No. S222329

IN THE SUPREME COURT OF CALIFORNIA

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926 NORTH ARDMORE AVENUE, LLC,

Plaintiff and Appellant

v.

COUNTY OF LOS ANGELES,

Defendant and Respondent.

SUPREME COURT
FILED

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

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Sen. Daily J. (2011-2012 Reg. Sess.) 50

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I. ISSUE PRESENTED FOR REVIEW

Does Revenue and Taxation Code section 11911 authorize a county to impose a documentary transfer tax based on a change in ownership or control of a legal entity that directly or indirectly holds title to real property?

II. INTRODUCTION

Revenue and Taxation Code section 11911[1]—a part of the Documentary Transfer Tax Act of 1967 ("DTTA")—authorizes counties and cities to impose a documentary transfer tax "on each deed, instrument, or writing by which any lands, tenements, or other realty sold … [are] granted, assigned, transferred or otherwise conveyed to … [a] purchaser or purchasers, or any other person or persons, by his or their direction … ."

Although this tax has always been limited to writings that *convey realty*, the Court of Appeal below transformed section 11911 into a tax on the conveyance of interests in *legal entities* if they indirectly (or directly) own realty. To do so, the court erroneously relied on concepts embodied in statutes found in a *different* division of the Revenue and Taxation Code, which *postdated* the DTTA by more than a decade, and which were enacted for an entirely *different purpose*.

In this case, trusts established for a mother, Gloria Averbook, transferred 90 percent of their interests in a partnership, BA Realty LLLP

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[1] All statutory references are to the Revenue and Taxation Code unless otherwise specified.

("BA Realty"), to two trusts that she had created for her sons, Bruce and Allen Averbook. BA Realty did not hold title to any realty and instead owned a limited liability company, 926 North Ardmore Avenue LLC ("Ardmore"), which, in turn, held title to an apartment building bearing that same address in Los Angeles (the "Property"). Title to the Property never changed, and BA Realty remained the owner of the limited liability company that owned the Property. Thus, there was no "deed ... or writing ... by which any ... realty sold [was] ... conveyed to ... [a] purchaser," upon which a documentary transfer tax could be imposed. (§ 11911.)

Nevertheless, the Court of Appeal upheld the County's imposition of such a tax on *Ardmore*, which had never transferred its Property. The court held that under the DTTA, counties are "permitted to impose a documentary transfer tax based on the transfer of more than 50% of the interest in a partnership that was the sole member of an LLC that held title to realty." (*926 North Ardmore Avenue, LLC v. County of Los Angeles* (2014), slip opn., p. 7.) To reach that conclusion, the Court of Appeal construed "realty sold" under section 11911 "to have the same meaning as 'change of ownership'" under the statutes implementing Proposition 13 (*id.* at pp. 22, 30), although those statutes are found in a different division of the Revenue and Taxation Code, concern a different kind of tax, and have a different purpose.

Specifically, the Court of Appeal relied on section 64, which triggers a reappraisal of the value of property upon a "change of ownership" for

purposes of assessing the annual property tax due under Proposition 13. That trigger serves a specific purpose relevant to Proposition 13: "In enacting section 64, subdivision (c), the Legislature sought to avoid inequality between the tax burden imposed on residential property due to its rapid turnover rate and that borne by corporate property in view of its lower turnover rate" and thus it established a trigger for more frequently reappraising corporate property. (*Twentieth Century Fox Film Corporation v. County of Los Angeles* (1990) 223 Cal.App.3d 1158, 1161 (*Twentieth Century Fox*).) Statutes providing for a *different* kind of tax in a *different* division of the Revenue and Taxation Code, enacted over a decade later using *different* language for a *different* purpose, cannot possibly shed light on the Legislature's earlier intent in enacting the DTTA. Indeed, it is ironic that a statute designed to implement a constitutional measure that *restricted* taxes is being used to *expand* the taxes authorized under the DTTA.

Correctly construed, section 11911 authorizes the imposition of a documentary transfer tax only on documents that convey "realty sold" for the following reasons:

First, the plain language of, and the past practice of applying, section 11911 only permits a documentary transfer tax to be imposed on documents that "gran[t], assig[n], transfe[r], or otherwise conve[y]" "realty sold." It does not authorize a tax on transfers of interests in legal entities because they directly or indirectly own realty.

Second, "[b]ecause section 11911 was patterned after the former [Federal Stamp A]ct and employs virtually identical language as that act, [courts] must infer that the Legislature intended to perpetuate the federal administrative interpretations of that federal act." (*Thrifty Corp. v. County of Los Angeles* (1989) 210 Cal.App.3d 881, 884 (*Thrifty*).) Those federal interpretations generally limited the tax to documents by which "realty [is] sold" or to "agreement[s] to transfer [title]" to realty. (*Berry v. Kavanagh* (6th Cir. 1943) 137 F.2d 574, 575-576 (*Berry*).)

Third, the words of a statute "must be construed in context, keeping in mind the statutory purpose," and "statutory sections relating to the same subject must, to the extent possible, be harmonized." (*Long Beach Police Officers Assn. v. City of Long Beach* (1988) 46 Cal.3d 736, 746 (*Long Beach*).) Here, other statutory sections within the DTTA *prohibit* the tax from being levied on "any transfer of an interest in [a] partnership" "[i]n the case of any realty held by a partnership," unless the partnership terminates, in which case "the partnership ... shall be treated as having executed an instrument whereby there was conveyed ... all realty held by the partnership." (§ 11925, subds. (a), (b).) This language reinforces the interpretation of the DTTA that (1) the documentary transfer tax may not be levied on the transfer of an interest in a partnership (as here) and (2) the triggering event for the levy is the "execut[ion of] an instrument whereby there was conveyed ... realty held by the partnership." (§ 11925, subd. (b).) Elsewhere, the DTTA exempts from

the tax any state or political subdivision "when [an] exempt agency is acquiring title" (§ 11922)—an exemption that again reinforces the general rule that the document must convey the realty before the tax may be levied.

Fourth, if any ambiguity remains, it must "be resolved in favor of the taxpayer" (here, Ardmore). (*Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 326 (*Agnew*), superseded by statute on other grounds.) The Court of Appeal did not even acknowledge, much less apply, this well-established canon of statutory interpretation.

In sum, the plain language of the DTTA, as confirmed by the long-standing interpretations of the federal Stamp Act on which it was patterned, only authorizes the imposition of a tax "on each deed, instrument, or writing by which any lands, tenements, or other realty sold … [are] granted, assigned, transferred or otherwise conveyed to … [a] purchaser." (§ 11911, subd. (a).) Accordingly, the transfer of interests in a partnership that, in turn, owned a company that, in turn, held realty—the title to which never changed—is not subject to a documentary transfer tax. This Court should therefore reverse the Court of Appeal's decision, grant Ardmore's request for a refund of the documentary transfer tax already paid, and remand to allow the lower courts to determine Ardmore's right to attorneys' fees and costs.

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Ownership Of The Property

1. Beryl And Gloria Averbook Establish A Family Trust

The roots of this case can be traced back to 1972, when Beryl Averbook and his wife Gloria established a family trust that owned, among other assets, an apartment building located at 926 North Ardmore Avenue (the "Property" or "Apartment Building"). (Slip opn., p. 2.) Under the terms of that trust (hereinafter, the "Family Trust"), upon the death of either spouse, the trust principal would be distributed to four subtrusts: the Survivor's Trust, the Bypass Trust, the Exempt Marital Trust, and the Nonexempt Marital Trust. (*Ibid.*)

2. Beryl Averbook Passes Away

Beryl passed away in April 2007, leaving Gloria as the beneficiary of the Family Trust and subtrusts. (Slip opn., p. 2.) Gloria designated her two sons, Bruce and Allen, as successor trustees of the Family Trust. (3RT306:8-12; Pl. Ex. 2.)

3. The Property Is Transferred To Ardmore

In August 2008, Bruce and Allen, in their capacity as trustees, created a limited liability company, Ardmore, to "acquire, hold, manage and dispose of" the Property. (Slip opn., p. 3.) The Family Trust was named as the sole member of Ardmore. (*Ibid.*)

The purpose of creating the LLC was to insulate the Averbooks' other assets from any liabilities that might arise from the operation of the Apartment Building. (3RT319:25-320:14, 324:12-325:2.)

On August 24, 2008, the Family Trust conveyed the Apartment Building to Ardmore. (3RT317:21-318:22; Pl. Ex. 19.)

4. The Family Trust Transfers Its Interest In Ardmore To BA Realty

On that same day, the Family Trust conveyed its interest in Ardmore to a Delaware limited liability limited partnership, BA Realty LLLP ("BA Realty"). (3RT318:24-319:17; Pl. Ex. 20.) The general partner of BA Realty was BA Realty Management LLC, which was owned by the Family Trust, and the Family Trust itself was the limited partner of BA Realty. (3RT316:10-22; Pl. Ex. 17[GWP000592-599].) Bruce and Allen were named as managers of BA Realty Management LLC. (3RT312:19-313:3; Pl. Ex. 12, p. 3.)

Thus, as of August 2008, the Family Trust owned BA Realty, which owned Ardmore, which held title to the Property.

5. The Family Trust Distributes Its Interest In BA Realty To The Four Subtrusts

On December 3, 2008, the Family Trust agreed to distribute its interest in BA Realty to the four subtrusts: approximately 64.7% of its interest in BA Realty was transferred to the Survivor's Trust; 23.9% to the Nonexempt Marital Trust; 9.8% to the Bypass Trust, and 0.6% to the Exempt Marital

Trust. (See slip opn., p. 3.) The remaining 1% interest in BA Realty was held by BA Realty Management LLC. (3RT316:10-22; Pl. Ex. 17 [GWP000593].)

On that same day, Gloria Averbook also established irrevocable trusts for Allen and his issue, and Bruce and his issue ("Allen's Trust" and "Bruce's Trust"). (Slip opn., p. 3.)

On January 1, 2009, the Survivor's Trust transferred a 3.4587% interest in BA Realty to Bruce's Trust, and an equivalent 3.4587% interest to Allen's Trust. (3RT316:10-22; Pl. Ex. 17[GWP000598].)

