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**THE OTHER TAXES: Property and Transfer Taxes:
An Introduction for the Trust and Estate Lawyer**

SUMMARY OUTLINE

As estate planners we devote the vast majority of our attention to the federal transfer tax system. We spend far less time on income taxes, although we do pay some attention to those taxes. We spend very little of our time on property taxes and documentary transfer taxes. This oversight is peculiar when we realize that the real property tax is quite often the client's *first* concern. When describing the need to transfer the family residence to a revocable trust, an invariable resulting question from the client is whether the transfer will result in a re-assessment for property tax purposes. Similar questions are asked when a qualified personal residence trust is discussed.

Once past the familiar and basic concepts, most estate planners display a breathtakingly blithe ignorance of these taxes, rivaled perhaps only by the community's effective denial of the importance of the generation skipping tax.

Part of the reason for our deliberate ignorance of this area results from its complexity. The complexity results from the varying sources of the law. The fundamental statute was a grassroots initiative, inserted into the California Constitution by direct popular vote. The legislative efforts at clarification were therefore restricted by the constitutional limitations. The regulatory gloss is found primarily in advisory opinions of the SBE, and therefore suffer from being the product of specific responses to narrow questions. There are numerous cases applying the constitutional and legislative provisions, but few of these cases have resulted from estate planning facts. This paucity of directly applicable cases causes uncertainty in our planning, or requires reliance on cases decided in different circumstances, such as commercial transactions.

1. Pertinent Law for Property Tax Issues
 1. Article XIII A, California Constitution
 2. Revenue and Taxation Code Sections 61, et seq.
 3. Title 18, California Administrative Code
 4. Letters to Assessor and other Board of Equalization correspondence (advisory only)
 5. Cases
2. Fundamental Concepts

The property tax is imposed upon all California real property. The rate is 1% of the "assessed value." The assessed value cannot be increased by more than 2% per year. The method of calculation is determined with reference to the date of acquisition by the owner of the interest in the property. The critical event and inquiry therefore become when a "change in ownership" occurs.

3. "Change of Ownership" (Section¹ 60)

Section 60 defines "change of ownership" broadly:

"a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the interest."

"Change of ownership" triggers re-assessment and increased (or decreased) property taxes. Section 61 describes, generally, what a "change in ownership" includes.

Since the statute employs such a broad definition, the exceptions become critical to its practical application. Sections 62-65 specify which transfers are excluded from the definition of "change in ownership."

Excluded transfers from "change of ownership" are:

1. Section 62 - transfers where "owners" remain the same and have same percentages of "ownership" before and after transfer.
2. Section 63 - interspousal transfer exclusion.

¹

For convenience, references to sections are to Revenue & Taxation Code, unless otherwise stated.

3. Section 63.1 - parent-child transfer exclusion - personal residence *plus* \$1,000,000 of "full cash value" (not fair market value) of other property. See Section 110 for definition of "full cash value"
4. Transfers within entity under Section 64(a)

Exceptions to 64(a):

- (1) "change in control" - Section 64(c) - someone gains control of 50% or more interest in entity.
 - (2) where transfer to create entity was excluded under 62(a)(2) and after 3/1/75 transfer of more than 50% interest of entity.
 5. Transfer among original joint tenants under Section 65.
 6. "de minimis" transfers - transfer is excluded where *interest in real property* of less than 5% of fair market value of total property and if aggregate amount transferred is less than \$10,000 of fair market value (note - "fair market value", not "full cash value"; note, further - only applies to "interests" in real property, not in entities)
4. Joint Tenancy Transfer (Section 65)
1. Section 65(a) defines a change in ownership of a joint tenancy interest as the "interest or portion which is transferred from one owner to another owner". A newly created joint tenancy (i.e. C conveys to A and B, as joint tenant) results in the joint tenants being *original transferees* to the transferor, C.
 2. Section 65(b) states there is no change in ownership "upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Section 65(d) states further that upon termination of a joint tenancy interest held by any joint tenant *other than* the original transferor, there is no reappraisal under subdivision (b), if the entire joint tenancy interest is transferred either to an *original* transferor or to all remaining joint tenants so long as one of the remaining ones is an *original* transferor.

