DENNIS J. HERRERA, State Bar #139669  
City Attorney  
JULIE VAN NOSTERN, State Bar #103579  
Chief Tax Attorney  
CAROLE RUWART, State Bar #146737  
Deputy City Attorney  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, California 94102-4682  
Telephone: (415) 554-4666  
Facsimile: (415) 554-4745  
E-Mail: carole.ruwart@sfgov.org

Attorneys for the Assessor-Recorder

CITY AND COUNTY OF SAN FRANCISCO  
TRANSFER TAX REVIEW BOARD

In Re ARCHSTONE SOUTH MARKET LLC  
TTRB Application re:
Documentary Transfer Tax on
Property Address: One Saint Francis Place,
San Francisco, California;
Block 3750 and Lot No. 089
Recorder Document No.:
DOC-2011-J210122-00

Hearing Date: October 28, 2011
Time: 1:30 pm
Place: City Hall, Room 406

ASSESSOR-RECORDER'S PRE-HEARING STATEMENT OF POSITION

I. INTRODUCTION

This pre-hearing statement of position is submitted on behalf of the Assessor-Recorder Phil Ting ("Recorder") of the City and County of San Francisco ("CCSF") in response to the Pre-
Hearing Brief submitted to the Transfer Tax Review Board (Review Board) on October 12, 2011 by
Archstone South Market LLC ("Company"). This matter involves the appeal of delinquency
penalties and interest in connection with the failure to timely pay to the Recorder CCSF's Real
Estate Transfer Tax ("Transfer Tax") that became due and payable when equity interests in the
Company's upper-tier legal entities were transferred in a transaction that was a change in ownership of the Company under state property tax law (Section 64 of the California Revenue and Taxation Code). It is the position of the Recorder that the petition for abatement of the delinquency penalties should be denied because the Company has not demonstrated "hardship" or "good cause" as required under section 1115.2, subdivision (c)(1) of Article 12-C of the San Francisco Business and Tax Regulations Code ("BTR"), and that public policy supports imposition of both delinquency penalties. It is also the position of the Recorder that the petition for waiver of interest should be denied, because the Review Board lacks authority to waive interest, or in any event because the Company has not demonstrated exercise of ordinary care and lack of willful neglect, as required under section 6.17-4 of Article 6 of the BTR.

II. FACTUAL BACKGROUND

The essential facts, as they are understood by the Recorder, are undisputed. The Company is one of many related legal entities whose ultimate parent is Tishman Speyer Properties ("Tishman Speyer"), a property development and management firm that has substantial property holdings and property management businesses throughout the world, including in CCSF itself. The Company directly owns the property that is the subject of this appeal: an apartment complex located at One Saint Francis Place (APN #3750-089) ("Property") that had an undisputed "fair value" for purposes of the Transfer Tax of $141,360,000 as of December 1, 2010. Tishman Speyer, in the form of its affiliated entity Tishman Speyer Archstone-Smith South Market, LLC, acquired beneficial ownership of the Property in 2007, as evidenced by the grant deed recorded as DOC-2007-I478807-00 (2007 Deed). (Exh. A.) The 2007 Deed contained on its face a claim for exemption from the transfer tax under section 11925, subdivision (d) of the California Revenue and Taxation Code, as a proportional interest transfer.

As of December 1, 2010, the Company was involved in an internal reorganization (as the Company terms it, the "Restructuring") that constituted a change in ownership of the Company and

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1 All references to "Articles" are to the San Francisco Municipal Code Business and Tax Regulations, unless otherwise indicated.
the Property under section 64 of the California Revenue and Taxation Code. (Company Pre-Hearing Brief ("PHB"), p. 2:19-21.) The reorganization was accomplished by an Assignment and Assumption Agreement ("Assumption Agreement") made as of December 1, 2010, between two upper-tier entities: "Archstone (f/k/a Archstone-Smith Operating Trust)" ("Transferor Entity") and "Archstone Property Holdings LLC (f/k/a The Lakes Holdings LLC)," ("Transferee Entity") under which the Transferor Entity transferred certain of its property interests to the Transferee Entity, in which it held 99.5 percent of the Common Membership Interests. Those interests included "Archstone South Market Mezzanine II LLC," which indirectly owned the Company (T. Reif email to Joe Lee, 6/14/11@10:48 a.m.) (Exh. B.) The Assumption Agreement was supplied to the Recorder.2

On June 8, 2011, CCSF’s Assessment Appeals Board received an unrecorded legal entity transfer form ("Unrecorded Transfer Form"),3 a Transfer Tax Affidavit executed May 24, 2011, and check #029562 ("check") dated June 7, 2011 from Archstone Multifamily CM LLC and addressed to “City & County of San Francisco, 1 Dr Carlton B Goodlett Pl- City Hall Room 405 – Assessment Appeals, San Francisco, CA 94102” in the amount of $2,120,400.00, all referencing the Property. The Transfer Tax Affidavit was signed by Mr. Thomas S. Reif, Associate General Counsel and Senior Vice-President of Archstone South Market LLC at 9200 E. Panorama Circle, Englewood, CA 80112, and the Unrecorded Transfer Form requested its return to Mr. Reif at "Archstone" at that address.

On June 13, 2011 these documents were hand-forwarded to the Recorder’s office. Mr. Joe Lee, Acting Manager of the Assessor-Recorder's Recording Division, contacted Mr. Reif and

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2 We note an apparent inconsistency between the characterization of facts in the Company's Pre-Hearing Brief, which indicates that there was an issuance of "preferred equity" by the Transferee Entity, and the Declaration of Thomas S. Reif, which was attached to the Company's Pre-Hearing Brief. The Reif Declaration does not mention the issuance of equity. The Recorder does not have any information regarding the sale of equity interests. For purposes of this appeal the change in ownership as a result of legal entity interest transfers is conceded, so the precise basis on which that change in ownership occurred is not material.

3 The form used by the Company was the version dated 11/20/2009. The form was revised as of 12/20/2010, and it is this later version that is attached to the Company's Petition for Review.
informed him that the amount of transfer tax was apparently understated because the lower rates no
longer in effect were used. When Mr. Reif stated that the transfer had occurred on December 1,
2010, Mr. Lee asked him to send or email supporting documents.

On June 14, 2011, Mr. Reif emailed the Assumption Agreement to Mr. Lee. Mr. Lee
emailed Mr. Reif, confirming the correct amount of the tax as $2,120,400.00 and stating that an
additional 25 percent delinquency penalty of $530,100.00 was due because the tax was unpaid
within 30 days of the transfer date. Mr. Reif emailed the following reply (see Exh. B):

"Is there a process for requesting a waiver of the penalty? We have been trying for many
months to figure out how to report and pay the transfer tax (there was no obvious procedure
in the absence of any recorded document), and it was only in the last few weeks that one of
counsel was able to provide the form we submitted."

