

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 more than 50% 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 located in
32 Illinois, as--represented--by--the--deed--that--is--filed--for
33 recerdation, and on the privilege of transferring a

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

16 (Source: P.A. 86-624; 86-925; 86-1028; 86-1475; 87-543;
 17 88-455.)

18 (35 ILCS 200/31-20)

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

1 revenue stamp shall cancel it and so deface it as to render
2 it unfit for reuse by marking it with his or her initials and
3 the day, month and year when the affixing occurs. The
4 marking shall be made by writing or stamping in indelible ink
5 or by perforating with a machine or punch. However, the
6 revenue stamp shall not be so defaced as to prevent ready
7 determination of its denomination and genuineness.

8 (Source: P.A. 86-624; 86-925; 86-1028; 86-1475; 87-543;
9 88-455.)

10 (35 ILCS 200/31-25)

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

1 telephone number of the person preparing the declaration.
2 Except as provided in Section 31-45, a deed, a document
3 transferring a controlling interest in real property, or
4 trust document shall not be accepted for recordation unless
5 it is accompanied by a declaration containing all the
6 information requested in the declaration. When the
7 declaration is signed by an attorney or agent on behalf of
8 sellers or buyers who have the power of direction to deal
9 with the title to the real estate under a land trust
10 agreement, the trustee being the mere repository of record
11 legal title with a duty of conveying the real estate only
12 when and if directed in writing by the beneficiary or
13 beneficiaries having the power of direction, the attorneys or
14 agents executing the declaration on behalf of the sellers or
15 buyers need identify only the land trust that is the
16 repository of record legal title and not the beneficiary or
17 beneficiaries having the power of direction under the land
18 trust agreement. The declaration form shall be prescribed by
19 the Department and shall contain sales information questions.
20 For sales occurring during a period in which the provisions
21 of Section 17-10 require the Department to adjust sale prices
22 for seller paid points and prevailing cost of cash, the
23 declaration form shall contain questions regarding the
24 financing of the sale. The subject of the financing
25 questions shall include any direct seller participation in
26 the financing of the sale or information on financing that is
27 unconventional so as to affect the fair cash value received
28 by the seller. The intent of the sales and financing
29 questions is to aid in the reduction in the number of buyers
30 required to provide financing information necessary for the
31 adjustment outlined in Section 17-10. For sales occurring
32 during a period in which the provisions of Section 17-10
33 require the Department to adjust sale prices for seller paid
34 points and prevailing cost of cash, the declaration form

1 shall include, at a minimum, the following data: (a) seller
 2 paid points, (b) the sales price, (c) type of financing
 3 (conventional, VA, FHA, seller-financed, or other), (d) down
 4 payment, (e) term, (f) interest rate, (g) type and
 5 description of interest rate (fixed, adjustable or
 6 renegotiable), and (h) an appropriate place for the inclusion
 7 of special facts or circumstances, if any. The Department
 8 shall provide an adequate supply of forms to each recorder
 9 and registrar of titles in the State.

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

11 (35 ILCS 200/31-46 new)

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

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

25 (35 ILCS 820/3 new)

26 Sec. 3. Construction of Act. Nothing in this Act shall
 27 be construed as prohibiting or otherwise invalidating any
 28 real estate transfer tax or fee authorized or permitted by
 29 Section 31-10 of the Property Tax Code, Section 5-1031.1 of
 30 the Counties Code, or Section 8-3-19 of the Illinois
 31 Municipal Code. This Section is intended as a clarification

1 and not as a change to existing law.

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

4 (55 ILCS 5/5-1031.1)

5 Sec. 5-1031.1. 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 county may impose or increase a tax or other fee on
9 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 county. The notice shall be published
2 in the following form:

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

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 county) in an
8 amount of (rate) to be paid by the buyer (seller) of the
9 real estate transferred will be held on (date) at (time)
10 at (location). The current rate of real estate transfer
11 tax imposed by (name of county) 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 county shall explain the
18 reasons for the proposed or increased real estate transfer
19 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
22 the proposed ordinance shall be made available to the general
23 public for inspection before the public hearing.

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

1 increase the rate of the tax or add transactions on which the
2 tax is imposed.

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

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

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

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

33 (h) Notwithstanding subsection (g) of this Section, any
34 real estate transfer taxes adopted by a county at any time

1 prior to January 17, 1997 (the effective date of Public Act
 2 89-701) and any amendments to any existing real estate
 3 transfer tax ordinance adopted after that date, in accordance
 4 with the law in effect at the time of the adoption of the
 5 amendments, are not preempted by this amendatory Act of the
 6 93rd General Assembly.

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

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

10 (65 ILCS 5/8-3-19)

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

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

31 (b) Before adopting a resolution to submit the question
 32 of imposing or increasing a real estate transfer tax to

1 referendum, the corporate authorities shall give public
2 notice of and hold a public hearing on the intent to submit
3 the question to referendum. This hearing may be part of a
4 regularly scheduled meeting of the corporate authorities.
5 The notice shall be published not more than 30 nor less than
6 10 days prior to the hearing in a newspaper of general
7 circulation within the municipality. The notice shall be
8 published in the following form:

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

11 A public hearing on a resolution to submit to
12 referendum the question of a proposed (increased) real
13 estate transfer tax for (legal name of the municipality)
14 in an amount of (rate) to be paid by the buyer (seller)
15 of the real estate transferred will be held on (date) at
16 (time) at (location). The current rate of real estate
17 transfer tax imposed by (name of municipality) is (rate).

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

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

30 (d) No home rule municipality shall impose a new real
31 estate transfer tax after the effective date of this
32 amendatory Act of 1996 without prior approval by referendum.
33 No home rule municipality shall impose an increase of the
34 rate of a current real estate transfer tax without prior

1 approval by referendum. A home rule municipality may impose
 2 a new real estate transfer tax or may increase an existing
 3 real estate transfer tax with prior referendum approval. The
 4 referendum shall be conducted as provided in subsection (e).
 5 An existing ordinance or resolution imposing a real estate
 6 transfer tax may be amended without approval by referendum if
 7 the amendment does not increase the rate of the tax or add
 8 transactions on which the tax is imposed.

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

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

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

34 (g) A home rule municipality may not impose real estate

1 transfer taxes other than as authorized by this Section. This
2 Section is a denial and limitation of home rule powers and
3 functions under subsection (g) of Section 6 of Article VII of
4 the Illinois Constitution.

5 (h) Notwithstanding subsection (g) of this Section, any
6 real estate transfer taxes adopted by a municipality at any
7 time prior to January 17, 1997 (the effective date of Public
8 Act 89-701) and any amendments to any existing real estate
9 transfer tax ordinance adopted after that date, in accordance
10 with the law in effect at the time of the adoption of the
11 amendments, are not preempted by this amendatory Act of the
12 93rd General Assembly.

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

14 Section 99. Effective date. This Act takes effect
15 October 1, 2003."