- C. Transfers between spouses qualify for the interspousal exclusion of Section 63. Accordingly, if the spouse of an *original* joint tenant is added as a joint tenant after the acquisition, the spouse becomes an *original* joint tenant or transferor.
- D. "Rule of Convenience" - For Joint Tenancies created prior to 3/1/75, the statute allows a rebuttable presumption that on 3/1/75, all owners on that date are treated as "original transferors".

An excluded transfer and a "change of ownership" can best be explained by the following examples:

Example 1:

A and B, unrelated parties, buy Greenacre and are vested in title as joint tenants. B's spouse is subsequently added as a joint tenant. B's spouse is an *original* transferor for purposes of creation or transfer of joint tenancy interests.

It should be noted that under Section 65(a), however, that A, B, and B's spouse are *original transferees*, having (or being deemed to have) taken title together from a common source.

Example 2a:

A and B, unrelated parties, buy Greenacre and are vested in title as joint tenants. After becoming vested, they add C, an unrelated party, to title as a joint tenant. There is no CIO because A and B remain vested as joint tenants. See Section 65(d).

Example 2b:

Assume the same facts as in 2a above. After becoming a joint tenant, C decides he wants "out" and sells his interest in Greenacre to D. There is a transfer of C's interest and a CIO of C's interest *only*.

The transfer by C to D is a partition or severance of the joint tenancy and, therefore, is a CIO of that tenancy in common interest.

(If C was deleted from title and D added as a joint tenant, there would not have been a CIO for the same reasons as in 2a above.)

Example 3:

A and B, unrelated parties acquire Greenacre and are vested in title as joint tenants. A sells A's interest to C. There is a transfer of A's interest - 50% -, and therefore a CIO, for the same reasons as in 2.b.

Example 4 (a progressive example):

A and B, unrelated parties acquire Greenacre and are vested in title as joint tenants. Subsequent to acquiring Greenacre, B's spouse, S, is added to title as a joint tenant.

Example 4a:

A, B, and S, add C and D, unrelated parties, to title as joint tenants. Under the rules no CIO has occurred.

Example 4b:

C transfers C's interest to D. There is now a transfer to someone who was not an *original* transferor. Under this example - with 5 owners - that is deemed to be a CIO as to C's 20% interest. The same result occurs for the same reasons if C transfers C's interest to a new owner.

Example 4c:

Alternately, C transfers C's interest to A. Because this transfer is to an *original* transferor, no CIO has occurred. If C transfers C's interest to A, B, or S, or "to all remaining joint tenants" there is no CIO because the interest passes to an *original* transferor.

Example 4d:

A transfers A's interest to B.

A CIO occurs because A owned one-half of the *original* joint tenancy and was an *original transferee* only with B under Section 65(a). An *original* joint tenant cannot transfer the original interest *inter vivos* to another original transferor, or to the remaining joint tenants - without incurring a CIO. This result is inconsistent with the treatment of transfer by a "nonoriginal" transferor to an original transferor, which is not a CIO.

Example 4e:

Now assume that a dies, instead of making an *intervivos* transfer. B and B's spouse succeed to a's interest under the rules of joint tenancy. Because an *original transferee* died, there is a CIO under Section 65(a). As between a and B, B is not an *original transferor*.

Example 4f:

What if S transfers S's interest to B, S's spouse? This transfer is excluded because of the interspousal exclusion under Section 63. However, if S transfers to anyone else - including a, an *original transferor* - an identical result occurs as under Examples 4d and 4e.

Example 4g:

a, B, and S transfer their interest to C and D as joint tenants? A complete turnover of the *original transferors* has occurred and there is a CIO as to 100% of Greenacre.

After re-appraisal and re-assessment, C and D are now *original transferors*.

Example 5:

a buys Greenacre in 1952 and then adds B, her nephew, as a joint tenant in 1956. a dies after March 1, 1975. Is there a CIO?

If the "Rule of Convenience" applies, then a and B were joint tenants on March 1, 1975, and there is no CIO because the interest passes to B, an *original joint tenant*, by operation of law.

If the Assessor chooses to ignore the "Rule of Convenience" by relying on the recorded deeds, there will be a CIO because the "Rule of Convenience" will be rebutted.