On June 29, 2011, the Unrecorded Transfer Form was recorded as DOC-2011-J207481-00
and the check was processed for payment.

On June 30, 2011, Mr. Lee responded by email to a "general" or "blind" inquiry regarding
transfer tax reporting obligations from Ms. Flavia Berys, an associate attorney at DLA Piper LLP,
sending her a blank unrecorded transfer form and transfer tax affidavit. Within four minutes, Ms.
Berys sent Mr. Lee three separate emails with follow-up questions regarding timing, deadline for
recording, keeping tax amounts suppressed, verifying that the transfer tax affidavit is not
recorded, and how value is calculated when legal entity interests are transferred. Mr. Lee
responded to Ms. Berys by email.

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On July 7, 2011, a Notice of Delinquent Tax ("Notice") was recorded as DOC-2011-J210122-00, which stated the following:

- Delinquent tax amount: $2,120,400.00
- 25% Delinquent penalty: $530,100.00
- 10% additional penalty: $212,040.00
- 1%/month Interest in delinquent tax: $106,020.00

**Total Now Due:** $848,160.00

Also on July 7, 2011, a copy of the Notice was mailed to "Archstone South Market, LLC, 2900 E. Panorama Circle, Englewood, CA 80112."

On July 8, 2011, Mr. Lee emailed Mr. Reif informing him of the Notice.

On July 12, 2011, Ms. Berys sent an email at 9:18 a.m. to Mr. Roberto Mercado of the CCSF Controller's office, inquiring as to how penalty waivers are handled. This was another "blind" inquiry, i.e., an inquiry that was not associated with any particular transaction, including this one. At 9:24 a.m., Ms. Berys emailed Mr. Lee seeking information on behalf of a "party" that "wants to request waiver of the 25% penalty when transfer tax is not paid within 30 days of an unrecorded off-record corporate transaction." By email sent at 10:09 a.m., Ms. Nguyen and Mr. Lee were forwarded an email from Mr. Mercado, who requested advice regarding a call that his unit of the Controller's office had received regarding how Transfer Tax penalties are handled and who handles these penalties, and any available remedies, as well as "if the public has been educated about Transfer Tax and related penalties...FAQs and forms availability on line (web)...[and] Appeal process for any disagreement." At 10:07 a.m., Mr. Reif responded to Mr. Lee's July 8, 2011 email and stated that the Notice had not been received.

On July 15, 2011, Mr. Reif emailed again, stating that the Notice had not been received, and asking the address to which it had been sent. Mr. Lee responded with the address information and asked if he wanted a copy of the Notice. Mr. Reif responded that he would like a fax or email copy. Mr. Lee faxed him a copy to (303) 648-6110. Then, Mr. Larry Tannenbaum of DLA Piper LLP...
(US) emailed Mr. Lee, stating that he represented the Company in this matter, the Company had not
received the Notice, and that his email be treated as a timely protest of the penalties.

III. **LEGAL BACKGROUND**

A. **Interpretation of the Transfer Tax Ordinance**

In contrast to state property taxes, which are imposed on the ownership of real property,
transfer taxes are imposed on the privilege of exercising one of the incidents of property ownership
—its conveyance. (*City of Huntington Beach v. Superior Court* (1978) 78 Cal.App.3d 333, 340-
341.) The tax can be made applicable to virtually every interest in real property which can be
created and transferred, including, as relevant here, transfers of real property that are effectuated
through transfers of interests in legal entities that directly or indirectly own real property. (BTR,
Art. 12-C, § 1114.) Liability for a transfer tax arises only when property is conveyed, i.e. upon
delivery of documents transferring title. (Rev. & Tax. Code, §§ 11911, 11912 and 11913; see also
*Huntington Beach, supra.*)

Real property transfer taxes, such as CCSF's Real Property Transfer Tax Ordinance (BTR,
Art. 12-C, §§ 1101 et seq.) ("Transfer Tax Ordinance"), are largely based on the Documentary
Stamp Taxes Act ("the Federal Stamp Act"), which applied to all transfers after 1959, but was
repealed in 1967. Upon the repeal of the Federal Stamp Act, the California Documentary Transfer
Tax Act (Cal. Rev. & Tax. Code, §§ 11901 et seq.) provided for the enactment of local transfer tax
ordinances. Under that authority, CCSF adopted its Transfer Tax Ordinance on December 12, 1967
(CCSF Ord. 315-67.) Although there are several differences between the Transfer Tax Ordinance
and the Federal Stamp Act, the Transfer Tax Ordinance provides that it shall be interpreted
consistent with the Federal Stamp Act, specifically with reference to the former Documentary
Stamp Tax Regulations at 26 C.F.R. §§ 47-4361-1, 47-4361-2, and 47-4362-1. (BTR, Art. 12-C,
§ 1114.)

B. **Imposition of the Transfer Tax**

The Transfer Tax Ordinance imposes the transfer tax "on each deed, instrument or writing
by which any...realty sold within the City and County of San Francisco shall be granted, assigned,
transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other
person...[for consideration in excess of $100.00]" (BTR, Art. 12-C, § 1102.) "[T]he tax imposed
by this ordinance is due and payable at the time the deed, instrument or writing effecting a transfer
subject to the tax is delivered, and is delinquent if unpaid thirty days later." (BTR, Art. 12-C,
§ 1115, subd. (a.).)

C. Imposition of Delinquency Penalties

The Transfer Tax Ordinance provides for penalties for untimely payment of the transfer tax,
as follows:

The tax imposed by this ordinance is due and payable at the time the deed, instrument
or writing effecting a transfer subject to the tax is delivered, and is delinquent if
unpaid thirty days later. In the event that tax is not paid prior to becoming delinquent,
a delinquency penalty of 25 percent of the amount of tax due shall accrue....An
additional penalty of 10 percent shall accrue if the tax remains unpaid on the ninetieth
day following the date of the original delinquency except that the additional penalty
shall not accrue during the pendency of a taxpayer's appeal before the Transfer Tax
Review Board.

IV. THE TAX WAS DELINQUENT AS OF 30 DAYS AFTER DECEMBER 1, 2010 AND
CONTINUED TO BE DELINQUENT AS OF 90 DAYS AFTER THAT DATE.

"Delivery" occurred on December 1, 2010, and the tax was due and payable as of that date
because the term "delivery" refers to delivery of documents that effect the transfer of the Property
to the grantee.

