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California: Documentary transfer tax; changes to legal entity holding title

The California Supreme Court has issued a long-awaited opinion, and affirmed a state appeals court finding that the County of Los Angeles could impose a documentary transfer tax on the transfer of a controlling interest in a legal entity when there was “an actual transfer of legal beneficial ownership made for consideration.”

The case is: *926 N. Ardmore Ave. LLC v. County of Los Angeles*, S222329 (Cal. June 29, 2017). Read the court’s [decision](#) [PDF 324 KB]

Summary

This case involved a series of transactions among trusts maintained for the benefit of certain family members. An apartment building was held in a single-member LLC owned by a limited liability partnership (LLP) that was, in turn, owned by the family trust. The family trust distributed its interest in the LLP to several subtrusts. The subtrusts then sold interests in the LLP to irrevocable trusts established for the benefit of the sons and heirs of the LLC owners.

The LLC reported these sales to the State Board of Equalization through a “statement of change in ownership of legal entities.” The statement asserted that the family trust’s initial distribution of the LLP to the various subtrusts did not qualify as a “change of ownership” of the real property because the surviving spouse remained the beneficial owner of the property through her status as beneficiary of the subtrusts. The statement did not address whether the subtrusts’ subsequent transfer of one-half of their interests in the LLP to the two irrevocable trusts constituted a “change of ownership” under the relevant property tax provisions. The Office of the Assessor for the County of Los Angeles, believing that it did, issued a supplemental property tax bill that was paid without objection.

The Registrar-Recorder/County Clerk for the County of Los Angeles subsequently demanded that documentary transfer tax be paid based on the value of the apartment

building. A trial court and the appeals court held in favor of the county. The state high court affirmed.

KPMG observation

A footnote in the opinion notes that a Recorder's office employee testified at trial that some taxpayers had taken the position that no transfer tax was due on the transfer of a legal entity interest, while others paid the tax. That said, this is arguably a significant expansion of the scope of the documentary transfer tax, and there is no indication that the holding could not be applied retroactively. In addition, it appears unlikely that there are grounds to appeal further (i.e., no constitutional question).

Read a [June 2017 report](#) [PDF 51 KB] prepared by KPMG LLP

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