If a gifts her interest to B during her life, but after March 1, 1975, there is a CIO as to the entire property because a owned (was the sole, *original transferor* of) the entire property at the time of acquisition of Greenacre.

5. Husband/Wife (Interspousal Exclusion)
 1. Section 63 excludes interspousal transfers from changes in ownership. Transfers falling within Section 63 include transfers of real property, or interests in real

property, and transfers through the medium of a trust. Section 63 includes within the definition of the transfer of an "interest in real property" joint tenancy transfers, receipt of the deceased spouse's community property interest, gift of a life estate¹, or transfers in connection with dissolution of the marriage².

2. Transfers through the medium of a trust require a separate analysis. Defining qualifying transfers in trust first requires an analysis of the definition of CIO provided by section 60. The inquiry turns on determining whether the spouse, "After the transfer...possesses the *present ownership* [of the property]" or whether the spouse "has the *beneficial use thereof*, the value of which is *substantially equal* to the value of the fee interest."³ A transfer of a complete interest in the real property by spouses into a joint revocable trust where each continues to hold the power to revoke⁴ for the individual's benefit therefore qualifies for this exclusion.
 - If spouse enjoys exclusive right to trust income, regardless of trustee's power to distribute principal, transfer to trust will qualify for interspousal exclusion.
 - If trustee has power to sprinkle income to surviving spouse and issue, then trust will not qualify and real property in trust will suffer a "change in ownership".
 - Power of Trustee to distribute principal among spouse and issue does not destroy interspousal transfer exception because issue do not share present interest with the income beneficiary; the issue's interest is a "mere expectancy." See *Estate of Canfield* (1947) 80 Cal App 2d 443, 451, 181 P.2d 732; *Estate of Johnson* (1961) 198 Cal App 2d 503, 510, 17 CR 909.
3. A "5+5" power held by the surviving spouse to appoint principal in the Exemption Trust to herself will be deemed to be exercised every year and thereby results in shift of 5% of the property's assessed value ("full cash value") from the Exemption Trust each year to the surviving spouse. [See Parent-Child Exclusion discussion below.]

PRACTICE TIPS:

If the client is concerned about property taxes, and they are a material financial burden, the surviving spouse should have the sole income interest. This objective is inconsistent with the federal transfer tax planning goal of minimizing the survivor's estate by granting the trustee a sprinkle power over income. A method by which to reconcile these goals is to allocate the real property to the QTIP Trust. You should note that being mindful for property tax purposes is contrary to advice to accumulate or sprinkle income to issue in order to avoid increasing surviving spouse's estate.

6. Parent-Child Exclusion (Section 63.1)

1. Each "transferor" may transfer a personal residence, plus property of no more than \$1,000,000 of "full cash value," to children.

1. Husband and wife have \$1,000,000 each. Therefore, total is \$2,000,000 per couple.

2. As stated above, "full cash value" means assessed value, not fair market value. *City and County of San Francisco v. County of San Mateo* (1995) 10 Cal.4th 554. Where parents have owned property for a long time or it has simply appreciated faster than Proposition XIII assessments, opportunity to transfer a great deal more than \$2,000,000 of fair market value exists.

2. Applies to "undivided interests" only: Doesn't apply to partnership interest, shares of stock, membership in LLC (cite cases). Trusts do work (cite 63.1 sub-division).

Please note example of how not to do parent-child transfer; i.e. transfer to partnership and then gift more than 50% away. See *Penner v. County of Santa Barbara* (1995) 37 CA4th 1672, 44 CR2d 606.

3. Applies to transfers to grandchildren on or after March 26, 1996, under Proposition 193 (enacted by Initiative that date) where all of the *parents* of the grandchildren are deceased as of the date of sale or transfer. California Constitution Article XIII A, Section 2, subdivision (h). Apparently, *both* parents must be deceased or the grandchild exemption does not qualify. However, where child's marriage is dissolved and child is deceased, grandchild exclusion will apply. Under Section 63.1 the definition of "children" does not include a son-in-law or daughter-in-law whose marriage to the parent's

child has been "terminated by divorce". Moreover, where the daughter-in-law or son-in-law is a surviving spouse of a deceased child, the definition of "children" under Section 63.1 lasts only until re-marriage.