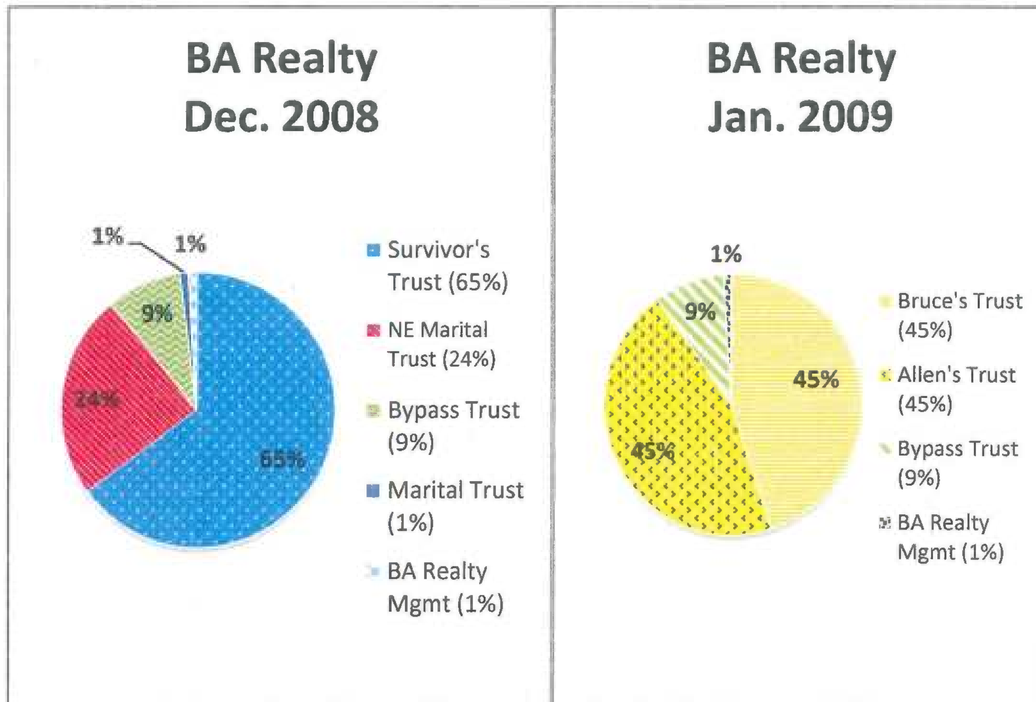
B. The Transaction At Issue

On January 8, 2009, the transaction at issue occurred. Pursuant to the "Master Limited Partner Transfer and Substitution Agreements" (the "Agreements"), the Survivor's Trust and the Marital Trusts sold their combined remaining 83.1% interest in BA Realty to Bruce's and Allen's Trusts. (Slip opn., p. 3; 3RT351:20-25, 352:27-353:7, 353:20-354:3, 354:23-355:9, 357:5-19; Pl. Exs. 32, 33, 36, 37.)

As Gloria's son Allen explained at trial, the purpose of the transactions was to provide estate-tax savings for Gloria, to provide sufficient liquidity to cover the estate taxes that would eventually have to be paid, and to facilitate the *eventual* disposition of the interests in BA Realty to Bruce's and Allen's issue. (3RT324:12-327:28.)

Following this transaction, Bruce's and Allen's Trusts each held a 44.6% interest in BA Realty; the Bypass Trust held a 9.8% interest; and

BA Realty Management LLC continued to hold the remaining 1% general partnership interest. (3RT370:15-27; Pl. Ex. 59[GWP000643].)



Neither the Agreements nor the other documents that facilitated the transaction mentioned the Property held by Ardmore. (3RT353:20-357:19; Pl. Exs. 32-39.)

As required by title 18, section 462.180, subdivision (d)(2) of the California Code of Regulations, Ardmore reported these transactions to the State Board of Equalization through a "Statement of Change in Control and Ownership of Legal Entities" (the "Statement"). (See slip opn., p. 3; 3RT375:6-17; Pl. Ex. 64.) Such statements must be filed whenever a transfer of *interests in a legal entity* results in a change in ownership of property within

the meaning of section 64, subdivisions (c) and (d), which address the reappraisal of property under Proposition 13. (See §§ 480.1, 480.2.)

In its Statement, Ardmore reported three separate transactions: First, that BA Realty had acquired a 100% interest in Ardmore from the Family Trust on August 24, 2008—a non-taxable event since the Family Trust retained control over the Property before and after the transaction; second, that the Family Trust distributed its interests in BA Realty to the four subtrusts on December 3, 2008—also a non-taxable event since Gloria was also the beneficiary of the subtrusts; and third, that the Survivor's Trust and two Marital Trusts sold their interests in BA Realty to Bruce's and Allen's Trusts on January 8, 2009. Ardmore did not take a position on whether those final sales constituted a change in ownership under section 64, subdivision (c) or (d). (3RT375:6-17; Pl. Ex. 64, p. 6.)

C. The County Demands Payment Of The Documentary Transfer Tax.

In 2011, the Registrar-Recorder/County Clerk of the County of Los Angeles sent a Notice and Demand to Ardmore for payment of the documentary transfer tax, invoking both section 11911 and Los Angeles County Code section 4.60.020. (Slip opn., p. 4; Pl. Ex. 66.) The Notice was based on the transfer of the "controlling interest in Ardmore" on January 8, 2009 (erroneously cited as "November 8, 2009") (1CT6, 47), and the amounts were assessed based on the value of the Property on that date.

(3RT375:19-26; Pl. Ex. 65.) The Notice sought payment of $2,160.40 in documentary transfer tax to the County and $8,838 to the City of Los Angeles. (Slip opn., pp. 4-5; 3RT376:5-377:3; Pl. Ex. 66.)[2]

D. Ardmore Files A Claim For A Refund

Ardmore paid the tax, and on October 14, 2011, filed a claim for a refund. (10CT2222-2238.) Ardmore argued that no tax was due because the subtrusts' sale of their interests in BA Realty to Allen's and Bruce's Trusts did not convey "realty" within the meaning of section 11911 or County Code section 4.60.020. (Slip opn., p. 5.)

Ardmore also argued that the only provision in the Revenue and Taxation Code that could have authorized a transfer tax—section 11925, governing partnerships—did not apply. This provision would have authorized a transfer tax only if BA Realty had terminated as a result of a change in beneficial ownership. But Gloria—who retained the right pursuant to the trust agreements to reacquire any property that she transferred to Allen's and Bruce's Trusts and replace it with property of equal value—remained the legal

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2 Section 11911, subdivision (b) authorizes a city within a county that has authorized a documentary transfer tax to also impose its own documentary transfer tax. The City of Los Angeles's own ordinance was meant to conform to the DTTA except for the tax rate. (City of Los Angeles Mun. Code, art. 1.9, § 21.9.1.) A county may collect the city's documentary transfer tax on its behalf. (§ 5146.)

and beneficial owner of Bruce and Allen's Trusts and of the Survivor's Trust. (Slip opn., p. 5; 26 U.S.C. §§ 675(4), 676.)[3]

On December 14, 2011, the County rejected Ardmore's claim. (Slip opn., p. 5; 1CT7.)

E. Ardmore Files Its Refund Action

On January 10, 2012, Ardmore brought an action for a refund of the documentary transfer tax collected by the County and the City, along with a request for attorneys' fees under Code of Civil Procedure section 1021.5. (Slip opn., pp. 5-6.)[4]

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[3] Section 7.23 of Bruce's and Allen's Irrevocable Trust Agreements (see 3RT348:6-12, 349:2-9; Pl. Exs. 29[GWP000095], 30[GWP000032]) contains a provision authorizing Gloria, as the grantor, to "reserve the right to reacquire [her] trust property by substituting other property of equivalent value." Section 7.3(b) of each Agreement further provided that such powers were exercisable solely by Gloria without the approval or consent of the trustees or other fiduciaries. (See *ibid.*) Under 26 U.S.C. § 675(4), a grantor of a trust (Gloria) "shall be treated as the owner" of the trust where she retains the "power to reacquire the trust corpus ...."

[4] Under section 5146, "[i]f ... any portion of the taxes sought to be recovered were collected by officers of the county for a city ..., an action must be brought against the county for recovery of those taxes." But notwithstanding section 5146, which also states that "whether or not a city intervenes in [an] action, any judgment rendered for an assessee shall be entered exclusively against the county," the trial court refused to consider Ardmore's claim to a refund from the City. Accordingly, if this Court agrees with Ardmore's interpretation of section 11911, it should either grant Ardmore's refund request in full or remand for proceedings consistent therewith.

Ardmore again argued that the documentary transfer tax could only be imposed "on the sale of real property and not on the sale of legal entities, except for sales of interests in partnerships holding real property that result in the termination of the partnership." (Slip opn., p. 5.) Ardmore alternatively argued there was no "sale" of a controlling interest in BA Realty because Gloria was treated as the legal and beneficial owner of the Survivor's Trust and Bruce's and Allen's Trusts. (*Ibid.*; see footnote 3, *ante*.)

At trial, the County admitted that until its 2010 website posting, it had never publicly taken the position that it would impose a documentary transfer tax "on legal entity transfers where no document is recorded ...." (3RT435:7-436:21.) An Assistant Registrar-Recorder for the County testified that before 2010, the County had no means of assessing the documentary transfer tax on transfers of interests in legal entities that resulted in a "change of ownership" of real property, because it did not have access to the Statements of Change in Control and Ownership of Legal Entities filed with the Board of Equalization. (Slip opn., pp. 6-7; 3RT436:25-437:2.) Once it was permitted access to those records,[5] the County started demanding payment of documentary transfer taxes whenever it was "advised by the assessor that there was a controlling interest change or some kind of conveyance" under section 64, subdivisions (c) or (d). (Slip opn., pp. 6-7; 3RT450:2-23.)

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[5] See sections 408, 480.1, and 480.2; see also Section IV.D.2, *post*.

The County's 2010 website posting explained:

> The collection is made pursuant to Chapter 4.60 of the Los Angeles County Code, and California Revenue and Taxation Code ('RTC') sections 11911 and 11925, and is consistent with case law which defines 'realty sold' as having the same meaning as changes in ownership for property tax purposes in RTC section 64(c)(1).

(Slip opn., p. 6; 1CT6, 15.)

The trial court ruled in favor of the County, stating that the tax could be based on the transfer of more than a 50% interest in BA Realty to Bruce's and Allen's Trusts because Ardmore could be treated "as a 'lower-tier entity' of the partnership" for purposes of the DTTA (8CT1718), such that its property "can be considered ... as the property of the [partnership] for documentary transfer tax purposes." (8CT1719-1720.)

The trial court also ruled that even if Ardmore had prevailed on the merits, it would not be entitled to attorneys' fees. (8CT1720.)

On March 8, 2013, the court entered a judgment of dismissal. (Slip opn., p. 7.)

F. The Court Of Appeal Affirms The Trial Court's Denial Of A Refund

The Court of Appeal affirmed the trial court's decision, concluding that the transfer of interests in BA Realty to Allen's and Bruce's Trusts on January 8, 2009 were subject to a documentary transfer tax because "section 11911 permits a documentary transfer tax when a transfer of interest in a legal entity results in a 'change of ownership' within the meaning of Revenue and Taxation Code section 64, subdivision (c) or (d)." (Slip opn., p. 2.)

