

*EXCISE AND MISCELLANEOUS TAXES*

## Controlling Interest Transfer Taxes (Part Two)

*A straightforward, easy to administer controlling interest transfer tax is more often the exception than the rule.*

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In a previous article,<sup>1</sup> the authors reviewed the controlling interest transfer tax statutes in seven states.<sup>2</sup> In part two, we discuss the remaining nine states (including the District of Columbia) that tax the transfer of a controlling interest in an entity that owns real property in the state. Some states impose a controlling interest transfer tax (abbreviated CITT) in a simple, straightforward manner (see Connecticut, Maine, and Washington), but, as a whole, most states' CITT statutes suffer from ambiguous terms, complicated calculations, and a lack of guidance. As before, in an effort to spice things up a bit, we refer to some of our favorite musicians from the states under discussion (but not all of them: the next great artist to emerge from Maine will be the first, so far as we know).

### The (Relatively) Simple States

Some good news to start: a few states apply their controlling interest transfer taxes in a (relatively) simple, straightforward manner.

#### **Connecticut**

We'd love to pretend that we learned about the Carpenters in "Tommy Boy," but—for at least one of the authors (the older one)—familiarity with the brother-sister duo that gave us "Superstar," "We've Only

Just Begun," and more started in the womb. Richard and Karen Carpenter's parents may have moved them to California in their teens, but their vibe was Connecticut to the bone. To echo Chris Farley, "you can change it if you want," but there's no reason to be ashamed to sing along: "Don't you remember you told me you loved me, baby . . . ."

Connecticut imposes its CITT on "the sale or transfer of a controlling interest [more than 50%]<sup>3</sup> in any entity which possesses, directly or indirectly, an interest in real property in this state when the present true and actual value of the interest in real property equals or exceeds two thousand dollars."<sup>4</sup> The "present true and actual value" of the real property is its fair market value at the time of the transfer.<sup>5</sup>

By using fair market value as the tax base, Connecticut avoids the administrative complications other states face when imposing tax based on consideration. This is especially helpful for multi-property transactions where the entity owns assets other than Connecticut real property. Instead of the transferor and transferee having to agree on the allocation of consideration between Connecticut real property and all the other assets, they only need to determine the fair market value of the Connecticut real property (at least that is all that is required for Connecticut CITT purposes).

An entity's taxable interest in Connecticut real property depends on whether it directly or indirectly owns the real property. If the entity being transferred directly owns Connecticut real property, the controlling interest transfer tax base (i.e. the present true and actual value of the interest in Connecticut property) is 100% of the fair market value of the Connecticut property owned by the entity.<sup>6</sup> If the transferred entity indirectly owns Connecticut real property, the tax base is "the entity's applicable ownership percentage" of the fair market value of the Connecticut property. For example, if a member transfers its controlling interest in an LLC, which in turn owns a 60% interest in a partnership that owns Connecticut real property, the tax base for the CITT on the transfer of the member's LLC interest is 60% of the Connecticut real property's fair market value.

Connecticut has a form specific to controlling interest transfer taxes (Form AU-330) that the transferor must file with the Department of Revenue Services on or before the last day of the month following the month in which it transferred the controlling interest.<sup>7</sup>

## **Maine**

Maine taxes "the transfer or acquisition within any 12-month period of a direct or indirect controlling interest in any entity with a fee interest in real property in this State."<sup>8</sup> A "controlling interest" is a greater

than 50% interest in the entity.<sup>9</sup> The tax base is the portion of consideration paid for the interest in the entity allocable to the Maine real property; however, if it is not possible to determine this amount, the taxable "value" is the fair market value of the real property.<sup>10</sup>

By imposing the tax directly on the value of the real property, rather than the transferee's indirect economic interest in the real property, Maine's CITT is easier to comply with than most other states' CITT provisions. But this does mean, perhaps unfairly, that Maine taxes the transfer of a 51% interest in a partnership the same as the transfer of 100% of the ownership interest in the same partnership.