The Transfer Tax Ordinance provides that the tax is due and payable "at the time the deed,
instrument or writing effectuating a transfer subject to the tax is delivered." (BTR, Art. 12-C, §
11115, subd. (a.) The term "delivery" in the context of transfers of ownership of real property
means delivery of the deed by the grantor to the grantee, and is an essential predicate to such
transfer. (Civ. Code, § 1054; Miller & Starr, Cal. Real Est. (3d ed.) § 8:41 ["There is actual delivery
when the instrument is executed and transmitted with the intention by the grantor that the deed is
immediately effective to vest title in the grantee."].) Under the federal Documentary Stamp Tax
Regulations,4 "The tax attaches at the time the deed or other instrument of conveyance is delivered, irrespective of the time when the sale is made. Deeds deposited in escrow become subject to the tax upon delivery to the grantee. A conveyance of realty subject to an equity of redemption is taxable when made, not when the time for redemption expires." (Former 26 C.F.R. § 47.4361-1(a)(2).) (Emphasis added.) There is no requirement that a document be recorded in order for a transfer to be valid. (Miller & Starr, supra.) (Emphasis added.)

Thus, the term "delivery" as used in section 1115, subdivision (a) of the Transfer Tax Ordinance means delivery of the document effecting the transfer to the grantee, not delivery of the reporting form and transfer tax affidavit to the Recorder, as argued by the Company. In the case of an otherwise unrecorded or "off-record" transaction, the imposition of the Transfer Tax "on" a "deed, instrument or writing" occurs, and the tax becomes due and payable, upon the "delivery" of the writings that effectuate the transfer the property to the grantee, whether the transfer is of direct ownership, or indirectly, as in the transfer of legal entity interests.

In this case, the Company concedes (and the Recorder accepts as accurate) that the transfer of legal entity interests occurred on December 1, 2010, and provided the Assumption Agreement as evidence thereof. The Agreement was executed by both the grantor Transferor Entity and grantee Transferee Entity, and thus evidences "delivery" as of that date. The only other "delivery" that even arguably occurred was presentation to the Recorder of the Unrecorded Transfer Document, Transfer Tax Affidavit, and check. There is no basis to interpret "delivery" as meaning delivery of such documents to the Recorder, as none of them effected the transfer of the "realty sold."

The portion of the January 26, 2010 findings of the Review Board in the Matter of the Petition for Review of the Roman Catholic Archbishop of San Francisco, a Corporation Sole, cited by the Company on page 4:19-22 of its Pre-Hearing Brief, are taken out of context and do not support the Company's argument. That appeal concerned in part whether a post-delivery oral

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4 It is appropriate to reference the former federal administrative interpretation of terms that are "patterned after and employ[] virtually identical language as" the original Federal Documentary Stamp Tax law. (BTR, Art. 12-C, § 1114; 51 Ops.Cal.Atty.Gen. 50, 57 (1968); Thrifty Corp. v. County of Los Angeles (1989) 210 Cal.App.3d 881, 884.)
condition on a deed was valid. In this case, "delivery" of the writing effectuating the transfer of the
Property was intended to occur, and did occur, on December 1, 2010. The transfer of the Property
was not conditioned on, or in any way related to, the recording of any document or the payment of
the Transfer Tax.

Finally, the Company's arguments regarding the date of delivery are inconsistent with its
position regarding the amount of tax properly due. The tax rate applicable as of December 1, 2010
was $15 per $1000 in value, which is lower than the rate applicable on June 7, 2011, which is $25
per $1000 in value. If the Company prevails on the "date of delivery" issue, then the Recorder
contends that the Company should pay the tax at higher rate in effect on the date that the delivery is
deemed to occur. In other words, the tax owed would be $3,534,000 – without delinquency or
interest, the Company would be required to pay an additional $1,413,600 to the Recorder.

V. NEITHER PENALTIES NOR INTEREST SHOULD BE RELIEVED BY THE
REVIEW BOARD.

A. The Company has not demonstrated "hardship" or "good cause," both of
which are required for relief of the delinquency penalties.

The taxpayer requests relief of all penalties and interest in accordance with section 6.17-4,
subdivision (a) of the BTR (Company PHB, p. 7:3-4), which provides that "[a]ny penalty or interest
assessed under Sections 6.17-1, 6.17-2, or 6.17-3 may be waived by the Tax Collector, in whole or
in part, upon a finding that...[if]ailure to make timely payment or report of tax liability or otherwise
comply with the provisions of the Business and Tax Regulations Code occurred notwithstanding the
exercise of ordinary care and in the absence of willful neglect." (Emphasis added.) The Company
contends that it exercised ordinary care and did not act with willful neglect (Company PHB, p. 8:2-
3), and cites its "good faith" and its "own volition" in paying the tax promptly after it belatedly
determined that the tax was due and the method of properly reporting it.

This is not the correct standard for abatement of Transfer Tax delinquency penalties.

Section 6.1-1, subdivision (a) of the BTR provides that: "These common administrative provisions
[including Section 6.17-4] shall apply to Article 6, 7, 8, 9, 10, 10B, 11, 12, 12-A and 12-B of this
Code and to Chapter 105 of the San Francisco Administrative Code, unless the specific language of
either Code otherwise requires." (Emphasis added.) For purposes of the Transfer Tax, the BTR
does otherwise require, in two ways. First and most obviously, Article 12-C is not mentioned as
being within the scope of Section 6.17-4. Second, abatement of delinquency penalties is addressed
in Section 1115.2, which provides that:

The Review Board shall not make any ruling inconsistent with the requirements of this
ordinance, nor is the Review Board authorized to relieve any taxpayer by reason of
hardship alone from tax properly due but it may, upon showing of good cause, relieve
a taxpayer by reason of hardship from delinquency penalties accrued hereunder.

In other words, the Review Board may only relieve a taxpayer of a Transfer Tax
delinquency penalty if "hardship" and "good cause" are shown. The presence of a specific
 provision is consistent with the omission of Article 12-C in section 6.17-4.

1. **The Company has not demonstrated that a "hardship" will be suffered if the penalties and interest are required to be paid.**

The total of penalties and interest at issue in this appeal is $848,160. The Company and its
affiliates are part of a multi-billion, perhaps trillion-dollar enterprise. No hardship has been
claimed, and the Recorder doubts that a hardship within any reasonable meaning of the law can be
demonstrated. As discussed above, hardship is required for the Review Board to abate the
delinquency penalties. For this reason alone, the Review Board must deny the petition for
abatement of the penalty.