The Court of Appeal acknowledged that the DTTA "'replace[d] and was patterned after the [portion] of the Federal Stamp Act [applying] to conveyances'" of real property. (Slip opn., p. 10, quoting *Thrifty, supra*, 210 Cal.App.3d at p. 884.) But the court disagreed that its "interpretation of section 11911 is dependent only on federal laws that expired over 45 years ago" because "[t]he state DTTA includes no language requiring that it be construed in the same manner as the federal statute it was designed to replace." (Slip opn., p. 26.) Instead, the court held that the phrase "'realty sold'" in section 11911 was "'sufficiently similar'" to the definition of "'change in ownership'" in section 64, subdivisions (c) and (d) that the two should have "'the same meaning.'" (*Id.* at p. 22.)

The ruling rested on several additional grounds. First, the Court of Appeal stated that "[t]he legislative history of the DTTA and the overall structure of the Revenue and Taxation Code support [the] conclusion that section 11911 is generally intended to permit a transfer tax when there has been a 'change in ownership' in the property" under section 64. (Slip opn., p. 22.) Second, it reasoned that its conclusion "is also supported by recent changes in the law that suggest the Legislature endorses the view that a transfer tax may be imposed when there is a 'change in ownership' of a legal entity under section 64, subdivisions (c) or (d)." (*Id.* at p. 24.)

Third, the court concluded that the interpretations of the former federal Stamp Act were "of limited utility in assessing the specific issue in this case"

because the "former federal tax stamp scheme applied to multiple categories of transfers," including transfers of interests in capital stock. Therefore, it was "understandable" that the federal tax would not have applied here in order to avoid "double taxation" of the transfer of stock *and* the realty indirectly owned by the partnership. (Slip opn., p. 27.)

Finally, the court addressed section 11925, subdivisions (a) and (b), which provide that "[i]n the case of any realty held by a partnership," a documentary transfer tax "shall [*not*] be imposed ... by reason of *any transfer of an interest in the partnership*" unless "there is a termination" of the partnership for federal income-tax purposes. (Italics added.) The court concluded that section 11925's partnership exemption did not apply here "because BA Realty [the partnership] did not hold title to the realty; instead, it owned Ardmore [the LLC], which held title to the realty." (Slip opn., p. 31.) Accordingly, the court concluded that since section 11925 did not apply, section 11911 could authorize a transfer tax on Ardmore, an LLC.

The Court of Appeal denied Ardmore's petition for rehearing, and this Court granted review.

IV. ARGUMENT

A. Section 11911's Origins And Plain Text Show That The Documentary Transfer Tax May Be Imposed Only On Documents Conveying Realty

The plain language of section 11911, its origins as a near-verbatim descendant of the former federal Stamp Act, and the surrounding statutory text

compel the conclusion that section 11911 must be read to authorize the imposition of a documentary transfer tax only on writings conveying *realty*, not on conveyances of interests in *legal entities* that directly or indirectly own realty.

1. The Relevant Statutory Canons

In interpreting section 11911, this Court's fundamental task is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 213.) "In order to determine this intent, we begin by examining the language of the statute." (*People v. Cruz* (1996) 13 Cal.4th 764, 775 (*Cruz*).) "'The statutory language, of course, is the best indicator of legislative intent.'" (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 350, quoting *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826.) "Indeed, the most powerful safeguard for the courts' adherence to their constitutional role of construing, rather than writing, statutes is to rely on the statute's plain language." (*Khajavi v. Feather River Anesthesia Medical Group* (2000) 84 Cal.App.4th 32, 46.)

Of course, 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." (*Long Beach, supra*, 46 Cal.3d at p. 746.)

"If ... the statutory language is not clear, then [a court] "may resort to extrinsic sources, such as the legislative history." (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 531.)

However, "courts, in interpreting statutes levying taxes, may not extend their provisions, by implication, beyond the clear import of the language used," and "[i]n case of doubt, construction is to favor the taxpayer rather than the government." (*Edison Cal. Stores, Inc. v. McColgan* (1947) 30 Cal.2d 472, 476 (*Edison*); accord, *Agnew, supra*, 21 Cal.4th at p. 326.)

2. The DTTA's Origins

Generally speaking, "[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." (*City of Cathedral City v. County of Riverside* (1985) 163 Cal.App.3d 960, 962 (*Cathedral City*).) This means "[t]he tax is on the document, not the *sale*." (*People ex rel. Dept. of Public Works v. County of Santa Clara* (1969) 275 Cal.App.2d 372, 375, fn. 6 (*People ex rel. Santa Clara*), italics original.) Consequently, the "tax is an excise tax rather than a property tax." (*Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, 145 (*Fielder*).)

The practice of taxing a document that conveys land arose from the English Parliament's decision to permit "the conveyance of land to be accomplished [through] the execution of a paper or parchment deed," rather than "deliver[y] ... [of] a clod of earth" to the purchaser: "In return for the aid

of the sovereign authority in thus simplifying conveyancing, the sovereign was of course justified in imposing a tax, the American successor of which is the stamp tax in question." (*Endler v. United States* (D.N.J. 1953) 110 F.Supp. 945, 948.)

California's DTTA is a direct descendant of the federal Stamp Act (former 26 U.S.C. § 4301 et seq., repealed by Pub.L. 89-44, Title VIII, § 802(a)(2), 79 Stat. 159 (1965) [1CT86-96]). That act imposed a tax on conveyances of realty (former 26 U.S.C. § 4361 [1CT93]) as well as on the "sale or transfer of shares or certificates of stock, ...issued by a corporation" (former 26 U.S.C. § 4321 [1CT88]). According to the former federal regulations, the realty tax was "limited to conveyances of realty sold" (former 26 C.F.R. § 47.4361-1(a)(2) (1962) [2CT242]), and historically, "[o]nly documentary stamps [were to be] used in payment of the tax imposed by section 4361," which were to "be affixed to the deed, instrument, or other writing by which the realty is conveyed." (Former 26 C.F.R. § 47.4361-3(a) (1962) [2CT245].)

Congress repealed the Stamp Act pursuant to the Excise Tax Reduction Act of 1965. (See H.R.Rep. No. 433, 89th Cong., 1st Sess. (1965), 111 Cong. Rec. 1645, 1679 [1CT100].) But the effective date of the repeal of the documentary transfer tax on realty was postponed until January 1, 1968, in order to allow States time to implement their own versions of the federal act.

(H.R.Rep. No. 525, 89th Cong., 1st Sess. (1965), 111 Cong. Rec. 1645, 1753-1754 [1CT107-108].)

In 1967, California's Legislature enacted the DTTA. Its key provisions (like section 11911) are virtually verbatim replicas of their federal progenitor (see Section IV.A.3, *post*), and it became operative upon the Stamp Act's repeal, "on and after 12:01 a.m. on January 1, 1968." (Stats. 1967, ch. 1332, § 1, p. 3165 [2CT429].) Because "section 11911 was patterned after the former federal [Stamp] [A]ct and employs virtually identical language as that act, [a court] must infer that the Legislature intended to perpetuate the federal administrative interpretations of that federal act." (*Thrifty, supra*, 210 Cal.App.3d at p. 884; see also *Holmes v. McColgan* (1941) 17 Cal.2d 426, 430; *Innes v. McColgan* (1941) 47 Cal.App.2d 781, 785.)

Significantly, California only adopted those sections of the Stamp Act authorizing a transfer tax on documents conveying realty; it did not enact (amongst others) the repealed sections of the Stamp Act authorizing a tax on transfers of shares of stock in corporations. (Slip opn., p. 28; Legis. Secs., Enrolled Bill Rep. on Senate Bill No. 837 (1967-1968 Reg. Sess.) Aug. 17, 1967, p. 1 [3CT449] [explaining that the DTTA "is designed to conform to the existing federal tax on transfers of real property"]; H.R.Rep. No. 433, p. 1679 [1CT101] [indicating that the Stamp Act's stock provisions were repealed more than two years before the DTTA was enacted].)

3. The DTTA's Plain Language Demonstrates That It Authorizes A Tax Only On Documents That Directly Convey Realty

A number of provisions of the DTTA, including sections 11911, 11911.1, 11922, 11925, 11932 and 11933, support the conclusion that only documents conveying realty—not documents transferring interests in *legal entities* that directly or indirectly own realty—are subject to the DTTA.

a. Section 11911 & Former 26 U.S.C. Section 4361

Section 11911, subdivision (a) provides:

> The board of supervisors of any county or city and county, by an ordinance adopted pursuant to this part, may impose, *on each deed, instrument, or writing by which any lands, tenements, or other realty sold* within the county *shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers*, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds one hundred dollars ($100) *a tax* at the rate of fifty-five cents ($0.55) for each five hundred dollars ($500) or fractional part thereof.

(Italics added.)

Former 26 U.S.C. section 4361 of the Stamp Act, on which section 11911 is modeled, was virtually identical:

> There is hereby imposed, on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds $100, a tax at the rate of 55 cents for each $500 or fractional part thereof.

(1CT93.)

The plain language of section 11911 states that the tax is imposed on a "writing" by which any "realty sold" is "transferred or otherwise conveyed" to "the purchaser … or any other person" at the purchaser's direction. Under long-standing rules of statutory construction, section 11911 does not authorize the imposition of a tax on the transfer of *an interest in an entity* because it owns property.

First, the canon of *ejusdem generis* requires that "if a statute contains a list of specified items followed by more general words, the general words are limited to those items that are similar to those specifically listed." (*Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193, 1202.) "[I]f the Legislature intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be surplusage." (*Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 141, superseded by statute on other grounds.)

Here, the grouping of the terms, "lands, tenements, or other realty sold," requires that the subject matter that is "granted, assigned, transferred, or otherwise conveyed" is "realty sold," not an interest in an entity that (directly or indirectly) owns realty. After all, "lands" ("real property less extensive than either tenements or hereditaments" (Black's Law Dict. (10th ed.), p. 1011)) and "tenements" ("a house or other building used as a residence" or "apartment" (*id.* at p. 1697)) are forms of "realty," not interests in entities.

"Realty," in turn, is defined as "[l]and and anything growing on, attached to, or erected on it, that cannot be removed …." (*Id.* at p. 1456). Indeed, Black's Law Dictionary states that the phrase, "lands, tenements, and hereditaments"—a phrase similar to that in section 11911—"was traditionally used in wills, deeds, and other instruments" and meant "[r]eal property." (*Id.* at p. 1011.) A transfer of an interest in a legal entity, even if it owns property, does not fall within the narrower class of transfers that are limited to conveyances of "realty sold."