The transferor and the transferee are each liable for half of Maine's CITT.<sup>11</sup> The parties must sign and file the Controlling Interest Transfer Tax Return/Declaration of Value with the County Registry of Deeds within 30 days of the completion of the controlling interest transfer.<sup>12</sup>

## Washington

Washington<sup>13</sup> imposes its CITT on "the transfer or acquisition within any 12-month period of a controlling interest (50% or more) in any entity with an interest in real property located in [Washington] for a valuable consideration."<sup>14</sup>

The tax base is the "selling price," which is the "true and fair value" of the Washington property owned by the entity at the time of the sale.<sup>15</sup> The taxpayer can determine the "true and fair value" of the property by obtaining a fair market value appraisal or by an allocation of assets by the seller and buyer under Internal Revenue Code Section 1060.<sup>16</sup> If the taxpayer cannot use either of those two methods to determine the property's value, the "selling price" is "the market value assessment for the property maintained on the county property tax rolls at the time of the sale."<sup>17</sup>

Like Maine, the amount of the controlling interest being sold does not control the tax base. The "selling price" is the value of the Washington real property owned by the entity, regardless of whether someone is selling a 51% or 100% interest in the entity or the amount of the consideration paid for the controlling interest.<sup>18</sup> Notably, Washington's CITT does not focus on whether a buyer or buyers acting in concert have acquired a controlling interest; rather, the CITT applies (or not) depending on whether 50% or more of the interests in an entity are transferred within a 12-month period. Thus, for example, there is no CITT due when a 40% owner acquires an additional 15% interest, even though that owner became the controlling shareholder as a result.<sup>19</sup>

The seller is generally liable for the tax and must report the transfer of the controlling interest to the Department of Revenue within five days of the date of sale on Form 84-0001B.

## The "Real Estate Company" States

Like Illinois, Pennsylvania, and Rhode Island, three additional states and D.C. impose CITT only on the transfer of an interest in a company that is at least primarily engaged in the business of owning real estate.

### District of Columbia

The District of Columbia only taxes the transfer of a controlling interest (more than 50%) in an entity that, in the previous 12 months, either: (1) derives more than 50% of its gross receipts from the ownership or disposition of real property in D.C., or (2) holds real property in D.C. that has a value comprising 80% or more of the value of its entire tangible asset holdings.<sup>21</sup> To determine whether an entity's D.C. real property comprises at least 80% of its tangible assets, D.C. examines the fair market value of an entity's D.C. real property and its other tangible assets.<sup>22</sup>

The tax is imposed on the portion of the consideration paid that is allocable to the real property in D.C.<sup>23</sup> Helpfully, though, D.C.'s controlling interest transfer tax regulations direct the taxpayer to allocate the consideration between D.C. real property and all other assets based on the assets' fair market value.<sup>24</sup> This provision mitigates the problem of negotiating with the transferee to allocate consideration when the entity owns other assets or real property in multiple jurisdictions. Note that D.C. does not provide any exemption for a direct drop-down of property to a wholly owned subsidiary, but it specifically excludes from tax the transfer of an *interest* in a property-owning entity to a wholly owned subsidiary.<sup>25</sup> This provision does not offer much help in terms of transfer tax planning for third-party transfers, but it provides an opportunity for restructurings without triggering an instance of CITT.

### Maryland

Based on the narrow scope of Maryland's CITT, the intent appears to be preventing real estate transfer tax avoidance rather than generating tax revenue. The tax applies to the transfer of a controlling interest in a "real property entity."<sup>26</sup> A "real property entity" is one that owns, directly or "beneficially," real

property in Maryland that both (1) constitutes at least 80% of the value of its assets, and (2) has an aggregate value of at least \$1 million.<sup>27</sup> Furthermore, the statute narrowly defines "controlling interest" as more than 80% of the total value of stock in a corporation or interest in a pass-through entity.<sup>28</sup>

Accordingly, the Maryland CITT applies only to the transfer of a substantial interest (more than 80%) in an entity, and only if at least 80% of the fair market value of the entity's assets are Maryland real property. While this statute is not as narrow as Florida's or Minnesota's, which tax only the sale of an entity following the non-taxable transfer of property to the entity,<sup>29</sup> it is much narrower than the broad CITT provisions described above that appear to have been intended to apply any time a party transfers an entity interest in lieu of a direct property transfer. The tax does not apply when "the ownership interests in the real property entity are owned, directly or indirectly, by the same persons and in the same proportions after the transfer," nor does it apply when the controlling interest is transferred by a series of transactions completed over more than 12 months.<sup>30</sup>

Maryland imposes its CITT on the consideration paid for the controlling interest, "reduced by the amount allocable to the assets of the real property entity other than real property."<sup>31</sup> If an entity owns assets other than Maryland real property, the taxpayer must allocate the consideration between the entity's Maryland real property and all of its other assets. A taxpayer has the burden of establishing "to the satisfaction of the Department" the amount of consideration allocable to the Maryland real property.<sup>32</sup>

The Maryland Report of Transfer of Controlling Interest, which the real property entity must use to report and pay the tax, requires breaking out the value attributable to each type of the real property entity's assets (Maryland real property, non-Maryland real property, cash, securities, etc.). The entity then calculates the tax base by (1) dividing the consideration for the controlling interest by the total value of all of the entity's assets, and (2) multiplying this amount by the value of the Maryland real property.

