

Date: August 1, 2014
To: Ballot Simplification Committee
From: Ted Gullicksen
Subject: Request for Reconsideration
Re: Approved Digest for Additional Transfer Tax on Residential Property Sold Within 5 Years of Purchase

I would like to formally request for reconsideration of the Ballot Simplification Committee's digest for the "Additional Transfer Tax on Residential Property Sold Within 5 Years of Purchase" that was approved at today's meeting. The proposed language is biased and based upon a legally inaccurate interpretation of the proposed measure.

The specific language that I would like to amend is as follows:

1.)

As approved by the Committee:

This additional tax would not apply in the following circumstances:

- The property is a single-family house or condominium;

Alternate Language:

This additional tax would not apply in the following circumstances:

- The property is a single-family house, condominium or owner occupied tenancy-in-common units where the owner has lived there for 1 year as their primary residence.

Reason for Change:

Section 1105(c)(5) clearly exempts any owner occupied unit in a multi-unit building from the tax and, unless that unit was a condominium subdivision, it would be a tenancy in common unit.

2.)

As approved by the Committee:

For example, if an owner buys a residential property for \$1,000,000 and sells it less than one year later for \$1,000,001, the tax would be \$240,000 (24% of the sale price), plus the existing transfer tax.

Alternate Language:

Option 1 (preferred) – Delete the example completely

Option 2 – Amend the example to read:

For example, if an investor buys a multi-unit residential property for \$2 million and re-sells it less than one year later for \$3 million, the tax would be \$720,000 (24% of the sale price), plus the existing transfer tax

Option 3 – In addition to a modified and more realistic original example, provide a range of examples, including:

If a property owner acquires a property for \$1,000,000 and sells it for \$900,000 1 year later, no tax would be paid;

If a property owner acquires a single family home and re-sells it for any amount 6 months later no tax would be paid.

If a property owner acquires a property for \$1,000,000 and sells it for \$2,000,000 3 years later, the tax would be \$200,000.

If a property owner acquires a property for \$1,000,000 and sells it for \$3,000,000 6 years later, no tax would be paid.

Option 4 – If a property owner acquires a property and then sells it less than one year later, the tax would be 24% of the sale price.

Reason for Change:

The current example is completely unrealistic and shows a clear bias. The example is clearly biased because it imagines an extreme and one-sided hypothetical case. By using the current example in the digest, the Committee is providing a ludicrous example that would clearly make a voter feel that the proposed tax is disproportionate and unreasonable. If the Committee is going to use an example then they need to provide one that is balanced and based on reality and/or they need to provide multiple fair and balanced examples (all based on real life models not on a theoretical worst case scenario) that show when the tax would and would not apply. Alternatively, the Committee could use an example which does not contain a sales price but which does exemplify how the tax gets calculated.

3.)

As approved by the Committee:

THE PROPOSAL:

Proposition _____ would impose an additional tax on the sale of certain residential properties that are sold within five years of purchase or transfer.

Alternate language:

Option #1:

THE PROPOSAL:

Proposition _____ would impose an additional tax on the sale of certain residential properties, NOT INCLUDING SINGLE FAMILY HOMES, CONDOMINIUMS TENANCY-IN-COMMON UNITS WHERE THE OWNER HAS LIVED THERE FOR 1 YEAR AS THEIR PRIMARY RESIDENCE that are sold within five years of purchase or transfer.

Option #2:

If the Committee is unwilling to add the exemption language into the proposal description qualifying what certain residential properties are then we request that the Committee move the list of exemptions up in the digest so that they are immediately after the listed proposal and before the tax rate table. It would then read as follows:

THE WAY IT IS NOW:

The City collects a transfer tax on sales of most real property in San Francisco. The tax rate depends on the sale price of the property. The lowest tax rate is 0.5%, for property sold for \$250,000 or less. The highest tax rate is 2.5%, for property sold for \$10,000,000 or more. The tax rate is not affected by how long a property is owned.

THE PROPOSAL:

Proposition ____ would impose an additional tax on the sale of certain residential properties that are sold within five years of purchase or transfer.

This additional tax would take effect on January 1, 2015.

This additional tax would not apply in the following circumstances:

- The property is a single-family house or condominium;
- An owner of the property has used it as a primary residence for at least one year immediately before the sale;
- The property contains more than 30 separate residential units;
- The property is sold for an amount equal to or less than what the seller paid for the property;

- The property is sold within one year of a property owner’s death;
- The property is legally restricted to low- and middle-income households;
- The property is newly built housing;
- The property meets the following criteria: it contains no more than two dwelling units; the seller applied on or before July 1, 2014, for a building permit for a project with a total construction cost of \$500,000 or more; and the last permit was issued no more than a year before the sale of the property; or
- The sale of the property is exempt from the existing transfer tax.

The following table shows the tax rates that would apply:

Length of Time Seller Has Owned the Property	Tax Rate
Less than one year	24%
One to two years	22%
Two to three years	20%
Three to four years	18%
Four to five years	14%

Reason for Change: It is clear that understanding what types of residential properties fall under the proposed transfer tax and which are exempt is critical for voters to understand this proposition. We believe that by adding the primary types of exempted properties – single family homes, condominiums and owner-occupied tenancies in common – is the clearest and most concise way of ensuring that voters understand the proposed transfer tax.

Without adding that language, we believe that reordering the list of exemptions provides the most clarity for voters trying to understand if the proposed tax would affect them or not. By helping them understand whether or not they would be exempted from the tax before seeing a possible example or listing the tax rate, they would have an unbiased view of the proposal.

4.)

As Approved by the Committee:

A “YES” VOTE MEANS: If you vote "yes," you want the City to impose an additional tax of between 14% and 24% on the sale of certain residential properties that are sold within than five years of purchase or transfer, subject to certain exceptions.

Alternate Language:

A “YES” VOTE MEANS: If you vote "yes," you want the City to impose an additional tax of between 14% and 24% on the sale of certain residential properties, NOT INCLUDING SINGLE FAMILY HOMES, CONDOMINIUMS OR TENANCY-IN-COMMON UNITS WHICH HAVE BEEN OWNER OCCUPIED AS A PRINCIPAL PLACE OF RESIDENCY FOR AT LEAST 1 YEAR that are sold in less than five years of the prior purchase or transfer, subject to certain exceptions.

Reason for Change:

Please see Request #3 above re: exemptions. Changing this language would keep it consistent.