

1 AMENDMENT TO SENATE BILL 1883

2 AMENDMENT NO. _____. Amend Senate Bill 1883, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Property Tax Code is amended by changing
6 Sections 31-5, 31-10, 31-20, and 31-25 and by adding Section
7 3-46 as follows:

8 (35 ILCS 200/31-5)

9 Sec. 31-5. Definitions. "Recordation" includes the
10 issuance of certificates of title by Registrars of Title
11 under the Registered Titles (Torrens) Act pursuant to the
12 filing of deeds or trust documents for that purpose, as well
13 as the recording of deeds or trust documents by recorders.

14 "Department" means the Department of Revenue.

15 "Person" means any natural individual, firm, partnership,
16 association, joint stock company, joint adventure, public or
17 private corporation, limited liability company, or a
18 receiver, executor, trustee, guardian or other representative
19 appointed by order of any court.

20 "Value" means the amount of the full actual consideration
21 for the real property, including the amount of any lien on
22 the real property assumed by the buyer.

1 "Trust document" means a document required to be recorded
2 under the Land Trust Recordation and Transfer Tax Act.

3 "Beneficial interest" includes, but is not limited to:

4 (1) the beneficial interest in an Illinois land
5 trust;

6 (2) the lessee interest in a ground lease
7 (including any interest of the lessee in the related
8 improvements) that provides for a term of 30 or more
9 years when all options to renew or extend are included,
10 whether or not any portion of the term has expired; or

11 (3) the indirect interest in real property as
12 reflected by a controlling interest in a real estate
13 entity.

14 "Controlling interest" means 50% or more of the fair
15 market value of all ownership interests or beneficial
16 interests in a real estate entity.

17 "Real estate entity" means any person including, but not
18 limited to, any partnership, corporation, limited liability
19 company, trust, other entity, or multi-tiered entity, that
20 exists or acts substantially for the purpose of holding
21 directly or indirectly title to or beneficial interest in
22 real property. There is a rebuttable presumption that an
23 entity is a real estate entity if it owns, directly or
24 indirectly, real property having a fair market value greater
25 than 75% of the total fair market value of all of the
26 entity's assets, determined without deduction for any
27 mortgage, lien, or encumbrance.

28 (Source: P.A. 92-651, eff. 7-11-02.)

29 (35 ILCS 200/31-10)

30 Sec. 31-10. Imposition of tax. A tax is imposed on the
31 privilege of transferring title to real estate, as
32 ~~represented-by-the-deed-that-is-filed-for-recordation,~~ and on
33 the privilege of transferring a beneficial interest in real

1 property ~~that-is-the-subject-of-a-land-trust--as--represented~~
 2 ~~by--the--trust-document-that-is-filed-for-recordation,~~ and on
 3 the privilege of transferring a controlling interest in a
 4 real estate entity, at the rate of 50¢ for each \$500 of value
 5 or fraction of \$500 stated in the declaration required by
 6 Section 31-25. If, however, the deed ~~--or--trust--document~~
 7 ~~states---that---the~~ real estate, beneficial interest, or
 8 controlling interest is transferred subject to a mortgage,
 9 the amount of the mortgage remaining outstanding at the time
 10 of transfer shall not be included in the basis of computing
 11 the tax. The tax is due if the transfer is made by one or
 12 more related transactions or involves one or more persons or
 13 entities and whether or not a document is recorded.

14 (Source: P.A. 86-624; 86-925; 86-1028; 86-1475; 87-543;
 15 88-455.)