2. **The Company has not demonstrated "good cause" for its failures to timely determine that the tax applied and how to report the tax.**

The Transfer Tax Ordinance provides that "[f]or the purposes of this ordinance. . . "realty
sold" includes any acquisition or transfer of ownership interests in a legal entity that would be a
change of ownership of the entity's real property under California Revenue & Taxation Code 64."
(BTR, Art. 12-C, § 1114.) As the Company acknowledges, this provision was added by
Proposition N of 2008. (Company PHB, p. 3:19-21.) Thus, since two years before the
Restructuring on December 1, 2010, it was clearly specified in the Transfer Tax Ordinance that
transfers like it would be subject to the Transfer Tax.
Putting all of its distracting allegations aside, the Taxpayer essentially argues that at the time
of the transfer, it did not know that the transfer was subject to the transfer tax or how to report the
tax. This is a classic "mistake of law," i.e., "when a person knows the facts as they really are but
has a mistaken belief as to the legal consequences of those facts." (14 Cal Jur Contracts § 117,
citing Hodge Sheet Metal Products v. Palm Springs Riviera Hotel, 189 Cal. App. 2d 653, 11 Cal.
Rptr. 435 (4th Dist. 1961); Berry v. Berry, 140 Cal. App. 2d 50, 294 P.2d 757 (2d Dist. 1956);
to blame the Recorder for its own failure to ascertain how to report and pay the tax. However, until
current counsel DLA Piper LLP became involved, it appears that such efforts were limited to
reviewing the Recorder's web site for personalized instructions applicable to its specific situation,
i.e., the transfer of real property interests through "off-record" transfers of legal entity interests.
(Reif Decl. ¶ 2.) Such efforts apparently did not include clicking through to the San Francisco
Municipal Code, where the applicable provision could be found. (See Exh. D for click-through link
from Recorder's web site.) The Company also acknowledges that it did not even begin to research
the issue until after the Restructuring had been completed. (Reif Decl., ¶ 2 ["Subsequent to the
Restructuring...the Company's legal counsel attempted to determine the San Francisco transfer tax
reporting requirements with respect to the Property."] (Emphasis added.).) In fact, the Company
has never stated when its efforts began, or what they consisted of. It is entirely possible that such
efforts did not even commence until after the two delinquency periods had expired.

The California Supreme Court has explained the standard for determining when "good
cause" exists to excuse a failure to comply with a statutory requirement and the consequence is
default.

It is settled that an honest and reasonable mistake of law on such an issue is excusable
and constitutes good cause for relief from default under Code of Civil Procedure
section 473. ( Viles v. State of California (1967) 66 Cal.2d 24, 29 [56 Cal.Rptr. 666,
423 P.2d 818], and cases cited.) The same test governs a claim of good cause under
section 863 of chapter 9: "The good cause which must be shown in such a case as this
'may be equated to good reason for a party's failure to perform that specific
requirement [of the statute] from which he seeks to be excused.' ( Waters v. Superior
Court, 58 Cal.2d 885, 893 [27 Cal.Rptr. 153, 377 P.2d 265].) The rule is that a
mistake as to the law does not require relief from default as a matter of law. (Security
11]
The issue of which mistakes of law constitute excusable neglect presents a fact question; the determining factors are the reasonableness of the misconception and the justifiability of lack of determination of the correct law. (Fidelity Fed. Sav. & Loan Assn. v. Long (1959) 175 Cal.App.2d 149, 154 [345 P.2d 568].) Although an honest mistake of law is a valid ground for relief where a problem is complex and debatable, ignorance of the law coupled with negligence in ascertaining it will certainly sustain a finding denying relief' (A & S Air Conditioning v. John J. Moore Co., 184 Cal.App.2d 617, 620 [7 Cal.Rptr. 592].)" (Community Redevelopment Agency v. Superior Court (1967) 248 Cal.App.2d 164, 174 [56 Cal.Rptr. 201].)

(City of Ontario v. Superior Court of San Bernardino County (1970) 2 Cal. 3d 335, 345-346.) (Emphasis added.)

Thus, an honest and reasonable mistake of law as to a "complex and debatable issue" can constitute "good cause" for relief from default, if counsel "acted in reasonable but mistaken reliance on their appraisal of that question." (Id. at pp. 345, 347.) Whether there is "good cause" to excuse a party's failure to perform a specific legal requirement of a statute, the consequence of which is default, is a question of fact. (Id. at p. 346.) "The determining factors are the reasonableness of the misconception and the justifiability of lack of determination of the correct law." (Id. at p. 346.) A default is not excused where a "governing statute spelled out the applicability [ ] in great detail" and "there is no prior reported decision holding to the contrary." (Id. at pp. 346-347.)

The Company has not demonstrated good cause for its inability to find the provision of the Transfer Tax Ordinance applying the Transfer Tax to legal entity transfers. The issue of whether the tax applies to the transaction at hand is not complex and debatable – section 1114 of the Transfer Tax Ordinance has clearly applied the Transfer Tax to the reorganization of upper-tier entities since 2008, and there is no reported decision to the contrary.

The Company's excuses for how it took them months to find the applicable Code section to determine that tax was lawfully due do not constitute good cause to abate the delinquency penalties.

The Company did not begin to research the applicability of the Transfer Tax until after the Restructuring. Any competent attorney should be able to find the Code within a day, either on the City's main web site, or through basic legal research, or, as ably demonstrated by Ms. Berys, simply contacting the Recorder. The Company's ultimate parent, Tishman Speyer, is a substantial property owner in San Francisco. On its web site, it boasts of its "thorough due diligence" in property acquisitions, including "In-house management and coordination of...legal counsel and tax experts."
Furthermore, as of October 23, 2007, someone responsible for the Company's Transfer Tax obligations had found enough of the BTR to record a document with respect to this very Property and claim an exemption from the Transfer Tax.

The Company also complains that it could not timely discern how to report and pay the tax. The Company's complaint that the proper form was not on the Recorder's web site is as disingenuous as its arguments for why it could not find the applicable law. Mr. Reif stated that "In May 2011, our legal counsel eventually became aware that the Assessor-Recorder's office did have a form to report equity shift change in ownership transactions." (Reif Decl., ¶ 3.) The Company has not explained how it obtained that Unrecorded Transfer Form it submitted, or why it could not have obtained it timely. The fact remains, however, that Ms. Berys was able to obtain the form within a day or two, or likely less, by contacting the Recorder directly. Obviously, the issue of how to report and pay the tax is not "complex and debatable." In this regard, it should be noted that even though the transfer tax affidavit form the Company submitted had the Recorder's address at City Hall Room 190 printed on it, the check and forms were sent to the Assessment Appeals Board at City Hall, Room 405. This suggests an overall carelessness with respect to the reporting and payment of the tax.