Likewise, the canon of *noscitur a sociis* holds that "the meaning of a word may be ascertained by reference to the meaning of other terms which the Legislature has associated with it in the statute, and … its scope may be enlarged or restricted to accord with those terms." (*Grafton Partners L.P. v. Superior Court* (2005) 36 Cal.4th 944, 960 (*Grafton Partners*).) Thus, because "realty sold" is associated with "lands" and "tenements," the documentary transfer tax may only be imposed on a writing by which "realty" is "sold." Attributing a broader meaning to "realty sold" is "inconsistent with its accompanying words" and would give "unintended breadth" to the DTTA. (*Yates v. United States* (2015) 135 S.Ct. 1074, 1085 (plur. opn. of Ginsburg, J.) [concluding that the phrase "tangible object" in the Sarbanes-Oxley Act

cannot be understood to refer to a fish—even if it is a "tangible object"—because it must be read in light of the statutory context].)[6]

Examining the entire phrase—"deeds, instruments, or writings, by which any lands, tenements, or other realty sold shall be ... conveyed"—does not alter this analysis. The object of that phrase is the sale of realty, and "deed[s], instrument[s], or writing[s]" are each necessary to accomplish this: Deeds "convey[] or transfer[] the title to real property." (*Estate of Stephens* (2002) 28 Cal.4th 665, 671-672.) Instruments may "transfer[] the title to ... real property," but also may convey lesser interests, like liens. (See *Rich v. Ervin* (1948) 86 Cal.App.2d 386, 391-392.) And a "writing" may capture methods of transfer that do not involve a deed or an instrument, such as a court judgment conveying realty against the wishes of the owner. (See *Ward v. Superior Court* (1997) 55 Cal.App.4th 60, 64 [contrasting an "instrument" with a "judgment affecting the title to or possession of real property"]; *White v. Rosenthal* (1934) 140 Cal.App. 184, 186-187 [contrasting "transfers by operation of law" with "voluntary transfers of the owner's property"].)

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[6] Construing writings conveying "realty sold" to include writings transferring interests in companies would also ignore California's decision to categorize interests in legal entities as personal property, not realty. (§ 106 ["'Personal property' includes all property except real estate."]; §§ 104, 105 [defining real estate and improvements, respectively].) Indeed, in *County of Los Angeles v. Southern California Edison Co.* (2003) 112 Cal.App.4th 1108, 1122, the court asserted that "realty for purposes of section 11911 ... encompasses only real property and improvements, excluding personal property."

Further, the canon of *noscitur a sociis* restricts the scope of the term "writing" by the "other terms which the Legislature has associated with it" such that it only relates to writings that convey "realty sold." (See *Grafton Partners L.P.*, *supra*, 36 Cal.4th at p. 960.)

Finally, "courts, in interpreting statutes levying taxes, may not extend their provisions, by implication, beyond the clear import of the language used, nor enlarge upon their operation so as to embrace matters not specifically included." (*Edison, supra*, 30 Cal.2d at p. 476.)

Significantly, the federal cases construed the virtually identical language in the federal Stamp Act (then codified at former 26 U.S.C. § 3482) to comport with the above-referenced interpretation. The federal courts ruled that the Stamp Act imposed an "excise" tax upon the "privilege of selling lands, tenements or other realty." (*Berry, supra*, 137 F.2d at pp. 575-576.)[7] In concluding that no tax was due for the principal-to-agent transfer of realty, *Berry* held that "[t]he burden of the tax attaches when the property is sold" and "[u]sually the word 'sold' means the transfer of title or an agreement to transfer subsequent for a consideration." (*Ibid.*)

Likewise, in *United States v. Seattle-First Bank* (1944) 321 U.S. 583, 589, the U.S. Supreme Court held that a statutory consolidation of banks, by

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[7] Federal, like California, law did not treat interests in legal entities as real property. (See former 26 C.F.R. § 47.4361-1(a)(3) [2CT242].)

which title to property and other assets passed to the consolidated entity, was not subject to a documentary transfer tax because the "realty was not conveyed to or vested ... by means of any deed, instrument or writing." (*Id.* at p. 590.) The Court explained that there was a "complete absence of any of the formal instruments or writings upon which the stamp tax is laid," "[n]or can the realty be said to have been 'sold' or vested in a 'purchaser or purchasers' within the ordinary meaning of those terms." (*Ibid.*) Other federal authorities are in accord. (See, e.g., *Socony-Vacuum Oil Co. v. Sheehan* (E.D. Mo. 1943) 50 F.Supp. 1010, 1021; former 26 C.F.R. § 47.4361-2(a), (b) (1962) [2CT242-245] [listing the types of realty conveyances subject to the Stamp Act].)

b. Section 11925 & Former 26 U.S.C. Section 4383

Section 11925—the partnership provision of the DTTA—further illustrates why section 11911 should be read to limit the DTTA to documents conveying "realty sold."

Section 11925 provides in relevant part that a "*transfer of an interest in the partnership*" that directly holds realty does *not* constitute a transfer subject to the DTTA unless the partnership is terminated:

> (a) In the case of any realty held by a partnership or other entity treated as a partnership for federal income tax purposes, *no levy shall be imposed* pursuant to this part *by reason of any transfer of an interest in the partnership* or other entity or otherwise, if both of the following occur:

> (1) The partnership or other entity treated as a partnership is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1986.
>
> (2) The continuing partnership or other entity treated as a partnership continues to hold the realty concerned.
>
> (b) If there is a termination of any partnership or other entity treated as a partnership for federal income tax purposes, within the meaning of Section 708 of the Internal Revenue Code of 1986, for purposes of this part, *the partnership or other entity shall be treated as having executed an instrument whereby there was conveyed, for fair market value ... all realty held by the partnership* or other entity at the time of the termination.
>
> (c) Not more than one tax shall be imposed pursuant to this part ... by reason of a termination described in subdivision (b), and any transfer pursuant thereto, with respect to the realty held by a partnership ....

(§ 11925, italics added.)

Under section 708 of the Internal Revenue Code, a partnership is continuing unless it is terminated. (26 U.S.C. § 708(b).) And a partnership terminates if "within a 12-month period there is a *sale or exchange* of 50 percent or more of the total interest in partnership capital and profits." (*Ibid.*, italics added.) In that event, section 11925, subdivision (b), expressly treats the termination as the legal equivalent of the partnership having "executed an instrument" conveying "all realty held by the partnership ... at the time of termination."

Accordingly, the language of section 11925 reinforces the interpretation that the DTTA only imposes a tax on documents that directly convey realty, and not on documents that convey an interest in legal entities, as explained below:

First, section 11925, subdivision (a) makes clear that "[i]n the case of any realty held by the partnership . . ., no levy shall be imposed . . . by reason of any transfer of an interest in the partnership" as long as the partnership is continuing. It therefore distinguishes a transfer of an interest in a partnership that holds realty (not taxed) from a conveyance of realty (taxed).

Second, section 11925, subdivision (b) treats the termination of a partnership as the constructive "execut[ion of] an instrument" whereby "all realty held by the partnership" is "conveyed for fair market value." There would be no need to describe a partnership's termination as a constructive execution of an instrument conveying realty if the latter was not the event that triggered the imposition of a documentary transfer tax.

The Court of Appeal assumed that section 11925 "is an exemption to the transfer tax authorized under section 11911" and thus reasoned that section 11911 must, by implication, authorize taxing the transfer of interests in *non-partnership* entities, like LLCs, that hold title to realty. (Slip opn., p. 29.)

But the origins of section 11925, which was patterned upon former 26 U.S.C. section 4383, demonstrate that the provision barring a tax on transfers of interests in partnerships was not an exemption, but rather a measure designed to address the anomalies arising from the then-prevailing "'aggregate' approach to partnerships." Under that approach, any change in a partnership's composition dissolved the partnership and could trigger the transfer of its realty: "[A] partner whose interest is transferred . . . is treated as

transferring … his pro rata share of the underlying assets of the partnership." (H.R.Rep. No. 481, 85th Cong., 2d Sess. (1957), p. 10 [1CT149].) However, Congress noted that the Internal Revenue Service had nonetheless adopted the "entity" approach and had "taken the position that no tax is to be imposed *until there is a change of legal title to the real property, irrespective of the changes of interests in the partnership*." (*Id.* at p. 11 [1CT150]; italics added.)

Former 26 U.S.C. section 4383 was enacted to adopt the "entity" approach and prevent every transfer of an interest in a partnership from triggering the documentary transfer tax: "[T]here is a question as to whether tax is presently imposed where there is merely a change of interests in the partnership and no change in legal title of real property. Not to impose a tax … follows the 'entity' approach for partnerships. [¶] The 'entity' approach is generally more practicable and is less likely to cause inequities and to lead to frequent calculations of tax resulting from minor changes in a partnership." (Sen.Rep. No. 2090, 85th Cong., 2d Sess. (1958) [1CT153].) The codification of the "entity approach" prevented every transfer of an interest in a partnership from dissolving the partnership and requiring the conveyance of realty.[8]

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[8] The "aggregate" theory of partnerships (adopted in the Uniform Partnership Act of 1914) was comprehensively replaced only when the Revised Uniform Partnership Act and its "entity approach" to partnerships were adopted by the National Conference of Commissioners of Uniform State Laws in 1993, and by California in 1996. (See Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 583 (1995-

[Footnote continued on next page]

Consequently, the Court of Appeal erred in inferring that the DTTA authorized the taxation of transfers of interests in legal entities that held realty, from which section 11925 purportedly carved out a limited "exemption." (Slip opn., p. 29.) Rather, section 11925 was enacted for the purpose of conforming the tax treatment of partnerships holding realty to that already accorded to other legal entities, transfers of interests of which did not dissolve them and were not understood to subject them to a documentary transfer tax. Thus, section 11925's prohibition against taxing transfers in partnership interests actually reinforces Ardmore's position that only conveyances of realty are subject to the DTTA.

Subdivision (d) of section 11925 also does not support the view that the Legislature intended to tax transfers of interests in legal entities that hold property. (Slip opn., pp. 22-24.) Subdivision (d) exempts "transfer[s] ... that result[] solely in a change in the method of holding title to ... realty" where the "proportional ownership interests in the realty ... remain the same

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[Footnote continued from previous page]

1996 Reg. Sess.) as amended Aug. 23, 1996, pp. 3-4 [Motion for Judicial Notice ("MJN") Ex. G, pp. 97-98].) Under the Revised Uniform Partnership Act, "there is no longer the need to convey title from the old partnership to the new partnership every time there is [a] change in partners." (*Id.* at p. 4 [Ex. G, p. 98].)

immediately after the transfer."[9] California had first recognized LLCs in 1994, and that subdivision was enacted to counter county recorders' efforts to impose documentary transfer taxes when legal entities converted into LLCs and transferred their real property to the newly-formed entity, thereby enabling such transfers to occur without triggering the DTTA. (Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Assem. Bill No. 1428 (1999-2000 Reg. Sess.) as amended May 3, 1999, p. 2 [3CT622].) Thus, under subdivision (d), even conveyances of title to realty were expressly exempted from the tax where only the method of holding title changed.

Accordingly, subdivision (d), properly read, evinces the Legislature's intent to exempt otherwise-taxable conveyances of realty. This exemption for these particular *conveyances of title to realty* offers no support for reading the DTTA to reach transfers of *interests in entities* that hold realty but *do not transfer title*.

c. Other DTTA Sections

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[9] Section 11925, subdivision (d) provides in relevant part: "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 ... remain the same immediately after the transfer."

