CURIAE* BRIEF

In *926 North Ardmore Avenue, LLC v. County of Los Angeles* (2014) 178 Cal.Rptr.3d 78, the Court of Appeal unmade nearly five decades of settled law and practice by holding, for the first time, that the Documentary Transfer Tax permitted by California Revenue and Taxation Code section 11911 (the Documentary Transfer Tax Act or "DTTA") can be imposed when there is a conveyance of a legal entity that directly, or indirectly, holds title to real property. In its briefing on the merits, Appellant 926 North Ardmore has described the Court of Appeal's error in interpreting the governing statute and the case law pertinent to this matter.

To 926 North Ardmore's arguments, CalCPA adds its considerable concern. First, the *Ardmore* decision undermines several decades of settled expectations and reliance on the part of property owners who reasonably anticipated that the DTTA—a statute designed to mimic the Federal Stamp Act that imposed a similar federal tax before its repeal—applied only to recorded documents that conveyed "realty sold." The recognition and protection of settled expectation and reliance interests has long been held vital to the maintenance of property rights. The *Ardmore* decision upends those expectations.

Indeed, the *Ardmore* decision dismisses these interests by divorcing the DTTA from its express legislative purpose of replacing the Federal Stamp Act. Instead, it expands the Documentary Transfer Tax far beyond its original intent to tax the recording of documents to instead encompass the taxation of thousands of non-realty

transactions. Worse, these transactions are clouded because while the tax is supposedly owed, there is no statutory provision for its collection. For property owners and their tax professionals, the situation can lead only to confusion.

*Ardmore* also illustrates the need to strictly interpret taxation statutes in favor of the taxpayer. That taxation is a prerogative of the legislative power can hardly be in dispute.[1] This is a primary reason why courts wisely hold that in tax disputes, the taxpayer should receive the benefit of the doubt. This deference ensures that even if statutory ambiguity creates a policy concern, the Legislature (or the people, through that part of the legislative power reserved to themselves) addresses that concern and not the courts.

Appellant convincingly demonstrates that there was no legislative intent—either in 1967 or in 1978—to expand the DTTA to apply in the manner described in the *Ardmore* decision.[2] CalCPA takes no position here on whether the DTTA's inherent scope

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[1] See *Delaney v. Lowery* (1944) 25 Cal.2d 561, 568; *City of Crescent City v. Moran* (1938) 25 Cal.App.2d 133; see also THE FEDERALIST No. 33 ("What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing, but the power of employing the MEANS necessary to its execution? What is a LEGISLATIVE power, but a power of making LAWS? What are the MEANS to execute a LEGISLATIVE power but LAWS? What is the power of laying and collecting taxes, but a LEGISLATIVE POWER, or a power of MAKING LAWS, to lay and collect taxes?") (Hamilton, A.).

[2] The Documentary Transfer Tax's application to certain partnership interests is expressly described in the statute. Appellant explains why the express statutory provisions regarding the tax treatment of certain dissolving partnerships do not change the analysis in this case. (See App. Op. Br. at 26-29.)

limitation is sound policy. CalCPA's concern is that tax law should be made through clear and predictable legislation after robust public debate and a proper exercise of the legislative power, and that did not happen here.

Where long-held expectations are disregarded, the foreseen and unforeseen consequences are sure to be severe. Even if the effects of the Court of Appeal's decision are limited to expansion of the Documentary Transfer Tax, non-realty transactions have now been re-classified and may be retroactively taxed. Of more concern, this reclassification threatens to ripple through California law, further upsetting public expectations regarding basic property definitions and rights. The resulting uncertainty will breed perceived and actual increases in risk, and thus in transaction costs.

These issues hit home for professionals—many of whom are CalCPA members—who counsel clients on business acquisitions, entity structuring, and family wealth planning. They can do so only if the law is clear and predictable. Where expectations are upset in the manner represented in *Ardmore*, professionals are either unable to counsel their clients, or worse, are put in the position of having wrongly counseled their clients based on their reasonable expectations and experience. Not only are clients exposed to significant risks and liabilities, but counseling professionals are subject to the same potential consequences.