There is no legal requirement that the Recorder provide all forms and information pertaining to all possible tax situations on its web site. In fact, state law prohibits the Recorder from providing legal advice. (Cal. Bus. & Prof. Code, § 6125.) To make taxpayers aware of this, the Recorder's web site states that: "By State law, county staff is not permitted to give legal advice or to assist in document preparation. Forms and notary services are not available at this office, but can be obtained from a title company, bank, stationery store or a notary public. For more information, call (415) 554-4176." (See Exh. D.) If the Company had truly reviewed the Recorder's web site, as it alleges, it would not have had any reasonable expectation that the Recorder's web site alone would be able to provide the type of information that the Company was seeking. In any event, the web site also indicates that if there are any questions, a simple telephone call can be made for more information.
The Recorder regularly receives timely payments of transfer tax for similar "off-record" transactions, and does not believe that other sophisticated taxpayers with access to knowledgeable and experienced outside counsel are similarly confused as to the applicability and reporting requirements. Whatever the alleged deficiencies in information provided on the Recorder's web site, the Company's ignorance of the applicability of the Transfer Tax to the transfer of the Property, or the method of timely reporting the tax, cannot be excused because the Company was clearly negligent in ascertaining both of those. That the Company eventually figured out that the tax applied and "voluntarily" came forward with payment does not provide the Review Board with any basis to abate the penalties when good cause does not exist. Because the Company has not demonstrated good cause for its failures to ascertain the applicability of the tax and the method for timely reporting and payment thereof, the penalties should not be abated.

B. The Review Board Should Not Waive Interest.

1. The Review Board lacks authority to waive interest.

The taxpayer requests waiver of all penalties and interest in accordance with section 6.17-4 (Company PHB, p. 7.3-4), on the basis that it did not act with "willful neglect" (Company PHB, p. 8:2-3). There is no specific provision for waiver of interest in the Transfer Tax Ordinance, and the provisions of BTR, Art. 6, section 6.17-4 are limited to interest assessed under sections 6.17-1, 6.17-2, and 6.17-3 of Article 6. Thus, it is the position of the Recorder that the Review Board has no authority to waive interest under Article 12-C.

2. Even if the Review Board has the authority to waive interest, the dual requirements of "exercise of ordinary care" and "lack of willful neglect" have not been established.

However, even if the standard set forth in BTR, Art. 6, section 6.17-4 did apply, the Company cannot be relieved of interest because it has not demonstrated "exercise of ordinary care" or "lack of willful neglect." Recently, the California Fifth Appellate District Court of Appeal denied a property tax payment company relief from penalties for delinquent payment of property taxes to Stanislaus County, which were imposed because the payment company erroneously sent $5.5 million in checks to the Office of the Treasurer and Tax Collector of the City and County of
San Francisco, and did not detect the error in time to pay Stanislaus County by the December 10
delinquency deadline. In its opinion, the court explained that:

"The standard for 'ordinary care' and 'reasonable' action by the taxpayer are appropriately
elevated when the amount at stake is not a $1,000 tax installment but is, instead, a $5.5
million installment on behalf of 4,400 taxpayers. It may or may not be reasonable for an
individual sitting at the kitchen table paying bills on December 1 to mistakenly place his or
her tax check in the envelope with the telephone bill. But whether that is or is not
reasonable and can occur despite 'ordinary care,' that circumstance is entirely different from
the situation in a professional office providing tax payment services for and on behalf of
thousands of individuals. 'Ordinary care,' in such circumstances, must include a recognition
of the stakes involved. Thus, the size of the penalty is not shockingly large; instead, the size
of the penalty is merely a reflection of the level of 'ordinary care' required in the
circumstances. [fn5] The idea that ordinary care and reasonableness must account for the
surrounding circumstances and the magnitude of foreseeable harm is common to all areas of
law. (See, e.g., 6 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, §§ 867-868, pp. 95-
97 [application in negligence context])."


In concluding that the payment company had not shown that the delinquency was due to
"reasonable cause and circumstances beyond the person's control" or that the delinquency occurred
"notwithstanding the exercise of ordinary care," as required for abatement of the penalty under
section 4985.2, subd. (a) of the Revenue and Taxation Code, the court observed that the payment
company's "failure to discover its error in a timely fashion is...a function of its own failure to set up
a system to make such discoveries." (Id, at p. 385.)

This principle is of long standing. In Dwin nell & Co. v. C. I. R., 33 T.C. 827, 1960 WL
1083 (T.C. 1960), acq. 1960-2 C.B. 4, the federal Tax Court determined that a taxpayer's innocent
ignorance that a corporation was a personal holding company was not reasonable cause for failure
to file as such under 26 U.S.C.A. § 6651. The court rejected the taxpayer's argument that the
complexity of the statute constituted reasonable cause because the taxpayer had not sought
professional advice even after it had identified the issue. And just this year, the California Second
Appellate District Court of Appeal rejected the taxpayer's request for relief from the delinquency

ARCHSTONE SOUTH MARKET LLC
ASSESSOR-RECORDER'S PRE-194G STATEMENT OF POSITION
penalty imposed under section 4985.2, subdivision (a)\(^5\) of the Revenue and Taxation Code. The court rejected the taxpayer's argument that the county's system requiring electronic payment of taxes was confusing, frustrating, and unclear and therefore in some way was to blame for the taxpayer's error in failing to process a pending electronic payment in a timely manner. *AvalonBay Communities, Inc.* (2011) 197 Cal.App.4\(^{th}\) 890, 901-902.)

In this case, the Company's argument consists mainly of blaming the Recorder for not providing specific references to BTR, Art. 12-C, section 1114 on its web site, even though the entire BTR has been available on-line to the public and on-line and via hard copy through proprietary legal research vendors for years. The Company also complains that the Recorder's web site does not provide the specific form by which to report the tax with respect to unreported entity interest transfers, even though such form and all payment information are readily provided by the Recorder if contacted.

In this case, the extent of the Company's efforts to determine whether the transfer tax applied and how to report and pay it consisted of perusing the Recorder's web site at some unknown date after the tax became due. As mentioned above, just a few years prior to this transaction, someone with charge of the Property's affairs was diligent and capable enough to determine that the Transfer Tax did NOT apply to the transfer of this very same Property, and recorded a document to that effect. In the context of this multi-million dollar property, the sophistication of the transaction, and the transactional expertise of the Company, its corporate affiliates, and outside counsel, it is abundantly clear that ordinary care in discovering the applicability of the tax and the method of reporting that tax in a timely manner was not exercised. Thus, the Review Board should not waive any interest on this basis.