16 (35 ILCS 200/31-20)

17 Sec. 31-20. Affixing of stamps. Payment of the tax shall
 18 be evidenced by revenue stamps in the amount required to show
 19 full payment of the tax imposed by Section 31-10. Except as
 20 provided in Section 31-45, a deed, document transferring a
 21 controlling interest in real property, or trust document
 22 shall not be accepted for filing by any recorder or registrar
 23 of titles unless revenue stamps in the required amount have
 24 been purchased from the recorder or registrar of titles of
 25 the county where the deed, document transferring a
 26 controlling interest in real property, or trust document is
 27 being filed for recordation. The revenue stamps shall be
 28 affixed to the deed, document transferring a controlling
 29 interest in real property, or trust document by the recorder
 30 or the registrar of titles either before or after recording
 31 as requested by the grantee. A person using or affixing a
 32 revenue stamp shall cancel it and so deface it as to render
 33 it unfit for reuse by marking it with his or her initials and

1 the day, month and year when the affixing occurs. The
2 marking shall be made by writing or stamping in indelible ink
3 or by perforating with a machine or punch. However, the
4 revenue stamp shall not be so defaced as to prevent ready
5 determination of its denomination and genuineness.

6 (Source: P.A. 86-624; 86-925; 86-1028; 86-1475; 87-543;
7 88-455.)

8 (35 ILCS 200/31-25)

9 Sec. 31-25. Transfer declaration. At the time a deed, a
10 document transferring a controlling interest in real
11 property, or trust document is presented for recordation, or
12 within 3 business days after the transfer is effected,
13 whichever is earlier, there shall also be presented to the
14 recorder or registrar of titles a declaration, signed by at
15 least one of the sellers and also signed by at least one of
16 the buyers in the transaction or by the attorneys or agents
17 for the sellers or buyers. The declaration shall state
18 information including, but not limited to: (a) the full
19 consideration for the property or interest in real property
20 so transferred; (b) the parcel identifying number of the
21 property; (c) the legal description of the property; (d) the
22 date of the deed, the date the transfer was effected, or the
23 date of the trust document; (e) the type of deed, transfer,
24 or trust document; (f) the address of the property; (g) the
25 type of improvement, if any, on the property; (h) information
26 as to whether the transfer is between related individuals or
27 corporate affiliates or is a compulsory transaction; (i) the
28 lot size or acreage; (j) the value of personal property sold
29 with the real estate; (k) the year the contract was initiated
30 if an installment sale; and (l) the name, address, and
31 telephone number of the person preparing the declaration.
32 Except as provided in Section 31-45, a deed, a document
33 transferring a controlling interest in real property, or

1 trust document shall not be accepted for recordation unless
2 it is accompanied by a declaration containing all the
3 information requested in the declaration. When the
4 declaration is signed by an attorney or agent on behalf of
5 sellers or buyers who have the power of direction to deal
6 with the title to the real estate under a land trust
7 agreement, the trustee being the mere repository of record
8 legal title with a duty of conveying the real estate only
9 when and if directed in writing by the beneficiary or
10 beneficiaries having the power of direction, the attorneys or
11 agents executing the declaration on behalf of the sellers or
12 buyers need identify only the land trust that is the
13 repository of record legal title and not the beneficiary or
14 beneficiaries having the power of direction under the land
15 trust agreement. The declaration form shall be prescribed by
16 the Department and shall contain sales information questions.
17 For sales occurring during a period in which the provisions
18 of Section 17-10 require the Department to adjust sale prices
19 for seller paid points and prevailing cost of cash, the
20 declaration form shall contain questions regarding the
21 financing of the sale. The subject of the financing
22 questions shall include any direct seller participation in
23 the financing of the sale or information on financing that is
24 unconventional so as to affect the fair cash value received
25 by the seller. The intent of the sales and financing
26 questions is to aid in the reduction in the number of buyers
27 required to provide financing information necessary for the
28 adjustment outlined in Section 17-10. For sales occurring
29 during a period in which the provisions of Section 17-10
30 require the Department to adjust sale prices for seller paid
31 points and prevailing cost of cash, the declaration form
32 shall include, at a minimum, the following data: (a) seller
33 paid points, (b) the sales price, (c) type of financing
34 (conventional, VA, FHA, seller-financed, or other), (d) down

1 payment, (e) term, (f) interest rate, (g) type and
 2 description of interest rate (fixed, adjustable or
 3 renegotiable), and (h) an appropriate place for the inclusion
 4 of special facts or circumstances, if any. The Department
 5 shall provide an adequate supply of forms to each recorder
 6 and registrar of titles in the State.

