STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date:	**08/29/11**	Bill No:	**Assembly Bill 563**
Tax Program:	**Property**	Author:	**Furutani**
Sponsor:	**City of Los Angeles**	Code Sections:	**RTC 408.4**
Related Bills:		Effective Date:	**01/01/12**

BILL SUMMARY

This bill allows specified city finance department employees to obtain or access otherwise confidential information held by the county assessor when conducting an investigation to determine whether the documentary transfer tax should be imposed for an unrecorded change in control or change in ownership of property.

Summary of Amendments

Since the previous analysis, the substance of this bill has been moved from RTC 408 to a stand alone provision to avoid chaptering out issues with SB 948 which also proposes amendments to RTC 408.

ANALYSIS

CURRENT LAW

The law requires that assessors keep certain information confidential. Revenue and Taxation Code Section 408(a) contains the general confidentiality rule for county assessors and provides that homeowners' exemption claims and any information and records in the assessor's office that are *not required*[1] by law to be kept or prepared by the assessor are not to be open to public inspection. In addition, Sections 451 and 481 provide that all information requested by the assessor or furnished in the property statement and change in ownership information shall be "held secret" by the assessor.

Subdivision (b) of Section 408 provides an exception to the general rule of confidentiality for certain governmental agencies or representatives. It requires that the assessor disclose information, furnish abstracts, or permit access to all records in his or her office to those agencies or representatives specified.

Part 6.7 of Division 2 of the Revenue and Taxation Code (§§11901-11935) relates to the documentary transfer tax (DTT) for counties and general law cities. Charter cities may also levy a DTT pursuant to a local ordinance and their own authority under the "municipal affairs" doctrine[2]. The locally imposed documentary transfer tax is generally collected by the county recorder at the time documents are presented for recording.

PROPOSED LAW

City Employee Access. This bill would add Section 408.4 to the Revenue and Taxation Code to require the assessor to disclose information, furnish abstracts, or permit access to records in the assessor's office to designated employees of a city's finance office for

[1] There are only very limited records that are required to be kept by the assessor, such as the assessment roll and the list of property transfers.

[2] Under the constitutional "municipal affairs" doctrine, charter cities can levy taxes which have not been preempted by the state or federal governments (Article XI, §5)

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purposes of conducting an investigation to determine whether a DTT should be imposed for an unrecorded change in control or change in ownership of property.

Conditions for City Employee Access. Related to the access to confidential assessor records and information, this bill would:

- Require written request for access.
- Require the designated employee of a city's finance office to certify to the assessor, under penalty of perjury:

  (1) that the information is needed to assist with the preparation and enforcement of Part 6.7 (commencing with Section 11901) of Division 2, and

  (2) that the information provided that is not public record and that is not open to public inspection shall not become public record and shall not be open to public inspection.
- Prohibit the assessor from disclosing social security numbers to the city employee.

Reimbursement. This bill would require the city to reimburse the assessor for any costs incurred in disclosing, furnishing, or permitting access to this information.

IN GENERAL

Documentary Transfer Tax. The DTT was enacted by Ch. 1332 of the Statutes of 1967 and became operative on July 1, 1968 to replace the repealed Federal Documentary Stamp Tax (former 26 U.S.C.§§4361, 4363). It authorizes counties to approve an ordinance to impose a documentary transfer tax, which applies to deeds of transfer of realty within that jurisdiction and is based on the value of the transfer. In counties, the rate is fifty-five cents ($0.55) for each five hundred dollars ($500) of value. While the rate in statute is stated per $500, in practice the rate is often expressed as $1.10 for each $1,000 of value. All of California's 58 counties apply the tax, which is modeled after the previously imposed Federal Stamp Tax. Cities are also allowed to enact ordinances to impose the tax as follows:

General law cities (non-charter cities) within a county that impose a DTT may apply the tax at half the county rate and it applies as a credit against the county tax (i.e., the total rate will still be fifty-five cents ($0.55) for each five hundred dollars ($500) of value and the city and county will equally share in the proceeds). As of 2010, there were 361 general law cities.

Charter cities may impose a DTT at a higher rate under the municipal affairs doctrine of the California Constitution (Article XI, Section 5). If they impose a DTT at a higher rate than the non-charter rate, then the city DTT does not serve as a credit against the county tax. The tax imposed by cities is referred to as the Documentary Transfer Tax, the Real Property Transfer Tax, or the Real Estate Transfer Tax. The provisions in the Revenue and Taxation Code do not apply to charter cities. Section 2 of Ch. 1332, Stats. 1967 provided that no city or county shall directly or indirectly impose a tax on transfers of real property not in conformity with Part 6.7, but that for purposes of this prohibition, it does not apply to charter cities or San Francisco (a city and county). As of 2010, there were 120 charter cities. Between 25 and 30 of those cities impose a higher rate – the lowest at about $2.00 per $1,000 and the highest at $15.00 per $1,000.