The language of section 11911's neighboring statutory provisions also confirms that the DTTA only imposes a transfer tax on writings conveying realty.

For instance, section 11922, patterned after former 26 U.S.C. section 4362(b), exempts the United States or any agency or instrumentality thereof, or any state or territory, from the tax, when the "exempt agency is *acquiring title*." (Italics added.) This reinforces the notion that the imposition of the documentary transfer tax turns on the conveyance of title to realty.

Section 11932 provides that "[i]f a county has imposed a tax pursuant to [the DTTA], every document subject to tax that is submitted for recordation shall show on the face of the document the amount of tax due *and the incorporated or unincorporated location of the lands, tenements, or other realty described in the document*." (Italics added.) Documents that convey realty, not interests in entities that hold realty, are the type of writings contemplated by these terms.

Section § 11911.1 provides that a city or county ordinance which imposes the documentary transfer tax "may require that each deed, instrument, or writing by which lands, tenements, or other realty is sold, granted, assigned, transferred, or otherwise conveyed shall have noted upon it the tax roll parcel number." This further demonstrates that the writings contemplated by the DTTA are those that convey realty, not writings that transfer interests in

entities holding a number of assets (including realty), and which one would not expect to specify parcel numbers.

Similarly, section 11933 provides that where a county "has imposed a [transfer] tax ..., the recorder shall not record any deed, instrument, or writing subject to the tax ... unless the tax is paid at the time of recording," again reinforcing that the DTTA was intended to authorize the imposition of a tax on instruments conveying *realty*, since such instruments are the type of documents that are recorded.

In sum, the plain text of section 11911, the interpretation of the federal statute after which it was patterned, and its accompanying statutory provisions all compel the same conclusion: A documentary transfer tax may only be imposed under the DTTA on a writing that directly conveys realty sold to another party. In Ardmore's case, the operative writing (namely, the Agreements) did not convey property. Indeed, they never once mentioned the realty, or even Ardmore. As such, they fall outside the purview of the DTTA, and no documentary transfer tax should have been imposed.

B. The DTTA's Legislative History Confirms That The Act Goes No Further Than The Federal Stamp Act

"To the extent that uncertainty remains in interpreting statutory language ... both legislative history and the 'wider historical circumstances' of the enactment may be considered. [Citation.]" (*Cruz, supra*, 13 Cal.4th at pp. 782-783.)

The legislative history of the DTTA further supports Ardmore's reading of the statutory language. It confirms that the California Legislature's intent in enacting the DTTA was merely to continue the long-standing judicial and administrative understandings of that portion of the former federal Stamp Act that our Legislature enacted nearly verbatim in the DTTA. (Enrolled Bill Rep. on Assem. Bill No. 837, p. 1 [3CT449] [noting that the bill "is designed to conform to the existing federal tax on transfers of real property which expires January 1, 1968"]; Ops. Cal. Leg. Counsel, No. 25569 (Aug. 1, 1967) on Sen. Bill No. 837, printed in 3 Sen. J. (1967-1968 Reg. Sess.), pp. 4738-4739 [3CT503-504] [noting that the DTTA was "quite similar" to the federal documentary stamp tax and should be "construed in the same manner as the federal law"]; Assem. Com. on Revenue and Taxation, Analysis of Sen. Bill No. 837 (1967-1968 Reg. Sess.) May 23, 1967 [3CT565] [noting that the DTTA was "essentially the same as the federal tax which is to be discontinued on January 1, 1968"]; Legis. Analyst, Analysis of Sen. Bill No. 837 (1967-1968 Reg. Sess.) as amended June 8, 1967 [2CT438] [referring to a "substantially similar federal tax which expires January 1, 1968]; accord, *Thrifty, supra*, 210 Cal.App.3d at p. 884.)

The legislative history predating the DTTA's final approval by the Governor on August 23, 1967 (Stats. 1967, ch. 1332, § 1, p. 3162 [2CT426]) also demonstrates that the Legislature intended the documentary transfer tax to extend no further than the conveyance of realty sold: The Legislative Analyst

stated that the DTTA would "authorize counties ... to levy a tax upon the transfer of real property" (Legis. Analyst, Analysis of Sen. Bill No. 837 [2CT434]), and in the Legislative Counsel's view, it would "authorize counties and cities to impose a tax on documents evidencing a transfer of real property" (Ops. Cal. Leg. Counsel on Sen. Bill No. 837, 3 Sen. J. at p. 4738 [3CT503]). Other sources confirm that the intent of the Act was to "impose a tax on instruments of conveyance with respect to real property" (Sen. Bill No. 837 (1967-1968 Reg. Sess.) as amended April 4, 1967 [2CT400]), or upon the "sale of an interest in real property" (Legis. Analyst, Analysis of Sen. Bill No. 837 [2CT439]; see also Enrolled Bill Rep. on Assem. Bill No. 837, p. 1 [3CT449] [describing the DTTA as a "deed transfer tax on instruments of conveyance with respect to real property"]).

These statements, coupled with the Legislature's decision *not* to enact the portion of the federal act imposing documentary transfer taxes on transfers of shares or certificates of stock (see former 26 U.S.C. § 4321 [1CT88]) reflect the Legislature's unmistakable intent to limit the tax to documents evidencing conveyances of realty.

The Court of Appeal's contrary reading of the legislative history conflicts with well-settled principles:

First, the court stated that its interpretation of section 11911 was not dependent upon the interpretation of the Stamp Act because "[t]he state DTTA includes no language requiring that it be construed in the same manner as the

federal statute it was designed to replace." (Slip opn., p. 26.) But "[t]he fundamental task of statutory construction is to 'ascertain the intent of the lawmakers'" (*Cruz, supra*, 13 Cal.4th at p. 774), and the unmistakable intent here was "to replace" the Stamp Act with a state law "patterned after the Federal Stamp Act ... which [had] expired ...." (*Thrifty, supra*, 210 Cal.App.3d at p. 884.) This is confirmed by the DTTA's use of virtually identical language from the relevant portions of the federal Stamp Act.

Second, the court dismissed reliance on the federal Stamp Act because "the former federal tax stamp scheme applied to multiple categories of transfers," such as transfers of interest in capital stock. Therefore, "the conveyance tax set forth in former section 4361 [regarding realty] would not apply to the type of transaction at issue here [involving Ardmore]" because doing so would result in "double taxation: one set of stamp taxes for the transfer of interests in the legal entities themselves and a second stamp tax for the realty held by the lower-tier entity." (Slip opn., pp. 27-28.)

But our Legislature's *deliberate* decision *not* to enact the federal provisions applying the tax to transfers of stock and certificates actually shows that the DTTA was not intended to tax transfers of interests in entities, but only conveyances of realty. (See *In re Hoddinott* (1996) 12 Cal.4th 992, 1002; Code Civ. Proc., § 1858 ["In the construction of a statute ..., the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted"].)

Finally, the Court of Appeal stated that federal law was of "limited utility" in interpreting the DTTA because LLCs did not exist in California until 1994, long after the repeal of the Stamp Act. (Slip opn., p. 28.) But many other types of legal entities existed when the Stamp Act was in effect. Nothing suggests that LLCs should be treated any differently than any of those other entities.

C. The Case Law Construing The DTTA Does Not Support Applying The Tax To A Change In Ownership Of An Entity That Owns Real Property

For the 48 years since its enactment, California courts have never once, until the Court of Appeal's decision in this case, applied the DTTA to the transfer of *interests in entities* that directly or indirectly own realty.

Instead, they have consistently ruled that the tax "is the fee paid in connection with the recordation of deeds or other documents evidencing transfers of ownership of real property." (*Cathedral City, supra*, 163 Cal.App.3d at p. 962.) This means the "tax is an excise tax rather than a property tax" (*Fielder, supra*, 14 Cal.App.4th at p. 145) and "is on the document, not the *sale*" (*People ex rel. Santa Clara, supra*, 275 Cal.App.2d at p. 375, fn. 6).

Moreover, courts have consistently recognized that "[b]ecause section 11911 was patterned after the former federal act and employs virtually identical language as that act, we must infer that the Legislature intended to perpetuate the federal administrative interpretations of that federal act."

(*Thrifty, supra*, 210 Cal.App.3d at p. 884; *Brown v. County of Los Angeles* (1999) 72 Cal.App.4th 665, 669 [federal regulations followed in determining amount of documentary transfer tax owed based on purchase of property at trustee's sale].)[10]

In departing from this long-standing precedent, the Court of Appeal stated that it was "follow[ing] prior case law that has interpreted the term 'realty sold" in section 11911 to have the same meaning as the phrase 'change of ownership' as used in the property tax provisions." (Slip opn., p. 19.) The court stated that it "agree[d] with *Thrifty* and *McDonald's* conclusion that where, as here, the DTTA does not directly address whether a particular type of transaction qualifies as 'realty sold' within the meaning of section 11911, courts may look to the definitions of 'change in ownership' set forth in the property tax provisions" because:

> [S]imilar terms used "in the same code and governing ... analogous subject[s]" should generally "be defined consistently" unless "countervailing indications require otherwise."

(Slip opn., p. 22, quoting *Thrifty, supra*, 210 Cal.App.3d at p. 886; see also *McDonald's Corp. v. Bd. of Supervisors* (1998) 63 Cal.App.4th 612, 615-616 (*McDonald's*).)

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[10] Several attorney-general opinions also rely on federal regulations in determining whether the DTTA encompasses various transfers of realty. (See, e.g., 62 Ops.Cal.Atty.Gen. 87 (1979); see also 56 Ops.Cal.Atty.Gen. 79, 82 (1973); 53 Ops.Cal.Atty.Gen. 252, 255 (1970); 51 Ops.Cal.Atty.Gen. 55 (1968); 51 Ops.Cal.Atty.Gen. 50, 52 (1968).)

But neither *Thrifty* nor *McDonald's* nor the rules of statutory construction support the Court of Appeal's extension of the DTTA to transfers that result in a "change in ownership" set forth under the "property tax provisions" implementing Proposition 13.

First, the phrase "realty sold" under section 11911 (enacted in 1967) is not sufficiently similar to the phrase "change in ownership" defined in section 64 over a decade later to implement Proposition 13's amendment to our Constitution to warrant giving them the same meaning. Although well-established principles of statutory construction dictate that "[a] word or phrase is presumed to bear the same meaning throughout a text" (Scalia & Garner, Reading Law: The Interpretation of Legal Texts (2012), p. 170; see also *People v. Gray* (2014) 58 Cal.4th 901, 906), there is no "sufficiently similar phrases" canon. To the contrary, "where the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a *different* idea." (Scalia, Reading Law, *supra*, at p. 170, italics added.)