4. Does not apply to sibling transfer even if transfer directly to child from estate.

Ex. 1: Decedent leaves to child a. Parent-child exclusion applies.

Ex. 2: Decedent leaves to a, B & C, decedent's children. Through children's agreement, decedent's estate (or trust) distributes to a only. There is a "change of ownership" as to 2/3 (B's and C's collective 2/3 interest).

Why this result in Example 2? Property vests in devisees at date of death. Probate Code section 7000; see also *California Academy of Sciences v. County of Fresno* (1987) 192 CA3d 1436 (charitable beneficiary entitled to refund of property taxes paid during administration of estate).

- Does power of Trustee under trust to distribute property non-pro-rata change the result in example 2?
- What if decedent's Will gave power to Executor to distribute property non-pro-rata?

Ex. 3: Decedent leaves house to child a, with requirement Child a pays child B an amount of cash so that a and B receive "equal" distributions. Because Child a is fully vested in title (i.e. a's left the house), a qualifies for parent-child exclusion. Child B is an "equitable encumbrancer" only. *Woodley v. Woodley* (1941) 47 CA2d 188.

5. "Step Transaction Doctrine" disregarded for purposes of effecting parent-child transfers. See 2 of Stats 1987 Ch. 48, which states legislative intent to ignore Step Transaction Doctrine in order to fully effect parent-child exclusions. Dicta in *Penner* implies that judicial effect will be given to this legislative history.

An example would be a dissolution of a corporation owned solely by H and W, with H and W being conveyed the property to themselves by the corporation, then deeding part of the property (undivided interests) to their

children, and then forming a limited partnership with their children in the same property. Under "Step Transaction Doctrine" all of the steps would be compressed into the corporation transferring to the limited partnership with different ownerships in each. Because of operation of Section 2, the "Step Transaction Doctrine" is ignored and the series of steps results in the children being able to claim the parent-child exclusion.

6. Application to Typical Family Revocable Trust

Example: H&W create estate plan where at first spouse's death, *Exemption Trust* is created from deceased spouse's assets. Surviving Spouse subsequently dies. Ultimate transfer from Exemption Trust to children will qualify for parent-child exclusion, unless a 5+5 power exercisable by surviving spouse existed. The exclusion will be eligible to be claimed from the *deceased* spouse's estate.

Another result of a 5+5 power is depletion of deceased spouse's full cash value to be transferred each year trust power is in existence, with resulting increase in surviving spouse's full cash value to be transferred to children.

Same logic extends to QTIP trust where surviving spouse has no power of appointment.

Property from surviving spouse qualifies for surviving spouse's exclusion amount.

PRACTICE TIPS:

The exclusion may be claimed even if the first spouse died before 11/6/86, effective date of Prop. 58. Therefore, if you are administering a Bypass Trust and the survivor dies in 1996, the practitioner should make certain to review the instrument to determine whether exclusion can be allocated to predeceased spouse.

Note that the exclusion applies *only* to property the *deceased* spouse owned at death. If Exemption Trust bought new property, i.e. Greenacre, during administration, this newly acquired property would not qualify for parent-child transfer. Greenacre would be re-assessed because of the "change of ownership" from Exemption Trust to children. In this case the

transfer is not from the deceased parent, but from the Exemption Trust.

What if Exemption Trust exchanged property owned by deceased spouse for another property?

7. Excluded Transfers Within Entities

1. Entity Transfers (Section 62 and 64):

1. Section 62 general rule: transfers which change method of holding title, but not who and proportion of whom owns title does not trigger change of ownership.

(1) 62(a)(1) - concerns transfer of property

(2) 62(a)(2) - concerns transfer of interests in property

Ex. 1: a, B, C - each owns 1/3 undivided interest. They transfer their interests to a general partnership where each owns 1/3 general partnership interest.

Ex. 2: a, B, C - each own 1/3 undivided interest. They transfer to Family Limited Partnership where a- owns 1% GP interest and 32 1/3% LP interest, B owns 1/3 LP interest and C owns 1/3 LP interest.