The *Ardmore* decision takes none of these considerations into account. CalCPA respectfully requests that the California Supreme Court reverse the Court of Appeal and restore the law to its proper scope, consistent with the statute's plain language and the reasonable

expectations that have arisen from the straightforward statutory interpretation urged by Appellant.

## ARGUMENT

### I. THE *ARDMORE* DECISION DISREGARDS FIFTY YEARS OF SETTLED RELIANCE AND EXPECTATION INTERESTS

As this Court well knows, the *Ardmore* decision turns on the definition of the word "realty" as it is used in Section 11911. Until *Ardmore*, "realty" had a predictable definition—"a brief term for real property or real estate" or "anything which partakes of the nature of real property." (Black's Law Dictionary (6th Ed. 1990) p. 1217, 1264.) Real property, in turn, has been defined as "[l]and and generally whatever is erected or growing upon or affixed to land." (*Id.*; see App. Op. Br. at 21-32 [describing provisions of the DTTA that use words relating to real property, not interests in legal entities that own real property].) Nothing in the DTTA suggests that the word realty could or should be stretched beyond its common-sense definition.

Indeed, the Court of Appeal has potentially created an entirely new definition of "realty." (See Cal. Civ. Code § 14 [distinguishing between uses of the word "property" and the term "real property"]; *Guy v. Brennen* (1923) 60 Cal.App. 452, 457 ["The words 'real property' are defined as . . . "coextensive with lands, tenements and hereditaments"]; *People ex rel. Dep't of Public Works v. Church* (1943) 57 Cal.App.2d.Supp. 1032, 1042-1043 ["So, too, in California it was laid down in the case of *Hegard v. California Insurance Co.* [citation], that 'the term fixture' has a well-ascertained and certain

meaning as something affixed to realty"].) And it did so with little regard for the customary hesitance that courts usually demonstrate when adjudicating once-settled property rights. (See *Leo Sheep Co. v. United States* (1979) 440 U.S. 668, 686-88 ["This Court has traditionally recognized the special need for certainty and predictability where land titles are concerned. . ."]; *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 456-457 ["judicial decisions affecting the business interests of the country should not be disturbed except for the most cogent reasons, as where the evils of the principle laid down will be more injurious to the community than can possibly result from a change, or upon the clearest grounds of error"].) The resulting change in the law inevitably alters long-held property rights. This is thus no ordinary case of statutory interpretation. Where significant property rights are at stake, the need for predictability and certainty raises the stakes considerably.

To obtain those ends, courts have long recognized that "decisions long acquiesced in, which constitute rules of property or trade upon which important rights are based, should not be disturbed, even though a different conclusion might have been reached if the question presented were an open one, inasmuch as uniformity and certainty in rules of property are often more important and desirable than technical correctness." (*Abbott*, 50 Cal.2d at 456.) The *Ardmore* decision undermines these goals.

First, it ignores the DTTA's history as California's equivalent to the former Federal Stamp Act on the putative basis that the DTTA did not expressly require "that it be construed in the same manner as the federal statute." (*Ardmore*, 178 Cal.Rptr.3d at 95.) But other

courts have already held that the DTTA was designed to replace the Stamp Act with a state law "patterned" in the same fashion. (*Thrifty Corp. v. Cnty. of Los Angeles* (1989) 210 Cal.App.3d 881, 884.) And while the Court of Appeal below rejected the premise that the federal act could inform its interpretation of the DTTA, other courts concluded that they "must infer that the Legislature intended to perpetuate the federal administrative interpretations of that federal act." (*Id.*; see also *Brown v. Cnty. of Los Angeles* (1999) 72 Cal.App.4th 665, 668.)