Further, neither *Thrifty* nor *McDonald's* lends support to the Court of Appeal's holding. The question in *Thrifty* was whether a "20-year lease with an option to renew for 10 years is of sufficient longevity … to approximate an 'ownership' right" subject to a documentary transfer tax under section 11911. (*Thrifty, supra*, 210 Cal.App.3d at p. 885.) In analyzing whether such a lease could constitute "realty" and thus trigger the DTTA, the court *looked to*

federal law, acknowledging that "[b]ecause section 11911 was patterned after the former federal act and employs virtually identical language as that act, we must infer that the Legislature intended to perpetuate the federal administrative interpretations of that federal act." (*Id.* at p. 884.)

Federal regulations interpreting the former federal act specified that "'ordinary leases of real property for a definite term of years' were generally not subject to a transfer tax," but "under former federal law a lease was subject to a transfer tax when it was of sufficient duration to approximate an interest such as an estate in fee simple or a life estate." (*Thrifty, supra*, 210 Cal.App.3d at p. 884.) In holding that "Thrifty's 20-year lease with an option to renew for 10 years was not of sufficient longevity to constitute 'realty sold' under section 11911" (*id.* at p. 886), the court decided to take "guidance" from the definition of "change in ownership" under section 61, subdivision (c)(1), which defined it to include "[t]he creation of a leasehold interest in taxable real property for a term of 35 years or more" (*id.* at p. 885) because "realty sold" under section 11911 was "sufficiently similar to the phrase 'change in ownership' contained in the same code and governing an analogous subject, to warrant that each phrase be defined to have the same meaning" (*id.* at p. 886).[11]

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[11] The Court of Appeal here suggested that *Thrifty* "ultimately rejected the federal rule used to determine what type of leasehold interests qualified for

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The County and the Court of Appeal have latched onto *Thrifty*'s statement that "[w]hile the Documentary Transfer Tax Act does not define 'realty sold' that phrase is sufficiently similar to the phrase 'change in ownership' ... to have the same meaning." (*Thrifty, supra*, 210 Cal.App.3d at p. 886; slip opn., p. 20.) But that assertion was made in the context of resolving the question of the *nature of the realty interest* that is subject to the tax. The court did not suggest that the "change in ownership" rules under Proposition 13 should be imported into the determination of what kind of transfer triggers the decade-earlier-enacted DTTA. Indeed, *Thrifty* never addressed whether a transfer of interest in an entity holding property is subject to the DTTA. "[A]n opinion is not authority," of course, "for a proposition not therein considered." (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524 fn. 2.)

McDonald's similarly did not consider whether the transfer of an interest in an entity that directly or indirectly owned realty was subject to the DTTA. Instead, it addressed whether an amendment to a lease that yielded a *total leasehold period* of more than 35 years could be subject to the DTTA. (*McDonald's, supra*, 63 Cal.App.4th at p. 616.) There, McDonald's entered into a lease for 21 years with three renewal options of five years, and after

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a transfer tax." (Slip opn., p. 27.) To the contrary, *Thrifty* simply did not find adequate guidance in federal law on that question, and only then turned to state law for an answer.

exercising its first option to renew, agreed to an amended lease that extended the term 18 years with two renewal options of five years each. (*Id.* at p. 614.) When the amended lease was recorded, the county considered McDonald's as having had continuous possession of the leased premises for 51 years, and imposed a transfer tax of $990. (*Ibid.*)

McDonald's cited *Thrifty* for the proposition that "the phrase 'realty sold' used in section 11911 includes leaseholds of 35 years or more," relying on the definition of section 61, subdivision (c)(1). (*McDonald's, supra*, 63 Cal.App.4th at p. 615.) But *McDonald's* declined to subject the lease to the tax because when the lease was amended, the remaining term of the lease was 28 years, and "in case of doubt statutes levying taxes are construed most strongly against the government and in favor of the taxpayer." (*Id.* at p. 617.) Thus, *McDonald's* does not support the Court of Appeal's decision to apply section 11911 to documents that transfer interests in partnerships.[12]

In sum, the case law supports the conclusion that the documentary transfer tax is a tax on a deed or other document conveying "realty sold" and that the long-standing interpretations of the former federal Stamp Act should

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12 The Court of Appeal also relied on 9 Witkin, Summary 10th (2005) Tax, § 320, p. 463, for the proposition that "realty sold" is similar to "change in ownership." (Slip opn., p. 22.) But Witkin was merely citing *Thrifty* for that proposition.

mark the outer bounds of the virtually verbatim provisions enacted by our Legislature in the DTTA.

D. The Court Of Appeal And The County May *Not* Rely On Subsequent Legislative Enactments To Impliedly Amend The DTTA

As noted, the Court of Appeal and the County erroneously relied on the statutes that implemented Proposition 13, and particularly section 64, to interpret the DTTA. In so doing, they improperly relied on subsequent legislative enactments, which were intended to *restrain* the growth of state and local property taxes, in order to markedly *expand* an entirely *different* tax statute (the DTTA) that had been enacted more than a *decade earlier*. The court's and the County's reading finds no support in the structure of the Revenue and Taxation Code, runs afoul of canons of statutory construction, and violates constitutional limitations on the implementation of new taxes.

1. The Statutes Enacted A Decade Later To Implement Proposition 13 Should Not Be Read To Amend The DTTA By Implication

There is no support for the Court of Appeal's (and County's) elemental premise that section 11911's reference to writings conveying "realty sold" to "purchasers" should be construed to have the same meaning as a "change of ownership" under the statutes implementing Proposition 13.

a. Proposition 13's Implementing Provisions Reflect A Different Purpose And Cannot Be Applied To The DTTA

More than a decade *after* the DTTA was enacted, California voters approved Proposition 13, adding article XIIIA to our Constitution.

Proposition 13, entitled the People's Initiative to Limit Property Taxation, serves a completely different purpose than the DTTA does: It was designed to limit the growth of state and local property taxes by, inter alia, capping the maximum amount of any ad valorem tax on real property to one percent of the "full cash value" of the property. (Cal. Const., art. XIIIA, §§ 1, subd. (a), 2, subd. (a).)

Under Proposition 13, county assessors may reassess real property at its current market value only when it is purchased, newly constructed, or undergoes a "change in ownership." (Cal. Const., art. XIIIA, § 2, subd. (a).) Section 60, in turn, defines a "change in ownership" as "a transfer of a present interest in real property ...."

Under section 64, subdivision (a), "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." (See *Title Insurance & Trust Co. v. County of Riverside* (1989) 48 Cal.3d 84, 89 (*Title Insurance & Trust Co.*); *Twentieth Century Fox, supra*, 223 Cal.App.3d at p. 1163.)

However, subdivisions (c) and (d) of section 64 do provide two exceptions to that rule.[13] These sections, which generally provide that

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[13] Section 64, subdivision (c)(1) provides that when control is obtained through "direct or indirect ownership" of a majority ownership interest in

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"mergers or other transfer[s] of majority controlling ownership should result in a reappraisal of the corporation's property," were enacted to "achieve some degree of parity [in] the tax burden imposed on individual and corporate purchasers of real property," because individual properties change hands more frequently than do corporate properties. (*Twentieth Century Fox, supra*, 223 Cal.App.3d at pp. 1161, 1164; see also *Title Insurance & Trust Co., supra*, 48 Cal.3d at p. 95 ["the equalization of the tax burden between individual and corporate purchasers of real property is an obvious purpose of the provision"]; Assem. Com. on Revenue and Taxation, Analysis of Assem. Bill No. 748 (1979-1980 Reg. Sess.) Oct. 29, 1979, p. 27 [MJN, Ex. A, p. 2].)

But there is no indication that the Legislature intended this exception to apply in any other context, and certainly not to the earlier-enacted DTTA. Indeed, "[t]he declaration of a later Legislature is of little weight in determining the relevant intent of the Legislature that enacted the law"

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another legal entity, this constitutes a "change of ownership of the real property owned by the ... legal entity in which the controlling interest is obtained."

Section 64, subdivision (d) similarly provides that where more than 50 percent of the total interests of a legal entity that owns real property are transferred "by any of the original coowners in one or more transactions," that transfer results in "a change in ownership of that real property owned by the legal entity." These provisions reflect "the 'ultimate control' theory, which looks through the title holder [of corporate property] to the entity ultimately responsible." (*Twentieth Century Fox, supra*, 223 Cal.App.3d at p. 1163.)

(*Peralta Community College Dist. v. Fair Employment and Housing Commission* (1990) 52 Cal.3d 40, 52 (*Peralta*), citing *Teamsters v. United States* (1977) 431 U.S. 324, 354, fn. 39), "especially … where …'a gulf of decades separates the two [legislative] bodies'" (*Apple Inc. v. Superior Court* (2013) 56 Cal.4th 128, 145 (*Apple Inc.*)).

To the contrary, in contemporaneously analyzing Proposition 13 for the Legislature in 1978, the Legislative Analyst advised that "the prohibition [in Proposition 13] against a 'transaction' or 'sales' tax on <u>real</u> property would not preclude an additional sales or use tax on tangible <u>personal</u> property," but that "[a]n extension of the existing documentary transfer tax, which is imposed on the transfer of equity in real property, probably would be prohibited." (Legis. Analyst, Analysis of Proposition 13, The Jarvis-Gann Property Tax Initiative (1977-1978 Reg. Sess.) p. 42 [MJN, Ex. F, p. 91].)

b. The Structure Of The Revenue And Taxation Code Also Distinguishes Property Taxes From Excise Taxes

The Court of Appeal's holding that "a documentary tax may be applied to transfers of interests in legal entities … if the transfer results in a 'change of ownership' under section 64" (slip opn., p. 30) is misplaced for another reason.

This holding requires using statutes in one division of the Revenue and Taxation Code, which come under different headings, to interpret earlier-enacted statutes in a separate division of that code. "'[C]hapter and section

headings [of an act] may properly be considered in determining legislative intent' [citation], and are entitled to considerable weight." (*People v. Hull* (1991) 1 Cal.4th 266, 272, quoting *American Federation of Teachers v. Bd. of Education* (1980) 107 Cal.App.3d 829, 836.)

Specifically, the Revenue and Taxation Code is divided into two divisions. Division 1 governs "Property Taxation," which includes Part 0.5, which is entitled "Implementation of Article XIIIA of the California Constitution" and includes section 64. (See Stats. 1979, ch. 242, § 4.)

In contrast, the DTTA appears in Division 2 of the Revenue and Taxation Code, governing "Other Taxes." Unlike a property tax, which is assessed based on the value of property, the DTTA—an excise tax—is a "privilege tax ... and its payment is invariably made a condition precedent to the exercise of the privilege involved." (*Douglas Aircraft Co. v. Johnson* (1939) 13 Cal.2d 545, 550; *City of Huntington Beach v. Superior Court* (1978) 78 Cal.App.3d 333, 340 [the DTTA taxes the "exercise of the right or privilege of transferring [real] property"].)

Division 2 covers, among other things, sales and use taxes (part 1), vehicle license fees (part 5), and taxes on corporations (part 11). Each of these taxes differs markedly from ad valorem property taxes, which tax the ongoing *ownership* of property, rather than the privilege of a sale or event. (Compare Division 1, Parts 0.5-14 (§ 50 et seq.) with Division 2, Parts 1-31 (§ 6001 et seq.).)

