

1 AN ACT concerning taxes.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

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

7 (35 ILCS 200/31-5)

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

13 "Department" means the Department of Revenue.

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

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

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

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

25 (1) the beneficial interest in an Illinois land
26 trust;

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

1 (3) the indirect interest in real property as
2 reflected by a controlling interest in a real estate
3 entity.

4 "Controlling interest" means more than 50% of the fair
5 market value of all ownership interests or beneficial
6 interests in a real estate entity.

7 "Real estate entity" means any person including, but not
8 limited to, any partnership, corporation, limited liability
9 company, trust, other entity, or multi-tiered entity, that
10 exists or acts substantially for the purpose of holding
11 directly or indirectly title to or beneficial interest in
12 real property. There is a rebuttable presumption that an
13 entity is a real estate entity if it owns, directly or
14 indirectly, real property having a fair market value greater
15 than 75% of the total fair market value of all of the
16 entity's assets, determined without deduction for any
17 mortgage, lien, or encumbrance.

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

19 (35 ILCS 200/31-10)

20 Sec. 31-10. Imposition of tax. A tax is imposed on the
21 privilege of transferring title to real estate located in
22 Illinois, as represented--by--the--deed--that--is--filed--for
23 recording, and on the privilege of transferring a
24 beneficial interest in real property located in Illinois that
25 is the subject of a land trust as represented--by--the--trust
26 document--that is filed for recording, and on the privilege
27 of transferring a controlling interest in a real estate
28 entity owning property located in Illinois, at the rate of
29 50¢ for each \$500 of value or fraction of \$500 stated in the
30 declaration required by Section 31-25. If, however, the deed
31 or--trust--document--states--that--the real estate, beneficial
32 interest, or controlling interest is transferred subject to a
33 mortgage, the amount of the mortgage remaining outstanding at

1 the time of transfer shall not be included in the basis of
2 computing the tax. The tax is due if the transfer is made by
3 one or more related transactions or involves one or more
4 persons or entities and whether or not a document is
5 recorded.

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

8 (35 ILCS 200/31-20)

9 Sec. 31-20. Affixing of stamps. Payment of the tax shall
10 be evidenced by revenue stamps in the amount required to show
11 full payment of the tax imposed by Section 31-10. Except as
12 provided in Section 31-45, a deed, document transferring a
13 controlling interest in real property, or trust document
14 shall not be accepted for filing by any recorder or registrar
15 of titles unless revenue stamps in the required amount have
16 been purchased from the recorder or registrar of titles of
17 the county where the deed, document transferring a
18 controlling interest in real property, or trust document is
19 being filed for recordation. The revenue stamps shall be
20 affixed to the deed, document transferring a controlling
21 interest in real property, or trust document by the recorder
22 or the registrar of titles either before or after recording
23 as requested by the grantee. A person using or affixing a
24 revenue stamp shall cancel it and so deface it as to render
25 it unfit for reuse by marking it with his or her initials and
26 the day, month and year when the affixing occurs. The
27 marking shall be made by writing or stamping in indelible ink
28 or by perforating with a machine or punch. However, the
29 revenue stamp shall not be so defaced as to prevent ready
30 determination of its denomination and genuineness.

31 (Source: P.A. 86-624; 86-925; 86-1028; 86-1475; 87-543;
32 88-455.)

1 (35 ILCS 200/31-25)

2 Sec. 31-25. Transfer declaration. At the time a deed, a

3 document transferring a controlling interest in real

4 property, or trust document is presented for recordation, or

5 within 3 business days after the transfer is effected,

6 whichever is earlier, there shall also be presented to the

7 recorder or registrar of titles a declaration, signed by at

8 least one of the sellers and also signed by at least one of

9 the buyers in the transaction or by the attorneys or agents

10 for the sellers or buyers. The declaration shall state

11 information including, but not limited to: (a) the value of

12 the real property or beneficial interest in real property

13 located in Illinois ~~the full consideration for the property~~

14 so transferred; (b) the parcel identifying number of the

15 property; (c) the legal description of the property; (d) the

16 date of the deed, the date the transfer was effected, or the

17 date of the trust document; (e) the type of deed, transfer,

18 or trust document; (f) the address of the property; (g) the

19 type of improvement, if any, on the property; (h) information

20 as to whether the transfer is between related individuals or

21 corporate affiliates or is a compulsory transaction; (i) the

22 lot size or acreage; (j) the value of personal property sold

23 with the real estate; (k) the year the contract was initiated

24 if an installment sale; and (l) the name, address, and

25 telephone number of the person preparing the declaration.