In light of these holdings, it should not have been in the least surprising that property owners' expectation interests did not change after the DTTA's passage. Indeed, the DTTA's only material change from the federal statute was the Legislature's deliberate decision not to enact the federal provisions applying the recordation tax to transfers of stock and certificates. (App. Op. Br. at 36-37.) If there is any stronger demonstration of the Legislature's intent to align the DTTA with transfers of "realty" and real property—and not business entities of the type at issue in *Ardmore*—it is hard to conceive of it. (See *id.*)

Second, the *Ardmore* decision changes the fundamental nature of the interest being taxed. The Declaratory Transfer Tax is an excise tax on the recordation of real property. It is "the fee paid in connection with the recordation of deeds or other documents evidencing transfers of ownership of real property." (*City of Cathedral City v. Cnty. of Riverside* (1985) 163 Cal.App.3d 960, 962.) It is an "excise tax" rather than a property tax, and is levied on the "document, not the sale." (*People ex rel. Dep't of Public Works v. Cnty. of Santa Clara* (1969) 275 Cal.App.2d 372, 375, n.6.) The

purpose of the excise tax is to fund a system of property recordation that benefits property owners. (See App. Op. Br. at 18, citing *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, 145 and *Endler v. United States* (D.N.J. 1953) 110 F.Supp. 945, 948.) The government does not generally record the sale of business entities, and there is no mechanism by which an "excise tax" on the "document" can be collected on a transaction that is not recorded. (See *Cathedral City*, 163 Cal.App.3d at 962 ["a documentary transfer tax is the fee paid in connection with the recordation of deeds or other documents evidencing transfers of ownership of real property"].)

In light of this case law, it was reasonable to expect that the DTTA's reach was limited to transactions involving "realty," which are regularly recorded. And, in fact, that was all the relevant parties' assumption for decades. (App. Op. Br. at 13-14.) Los Angeles County did not enforce the Documentary Transfer Tax on documents other than recorded conveyances of realty, and the public reasonably ordered its affairs on the assumption that the tax was not owed on the conveyance of business entities. (*Id.*)

To upset these settled legal expectations, the Court of Appeal found a most unlikely catalyst—the 1978 property-tax overhaul popularly known as Proposition 13.[3] But nothing in Proposition 13

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[3] In 1978, Proposition 13 determined that "the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests, shall not be deemed to constitute a transfer of the real property of the legal entity." (App. Op. Br. at 44.) Appellant's opening brief explains why the narrow exception to that rule should not change this Court's analysis of the DTTA. (*Id.*)

could possibly have signaled the change in law brought about by the *Ardmore* decision. Indeed, it is unreasonable to believe that the most famous tax-limitation law in California history somehow had the derivative effect of vastly increasing the scope of the Documentary Transfer Tax, and moreover, that somehow localities did not pick up on this fact for another 30 years after its passage. (See California Property Tax: An Overview, California Board of Equalization, Publication 29, July 2015, viewed at http:www.boe.ca.gov/proptaxes/pdf/pub29.pdf ["On June 6, 1978, California voters overwhelmingly approved Proposition 13, a property tax limitation initiative. This amendment to California's Constitution was the taxpayers' collective response to dramatic increases in property taxes and a growing state revenue surplus of nearly $5 billion."] (last viewed Sept. 29, 2015).) This flimsy justification for upending long-held and once-settled expectation interests cannot withstand scrutiny.

The Court of Appeal relied on the *Thrifty* and *McDonald's* cases for its proposition that the Documentary Transfer Tax is triggered every time there is a transaction that constitutes a change in ownership subject to reassessment under Proposition 13. (*Ardmore*, 178 Cal.Rptr.3d 78, 91-95.) In doing so, it missed the crucial fact distinguishing this case from *Thrifty* and *McDonald's*. The latter cases involved a transfer of a real property interest, if not a "sale" of real property. This case does not.