Ex. 3: a, B, C, each owns 1/3 undivided interest in property. a, B, C form a corporation with each owning 1/3 of the issued stock, and they deed, collectively and equally, 1% undivided interest to Corp. They then form limited partnership where Corp. owns 1% GP interest and a, B, and C own 33% LP interest each.

Ex. 4: a, B, C - each owns 1/3 undivided interest. Corp is formed, owned by a, B, C, & D and deeded 1% of real property. There is a change of ownership as to the 1%.

Ex. 5: a, B, C own 1/3 undivided interest. They convey to corporation owned by a, B, C, and D. There is a change in ownership.

2. Assume entity is formed, and property conveyed to it without change of ownership: how can you trigger change of ownership within entity?

(1) General rule of 64(a) - transfer of interests in entity do *not* trigger change of ownership.

(2) Three exceptions to 64(1):

(1) Section 61(h) - transfer of stock cooperative housing corporation.

(2) Section 64(c) - when a person or legal entity obtains majority control of entity.

See amendment to 64(c), resulting in new 64(c))(2) which states that when a majority interest in *partnership* obtains all of remaining ownership interest (majority owner becomes sole owner), there is no "change of ownership". Overrules *Zapara v. Orange County* (1994) 26 CA4th 464, 31 CR2d 555.²

(3) Where transfers forming legal entity *occurred after 3/1/75 and* were excluded under 62(a)(2), then change of ownership when *more than 50% of interest in entity transferred by original co-owners.*

(4) Distinction between 64(c) and 64(d)

Example: Assume

- Corp X owns A, B, and C properties, acquired 1/1/71. Doe owns 100% of Corp X;
- 6/1/76 - Doe transfers property D to Corp X, which is excluded under section 62(a)(2).
- On 10/1/82 - Doe sells 20% of Doe's shares in Corp to SH1, SH2 & SH3 (transfers 60% total).

²

Why was amendment limited to partnership? Why not any legal entity which would include limited liability company?

- Under 64(c) there is no change of ownership as to a, B, & C properties because no one owns more than 50%. 64(c) applies because the property was acquired before 3/1/75 and not through 62(a)(2).
- Under 64(d) there is a change of ownership of property D because more than 50% of the interest of Corp was transferred.

[See Letter to Assessor - 2/18/83]

[Under example, what if a, B, & C formed a partnership and the partnership bought 60% of Corp X?]

3. Application of principles becomes complicated as applied. When you start using Section 62, 63, 63.1 and 64, you have considerable freedom, within constraints, to fashion transfer without changes of ownership. But,

4. Three caveats:

(1) Step transaction: Form will not prevail over substance. If multiple transfers can be compressed into one transfer, with a change of ownership, the form of multiple transfers will be ignored and a change of ownership will be found. See *Shuwa Investments Corp v. Los Angeles County* (1991) 1 CA4th 1635, 2 CR2d 783. Where there are multiple transfers which are seemingly subject to the Step Transaction Doctrine you need to demonstrate "business purpose" to avoid step transaction doctrine. "Avoiding property taxes" is not a "business purpose."

(2) Parent-Child legislative intent and limits: Stats 1987, Section 2 of Legislative Intent for Section 63.1 states "step transaction" to be ignored. Therefore,

Ex. 1: i) Parent transfer to 3 children of 1/4 undivided interest each in property, ii) formation of corporation with parent and each child owning 25% of stock equally, iii) transfer of 1% of undivided interest (.25% from parent and each child) to corporation, and iv) the conveyance to FLP where Corp owns 1% GP and parent and

child each own 24.75% LP. But for Stats 1987, Section 2 Legislative Intent, this would be a change of ownership under step transaction doctrine.

Ex. 2: Corp owned by P1 & P2 (different parents). Corp owns X. Corp dissolved and X distributed 1/2 to P1 and 1/2 to P2. P1 gifts 10% undivided interests in property to C1, C2, C3 and C4. P2 gifts 12.5% to C4, C5 and C6. P1, P2, C1, C2, C3, C4, C5, C6 and C7 form and transfer 1% undivided interest (through pro-rata transfers) to Corp under 62(a)(2) Corp and parties transfer to LLC under 62(a)(2). No change in ownership.