## **Michigan**

The scope of Michigan's<sup>33</sup> CITT is also fairly narrow. Michigan imposes its CITT on "the transfer or acquisition of a controlling interest in an entity only if the real property owned by that entity comprises 90% or more of the fair market value of the assets determined in accordance with generally accepted accounting principles."<sup>34</sup> And like Maryland, Michigan's statute defines "controlling interest" as more than 80% of the total value of stock in a corporation or the total interest in a pass-through entity.<sup>35</sup> The tax base is the fair market value "of the real property or interest in the real property, apportioned based on the percentage of the ownership interest transferred or acquired in the entity."<sup>36</sup>

Unlike most states, however, Michigan's CITT appears to apply only to the transfer of a controlling interest in an entity that directly owns real property. Thus, selling 81% of the stock of a wholly owned subsidiary whose sole asset is Michigan real property would be subject to tax, but Michigan's CITT provision does not appear to impose tax on the sale of 100% of the parent company's stock.

The transferor must pay the tax within 15 days of the transfer of the controlling interest.<sup>37</sup> The transferor should file the Real Estate Transfer Tax Valuation Affidavit (Form 2705) with the Register of Deeds of the county in which the real property is located.<sup>38</sup>

## **New Hampshire**

Unlike most states, New Hampshire does not limit its tax to only the transfer of a "controlling" interest in an entity that owns real estate. Instead, New Hampshire taxes the transfer of *any* interest in a "real estate holding company" that holds real estate (or interests in real estate) in New Hampshire.<sup>39</sup> Despite that broad language, the regulations provide an exemption for "de minimis" transfers, which prevents the over-reaching (and un-administrable) interpretation of the state's CITT to impose tax every time a New Hampshire resident sells stock in a corporation that directly or indirectly owns a "real estate holding company."<sup>40</sup>

A "real estate holding company" is an entity "engaged principally in owning, holding, selling, or leasing real estate and which owns real estate or an interest in real estate within [New Hampshire]."<sup>41</sup> However, neither the statute nor regulations address what it means for a company to be "engaged principally" in holding real estate.<sup>42</sup> Is a company "engaged principally" in owning real estate if it derives the majority of its revenue from real estate? Or if the majority of its assets are real estate? What if an entity runs a retail business on real estate it owns, but ends up earning substantially all of its gain from the eventual sale of the real estate? The Department of Revenue Administration has yet to provide further guidance.

The tax is imposed on the consideration paid for the interest in the real estate holding company.<sup>43</sup> If the sale is for 100% of the interest in the real estate holding company, the consideration is "the sum of the fair market value of all the New Hampshire real estate or interests therein owned or held by the company."<sup>44</sup> However, if the sale is for less than 100% of the real estate holding company, "the consideration shall be determined by multiplying the fractional interest transferred by the sum of the fair market value of all the New Hampshire real estate or interests therein owned or held by the company."<sup>45</sup> Therefore, if a member sells a 50% ownership interest in Real Estate Holding Company, LLC for \$250,000, and Real Estate Holding Company, LLC's only asset is New Hampshire real estate with a fair

market value of \$1 million, the taxable consideration for the sale will be \$500,000 (50% of \$1 million), rather than the actual consideration paid for the ownership interest.<sup>46</sup>

## The Outliers

Delaware and California are outliers among the states that tax the transfer of a controlling interest.

### Delaware

Delaware's CITT statute is notable for what it leaves unsaid. In enacting the CITT, the Delaware General Assembly was clear that it intended to limit the "avoidance of the [realty transfer] tax through dealings in intangible interests rather than deeds to transfer the beneficial ownership of real estate."<sup>47</sup> To that end, Delaware taxes the transfer of a "beneficial ownership in real estate [] transferred through a conveyance or series of conveyances of intangible interests including mergers and all other indirect exchanges, in a corporation, limited liability company, partnership, trust, pass-through entity or other entity."<sup>48</sup>