The *Thrifty* case considered whether a 20-year recorded lease was the equivalent of a sale of a real property interest. (*Thrifty*, 210 Cal.App.3d at 883 [noting the trial court's ruling that the

Documentary Transfer Tax could not apply to "the recordation of leases or leasehold interest."].) To decide that question, the *Thrifty* court in part looked to the "change of ownership" provision of Proposition 13, which provides that a property value reassessment is triggered by "the creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options)." (*Id.* at 885.) But that is only half the story. The question *Thrifty* posed was when a lease—inherently a type of real property interest—triggers the Documentary Transfer Tax because it is the equivalent of "reality sold."

It has long been recognized that a long-term lease can be the economic equivalent of a sale. The test is whether the "primary economic value of the land is transferred from one person to another." (See *Pac. Southwest Realty Co. v. Cnt.y of Los Angeles* (1991) 1 Cal.4th 155, 167-168; see also *Dyanlyn Two v. Cnty. of Orange* (2015) 234 Cal.App.4th 800, 810.) If a lease is short-term, the landlord retains the main economic value of the property, and has not conveyed an interest equivalent to a sale. (*Pac. Southwest Realty*, 1 Cal.4th at 167-168.) In some long-term leases, however, the lessee conveys the property's "primary economic value" to the lessor. (See *id.*) Indeed, this rule traces all the way back to the former Federal Stamp Act, which recognized that "ordinary leases for real property for a definite term of years were generally not subject to a transfer tax," but did assess a tax on leases "of sufficient duration to approximate an interest such as an estate in fee simple or a life estate." (*Thrifty*, 210 Cal.App.3d at 884-885, citing former 26 C.F.R. 47.4361-2(b)(8).)

This is where *Thrifty*'s analysis of California Revenue and Taxation Code Section 61's "change of ownership" provision came into play. Section 61 provides that commercial property should be reassessed when a property owner enters into a lease of 35 years or longer. It thus provided a bright-line rule for determining how long a lease is necessary under California law to meet the "primary economic value" test to determine when an ordinary lease converts into a quasi-sale.

The *Thrifty* court adopted the same rule in the context of the County's argument that whether the lease constituted "realty sold"—i.e., whether the lease "approximated" a taxable sale because it transferred the primary economic value of the property—was a question of fact for the jury, instead of a question of law for the court. Ultimately, the *Thrifty* court concluded that the use of the "restrictive" term "realty sold" was "intended to generally place leases outside of the scope of section 11911," but nevertheless held that it was possible for a long-term lease to "approximate" a sale of realty—an event that triggers a Proposition 13 reassessment. (*Id.*) It found, however, that the *Thrifty* lease was not a long-term lease and not subject to the tax. (*Id.*)

The *McDonald's* case covered similar ground, finding that a 28-year lease did not satisfy the definition of "realty sold" because, in effect, the primary economic value of the property had not been transferred to the lessee using the bright-line rule of Section 61 and *Thrifty*. (See *McDonald's Corp. v. Bd. of Supervisors of Mendocino Cnty.* (1998) 63 Cal.App.4th 612, 616-617 ["Adding the remaining 13 years of the original lease and the 15 years added by the extension,

McDonald's leasehold at the time of the amendment was for 28 years. As this period is less than 35 years, the trial court correctly determined the documentary transfer tax should not have been imposed."].)

But neither case involved the transfer of a ***corporate interest***—i.e., a non-realty interest—where the real property at issue continues to have the same owner (the corporate entity) both before and after the transaction is complete.[4] Here, there is no reason to borrow from Section 61 at all, because realty is realty, and corporate entities are not realty.

Thus, to the extent *Thrifty* and *McDonald's* are relevant here, they confirm that Section 11911 was "patterned after the Federal Stamp Act," and should be interpreted the same way. (*Thrifty*, 210 Cal.App.3d at 884.) The fact that those cases recognized the possibility of triggering the Documentary Transfer Tax through the recordation of a long-term lease did not change public expectations, because that rule was just another continuation of the policy encapsulated in the Federal Stamp Act.