7 (Source: P.A. 91-555, eff. 1-1-00.)

8 (35 ILCS 200/31-46 new)

9 Sec. 31-46. Exemption from tax equal to corporate
 10 franchise taxes paid. If a transfer of a controlling interest
 11 in a real estate entity is taxed under this Article and the
 12 real estate entity liable for the tax under this Article is
 13 also liable for corporate franchise taxes under the Business
 14 Corporation Act of 1983 as a result of the transfer, then the
 15 real estate entity is exempt from paying the tax imposed
 16 under this Article to the extent of the corporate franchise
 17 tax paid by the real estate entity as a result of the
 18 transfer. The exemption shall not reduce the real estate
 19 entity's tax liability under this Article to less than zero.

20 Section 10. The Stock, Commodity, or Options Transaction
 21 Tax Exemption Act is amended by adding Section 3 as follows:

22 (35 ILCS 820/3 new)

23 Sec. 3. Construction of Act. Nothing in this Act shall
 24 be construed as prohibiting or otherwise invalidating any
 25 real estate transfer tax or fee authorized or permitted by
 26 Section 31-10 of the Property Tax Code, Section 5-1031.1 of
 27 the Counties Code, or Section 8-3-19 of the Illinois
 28 Municipal Code. This Section is intended as a clarification
 29 and not as a change to existing law.

30 Section 15. The Counties Code is amended by changing

1 Section 5-1031.1 as follows:

2 (55 ILCS 5/5-1031.1)

3 Sec. 5-1031.1. Home rule real estate transfer taxes.

4 (a) After the effective date of this amendatory Act of
5 the 93rd General Assembly 1996 and subject to this Section, a
6 home rule county may impose or increase a tax or other fee on
7 the privilege of transferring title to real estate, as
8 ~~represented-by-the-deed-that-is-filed-for-recordation,~~ and on
9 the privilege of transferring a beneficial interest in a ~~land~~
10 ~~trust--holding--legal--title--to~~ real property, and on the
11 privilege of transferring a controlling interest in a real
12 estate entity, as the terms "beneficial interest",
13 "controlling interest", and "real estate entity" are defined
14 in Article 31 of the Property Tax Code ~~as-represented-by-the~~
15 ~~trust-document-that-is-filed-for-recordation.~~ Such a tax or
16 other fee ~~on--the--privilege--of--transferring--title--to--real~~
17 ~~estate,~~ ~~as--represented--by--the--deed--that--is--filed--for~~
18 ~~recordation,~~ ~~and--on--the--privilege--of--transferring--a~~
19 ~~beneficial--interest--in--a--land--trust--holding--legal--title--to~~
20 ~~real--property,~~ ~~as-represented-by-the-trust-document--that--is~~
21 ~~filed--for--recordation,~~ shall hereafter be referred to as a
22 real estate transfer tax.

23 (b) Before adopting a resolution to submit the question
24 of imposing or increasing a real estate transfer tax to
25 referendum, the corporate authorities shall give public
26 notice of and hold a public hearing on the intent to submit
27 the question to referendum. This hearing may be part of a
28 regularly scheduled meeting of the corporate authorities.
29 The notice shall be published not more than 30 nor less than
30 10 days prior to the hearing in a newspaper of general
31 circulation within the county. The notice shall be published
32 in the following form:

33 Notice of Proposed (Increased) Real Estate Transfer

1 Tax for (commonly known name of county).

2 A public hearing on a resolution to submit to
3 referendum the question of a proposed (increased) real
4 estate transfer tax for (legal name of the county) in an
5 amount of (rate) to be paid by the buyer (seller) of the
6 real estate transferred will be held on (date) at (time)
7 at (location). The current rate of real estate transfer
8 tax imposed by (name of county) is (rate).