The statute exempts transfers in which the beneficial owners of the real property before the transfer or series of transfers "own 80% or more of the beneficial interest in the real estate following" the transfers.<sup>49</sup> On the other hand, if the pre-transfer beneficial owners of the real property own less than 80% of the beneficial interest post-transfer, the transfer "shall not be subject to tax under this subdivision, unless, under regulations promulgated by the Secretary of Finance, such transfer or transfers are properly characterized as a sale of real property."<sup>50</sup>

The Secretary of Finance issued a Technical Information Memorandum in 1986 providing some guidance on the scope of the controlling interest transfer tax. In particular, the memo lists four factors relevant to determining whether a transfer is properly characterized as a sale of real property (timing, percentage change in interest, transitory ownership status, and business purpose).<sup>51</sup> However, these guidelines were not promulgated as formal regulations and fail to address important details about how the CITT applies. Most local jurisdictions have adopted the state provisions verbatim, so a taxpayer is out of luck looking for better guidance at the local level.<sup>52</sup> Compared to other states, Delaware's CITT is a black box.

## California

The largest outlier of all is California, which of course exports more important musical acts than any other state. To many around the globe, the music and videos from famous California artists define America, for better (the Beach Boys, the Grateful Dead, Dr. Dre and Snoop, half of Fleetwood Mac) and worse (Coolio, Train, Glenn Frey's solo work).

Unlike the states mentioned in part one and the other states discussed above, the California Legislature has not explicitly enacted a controlling interest transfer tax statute. Instead, in *926 North Ardmere Ave., LLC v. County of Los Angeles*,<sup>53</sup> the California Supreme Court held that the documentary transfer tax statute, which on its face imposes tax only on documents conveying direct interests in real property, provides authority for cities and counties to impose the tax on the transfer of ownership interests in entities that own real property in the city or county.

California's documentary transfer tax statute authorizes counties and cities to impose a tax "on each deed, instrument, or writing by which" a person transfers real property in the jurisdiction "when the consideration or value of the interest or property conveyed" exceeds \$100.<sup>54</sup> For years, some of the state's largest counties (*e.g.*, Alameda, Los Angeles, and San Francisco) interpreted this statute to authorize them to tax the transfer of interests in entities that own real property in their jurisdiction. Because there was no explicit authority for such tax in most counties and no reporting mechanism, taxpayers would receive surprise assessments months (or years) after such transactions, typically after a county learned of an entity transfer by reviewing the BOE-100-B forms that were required to be filed for property tax purposes.

In *926 North Ardmere*, Los Angeles County imposed the documentary transfer tax on the transfer of almost 90% of the transferee's interests in a partnership that indirectly owned real property in the county.<sup>55</sup> The transferee agreed that the transfer of the ownership interest in the partnership qualified as a "change in ownership" of the real property for ad valorem property tax purposes, which caused the county to reappraise and reassess the real property.<sup>56</sup> However, title to the real property did not actually change, nor was a deed or any other written instrument recorded with the county.

Even though the plain language of Cal. Rev. & Tax. Code §11911 does not impose the tax on transfers of interests in entities that directly or indirectly own real property, the state high court concluded that the "the transfer of an interest in a legal entity that owns real property can potentially trigger imposition of the tax."<sup>57</sup> The court explained "that the critical factor in determining whether the documentary transfer tax



may be imposed is whether there was a sale that resulted in a transfer of beneficial ownership of real property.<sup>58</sup> Even though the documentary transfer tax statute and the ad valorem property tax statute were enacted at different times and do not reference each other, the court held that a city or county may impose the documentary transfer tax "whenever a transfer of an interest in a legal entity results in a change in ownership of real property within the meaning of section 64, subdivision (c) or (d), so long as there is a written instrument reflecting a sale of the property for consideration."<sup>59</sup> Remarkably, the court did not address whether a county must impose such a tax under an explicit ordinance, nor did it address any of the mechanics of such a tax.

Therefore, the clearest reading of *926 North Ardmore* is that California cities and counties may impose the documentary transfer tax on the transfer of an interest in an entity that owns real property if the transfer qualifies as a "change in ownership" of the real property according to Cal. Rev. & Tax. Code §64(c) or (d). Under §64(c), a change in ownership of real property occurs if a person obtains direct or indirect ownership or control of an entity by owning more than 50% of the voting stock of a corporation or obtaining a majority ownership interest in a partnership or LLC.<sup>60</sup> Under §64(d), a change in ownership of real property occurs if (1) an entity's previous acquisition of the real property was deemed not to be a change in ownership under §62(a), and (2) interests representing more than 50% of the total interests in the entity are later transferred by any original co-owners in one or more transactions.<sup>61</sup>

The *926 North Ardmore* decision left many questions about California's CITT unanswered. Most importantly, the decision does not address the tax base for the controlling interest transfer tax. For direct transfers of real property, the tax base is the consideration or value of the real property transferred.<sup>62</sup> In *926 North Ardmore*, Los Angeles County imposed the transfer tax on 100% of the real property's new assessed value.<sup>63</sup> However, as the dissent points out, nothing in the statute indicates that this is the correct tax base.