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[4] It is a legal truism that a corporate entity is separate from its holdings. (See *Dole Food Co. v. Patrickson* (2003) 538 U.S. 468, 475 ["An individual shareholder, by virtue of his ownership of shares, does not own the corporation's assets and, as a result, does not own subsidiary corporations in which the corporation holds an interest."].) Proposition 13 does not change this fact, nor does it change the definition of real property or realty interests. It merely provides a statutory test to determine when real property should be reassessed, after which a tax is imposed on the reassessed value.

Neither *Thrifty* nor *McDonald's*, supports the County's attempt to undermine property expectations as has been done in *Ardmore*. To the contrary, the DTTA's plain language and legislative history establish not only the state of the law since its passage in 1967, but the long-standing public expectation interests that predated its passage. It was error for the Court of Appeal to reverse settled law and practice and reclassify the corporate transactions at issue here as sales of "realty." This Court should not hesitate to restore the law to its pre-*Ardmore* condition.

## II. AMBIGUOUS STATUTES SHOULD BE INTERPRETED IN FAVOR OF THE TAXPAYER

Predictability is also the lodestar of tax law. The power to tax must be utilized and enforced in a clear and predictable manner, and courts must have good reason to upset settled expectations in tax law as well.[5] At the very least, the undoing of settled expectations should unambiguously accord with legislative intent.

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[5] See *Pac. Southwest Realty*, 1 Cal.4th at 168 (noting that the "primary economic weight" rule "comports with commercial reality and public expectations" and describing the potential "mischief" of a contrary rule); *General Motors Corp. v. Romein* (1992) 503 U.S. 181, 191 (explaining that retroactive legislation "presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions"); see also *Varelas v. Holder* (2012) 132 S.Ct. 1479, 1491 ("Although not a necessary predicate for invoking the antiretroactivity principle, the likelihood of reliance on prior law strengthens the case for reading a newly enacted law prospectively."); Stephen R. Munzer, *A Theory of Retroactive Legislation* (1982) 61 Tex. L. Rev. 425, 427 ("[R]etroactive lawmaking violates what is often called the rule of law, namely, an entitlement of persons to guide their behavior by impartial rules that are publicly fixed in advance.").

For this reason, courts resolve statutory ambiguities in tax law in taxpayers' favor. (See, *e.g.*, *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750, 759 ["To the extent the language is ambiguous, we generally will prefer the interpretation favoring the taxpayer"]; *Apple, Inc. v. Franchise Tax Bd.* (2011) 199 Cal.App.4th 1; *Yamaha Corp. of Am. v. State Bd. of Equalization* (1998), 19 Cal.4th 1, 25, quoting *Rizzo v. Bd. of Trustees* (1994) 27 Cal.App.4th 853, 861.) The rule prevents overreaching by the judicial branch, as it avoids expanding tax liabilities beyond the legislature's clear intent. (*Microsoft*, 39 Cal.4th at 772 [noting that the Court's adoption of the taxpayer's interpretation of the statute created a potentially "valid" concern, but declining "judicially to amend" the statute and inviting the Legislature to act].) This rule also ensures that when there has been a long-standing interpretation of tax law, "it is likely that numerous transactions have been entered into in reliance thereon, and [the law] could be invalidated only at the cost of major readjustments and extensive litigation." (*Yamaha*, 19 Cal.4th at 21, quoting *Whitcomb Hotel, Inc. v. Cal. Emp. Comm.* (1944) 24 Cal.2d 753, 757.)

There is no ambiguity in the statutory language here, but at the very least, the statute could and should have been interpreted consistent with the inference that the Legislature "intended to perpetuate the federal administrative interpretations" of the Federal Stamp Act by passing the DTTA. (See App. Op. Br. at 4, quoting *Thrifty*, 210 Cal.App.3d at 884.) That interpretation is consistent with the statute's legislative history, indicating that the DTTA was intended to "authorize counties . . . to levy a tax upon the transfer of real property." (*Ardmore*, 178 Cal.Rptr.3d at 85.) And it is also

consistent with Appellant's position—and the understanding of CalCPA and its members—that the transfer tax is assessed on ***recorded*** documents where "realty [is] sold" or there is an "agreement to transfer" the title to real property. (App. Op. Br. at 4, citing *Berry v. Kavanagh* (6th Cir. 1943) 137 F.2d 574, 575-576.) Taxpayers—and their advising professionals—should be able to rely on these reasonable interpretations of the statute. Any policy ambiguities should be resolved by the Legislature or the people in their exercise of legislative power, particularly when doing otherwise has now expanded the scope of the Documentary Transfer Tax far beyond what was originally intended.