\(^5\) This section provides that a delinquency penalty may be canceled if failure to make a timely payment is "due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect."
VI. PUBLIC POLICY SUPPORTS IMPOSITION OF THE PENALTIES AND PAYMENT OF INTEREST IN THIS CASE, INCLUDING THE IMPOSITION OF THE ADDITIONAL 10 PERCENT PENALTY FOR DELINQUENCY AFTER 90 DAYS.

As the Company acknowledged, there could be a temptation for entities that accrue liability for transfer tax to delay or even hide a transaction from the Recorder as long as possible, and the Recorder particularly depends on voluntary self-reporting to detect unrecorded transfers of legal entity interests. The incentive to "simply elect to ignore the law and fail to report upper level entity transfers that create a change in ownership under the ordinance" (Company PHB, pp. 1-2) presents a far different situation than when tax is unpaid when a document is presented for recording, because in that case, the Recorder is on notice of the transaction and presumably has identified the potentially liable parties; the only question is payment.

A document is usually presented for recording because the party wishes to avail itself of the protections recording provides, and does not wish to keep the transfer "off the record." Under the Company's argument, there would never be a delinquency, and therefore no penalty or interest due, as long as the tax was paid at the same time that a request for recordation of an unrecorded legal entity transfer form was made. Even the most honest and competent entity could be tempted to delay, or even avoid completely, the reporting of an otherwise unrecorded transaction if it thought that there was an acceptable risk that the Transfer Tax could be avoided or substantially delayed.

This appeal illustrates the effect of the additional 10 percent penalty on self-reporting entities. Under the Company's argument, once 30 days has passed, there would be no additional consequence except monthly interest for waiting for the Recorder to detect the transaction. This puts the Recorder in a far different and more difficult position than with respect to a taxpayer who is known to the Recorder, but has not paid the tax. The penalty imposed after 90 days acts as an additional incentive to at least timely report an unrecorded transaction. Precisely for all the reasons the Company states, and as illustrated by the Company's delays in ascertaining its liability and reporting, neither delinquency penalty should be abated.
VII.  CONCLUSION

For the above reasons, the TTBR should uphold the Assessor-Recorder’s imposition of the
delinquency penalties and interest.

Dated: October 18, 2011

DENNIS J. HERRERA
City Attorney
JULIE VAN NOSTERN
Chief Tax Attorney
CAROLE F. RUWART
Deputy City Attorney

By:  
CAROLE RUWART

Attorneys for the Assessor-Recorder
<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>2007 Deed</td>
</tr>
<tr>
<td>B</td>
<td>Thomas S. Reif and Joe Lee emails, 6/14/11</td>
</tr>
<tr>
<td>C</td>
<td>Tishman Speyer's web page</td>
</tr>
<tr>
<td>D</td>
<td>Recorder's web page</td>
</tr>
</tbody>
</table>
EXHIBIT A
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL
THIS GRANT DEED AND ALL
TAX STATEMENTS TO:

Michael B. Benner
Senior Managing Director & General Counsel
Tishman Speyer Properties
45 Rockefeller Plaza
New York, NY 10111

Property: One St. Francis Place

(Above Space for Recorder's Use Only)
Assessor's Lot 089; Block 3750

This deed is a transfer which results solely
in a change in the method of holding title to
the realty and in which proportional ownership
interests remain the same, and is therefore exempt
from Documentary Transfer Tax pursuant to California
Revenue and Taxation Code Section 11925(d).

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
ARCHSTONE-SMITH OPERATING TRUST, a Maryland real estate investment trust,
hereby GRANTS to TISHMAN SPEYER ARCHSTONE-SMITH SOUTH MARKET,
L.L.C., a Delaware limited liability company, the following described real property located in
the City of San Francisco, County of San Francisco, State of California (the "Property"): See
Exhibit A attached hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed as of October 5th, 2007.

ARCHSTONE-SMITH OPERATING TRUST,
a Maryland real estate investment trust

By: ____________________________
Authorized Signatory

ANDREW I. COHEN
AUTHORIZED SIGNATORY
On Oct 3, 2007 before me, Rafael Beaumont, Notary Public, personally appeared
personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand, at office, this 3rd day of October, 2007.

Rafael Beaumont
Notary Public

My Commission Expires:

2-19-2010
Exhibit A
Legal Description of Property
Archstone South Market

Real property in the City of SAN FRANCISCO, County of SAN FRANCISCO, State of California, described as follows:

BEGINNING AT A POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF FOLSOM STREET AND THE NORTHEASTERLY LINE OF THIRD STREET; THENCE RUNNING SOUTHEASTERLY ALONG SAID LINE OF THIRD STREET 345 FEET AND 3 INCHES TO THE NORTHWESTERLY LINE OF VERONA PLACE; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF VERONA PLACE 100 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 35 FEET TO THE SOUTHEASTERLY LINE OF VERONA PLACE, AS SAID VERONA PLACE EXISTED PRIOR TO THE VACATION OF A PORTION THEREOF BY RESOLUTION NO. 505-74, ADOPTED JUNE 24, 1974, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG LAST SAID LINE OF VERONA PLACE 26 FEET 3 INCHES; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 85 FEET AND 2 INCHES TO A POINT PERPENDICULARLY DISTANT 85 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF HARRISON STREET; THENCE NORTHEASTERLY PARALLEL WITH SAID LINE OF HARRISON STREET 12 FEET AND 9 INCHES; THENCE AT A RIGHT ANGLE NORTHEASTERLY 73 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 100 FEET TO THE NORTHWESTERLY LINE OF HARRISON STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF HARRISON STREET 103 FEET TO A POINT DISTANT THEREON 67 FEET AND 6 INCHES SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF HAWTHORNE STREET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 81 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 45 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 112 FEET AND 6 INCHES TO THE SOUTHWESTERLY LINE OF HAWTHORNE STREET; THENCE AT A RIGHT ANGLE NORTHWESTERLY ALONG SAID LINE OF HAWTHORNE STREET 144 FEET 2-1/2 INCHES TO A POINT DISTANT THEREON 275 FEET AND 2-1/2 INCHES SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF FOLSOM STREET; THENCE SOUTHWESTERLY AT A RIGHT ANGLE TO SAID SOUTHWESTERLY LINE OF HAWTHORNE STREET 112 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE NORTHWESTERLY 150 FEET AND 2-1/2 INCHES TO A POINT PERPENDICULARLY DISTANT 125 FEET SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF FOLSOM STREET; THENCE SOUTHWESTERLY PARALLEL WITH SAID SOUTHEASTERLY LINE OF FOLSOM STREET 55 FEET AND 6 INCHES TO A LINE DRAWN PARALLEL WITH AND PERPENDICULARLY DISTANT 220 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF THIRD STREET; THENCE AT A RIGHT ANGLE NORTHWESTERLY ALONG LAST SAID PARALLEL LINE SO DRAWN 125 FEET TO THE SOUTHEASTERLY LINE OF FOLSOM STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF FOLSOM STREET 220 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 357, AND PORTIONS OF HAMPTON PLACE AND VERONA PLACE, VACATED BY THE AFOREMENTIONED RESOLUTION NO. 505-74.

