

FILE NO. 080832

LEGISLATIVE DIGEST

[Real Property Transfer Tax].

Ordinance submitting to the voters an ordinance amending the Business and Tax Regulations Code by (1) amending Section 1102 to increase the Real Property Transfer Tax rate from 0.75% to 1.5% if the consideration for or value of the transfer exceeds \$2 \$5 million; (2) amending Section 1105 to reduce the tax on transfers of residential property by up to one third (1/3) if, after January 1, 2009, the transferor has installed an active solar system or made seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies; (3) amending Section 1114 to clarify application of tax to transfers of ownership interests in legal entities that own real estate; and (4) amending Section 1108.3 to apply transfer tax to transfers of 35 year or longer leasehold

Existing Law

Article 12-C, the Real Property Transfer Tax Ordinance, taxes deeds, instruments or writings that transfer lands, tenements, or other realty sold in the City. The tax rate ranges from \$2.50 to \$3.75 for each \$500 increment of value or consideration transferred (0.5% to 0.75%).

The tax applies to the creation, cancellation, or transfer of a leasehold with a term of more than 50 years.

Amendments to Current Law

Section 1 states that this Ordinance will not become effective unless approved by the voters at the November 4, 2008 general municipal election.

Rate increase for high value transfers.

Section 2 increases the transfer tax rate to 1.5% (\$7.50 for each \$500 of value or consideration) if the consideration for the transfer or value of the interest transferred exceeds five million dollars (\$5,000,000) but will not change any of the current tax rates in Section 1108 (i)-(iii) for transfers with a value or consideration less than \$5,000,000. This rate will apply to all of the consideration for the transfer, not just to the increment in excess of \$5,000,000. This Ordinance allows the Board to enact ordinances without further voter approval that will exempt rent-restricted affordable housing from the rate increase.

New reduction if transferor has installed active solar system or made earthquake safety improvements.

Section 3 creates a new transfer tax reduction. It reduces the tax liability for a transfer of residential property by one third (1/3) if, after January 1, 2009, (a) the transferor has installed an "active solar system" or has made "seismic retrofitting improvements" or "improvements

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utilizing earthquake hazard mitigation technologies", as those terms are defined in the Revenue & Taxation ("R&T") Code for purposes of the property tax laws; and (b) the transferor has claimed and the Assessor has approved an exclusion from reassessment for the value of that system or those improvements. The amount of this partial exemption shall not exceed the transferor's cost of seismic retrofitting improvements or the active solar system. Multi-family residential properties qualify for the tax reduction.

Meanings of terms borrowed from the R&T Code:

R&T Code §73 excludes the value of "active solar energy systems" from property tax reassessment for the value of new construction. Section 73(b) defines an "active solar system" as "a system that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy ." The definition goes on to exclude solar swimming pool heaters or hot tub heaters. It also says active solar systems may be used for "(A) Domestic recreational, therapeutic, or service water heating. (B) Space conditioning. (C) Production of electricity. (D) Process heat. (E) Solar mechanical energy."

R&T Code §74.5 excludes the value of "seismic retrofitting improvements" or "improvements utilizing earthquake hazard mitigation technologies" from property tax reassessment for the value of new construction. Section 74.5(b)(1) defines "seismic retrofitting improvements" as: "reconstruction of an existing building or structure, to abate falling hazards from structural or non-structural components of any building ... that pose serious danger" and "structural strengthening or providing the means necessary to resist seismic force levels that would otherwise be experienced by an existing building or structure during an earthquake, so as to significantly reduce hazards to life and safety while also providing for the substantially safe ingress and egress of building occupants during and immediately after an earthquake." Section 74.5(b)(2) defines "improvements utilizing earthquake hazard mitigation technologies" as earthquake protection of structures or building which local government has identified as hazardous in the event of an earthquake with seismic technologies referenced in the Uniform Building Code.

Changes to clarify application of tax to transfers of ownership interests in corporations, partnerships, and other legal entities that own San Francisco real property.

Section 4 changes Section 1114, the general standards to interpret the Ordinance, to clarify that the tax applies to any acquisition or transfer of ownership interests in a legal entity that would be a change of ownership of, and cause a reassessment of, the entity's real property under Revenue & Taxation Code §64. A legal entity's real property changes ownership if: (a) any one person acquires more than a 50% interest in capital and profits; or (b) "original co-owners" transfer, in the aggregate, more than 50% of their ownership interests. Revenue & Taxation Code §64(c), (d). An "original co-owner" is a person who acquired an interest in a transfer excluded from reassessment under Revenue & Taxation Code §62(a)(1) because it preserved proportional ownership interests and merely changed the manner of holding title, for example, a transfer from A and B as 50% tenants in common to a partnership in which A and B each have a 50% partnership interest.

BOARD OF SUPERVISORS

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Application of tax to leaseholds of 35 years or more.

Section 5 applies the transfer tax to the creation of a leasehold with term, including renewal options, of 35 years or more, and to the cancellation or assignment of a lease with a remaining term, including renewal options, of 35 years or more.

Background Information

The intent of this Ordinance is to increase the transfer tax rate for high value properties and create a new tax reduction for persons who transfer residences after they have installed an active solar system or made improvements to make the residence more earthquake safe. This Ordinance also clarifies that an acquisition of a majority share interest in a corporation is a taxable transfer of that corporation's San Francisco real estate and applies the tax to leaseholds of 35 years or more.