Are there limits?

Ex. 3: P1 and P2 transfer 17% undivided interest to C1, C2 and C3, so that P1 owns 24.5%, P2 owns 24.5%, and C1, C2 and C3 own together, 51%. They form Corp and transfer 1% undivided interest (pro-rata) to Corp. Corp, P1, P2, C1, C2, and C3 form FLP where Corp owns 1% GP.

At time of transfer 51% of full cash value of property is \$2,000,000. P1 dies; share goes to exemption trust; all for benefit of surviving spouse.³ P2 then dies. Now ownership is: Corp owns 1% GP, C1 owns 33%, C2 owns 33%, and C3 owns 33% as LP's of FLP.

Has there been a Change of Ownership?

1. 64(d) not violated

2. What if property now worth \$10,000,000 while full cash value is \$4,500,000, i.e. more than \$1,000,000 of full cash value for parent transferred.

³

See discussion below whether this transfer for surviving spouse qualifies for interspousal exemption under Section 63.

Answer: Our opinion, and opinion of State Board of Equalization is you've gone too far: "Section 63.1 shielded against the step transaction doctrine exists solely to prevent frustration of the \$1,000,000 exclusion, not to allow it to be manipulated to permit an expansion beyond this limit!"

Query: What happens in Example two when P1 and P2 die? How is transaction unwound under various fact patterns?

(3) Be careful of layering exclusion

Assume 62(a)(2) transfer: P1 and P2 transfer 40% undivided interest in exchange for 40% LP interest (20% each). At same time C1, C2 and C3 transfer 19% undivided interest in exchange for 19% LP interest, other owner - Corp transfers 3% undivided interest for 3% GP interest. No change of ownership results so far.

But then C1 and C2 transfer their aggregate 38% to C3. P2 dies and transfers his 20% to Trust for benefit of P1. Has more than 50% interest been transferred under 64(d)?

Don't assume transfer exempt under Section 63 - Interspousal transfer - applies to exclude Interspousal transfers from being considered as transfers of original co-owner interests under 64(d). Board of Equalization declined to give an opinion in correspondence dated 5/14/91.

XIII Applicable Law and Forms

- A.** Section 480 etc. require the filing of "change of ownership" statements with each document or upon death.

Section 480 (b) requires the personal representative to file a "change in ownership" statement with the county recorder or assessor in each county in which the decedent owned real property "*prior to or at the time the inventory and appraisal is filed*". In *all* other cases, including a transfer through a trust, the form is to be filed.

PRACTICE TIP:

Send a copy with the original to the Assessor, with a self-addressed, stamped envelope, and ask for return.

This Change in Ownership Statement is what is required to be filed in order to file the Property Tax Certification required under Section 8800 (d).

When recording a document, use the Preliminary Change of Ownership Report Form. Documents include Affidavit of Death, Trustee's Deed.

PRACTICE TIP:

Whenever you record a document which changes who manages the trust (i.e. a resignation of trustee, acceptance of nomination of successor trustee), no matter how seemingly innocuous, use a Preliminary Change of Ownership Report Form. The Recorder will usually insist upon an identification of the real property which is "affected" by Assessor's Parcel Number and often will require a reference (by instrument number and date) to the recorded deed which places the Trustee in title to the property. While Probate Code section 210 pertains only to an affidavit of death or an order, the Recorder goes further. On the other hand, practically, it is easier to comply.

PRACTICE TIP:

If the transfer is exempt from re-assessment, take some time and explain on the Preliminary Change of Ownership Report form through an attachment what transfers are occurring and why the transfers are exempt from re-assessment. While one can always file a Claim for Refund based on an erroneous "change of ownership", the property tax has to be paid as a condition of filing the Claim for Refund and it takes one year or longer to be given a hearing date. Consequently, a Preliminary Change of Ownership Report form which clearly states the reasons for the exemption and convinces the Recorder of the basis for the exemption will be of substantial benefit to your client.

There are penalties for failure to comply.

B. Claim for Re-Assessment Exclusion By Reason of Parent-Child Relationship

Section 63.1 requires statement to be filed.