Accordingly, if anything, the structure of the Revenue and Taxation Code undercuts the notion that section 64 (which governs the reappraisal of property for purposes of ad valorem property taxes) also applies to an excise tax (the DTTA), enacted a *decade earlier* in a *different* division for a *different* purpose.

2. Other Subsequent Legislative Enactments Also Do Not Expand The Reach Of The DTTA

The Court of Appeal also reasoned that "since the DTTA was adopted in 1967, there have been changes in California law suggesting the Legislature endorses the view that section 11911 permits counties and cities to impose a documentary tax on transfers of interests in legal entities that result in a 'change of ownership.'" (Slip opn., p. 28.)

Specifically, prior to 2009, county assessors were "barred ... from providing county recorders [who enforce the DTTA] access to statements of change in ownership of legal entities." (Slip opn., p. 16.) Senate Bill No. 816 and Assembly Bill No. 563 amended the Revenue and Taxation Code to provide county recorders and city finance officials with access to such statements and records of any investigation concerning a change in ownership. (§§ 408, subd. (b), 408.4.) The court suggested that the passage of those bills in 2009 and 2011 implies that the Legislature now reads the DTTA to incorporate section 64. (Slip opn., pp. 23-24.)

There are at least three barriers to the Court of Appeal's analysis.

a. Invoking Senate Bill No. 816 And Assembly Bill No. 563 To Expand The DTTA's Scope Would Be Contrary To The Constitution

"An established rule of statutory construction requires [courts] to construe statutes to avoid 'constitutional infirmit[ies].'" (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 477 (*McClung*); *People v. Navarro* (2007) 40 Cal.4th 668, 675.)

Here, construing Senate Bill No. 816 and Assembly Bill No. 563 to amend the DTTA to impose a new transaction tax on transfers of interests in entities raises serious constitutional concerns that warrant construing these statutes to avoid rendering them unconstitutional.

Specifically, Proposition 13 not only capped ad valorem taxes on real property, but also amended our Constitution to (1) require that "any change in State taxes ... whether by increased rates or changes in methods of computation 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," and (2) prohibit "new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property." (Former Cal. Const., art. XIIIA, § 3.)[14]

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[14] There have been no material changes in the wording of Article XIIIA since then.

Thus, interpreting section 11911 based on these subsequently enacted bills (neither of which was enacted by a supermajority vote)[15] to expand or impose a new "transaction tax" based on writings that transfer interests in legal entities would run afoul of article XIIIA, section 3 of the Constitution; thus, they should not be construed to do so. (*McClung, supra*, 34 Cal.4th at p. 477.)[16]

b. Settled Rules Of Statutory Construction Argue Against Relying On Bills Enacted In 2009 And 2011 To Interpret The DTTA

Secondly, as noted earlier, any views that the Legislature may have had in 2011 or 2009 cannot shed light on the Legislature's intent in enacting the DTTA almost fifty years ago. (*Peralta, supra*, 52 Cal.3d at p. 52; *Apple Inc., supra*, 56 Cal.4th at pp. 145-146 [declining to credit views of the 2011 Legislature with respect to what the 1990 Legislature intended].)

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[15] See 3 Assem. J. (2009-2010 Reg. Sess.), p. 3209 [MJN, Ex. B, p. 7]; Sen. Daily J. (2009-2010 Reg. Sess.), pp. 2388-2389 [MJN, Ex. C, pp. 9-10]; Sen. Daily J. (2011-2012 Reg. Sess.), pp. 2206-2207 [MJN, Ex. D, pp. 12-13]; Assem. Daily J. (2011-2012 Reg. Sess.), p. 2909 [MJN, Ex. E, p.15].

[16] The Court of Appeal also erred in relying on amendments to *other* counties' tax ordinances to interpret the DTTA. (Slip opn., p. 25, citing County of Santa Clara Code, § A30-39.6; City and County of San Francisco Business and Tax Regulations Code, Art. 12C, § 1114.) Clearly, those *local* ordinances cannot inform the interpretation of the *state* DTTA (or Los Angeles County's own ordinance). Further, even assuming that those counties had the constitutional power to enact such ordinances, unlike Los Angeles County, San Francisco and Santa Clara submitted their ordinances to the electorate for popular approval, as required. (See Cal. Const., art. XIIIC § 2, subd. (b).)

Moreover, using bills enacted in 2009 and 2011 to alter the intent of the Legislature in enacting a statute more than forty years earlier constitutes an attempt to amend the DTTA by implication. But "the principle of amendment ... by implication is to be employed frugally, and only where the later-enacted statute creates such a conflict with existing law that there is no rational basis for harmonizing the two statutes...." (*McLaughlin v. State Bd. of Education* (1999) 75 Cal.App.4th 196, 222-223, quoting *In re White* (1969) 1 Cal.3d 207, 212; see also *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1187.)

Here, neither Senate Bill No. 816 nor Assembly Bill No. 563 expressly amended the DTTA to authorize the taxation of "change[s] in ownership." They merely amended the Revenue and Taxation Code's property-tax provisions to allow county recorders to access records concerning "change[s] in ownership." (See §§ 408, 408.4.) Thus, there is no conflict between these provisions and the DTTA that would justify the Court of Appeal's amendment by implication.

c. Senate Bill No. 816 And Assembly Bill No. 563 Are Consistent With Ardmore's Interpretation Of The DTTA

Finally, the enactment of Senate Bill No. 816 and Assembly Bill No. 563 is consistent with the interpretation of the DTTA set forth herein: Affording county recorders the right to access the county assessor's records allows them to enforce the DTTA's existing *partnership* provisions.

As explained earlier, section 11925, subdivision (b) deems a constructive conveyance of title to realty to have occurred—which triggers a tax—when "there is a termination of any partnership or other entity treated as a partnership for federal income tax purposes, within the meaning of Section 708 of the Internal Revenue Code of 1986." (§ 11925, subd. (b); see Section IV.A.3.b, *ante*.) Some transfers of interests in partnerships, which require the filing of a statement of change in ownership under Proposition 13's scheme, can also terminate the partnership under 26 U.S.C. section 708 for purposes of a documentary transfer tax. However, it is also possible to have a termination of the partnership without a taxable change in ownership.[17]

Consequently, "legally required forms [that acknowledge 'changes in control'] ... may or may not trigger a [documentary transfer tax]" under section 11925, and by granting county recorders access to these filings, Senate Bill No. 816 and Assembly Bill No. 563 "help recorders determine whether" section 11925 "applies to certain changes of ownership." (Slip opn., p. 18, quoting Sen. Comm. on Revenue and Taxation, Summary of Senate Bill No. 816 (2009-2010 Reg. Sess.).)

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[17] For example, there is no change in ownership under section 64 where "all of [a partnership's] membership interests are sold but no one person or entity obtains, directly or indirectly, more than a 50 percent interest in the [partnership's] capital and profits." (*Ocean Ave. LLC v. County of Los Angeles* (2014) 227 Cal.App.4th 344, 346-347, 351.) Such a transaction would, however, produce a partnership termination under 26 U.S.C. § 708(b)(1)(B).

E. Extending The DTTA To Reach Transfers Of Interests In Entities That Directly Or Indirectly Own Realty Is Not Necessary To Avoid, And Would Actually Produce, Adverse Consequences

The Court of Appeal also defended its interpretation on the ground that Ardmore's interpretation of the DTTA would permit "property owners to avoid the transfer tax by conveying their real property to a wholly owned, single entity LLC established for the sole purpose of holding the property, and then selling the LLC ... to a third party." (Slip opn., p. 31.)

But there is no basis for this tax-avoidance concern. Under long-standing tax doctrines, a sham or transitory transfer to an entity that is not supported by a business purpose (something that the transactions at issue in this case have never been suggested to be) could be disregarded. (See, e.g., *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750, 760 ["For purposes of taxation, what matters is substance, not form"]; *Shuwa Investment Corp. v. County of Los Angeles* (1991) 1 Cal.App.4th 1635, 1648 ["'the general tax principle [is that] the incidence of taxation depends upon the substance of a transaction rather than its form [Citation.]'"].) But none of these doctrines has any application here.[18]

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[18] Ardmore was an adequately capitalized company that observed corporate formalities at all times. (3RT317:21-318:22, 328:19-330:12, 340:25-341:7, 360:23-361:23.) And, as discussed at section III.A.3, *ante*, Ardmore was formed for legitimate purposes.

Additionally, under general tax principles, "[p]ersons may adopt any lawful means for the lessening of the burden of taxes which in one form or another may be laid upon properties or profits." (*Edison, supra*, 30 Cal.2d at p. 476.)

In any event, if the Legislature shares the Court of Appeal's policy concerns and wishes to expand the reach of the DTTA, it may take steps to do so. But a change of this nature involves the balancing of many delicate policy concerns that under well-established precedent are the province of the Legislature, not the courts. (See *Professional Engineers v. Dept. of Transportation* (1997) 15 Cal.4th 543, 593 ["'Courts do not sit as super-legislatures to determine the wisdom, desirability or propriety of statutes enacted by the Legislature'"].)

Finally, far from avoiding adverse consequences, the Court of Appeal's interpretation of the DTTA produces adverse consequences, two examples of which follow.

First, under the Court of Appeal's decision, the purchase of as little as a 1% interest in a non-partnership entity—if it results in a change of control or ownership under section 64, subdivisions (c) or (d)—would result in a documentary transfer tax on the entity based on 100% of the fair market value of the real property held by the entity, even if little or no consideration is actually paid for the transfer of that 1% interest. (Slip opn., pp. 13-14.) Further, even though the text of the DTTA is designed to levy the tax on the

"buyers" or "sellers" of realty, the Court of Appeal's interpretation would extend the incidence of the tax to minority members of an LLC or a partnership, who are passive bystanders to the triggering transaction.

Second, because minor transfers of interests in non-partnership entities would trigger the DTTA, while substantially larger transfers of interests in partnership interests would not, the Court of Appeal's decision would render the partnership form far more attractive, at least from a documentary transfer tax perspective.

F. The County Has Waived Its Argument That Section 11925 Authorizes The Imposition Of A Tax On Ardmore

In the trial court and the Court of Appeal, the County argued that Ardmore was a "disregarded entity" for purposes of federal and state income tax law such that BA Realty should be deemed to directly hold Ardmore's Property and that the transfers of interests in BA Realty caused it to terminate under 26 U.S.C. section 708, thereby triggering a documentary transfer tax under section 11925. (County's RB, pp. 7, 9-10; 7CT1535.) Ardmore contended that BA Realty was not terminated, and even if it was, section 11925 did not apply because BA Realty did not hold any realty.[19]

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[19] On the first point, Ardmore explained below that BA Realty did not terminate under 26 U.S.C. § 708(b)(1)(B) because Gloria Averbook remained the legal and beneficial owner of Bruce's and Allen's Trusts for income tax purposes pursuant to the trust instruments and 26 U.S.C. § 675(4). (3RT348:6-12, 349:2-9; Pl. Exs. 29[GWP000095],

[Footnote continued on next page]

The Court of Appeal "*agree[d]*" with Ardmore that section 11925 "[i]s inapplicable because BA Realty did not hold title to the realty; instead, it owned Ardmore, which held title to the realty." (Slip opn., p. 31, italics added). The court thus declined to decide whether the partnership had been terminated. (*Id.* at pp. 31-32, fn. 12.)