DTT is an Excise Tax. The courts have held that the documentary transfer tax is an excise tax. It is neither a property tax nor is it a transaction tax or sale tax on the

transfer of real property, which is prohibited by Article XIIIA, Section 4 of California Constitution. A transfer tax attaches to the privilege of exercising one of the incidents of property ownership, its conveyance. Such a tax is an excise tax, rather than a property tax, imposed solely on the privilege of disposing of one's property and realizing its actual value. *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137; *Fisher v. Alameda County* (1993) 20 Cal.App.4th 120.

Administration of the DTT. The county recorder generally collects the DTT on behalf of the counties and cities.

BACKGROUND

SB 816 (Stats. 2009, Ch. 622, Ducheny) amended Section 408 to authorize the assessor to provide confidential information to the county recorder for purposes of investigating whether the DTT should be imposed. In addition, SB 816 added Section 11935 to expressly authorize a county board of supervisors to establish an administrative appeal process for the DTT and specify that the value determined for purposes of the DTT is not binding on the value determined for property tax purposes.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the city of Los Angeles to obtain access to data or information it needs to ensure the proper imposition of the documentary transfer tax. The author states, "AB 563 would allow for information sharing between the County Assessors' Office and cities to identify change of ownership legal entity transfers and other real property transfers that may not be currently captured. Enactment of the proposed legislation is estimated to result in improved and increased collection of the Documentary Transfer Tax at a time of fiscal crisis for local governments."

   The sponsor states that information sharing would help result in improved and increased collection of an existing revenue source at a time of fiscal stress.

2. **Amendments.** The **August 29, 2011** amendments move the substance of this bill's provisions into a separate section of code. Since SB 948 (Senate Governance and Finance Committee) also proposed amendments to Section 408 (it provides tax collectors with access to assessor records) moving these provisions eliminated the need for double joining amendments to prevent chaptering out issues. **August 22, 2011 amendments** (1) required the city to reimburse the assessor for any costs incurred in disclosing the information allowed under this measure and (2) consolidated into one location other agencies also required to provide cost reimbursement. The **May 11, 2011 amendments** (1) limited city employee access to designated employees of a city's finance office, (2) required a written request for access to the information, (3) prohibited the assessor from disclosing social security numbers in documents provided, (4) required the city employee to certify, under penalty of perjury, that access is needed to assist with the enforcement of the DTT, and (5) expressly provided that confidential information obtained retains its confidentially and is not a public record or open to public inspection.

3. **The county recorder generally collects the DTT on behalf of counties and cities.** In the city of Los Angeles, a charter city, the agreement for the collection of taxes between the city and county provides that if the county is unable or does not collect the DTT when the instrument or writing is presented for recordation, the city is responsible for collecting the DTT. Also, a person may claim an exemption from the DTT which may require further investigation by the city to verify. Furthermore, a

city may conduct periodic audits of city revenues related to documentary transfer taxes. Such an audit could require access to assessor records to determine the proper imposition of the tax.

4. **Maintaining Confidentially.** This bill expressly requires that confidentiality be maintained by the city. This is consistent with existing practices. Although not expressly provided in law, BOE staff has consistently opined that confidential records held by the county assessor disclosed to a person permitted access under Section 408 do not lose their status as confidential information. Thus, the city (or any other person granted access via Section 408) would be bound by the same confidentiality standards required by law as the county in regards to maintaining the confidentiality of records. Any acquired documents that are confidential and privileged remain so as long as the privilege is not waived by the affected taxpayer.

5. **Use of the phrase "unrecorded change in control or ownership of property."** Is the intent of this bill to limit access to assessor records in circumstances involving changes in control and ownership occurring under Section 64 (c) and (d)? The phrase could be interpreted to mean that access is allowed only for purposes of investigating changes in ownership triggered by transfers of ownership interests in legal entities such as stock or partnership interests (as distinct from transfers of real property interests). Also, the phrase could be interpreted to allow access in the case of a long term lease of real property that triggers a "change in ownership" of the property. It is unclear whether this language is intended to limit a city's access to precise and narrow circumstances. If so, this language could hamper an investigation a city might want to pursue in the future.

6. **Unrecorded Limitation.** Presumably, adding the term "unrecorded" means that if a grant deed or a lease is recorded and the DTT was not imposed, then the city would have no express right to access the assessor's records. This seems inconsistent with the stated goal of the bill.

7. **Technical Amendments.** At page 2, lines 11 and 17, should "preparation and" be struck or alternatively replaced with either "imposition and" or "investigation and"? At page 2, line 19 and page 3, line 2 should "subdivision" be replaced with "section"?

COST ESTIMATE

The BOE would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the change in law.

REVENUE ESTIMATE

This bill has no direct property tax revenue impact.

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