26 Except as provided in Section 31-45, a deed, a document

27 transferring a controlling interest in real property, or

28 trust document shall not be accepted for recordation unless

29 it is accompanied by a declaration containing all the

30 information requested in the declaration. When the

31 declaration is signed by an attorney or agent on behalf of

32 sellers or buyers who have the power of direction to deal

33 with the title to the real estate under a land trust

34 agreement, the trustee being the mere repository of record

1 legal title with a duty of conveying the real estate only
2 when and if directed in writing by the beneficiary or
3 beneficiaries having the power of direction, the attorneys or
4 agents executing the declaration on behalf of the sellers or
5 buyers need identify only the land trust that is the
6 repository of record legal title and not the beneficiary or
7 beneficiaries having the power of direction under the land
8 trust agreement. The declaration form shall be prescribed by
9 the Department and shall contain sales information questions.
10 For sales occurring during a period in which the provisions
11 of Section 17-10 require the Department to adjust sale prices
12 for seller paid points and prevailing cost of cash, the
13 declaration form shall contain questions regarding the
14 financing of the sale. The subject of the financing
15 questions shall include any direct seller participation in
16 the financing of the sale or information on financing that is
17 unconventional so as to affect the fair cash value received
18 by the seller. The intent of the sales and financing
19 questions is to aid in the reduction in the number of buyers
20 required to provide financing information necessary for the
21 adjustment outlined in Section 17-10. For sales occurring
22 during a period in which the provisions of Section 17-10
23 require the Department to adjust sale prices for seller paid
24 points and prevailing cost of cash, the declaration form
25 shall include, at a minimum, the following data: (a) seller
26 paid points, (b) the sales price, (c) type of financing
27 (conventional, VA, FHA, seller-financed, or other), (d) down
28 payment, (e) term, (f) interest rate, (g) type and
29 description of interest rate (fixed, adjustable or
30 renegotiable), and (h) an appropriate place for the inclusion
31 of special facts or circumstances, if any. The Department
32 shall provide an adequate supply of forms to each recorder
33 and registrar of titles in the State.

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

1 (35 ILCS 200/31-46 new)

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

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

15 (35 ILCS 820/3 new)

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

23 Section 15. The Counties Code is amended by changing
24 Section 5-1031.1 as follows:

25 (55 ILCS 5/5-1031.1)

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

27 (a) After the effective date of this amendatory Act of
28 the 93rd General Assembly 1996 and subject to this Section, a
29 home rule county may impose or increase a tax or other fee on
30 the privilege of transferring title to real estate, as

1 represented-by-the-deed-that-is-filed-for-recordation, and on
2 the privilege of transferring a beneficial interest in a land
3 trust-holding-legal--title--to real property, and on the
4 privilege of transferring a controlling interest in a real
5 estate entity, as the terms "beneficial interest",
6 "controlling interest", and "real estate entity" are defined
7 in Article 31 of the Property Tax Code as-represented-by--the
8 trust--document-that-is-filed-for-recordation. Such a tax or
9 other fee on-the-privilege--of--transferring--title--to--real
10 estate,--as--represented--by--the--deed--that--is--filed--for
11 recordation,---and---on---the---privilege---of---transferring--a
12 beneficial-interest-in-a-land-trust-holding--legal--title--to
13 real--property,--as-represented-by-the-trust-document-that-is
14 filed-for-recordation, shall hereafter be referred to as a
15 real estate transfer tax.

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

26 Notice of Proposed (Increased) Real Estate Transfer
27 Tax for (commonly known name of county).

28 A public hearing on a resolution to submit to
29 referendum the question of a proposed (increased) real
30 estate transfer tax for (legal name of the county) in an
31 amount of (rate) to be paid by the buyer (seller) of the
32 real estate transferred will be held on (date) at (time)
33 at (location). The current rate of real estate transfer
34 tax imposed by (name of county) is (rate).

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

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

13 (d) No home rule county shall impose a new real estate
14 transfer tax after the effective date of this amendatory Act
15 of 1996 without prior approval by referendum. No home rule
16 county shall impose an increase of the rate of a current real
17 estate transfer tax without prior approval by referendum. A
18 home rule county may impose a new real estate transfer tax or
19 may increase an existing real estate transfer tax with prior
20 referendum approval. The referendum shall be conducted as
21 provided in subsection (e). An existing ordinance or
22 resolution imposing a real estate transfer tax may be amended
23 without approval by referendum if the amendment does not
24 increase the rate of the tax or add transactions on which the
25 tax is imposed.

26 (e) The home rule county shall, by resolution, provide
27 for submission of the proposition to the voters. The home
28 rule county shall certify the resolution and the proposition
29 to the proper election officials in accordance with the
30 general election law. If the proposition is to impose a new
31 real estate transfer tax, it shall be in substantially the
32 following form: "Shall (name of county) impose a real estate
33 transfer tax at a rate of (rate) to be paid by the buyer
34 (seller) of the real estate transferred, with the revenue of

1 the proposed transfer tax to be used for (purpose)?" . If the
2 proposition is to increase an existing real estate transfer
3 tax, it shall be in the following form: "Shall (name of
4 county) impose a real estate transfer tax increase of
5 (percent increase) to establish a new real estate transfer
6 tax rate of (rate) to be paid by the buyer (seller) of the
7 real estate transferred? The current rate of the real estate
8 transfer tax is (rate), and the revenue is used for
9 (purpose). The revenue from the increase is to be used for
10 (purpose)."

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

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

17 (g) A home rule county may not impose real estate
18 transfer taxes other than as authorized by this Section. This
19 Section is a denial and limitation of home rule powers and
20 functions under subsection (g) of Section 6 of Article VII of
21 the Illinois Constitution.

22 (h) Notwithstanding subsection (g) of this Section, any
23 real estate transfer taxes adopted by a county at any time
24 prior to January 17, 1997 (the effective date of Public Act
25 89-701) and any amendments to any existing real estate
26 transfer tax ordinance adopted after that date, in accordance
27 with the law in effect at the time of the adoption of the
28 amendments, are not preempted by this amendatory Act of the
29 93rd General Assembly.

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

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

1 (65 ILCS 5/8-3-19)

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

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

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

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

34 A public hearing on a resolution to submit to

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

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

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

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

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

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

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

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

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

28 (h) Notwithstanding subsection (g) of this Section, any
29 real estate transfer taxes adopted by a municipality at any
30 time prior to January 17, 1997 (the effective date of Public
31 Act 89-701) and any amendments to any existing real estate
32 transfer tax ordinance adopted after that date, in accordance
33 with the law in effect at the time of the adoption of the
34 amendments, are not preempted by this amendatory Act of the

1 93rd General Assembly.

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