9 Any person desiring to appear at the public hearing
10 and present testimony to the taxing district may do so.

11 (c) A notice that includes any information not specified
12 and required by this Section is an invalid notice. All
13 hearings shall be open to the public. At the public hearing,
14 the corporate authorities of the county shall explain the
15 reasons for the proposed or increased real estate transfer
16 tax and shall permit persons desiring to be heard an
17 opportunity to present testimony within reasonable time
18 limits determined by the corporate authorities. A copy of
19 the proposed ordinance shall be made available to the general
20 public for inspection before the public hearing.

21 (d) No home rule county shall impose a new real estate
22 transfer tax after the effective date of this amendatory Act
23 of 1996 without prior approval by referendum. No home rule
24 county shall impose an increase of the rate of a current real
25 estate transfer tax without prior approval by referendum. A
26 home rule county may impose a new real estate transfer tax or
27 may increase an existing real estate transfer tax with prior
28 referendum approval. The referendum shall be conducted as
29 provided in subsection (e). An existing ordinance or
30 resolution imposing a real estate transfer tax may be amended
31 without approval by referendum if the amendment does not
32 increase the rate of the tax.

33 (e) The home rule county shall, by resolution, provide
34 for submission of the proposition to the voters. The home

1 rule county shall certify the resolution and the proposition
2 to the proper election officials in accordance with the
3 general election law. If the proposition is to impose a new
4 real estate transfer tax, it shall be in substantially the
5 following form: "Shall (name of county) impose a real estate
6 transfer tax at a rate of (rate) to be paid by the buyer
7 (seller) of the real estate transferred, with the revenue of
8 the proposed transfer tax to be used for (purpose)?" If the
9 proposition is to increase an existing real estate transfer
10 tax, it shall be in the following form: "Shall (name of
11 county) impose a real estate transfer tax increase of
12 (percent increase) to establish a new real estate transfer
13 tax rate of (rate) to be paid by the buyer (seller) of the
14 real estate transferred? The current rate of the real estate
15 transfer tax is (rate), and the revenue is used for
16 (purpose). The revenue from the increase is to be used for
17 (purpose).".

18 If a majority of the electors voting on the proposition
19 vote in favor of it, the county may impose or increase the
20 real estate transfer tax.

21 (f) Nothing in this amendatory Act of 1996 shall limit
22 the purposes for which real estate transfer tax revenues may
23 be collected or expended.

24 (g) A home rule county may not impose real estate
25 transfer taxes other than as authorized by this Section. This
26 Section is a denial and limitation of home rule powers and
27 functions under subsection (g) of Section 6 of Article VII of
28 the Illinois Constitution.

29 (h) Notwithstanding subsection (g) of this Section, any
30 real estate transfer taxes that were imposed by a county at
31 any time prior to the effective date of this amendatory Act
32 of the 93rd General Assembly are hereby specifically
33 authorized, permitted, and validated under this subsection
34 (h).

1 (Source: P.A. 89-701, eff. 1-17-97; 90-14, eff. 7-1-97.)

2 Section 20. The Illinois Municipal Code is amended by
3 changing Section 8-3-19 as follows:

4 (65 ILCS 5/8-3-19)

5 Sec. 8-3-19. Home rule real estate transfer taxes.

6 (a) After the effective date of this amendatory Act of
7 the 93rd General Assembly 1996 and subject to this Section, a
8 home rule municipality may impose or increase a tax or other
9 fee on the privilege of transferring title to real estate, as
10 ~~represented by the deed that is filed for recordation,~~ and on
11 the privilege of transferring a beneficial interest in a ~~land~~
12 ~~trust holding legal title to~~ real property, and on the
13 privilege of transferring a controlling interest in a real
14 estate entity, as the terms "beneficial interest",
15 "controlling interest", and "real estate entity" are defined
16 in Article 31 of the Property Tax Code ~~as represented by the~~
17 ~~trust document that is filed for recordation.~~ Such a tax or
18 other fee ~~on the privilege of transferring title to real~~
19 ~~estate, as represented by the deed that is filed for~~
20 ~~recordation, and on the privilege of transferring a~~
21 ~~beneficial interest in a land trust holding legal title to~~
22 ~~real property, as represented by the trust document that is~~
23 ~~filed for recordation,~~ shall hereafter be referred to as a
24 real estate transfer tax.