This Court need not, and should not, reach this issue, as the County failed to preserve it for this Court's review under California Rules of Court, rule 8.504(c); thus, Ardmore will not address it here.[20]

[Footnote continued from previous page]

30[GWP000032].) Under 26 U.S.C. § 675(4), the grantor of a trust (Gloria) "shall be treated as the owner" of the trust where she retains "a power," as did Gloria, "to reacquire the trust corpus by substituting other property of an equivalent value." (See p. 12, fn. 3, *ante*; Ardmore's AOB, pp. 66-67.)

On the second point, while Ardmore is disregarded for state and federal *income-tax purposes*, it remains a separate entity for other purposes and can be subject to other taxes. (See, e.g., 26 C.F.R. § 301.7701-2(c)(iii), (iv), (v) [limiting situations in which entities can be disregarded to federal income taxes, but not employment or excise taxes]; Cal. Code Regs., tit. 18, § 23038(b)-2, subd. (c)(2) [recognizing disregarded status for state income taxes, but not for other particular taxes specific to LLCs].) Therefore, BA Realty held Ardmore, not realty, for purposes of the *excise tax* under section 11925.

[20] A party "has failed to preserve [an] issue" for review where it "neither filed a petition for review nor asserted in its answer ... that, if [this Court] grant[s] review [of the issues raised in the petition, it] should also address [respondent's] issue." (*Scottsdale Insurance Co. v. MV Transportation* (2005) 36 Cal.4th 643, 654, fn. 2; Cal. Rules of Court, rule 8.516(a).) The County indisputably did neither here.

V. CONCLUSION

For the foregoing reasons, the DTTA does not authorize the imposition of a documentary transfer tax based on the conveyance of an interest in a legal entity that owns realty. Instead, the DTTA's plain language only imposes a tax on a "deed, instrument, or writing by which any lands, tenements, or other realty sold [have been] ... otherwise conveyed." (§ 11911.) Consequently, this Court should reverse the Court of Appeal's judgment, grant Ardmore's request for a refund of the documentary transfer taxes already paid, and remand to allow the trial court to determine Ardmore's rights to attorneys' fees for prosecuting this litigation.

Dated: March 25, 2015

Respectfully submitted,

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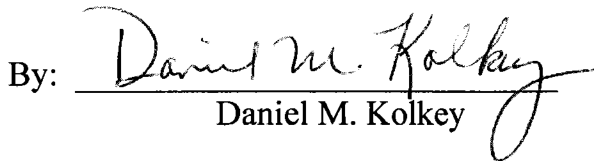
By: 

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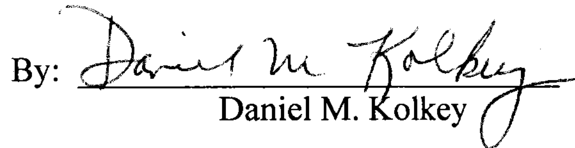
CERTIFICATE OF WORD COUNT

In accordance with rule 8.520(c) of the California Rules of Court, the undersigned hereby certifies that this Opening Brief on the Merits contains 13,840 words, as determined by the word processing system used to prepare this brief, excluding the cover information, the tables, the signature block, the attachment, and this certificate.

Dated: March 25, 2015

FISHERBROYLES, LLP

GIBSON, DUNN & CRUTCHER LLP



By: Daniel M. Kolkey

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ADDENDUM OF STATUTES

CALIFORNIA REVENUE AND TAXATION CODE

§ 11911. Imposition; instruments subject to tax; consideration or value of property; rate; credits. (a) The board of supervisors of any county or city and county, by an ordinance adopted pursuant to this part, may impose, on each deed, instrument, or writing by which any lands, tenements, or other realty sold within the county shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds one hundred dollars ($100) a tax at the rate of fifty-five cents ($0.55) for each five hundred dollars ($500) or fractional part thereof.

(b) The legislative body of any city which is within a county which has imposed a tax pursuant to subdivision (a) may, by an ordinance adopted pursuant to this part, impose, on each deed, instrument, or writing by which any lands, tenements, or other realty sold within the city shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds one hundred dollars ($100), a tax at the rate of one-half the amount specified in subdivision (a) for each five hundred dollars ($500) or fractional part thereof.

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

§ 11911.1. Tax roll parcel number. Any ordinance which imposes the documentary transfer tax may require that each deed, instrument or writing by which lands, tenements, or other realty is sold, granted, assigned, transferred, or otherwise conveyed, shall have noted upon it the tax roll parcel number. The number will be used only for administrative and procedural purposes and will not be proof of title and in the event of any conflicts, the stated legal description noted upon the document shall govern. The validity of such a document shall not be affected by the fact that such parcel number is

erroneous or omitted, and there shall be no liability attaching to any person for an error in such number or for omission of such number.

§ 11922. Instruments of United States, state, territory or political subdivision, etc. Any deed, instrument or writing to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this part when the exempt agency is acquiring title.

§ 11925. Transfer of certain partnership property. (a) In the case of any realty held by a partnership or other entity treated as a partnership for federal income tax purposes, no levy shall be imposed pursuant to this part by reason of any transfer of an interest in the partnership or other entity or otherwise, if both of the following occur:

(1) The partnership or other entity treated as a partnership is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1986.

(2) The continuing partnership or other entity treated as a partnership continues to hold the realty concerned.

(b) If there is a termination of any partnership or other entity treated as a partnership for federal income tax purposes, within the meaning of Section 708 of the Internal Revenue Code of 1986, for purposes of this part, the partnership or other entity 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 the partnership or other entity at the time of the termination.

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

(d) 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.

§ 11932. Submission of documents subject to tax for recordation; facts to be shown. If a county has imposed a tax pursuant to this part, every document subject to tax that is submitted for recordation shall show on the face of the document the amount of tax due and the incorporated or unincorporated location of the lands, tenements, or other realty described in the document.

§ 11933. Payment of tax as prerequisite to recording. If a county has imposed a tax pursuant to this part, the recorder shall not record any deed, instrument, or writing subject to the tax imposed pursuant to this part, unless the tax is paid at the time of recording. A declaration of the amount of tax due, signed by the party determining the tax or his or her agent, shall appear on the face of the document in compliance with Section 11932, and the recorder may rely on that declaration if the recorder has no reason to believe that the full amount of the tax due has not been paid. The declaration shall include a statement that the consideration or value on which the tax due was computed either was, or was not, exclusive of the value of a lien or encumbrance remaining on the interest or property conveyed at the time of sale. Failure to collect the tax due shall not affect the constructive notice otherwise imparted by recording a deed, instrument, or writing.

LOS ANGELES COUNTY CODE

§ 4.60.020. Imposition of tax—Amount. There is imposed on each deed, instrument or writing by which any lands, tenements or other realty sold within the county of Los Angeles shall be granted, assigned, transferred or otherwise conveyed to or vested in the purchaser or purchasers, or any other person or persons by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) exceeds $ 100.00, a tax at the rate of $.55 for each $500.00 or fractional part thereof.

LOS ANGELES MUNICIPAL CODE

§ 21.9.1. Title. This article shall be known as the "Real Property Transfer Tax Ordinance of the City of Los Angeles." It is adopted pursuant to the authority contained in Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the State of California. It is also enacted under the authority of Subdivision (d) of Subsection (11) of Section 2 of the Los Angeles City Charter and other authority held as a Charter City.

§ 21.9.2. Tax Imposed. There is hereby imposed on each deed, instrument or writing by which any lands, tenements, or other realty sold within the City of Los Angeles shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds $100.00, a tax at the rate of $2.25 for each $500.00 or fractional part thereof.

FEDERAL STATUTORY PROVISIONS

Former 26 U.S.C. § 4321. Imposition of tax. There is hereby imposed on each sale or transfer of shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation, a tax at the rate of 4 cents on each $100 (or major fraction thereof) of the actual value of the certificates, of the shares where no certificates are sold or transferred, or of the rights, as the case may be. In no case shall the tax so imposed on any such sale or transfer be—

(1) more than 8 cents on each share, or

(2) less than 4 cents on the sale or transfer.

Former 26 U.S.C. § 4361. Imposition of tax. There is hereby imposed, on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds $100, a tax at the rate of 55 cents for each $500 or fractional part thereof.

Former 26 U.S.C. § 4383. Certain changes in partnerships.

(a) **Continuing partnerships.** In the case of any share, certificate, right, or realty held by a partnership, no tax shall be imposed under section 4321, 4331, or 4361 by reason of any transfer of an interest in a partnership or otherwise, if—

(1) such partnership (or another partnership) is considered as a continuing partnership (within the meaning of section 708), and

(2) such continuing partnership continues to hold the share, certificate, right, or realty concerned.

(b) **Terminated partnerships.** If there is a termination of any partnership (within the meaning of section 708)—

(1) for purposes of this chapter, such partnership shall be treated—

(A) as having transferred all shares, certificates, and rights held by such partnership at the time of such termination; and

(B) as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination; but

(2) not more than one tax shall be imposed under section 4321, 4331, or 4361, as the case may be, by reason of such termination (and any transfer pursuant thereto) with respect to the shares, certificates, rights, or realty held by such partnership at the time of such termination.

26 U.S.C. § 708. Continuation of partnership.

(a) **General rule.** For purposes of this subchapter, an existing partnership shall be considered as continuing if it is not terminated.

(b) **Termination.**

(1) **General rule.** For purposes of subsection (a), a partnership shall be considered as terminated only if—

(A) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or

(B) within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

* * *

CERTIFICATE OF SERVICE
PROOF OF SERVICE

I, Carol J. Aranda, declare as follows:

I am employed in the County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, California 94105, in said County and State. On March 25, 2015, I served the within:

OPENING BRIEF ON THE MERITS

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

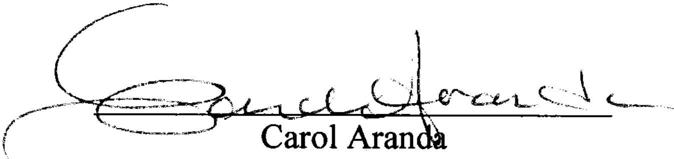
SEE ATTACHED SERVICE LIST

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

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s), and all copies made from same, were printed

on recycled paper, and that this certificate was executed on March 25, 2015 at

San Francisco, California.



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