Why is the tax not based on the 90% indirect interest in the real property that was transferred, or the consideration paid by the transferees for that interest?<sup>64</sup> The transfer of a small ownership interest in an entity can trigger a "change in ownership" under Cal. Rev. & Tax. Code §64 (e.g., if a partner with a 45% interest acquires an additional 6% interest in the partnership). Thus, there is a risk that a small ownership transfer can trigger a massive transfer tax bill if the real property in the county has a significant new assessed value.

There is also a significant lack of clarity as to which exceptions from the change of ownership provisions for property tax purposes apply for purposes of the judicially created CITT. Taxpayers can hope that the

Legislature will bring clarity to the area at some point in the future—or overrule the decision and make clear that the documentary transfer tax does not apply to transfers of interests. But until then, taxpayers are stuck with the reality of the unfavorable (and poorly reasoned) *926 North Ardmore* decision.

Finally, because a city or county is not required to enact an ordinance explicitly acknowledging that the tax applies to transfers of controlling interests, taxpayers may not know that a particular jurisdiction imposes a CITT until they receive an assessment in the mail.

## Conclusion

Despite a common goal—preventing the avoidance of real estate transfer taxes through tax planning—states' controlling interest transfer tax statutes vary widely. Unfortunately, a straightforward, easy to administer controlling interest transfer tax is more often the exception than the rule.

<sup>1</sup> Calhoun and Cornett, "Controlling Interest Transfer Taxes: A (Mostly Critical) Review," 26 *Journal of Multistate Taxation and Incentives* 14 (January 2017).

<sup>2</sup> New Jersey, New York, Florida, Minnesota, Illinois, Pennsylvania, and Rhode Island.

<sup>3</sup> Conn. Gen. Stat. §12-638a.

<sup>4</sup> Conn. Gen. Stat. §12-638b(a)(1).

<sup>5</sup> See Conn. Special Notice No. 2003(11) (Aug. 27, 2003) (defining "present true and actual value of real property" as the "fair market value, unreduced by the amount of any mortgage, lien or other encumbrance, as of the time of the transfer of a controlling interest.").

<sup>6</sup> *Id.*

<sup>7</sup> See Connecticut Form AU-330I, *Controlling Interest Transfer Taxes Return Instructions*.

<sup>8</sup> Me. Rev. Stat. tit. 36, §4641-A(2).

<sup>9</sup> Me. Rev. Stat. tit. 36, §4641(1-A).

<sup>10</sup> Me. Rev. Stat. tit. 36, §4641(3).

<sup>11</sup> 18-125 Me. Code R. §207.04.

<sup>12</sup> *See id.*

<sup>13</sup> Washington is most recently known as the birthplace of grunge (and some bands with impressive legacies, including Nirvana, Pearl Jam, and Soundgarden), but it's been producing musical institutions for decades. Ray Charles and Quincy Jones inspired each other as childhood friends in Seattle, and

Jimi Hendrix grew up and learned to play there (though his most important records didn't happen until he moved to London in his mid-twenties).

<sup>14</sup> Wash. Rev. Code §82.45.010(2)(a).

<sup>15</sup> Wash. Rev. Code §82.45.030(2).

<sup>16</sup> Wash. Admin. Code §458-61A-101(4)(a).

<sup>17</sup> Wash. Rev. Code §82.45.030(4) and Wash. Admin. Code §458-61A-101(4)(b).

<sup>18</sup> Wash. Admin. Code §458-61A-101(4)(c).

<sup>19</sup> See Wash. Admin. Code §458-61A-101(2)(a)(ii).

<sup>20</sup> Wash. Admin. Code §458-61A-101(7)-(8).

<sup>21</sup> D.C. Code §42-1102.02(a).

<sup>22</sup> D.C. Mun. Regs. tit. 9, §516.4.

<sup>23</sup> D.C. Code §42-1103(a)(2).

<sup>24</sup> D.C. Mun. Regs. tit. 9, §519.1.