This form will have to be modified to reflect fact that grandchildren, whose parents are deceased at the time of the transfer, also qualify.

PRACTICE TIP:

Even though the Assessor will send you the form and you may have as much as 3 years to file the form, it is advisable to have your clients complete the form early in the process.

Alameda County requires *certified* birth certificates with the application. Other counties do not. Probably Alameda County will require *certified* death certificates for grandchildren's parents as well.

DOCUMENTARY TRANSFER TAXES

(Revenue & Taxation Code sections 11901 *et seq.*)

2. History

Historically, the Documentary Transfer Tax Act was enacted, effective January 1, 1968, to replace the Federal Stamp Act (former USC sections 4361 and 4363) on documentary transfers which expired on that date. Section 4 of Stats 1967 ch 1332 provides for the act to have no operative effect if Congress re-enacts the federal tax.

3. What is taxed?

The tax is a privilege of transferring property and is not a tax on the real property itself. *City of Huntington Beach v. Superior Court* (1978) 78 CA3d 333, 341, 144CR 236.

Revenue & Taxation Code section 11911 provides for ordinance which imposes on each "deed, instrument or writing" by which any "lands, tenements, other realty" "sold" within the county shall be "granted, assigned, transferred or otherwise conveyed to, or vested in, the purchase or purchasers, or any other person or persons, by his or their direction."

4. Who is liable?

Revenue & Taxation Code section 11912 provides for tax to be paid by any

"person who makes, signs, or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued."

5. Exemptions

1. Gifts

2. Instruments involving bankruptcy, reorganization, receivership, or change of identity. Revenue & Taxation Code section 11923.

What is meaning of "mere change in identity, form or place or organization" mean when found in statute addressed to insolvent organizations? The Documentary Transfer Tax Act is "patterned" after the former Federal Stamp Act. *Thrifty Corp. v. County of Los Angeles* (1989) 210 CA3d 881, 258 CR 585, implying answer may be found in federal law.

3. Partnership Transfer where (i) partnership (or another partnership) is considered a continuing partnership within the meaning of IRC section 708 and the continuing partnership continues to hold title to the realty.

Where there is a termination of the partnership under IRC section 708 a tax is levied, but no more than one tax. Revenue & Taxation Code section 11925.

IRC section 708 provides there is a termination of a partnership where there is a sale or exchange of more than 50% of the partnership interests representing 50% or more of partnership capital and profits in any 12 month period. IRC section 708(b)(1)(B).

4. Instruments taken in lieu of foreclosure. Revenue & Taxation Code section 11926.
5. Deeds, instrument, or other writings which purport to transfer, divide or allocate community, quasi-community, or quasi-marital assets between spouses for the purpose of effecting a division of community, quasi-community, or quasi-marital property required by a judgment decreeing dissolution or separation, or by written agreement between spouses executed in contemplation of any judgment or order.

Exemption requires a written recital on deed, instrument or other writing executed by either spouse stating entitlement to exemption.

Revenue & Taxation Code section 11927.

6. Estate distributions or trust distributions where no sale.
7. Statement of Exemption on Document to be recorded.
8. Protest: pay and make claim for refund to county. See Revenue & Taxation Code sections 5096 *et seq.* If still aggrieved, only remedy is writ of mandate.

PRACTICE TIP:

The Statement recording transfer tax always goes on the top of the deed (after the "When recorded, return to"

information). If there is no transfer tax due, the basis for such should be clearly stated. The Recorder adheres strictly to the exception. The Statement also needs to be signed by a grantor.

As a further practical tip, many county recorders are requiring a "face page" for an order issued by the Court as a condition of recording the document, presumably in order to provide "space" for the stamping of the recording information.

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1. Revenue and Taxation Code section 63, see subdivision (a), (cite Frayda Burton article)
 2. Revenue and Taxation Code sections 63, subdivisions (b) and (e), concerning transfers to effect a property settlement agreement which permit spouses dissolving the marriage to transfer property between them (before or after the actual dissolution) without causing a CIO and corresponding re-assessment.
 3. Revenue and Taxation Code section 60. See ___ above.
 4. See Family Code section 761 concerning revocation of trusts containing community property.