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July 20, 2017

The Honorable Tani Cantil-Sakauye, Chief
Justice, and Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

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CLERK SUPREME COURT

RE: Letter of *Amicus Curiae* Council On State Taxation (COST) in Support of
Appellant's Petition for Rehearing.

To The Honorable Chief Justice and Associate Justices of the California
Supreme Court:

The Council On State Taxation (COST) respectfully requests this Court grant the Appellant's Petition for Rehearing in *926 North Ardmore Avenue LLC v. County of Los Angeles* (No. S222329) ("*North Ardmore*"). Since its inception nearly 50 years ago, the California Documentary Transfer Tax Act 1 ("DTTA") has applied the documentary transfer tax ("DTT") to transfers of interests in real property. In *North Ardmore*, this Court upheld a decision by the Second Appellate District Court of Appeal that expanded the DTTA to include transfers of ownership interests of a legal entity that owns real property. This is a sea change in how the DTT has been applied for the past 50 years. It will upend well-settled expectations of taxpayers throughout the State and will continue to create confusion as to how DTTs should be applied.

Further, the *North Ardmore* decision should also be reconsidered because it results in a judicially created tax increase circumventing the legislative process in contravention of the California Constitution. Moreover, because the opinion interprets a state statute that authorizes cities and counties in California to impose a DTT, it will impact DTTs in every city and county in the State. This has the potential to affect thousands of transactions previously not subject to DTT.²

1 Rev. & Tax. Code § 11901, *et seq.*

2 The California State Board of Equalization reports that for FY 2012-13 alone more than 1,132 transfers of interest in legal entities produced "changes in ownership" of 3,982 parcels of property. <http://www.boe.ca.gov/pdf/pub306.pdf>

3 Former 26 U.S.C. §§ 4361, 4363.

Interests of Amicus Curiae

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce. Today, COST has grown to an independent membership of approximately 600 major corporations engaged in interstate and international business representing every industry doing business in every state. COST members represent that part of the nation's business sector that is most directly affected by state taxation of interstate and international business operations. COST members employ a substantial number of California citizens, own extensive property in California, and conduct substantial business in California. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities, a mission COST has steadfastly maintained since its creation.

The rules of one tax system (*ad valorem*) cannot be haphazardly applied to another tax system (title transfer). Doing so, without the appropriate legislative action, will at a minimum erode confidence in tax administration, deterring taxpayer compliance. COST respectfully requests this Court grant Appellant's Petition for Rehearing of *North Ardmore* and submits the following comments in support of this request.

North Ardmore Erroneously Expands the DTT Base

In 1967, the California legislature enacted the DTTA authorizing cities and counties to impose by ordinance a DTT to replace and be patterned after the Federal Stamp Act³ on conveyances of real estate. "Because 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 Corp. v. County of Los Angeles* (1989) 210 Cal.App.3d 881, 884.) Former Internal Revenue Code § 4361 necessarily excluded transfers of legal entities and other similar transfers because those were subject to the federal stamp tax under wholly separate sections (e.g., transfers of stock under IRC § 4321, transfers of notes of indebtedness under IRC § 4331, etc.).

The DTTA authorizes cities and counties, by ordinance, to impose a tax upon the documents by which real property is transferred or conveyed. Section 11911 provides:

[O]n 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.

Los Angeles County adopted the DTT language verbatim in Los Angeles County Code § 4.60.020.

The Second Appellate District Court of Appeals in *North Ardmore*, based on its misreading of *Thrifty*, concluded that “realty sold” was equivalent to a “change in ownership” for property tax purposes under Rev. & Tax Code § 64, *ipso facto* triggering DTT. (*926 N. Ardmore Ave. LLC v. Cty. of Los Angeles*, 178 Cal. Rptr. 3d 78, 90 (Cal. App. 2d Dist. 2014).) This Court should reconsider it upholding that erroneous conclusion. The Court’s decision can neither be reconciled with U.S. Supreme Court authority (*see e.g. United States v. Seattle First National Bank*, 321 U.S. 583 (1944)) nor does it apply the plain meaning of the statute at issue, in violation of this Court’s own rules of statutory construction. The plain language of section 11911 makes clear it only authorizes the DTTA to be imposed on documents by which “realty sold” is “granted, assigned, transferred or otherwise conveyed....” It does not impose a tax on transfers of interests in legal entities that directly or indirectly own realty.