ALSO SHOWN ON THE CERTAIN "MAP OF THE ST. FRANCIS PLACE CONDOMINIUM DEVELOPMENT" FILED JULY 22, 1986 IN MAP BOOK 25 AT PAGES 97 TO 160, INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

SHOWN ON THE CERTAIN PLAT OF SURVEY ENTITLED "ALTA SURVEY" BY SLOOTEN CONSULTING INC., DATED AUGUST 15, 2007 (AS MAY BE FURTHER REVISED ON OR PRIOR TO OCTOBER 31, 2007), AS JOB NO. 8096-01.

APN: 25-3750-089-01
EXHIBIT B
Archstone South Market Transfer
Reif, Tom
to:
joe.lee@sfgov.org
06/14/2011 10:48 AM
Hide Details
From: "Reif, Tom" <TReif@archstonemail.com>
To: "joe.lee@sfgov.org" <joe.lee@sfgov.org>

1 Attachment

Archstone Assignment.pdf

Dear Mr. Lee,

Per our discussion yesterday, attached is a copy of the Assignment and Assumption Agreement that effected the indirect transfer of membership interests in the apartment complex known as Archstone South Market on December 1, 2010. Archstone South Market was indirectly owned by Archstone South Market Mezzanine II LLC, which is listed as a transferred entity on Schedule 1.1(a)(i) (2d page of that schedule).

Please feel free to call if you have any questions.

Thomas S. Reif
Associate General Counsel
Archstone
9200 E. Panorama Circle
Englewood, Colorado 80112
Tel: 303/792-8113
Fax: 303/648-6110
Cell: 303/888-5707
E-mail: treif@archstonemail.com
Dear Mr. Lee,

Is there a process for requesting a waiver of the penalty? We have been trying for many months to figure out how to report and pay the transfer tax (there was no obvious procedure in the absence of any recorded document), and it was only in the last few weeks that one of counsel was able to provide the form that we submitted.

Thanks,

Thomas S. Reif  
Associate General Counsel  
Archstone  
9200 E. Panorama Circle  
Englewood, Colorado 80112  
Tel: 303/792-8113  
Fax: 303/648-6110  
Cell: 303/888-5707  
E-mail: treif@archstonemail.com

From: Joe.Lee@sfgov.org [mailto:Joe.Lee@sfgov.org]  
Sent: Tuesday, June 14, 2011 1:55 PM  
To: Reif, Tom  
Subject: Re: Archstone South Market Transfer

Mr. Reif,

Thank you so much for e-mailing me a copy of the Assignment and Assumption Agreement effecting the indirect transfer of membership interests in the apartment complex located at 339-349 Saint Francis Place in San Francisco effective December 1, 2010. Pursuant to San Francisco Real Property Transfer Tax Ordinance -Section 115, a delinquency penalty of 25 percent of tax amount ($530,100.00) in addition to Transfer Tax Payment of $2,120,400.00 totaling $2,550,500.00 is due since the Transfer Tax due is unpaid within thirty days of effecting the indirect transfer of membership interests in apartment complex. I hope this information is helpful to you.

Please let me know if you have any questions or concerns.

Best regards,

Joe Lee  
Acting Manager  
Recording Division
EXHIBIT C
ACQUISITION & DEVELOPMENT

Knowing what opportunity looks like.

Since 1978, Tishman Speyer has acquired, built or developed over 325 projects totaling over 116 million square feet and more than 92,000 residential units, and a property portfolio in excess of US$50.2 billion in total value across the United States, Europe, Latin America and Asia. In that time, we have developed in-depth market knowledge as well as an extensive network of relationships that enable us to identify opportunities before they reach the market often positioning Tishman Speyer as the buyer of choice for those selling assets. This has resulted in a near-legendary ability to spot opportunities and create value for our tenants and our partners.

Application of Market Knowledge and Operational Experience

Tishman Speyer's long-standing presence in many markets, its extensive network of in-house leasing and property management professionals, and its ability to identify, in significant detail, opportunities for operational improvements and asset repositioning, give Tishman Speyer a competitive advantage in determining an asset's underlying value. Such knowledge and experience also reduces investment risk.

Thorough Due Diligence

Tishman Speyer's in-house professionals carefully manage each element of the due diligence process to increase the likelihood of the successful acquisition of an existing property or the development of a new property at an attractive price. The due diligence process includes:

- Analysis of the supply and demand dynamics in the selected market or submarket
- Thorough review of the existing or proposed financial structure of the property
- Detailed review of building expense and analysis of potential operating cost savings
- Market validation of leasing assumptions and identification of prospective new tenants
- In-house management and coordination of environmental consultants, legal counsel and tax experts and other professionals both within and outside of our organization

Tishman Speyer’s superior acquisition and development expertise is reflected in many of the world’s great urban properties as well as in the company’s current portfolio of assets. Among our better known properties are New York’s Rockefeller Center, the Chrysler Center and the Peter Cooper Village/Stuyvesant Village residential complex in New York, Berlin's Sony Center, Frankfurt’s Messeturm, London’s Millbank Tower and Sao Paolo’s Torre Norte.
EXHIBIT D
Recorder Information

- Monument Preservation Fund
- Recording a Document
- How to Obtain Copies of Recorded Documents
- Recording Fees
- Policy for Non-sufficient Funds (NSF) Checks
- Transfer Tax

Recording a Document

The Recorder performs the following functions:

- Records documents related to real property
- Maintains an index and issues copies of all recorded documents
- Maintains an index of recorded documents and public marriage records

The Assessor-Recorder's Office will record only those documents as permitted by State law. Documents can only be recorded in City Hall, Room 190 at 1 Dr. Carlton B. Goodlett Place. By State law, county staff is not permitted to give legal advice or to assist in document preparation. Forms and notary services are not available at this office, but can be obtained from a title company, bank, stationery store or a notary public. For more information, call (415) 554-4176.

RECORDING DIVISION FEE SCHEDULE
RECORDING HOURS: 8:00 am - 4:00 pm

RECORDING FEES

(Government Code 27550 et seq)

NOTE: All pages for recording must be 8 1/2 x 11 inches. There is a surcharge of $3.00 per page for every page of a document in which any portion of the document is not 8 1/2 x 11 inches (any page over 8 1/2 x 14 inches will not be accepted for recording).