25 (b) Before adopting a resolution to submit the question
26 of imposing or increasing a real estate transfer tax to
27 referendum, the corporate authorities shall give public
28 notice of and hold a public hearing on the intent to submit
29 the question to referendum. This hearing may be part of a
30 regularly scheduled meeting of the corporate authorities.
31 The notice shall be published not more than 30 nor less than
32 10 days prior to the hearing in a newspaper of general

1 circulation within the municipality. The notice shall be
2 published in the following form:

3 Notice of Proposed (Increased) Real Estate Transfer
4 Tax for (commonly known name of municipality).

5 A public hearing on a resolution to submit to
6 referendum the question of a proposed (increased) real
7 estate transfer tax for (legal name of the municipality)
8 in an amount of (rate) to be paid by the buyer (seller)
9 of the real estate transferred will be held on (date) at
10 (time) at (location). The current rate of real estate
11 transfer tax imposed by (name of municipality) is (rate).

12 Any person desiring to appear at the public hearing
13 and present testimony to the taxing district may do so.

14 (c) A notice that includes any information not specified
15 and required by this Section is an invalid notice. All
16 hearings shall be open to the public. At the public hearing,
17 the corporate authorities of the municipality shall explain
18 the reasons for the proposed or increased real estate
19 transfer tax and shall permit persons desiring to be heard an
20 opportunity to present testimony within reasonable time
21 limits determined by the corporate authorities. A copy of the
22 proposed ordinance shall be made available to the general
23 public for inspection before the public hearing.

24 (d) No home rule municipality shall impose a new real
25 estate transfer tax after the effective date of this
26 amendatory Act of 1996 without prior approval by referendum.
27 No home rule municipality shall impose an increase of the
28 rate of a current real estate transfer tax without prior
29 approval by referendum. A home rule municipality may impose
30 a new real estate transfer tax or may increase an existing
31 real estate transfer tax with prior referendum approval. The
32 referendum shall be conducted as provided in subsection (e).
33 An existing ordinance or resolution imposing a real estate
34 transfer tax may be amended without approval by referendum if

1 the amendment does not increase the rate of the tax.

2 (e) The home rule municipality shall, by resolution,
3 provide for submission of the proposition to the voters. The
4 home rule municipality shall certify the resolution and the
5 proposition to the proper election officials in accordance
6 with the general election law. If the proposition is to
7 impose a new real estate transfer tax, it shall be in
8 substantially the following form: "Shall (name of
9 municipality) impose a real estate transfer tax at a rate of
10 (rate) to be paid by the buyer (seller) of the real estate
11 transferred, with the revenue of the proposed transfer tax to
12 be used for (purpose)?" If the proposition is to increase
13 an existing real estate transfer tax, it shall be in the
14 following form: "Shall (name of municipality) impose a real
15 estate transfer tax increase of (percent increase) to
16 establish a new transfer tax rate of (rate) to be paid by the
17 buyer (seller) of the real estate transferred? The current
18 rate of the real estate transfer tax is (rate), and the
19 revenue is used for (purpose). The revenue from the increase
20 is to be used for (purpose).".

21 If a majority of the electors voting on the proposition
22 vote in favor of it, the municipality may impose or increase
23 the municipal real estate transfer tax or fee.

24 (f) Nothing in this amendatory Act of 1996 shall limit
25 the purposes for which real estate transfer tax revenues may
26 be collected or expended.

27 (g) A home rule municipality may not impose real estate
28 transfer taxes other than as authorized by this Section. This
29 Section is a denial and limitation of home rule powers and
30 functions under subsection (g) of Section 6 of Article VII of
31 the Illinois Constitution.

32 (h) Notwithstanding subsection (g) of this Section, any
33 real estate transfer taxes that were imposed by a
34 municipality at any time prior to the effective date of this

1 amendatory Act of the 93rd General Assembly are hereby
2 specifically authorized, permitted, and validated under this
3 subsection (h).

4 (Source: P.A. 89-701, eff. 1-17-97.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law."