North Ardmore Circumvents the Legislative Process and Voters

This Court has repeatedly stated that the judicial function in interpreting statutes is ascertaining and carrying out the intent of the Legislature. (*People v. Garcia* (2001) 25 Cal.4th 744, 756-757.) In the exercise of its power to interpret, however, this Court has also recognized the importance of judicial restraint to avoid rewriting statutes or otherwise interpreting them to accord an unexpressed or presumed legislative intent. (*Metromedia Inc. v. City of San Diego* (1982) 32 Cal 3d 180, 187.) Restraint in the exercise of the interpretive powers of the court protects against encroachment on the legislative function. Policy “is best directed to the Legislature, which can study the various policy and factual questions and decide what rules are best for society. Our role here is to interpret the statute[s] [as they are written], not establish policy. The latter role is for the Legislature.” (*Los Angeles Metro. Trans. Auth. v. Alameda Produce Market* (2011) 52 Cal.4th 1100, 1112, *citing Carrisales v. Dept. of Correction* (1999) 21 Cal.4th 1132, 1140.) Expanding the DTT to include transfers of ownership interests in legal entities necessarily involves important policy choices that are best addressed through the legislative process.

Other cities and counties desiring to expand the DTT to include certain transfers of interests in legal entities have done so properly through the legislative process.⁴ Los Angeles County, however, has not. Section 2 of Article XIII C of the California Constitution provides that “[n]o local government may impose, extend, or increase any general [or special] tax unless and until that tax is submitted to the electorate and approved by a majority [or two-thirds] vote,” and Los Angeles has yet to obtain a vote on this issue.

⁴ For example, in 2008 the voters in the City and County of San Francisco approved ‘Proposition N’ to amend their transfer tax ordinance to expand the definition of “realty sold” to include transfers of interests in legal entities that constitute a “change in ownership” under Rev. & Tax. Code § 64. (City and County of San Francisco Business and Tax Regulations Code Article 12-C, section 1114.)

The documentary transfer tax is ultimately a tax on instruments that transfer or convey an interest in real property, not ownership interests in a legal entity. Whether that tax should be expanded to include transfers of interests in legal entities that own real property is a policy question for the legislative branch, not an interpretive question for the judiciary. This case should be reheard because it encroaches on what should be a matter for legislative action and for the voters to address.

Conclusion

The Court should reconsider its decision in *North Ardmore* that ignored the way the DTT has been applied for more than 50 years. Otherwise, it will upend well-settled expectations of taxpayers and will continue to create confusion as to how DTTs should be applied. The implications of the Court's opinion, however, are significant not just for taxpayers in Los Angeles County, but across the State and for taxpayers outside of California because transactions not previously subject to DTT have now been brought into question. *North Ardmore*, therefore, has the effect of usurping decisions best left to the legislative process and circumvents what voters have repeatedly demanded, having a voice in decisions whether to impose, extend, or expand local taxes. For these reasons, COST respectfully requests the Court grant the Appellant's request for a rehearing.

Sincerely,



Nikki E. Dobay

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

PROOF OF SERVICE BY MAIL

I, David A. Kramlick, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City of San Francisco, California.

2. My business and mailing address is Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111.

3. I am familiar with Pillsbury Winthrop Shaw Pittman LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service; in the ordinary course of business, correspondence placed in interoffice mail is deposited with the United States Postal Service with first class postage thereon fully prepaid on the same day it is placed for collection and mailing.

4. On July 21, 2017, at Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111, I served true copies of the attached document titled LETTER OF AMICUS CURIAE COUNCIL ON STATE TAXATION by placing them in addressed, sealed envelopes clearly labeled to identify the persons being served at the addresses shown below and placed in interoffice mail for collection and deposit in the United States Postal Service on that date following ordinary business practices:

[See Attached Service List]

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of July, 2017, at San Francisco, California.

David A. Kramlick

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