FEE Schedule Effective 4/8/2010

<table>
<thead>
<tr>
<th>1. First page of a deed of trust, assignment of deed of trust, reconveyance, request for notice, notice of default, and any deed that is not subject to the documentary transfer tax (Government Code 27388)</th>
<th>$11.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Page of all other documents</td>
<td>$8.00</td>
</tr>
<tr>
<td>1a. Each additional page</td>
<td>$3.00</td>
</tr>
<tr>
<td>1b. Monument fee (deed subject to the documentary transfer tax - City Ordinance 958-5)</td>
<td>$10.00</td>
</tr>
<tr>
<td>2. Combined (multiple title) documents - each additional title</td>
<td>$8.00</td>
</tr>
<tr>
<td>3. Penalty Print (more than 9 lines per vertical inch or 22 characters per horizontal inch) each page</td>
<td>$1.00</td>
</tr>
<tr>
<td>4. Documents requiring indexing of more than 10 names -</td>
<td></td>
</tr>
<tr>
<td>4a. Each additional 10 names</td>
<td>$1.00</td>
</tr>
<tr>
<td>4b. Each additional reference (Government Code 27361.2)</td>
<td>$1.00</td>
</tr>
<tr>
<td>5. Releases State and County Liens</td>
<td>$12.00</td>
</tr>
<tr>
<td>5a. Exceptions: Franchise Tax Board Out-of-State debtor</td>
<td>$8.00</td>
</tr>
<tr>
<td>6. Notification of Involuntary Lien (Government Code 27297.5, 27387)</td>
<td>$6.00</td>
</tr>
<tr>
<td>6a. First Debtor</td>
<td>$6.00</td>
</tr>
<tr>
<td>6b. Each additional debtor</td>
<td>$2.00</td>
</tr>
</tbody>
</table>
### Preliminary Change of Ownership (failure to file, R & T 480.3)
- $20.00

### California Preliminary 20-Day Notice
- $22.00

### Financing Statements (UCC's) (Commercial Code 9403-9407)
1. Filing of forms prescribed by Secretary of State (two pages or less) $11.00
2. Filing of forms prescribed by Secretary of State (three pages or more) $21.00
3. Request for UCC Certificate (UCC11) $10.00

### Maps (Government Code 27366, 27364)
1. First Page $9.00
2. Each additional page $2.00

### Copying & Certification Fees (Government Code 27366, 27364)
1. Copies of records or papers on file (per page, retrieval by Assessor-Recorder staff, pages 1 through 2) $3.00
   - 1. Each additional page $0.50
2. Certification, each document $1.00
3. Certified copy of Public Marriage License (as of 01/01/2010) $14.00
4. Conforming copy surcharge (each) $1.00
5. Copies of recorded maps (1st page) $5.00
   - 5a. Each additional page of same map $3.00

**Please note that on July 22, 2008, the San Francisco Board of Supervisors approved Ordinance Number 080708, the Social Security Number truncation Program Fee. Pursuant to Government Code section 27301, the Ordinance authorized the Assessor-Recorder of the City and County of San Francisco to collect an additional recording fee of one dollar ($1.00) for recording the first page of every instrument, paper, or notice required or permitted by law to be recorded to be used solely for the implementation and ongoing operation of a Social Security Number truncation Program. The fee authorized pursuant to the approved ordinance shall discontinue after December 31, 2017 unless reauthorized by the Board of Supervisors.**

### Transfer Tax

In order to record documents with the San Francisco Assessor-Recorder’s Office, you must pay the documentary transfer tax at the time of recording if the tax is due. Exemptions will only be made if the recording party falls under one of the documentary transfer tax exemptions. If a party claims a documentary tax exemption, he or she will be required to provide written documentation substantiating the claimed exemption at the time of recording; otherwise the party will be required to pay the transfer tax. If the recording party wishes to dispute the fee or is eligible for a refund, he or she will need to complete a Claim for Tax Refund form, which may be downloaded from our website. After the Claim for Tax Refund form is completed, please return this form to the San Francisco Controller’s Office, Claim Division, 1350 Market Street, 7th Floor, San Francisco, CA 94108-5408.

Please also be advised that any information signed under the penalty of perjury and recorded with the San Francisco Assessor-Recorder may be shared with the federal government and the Internal Revenue Service for taxation and verification purposes.

**Effective December 17, 2010, the Transfer Tax Rates for the City and County of San Francisco are as follows:**

#### Transfer Tax (Part III, Article 13 of San Francisco Municipal Code)

<table>
<thead>
<tr>
<th>If entire value or consideration is...</th>
<th>Tax rate for entire value or consideration is...</th>
</tr>
</thead>
<tbody>
<tr>
<td>A) More than $100 but less than or equal to $250,000</td>
<td>$2.50 for each $500 or portion thereof</td>
</tr>
<tr>
<td>B) More than $250,000 but less than $1,000,000</td>
<td>$3.40 for each $500 or portion thereof</td>
</tr>
<tr>
<td>C) $1,000,000 or more but less than $5,000,000</td>
<td>$3.75 for each $500 or portion thereof</td>
</tr>
<tr>
<td>D) $5,000,000 or more but less than $10,000,000</td>
<td>$10.00 for each $500 or portion thereof</td>
</tr>
<tr>
<td>E) $10,000,000 or more</td>
<td>$12.50 for each $500 or portion thereof</td>
</tr>
</tbody>
</table>

*Additionally, Effective December 19, 2008, transfers of leaseholds with a term of 35 years or more will be subject to transfer tax.*


10/18/2011
PROOF OF SERVICE

I, DONNA ALSCHULER, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney’s Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, CA 94102-4682.

On October 18, 2011, I served the following document(s):

Assessor-Recorder's Pre-Hearing Statement of Position

on the following persons at the locations specified:

Hugh Goodwin, Esq. 
DLA Piper

City and County of San Francisco
Transfer Tax Review Board

in the manner indicated below:

☐ BY UNITED STATES MAIL: Following ordinary business practices, I sealed true and correct copies of the above document(s) in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ BY PERSONAL SERVICE: I sealed true and correct copies of the above document(s) in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.

☐ BY OVERNIGHT DELIVERY: I sealed true and correct copies of the above document(s) in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.

☐ BY FACSIMILE: Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number (415) 554-4745 to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of the transmission report ☐ is attached or ☐ will be filed separately with the court.

☒ BY E-MAIL: I transmitted a true and correct copy of the above document via e-mail to the person(s) and the e-mail address listed above.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed October 18, 2011, at San Francisco, California.

Donna Alschuler