## III. UPSETTING EXPECTATION AND RELIANCE INTERESTS HAS SIGNIFICANT POLICY IMPLICATIONS AND RISKS

The burden of *Ardmore*'s reversal of decades of practice falls primarily on those most in need of clear, predictable rules to structure their affairs. There are significant societal risks inherent in obstructing commercial activity by upending settled law and practice as the Court of Appeal did here.

In this particular circumstance, the *Ardmore* decision has upended a regime in place not only since 1967, upon the DTTA's adoption, but for decades prior under the Federal Stamp Act. If the *Ardmore* decision is upheld, it will have significant consequences for thousands of past, present, and future corporate transactions. In most cases, returns have never been filed because there has been no expectation that a tax would be paid on the conveyance of an interest in a corporation or other business not historically considered to be

"realty." But the *Ardmore* decision now opens the door for localities to recover these taxes for decades of untaxed transactions. At an extreme, these taxes may even trigger the mandatory reporting of probable and material past obligations as required under generally-accepted accounting principles. It will take many years and resources to quantify existing and future tax liabilities under *Ardmore*, and still more to determine a system for reporting and collecting those tax liabilities, particularly in the absence of any existing legal framework for doing so.

And those are only the direct consequences of the *Ardmore* decision. CalCPA is also concerned about the unexpected and unknowable consequences of *Ardmore*. For example, the failure to pay the Documentary Transfer Tax, when compounded over years (and potentially, decades), creates liabilities not only for property-owners, but for their advisers, who must now consider the very real possibility that they will assume liability for mistakenly—but in good faith—counseling their clients that the transfer of non-realty interests nevertheless qualified as "realty sold" under the statute.

The Court of Appeal's analysis also creates significant concern that its broad definition of "realty"—one that now for the first time includes any entity that owns real property—may ripple through California law as this new definition upends traditional definitions of realty and real property. Such a broad rethinking of the nature of property, particularly at this late date, should be undertaken, if at all, by the Legislature after robust debate, a full cost-benefit analysis, and most importantly, input from California citizens.

by the Legislature after robust debate, a full cost-benefit analysis, and most importantly, input from California citizens.

## IV. CONCLUSION

For the foregoing reasons, CalCPA respectfully requests that the California Supreme Court determine that the Documentary Transfer Tax is assessed only upon a conveyance of a realty interest, and thus reverse the Court of Appeal.

Dated: October 5, 2015

Respectfully submitted,

By: 

Stephen G. Larson
Steven A. Haskins
Attorneys for *Amicus Curiae*
CALIFORNIA SOCIETY OF
CERTIFIED PUBLIC
ACCOUNTANTS

## CERTIFICATE OF COMPLIANCE

[Cal. Rules of Court, Rule 8.204]

The text in this *Amicus Curiae* Brief consists of 4,153 words as counted by the Microsoft Word word-processing program used to generate this document.

Dated: October 5, 2015

Respectfully submitted,

By: 

Steven A. Haskins
Attorneys for *Amicus Curiae*
CALIFORNIA SOCIETY OF
CERTIFIED PUBLIC
ACCOUNTANTS

State of California )
County of Los Angeles )
)

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I, Kirstin Largent , declare that I am not a party to the action, am over 18 years of age and my business address is: 631 S Olive Street, Suite 600, Los Angeles, California 90014.

**On** 10/5/2015 declarant served the within: Application for Leave to File and Proposed Amicus Brief **upon:**

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