<sup>25</sup> See *Columbia Realty Venture v. D.C.*, 433 A.2d 1075 (D.C. Ct. App. 1981) (rejecting claim for an exemption on a related-party transfer); *but see* D.C. Mun. Regs. tit. 9, §523.3 ("The transfer of a controlling interest by a corporation to its wholly-owned subsidiary, from a wholly-owned subsidiary to its parent, or from one wholly-owned subsidiary to another shall be considered a change of identity and not subject to the Recordation of Economic Interests Act.").

<sup>26</sup> Md. Code Ann., Tax-Prop. §13-103(b)(1).

<sup>27</sup> Md. Code Ann., Tax-Prop. §12-117(a)(6)(i) (A "real property entity" is also an entity that owns, directly or "beneficially," real property in Maryland that both (1) constitutes at least 80% of the value of its assets, and (2) is the product of an untaxed conversion from a sole proprietorship that was exempt from the recordation tax under Md. Code Ann., Tax-Prop. §12-108(y)).

<sup>28</sup> Md. Code Ann., Tax-Prop. §12-117(a)(2).

<sup>29</sup> See Calhoun, *supra* note 1, at 17-18.

<sup>30</sup> Md. Code Ann., Tax-Prop. §12-117(c).

<sup>31</sup> Md. Code Ann., Tax-Prop. §12-117(b)(2)(i), (iii).

<sup>32</sup> Md. Code Ann., Tax-Prop. §12-117(b)(2)(iv).

<sup>33</sup> Like Washington, Michigan is a state with a long history of important musical contributions: it was the home of Motown, which spawned massive American hitmakers from the early 60s (the Supremes, the Four Tops, Gladys Knight & the Pips, Smokey Robinson, and Stevie Wonder) through the 90s (Boyz II Men). More recently, the White Stripes, Kid Rock, and Eminem emerged from Michigan. In

between, Madonna emerged from outside Detroit to change music and popularize music videos (and make some bad movies). Michigan has *range*.

<sup>34</sup> Mich. Comp. Laws §207.523(1)(c).

<sup>35</sup> Mich. Comp. Laws §207.522(a).

<sup>36</sup> Mich. Comp. Laws §207.522(g).

<sup>37</sup> Mich. Comp. Laws §207.523(3).

<sup>38</sup> See Michigan Form 2705 (rev. Nov. 2016).

<sup>39</sup> N.H. Rev. Stat. Ann. §78-B:1-a, V.

<sup>40</sup> N.H. Code Admin. R. Ann. §802.05(d).

<sup>41</sup> N.H. Rev. Stat. Ann. §78-B:1-a, VI.

<sup>42</sup> See N.H. Code Admin. R. Ann. §801.09 (merely referring to N.H. Rev. Stat. Ann. §78-B:1-a, VI for the definition of "real estate holding company").

<sup>43</sup> N.H. Rev. Stat. Ann. §78-B:1(b).

<sup>44</sup> N.H. Code Admin. R. Ann. §805.01(a).

<sup>45</sup> N.H. Code Admin. R. Ann. §805.01(b).

<sup>46</sup> See N.H. Code Admin. R. Ann. §802.05(a)(2).

<sup>47</sup> Del. Code Ann. tit. 30, §5401(7)(d).

<sup>48</sup> Del. Code Ann. tit. 30, §5401(7)(a).

<sup>49</sup> Del. Code Ann. tit. 30, §5401(7)(c).

<sup>50</sup> *Id.*

<sup>51</sup> Del. Tech. Info. Memo. No. 86-9 (1986).

<sup>52</sup> See, e.g., Sussex County, DE Ord. No. 746.

<sup>53</sup> 3 Cal. 5 (2017).

<sup>54</sup> Cal. Rev. & Tax. Code §11911(a)-(b).

<sup>55</sup> 926 *North Ardmore*, 3 Cal. 5th at 325-26.

<sup>56</sup> See *id.* at 326-27.

<sup>57</sup> *Id.* at 332.

<sup>58</sup> *Id.* at 337.

<sup>59</sup> *Id.* at 338.

<sup>60</sup> Cal. Rev. & Tax. Code §64(c)(1).

<sup>61</sup> Cal. Rev. & Tax. Code §64(d).

<sup>62</sup> Cal. Rev. & Tax. Code §11911.

<sup>63</sup> *See 926 North Ardmore*, 3 Cal. 5th at 345 (J. Kruger, dissenting).

<sup>64</sup> *See id.*