

## Recent Legislative Changes May Reduce Potential California Transfer Tax Liability

Kerne Matsubara

Transfer taxes usually do not take center stage when structuring or negotiating corporate transactions. However, with the recent escalation in the value of real estate and the growing use of limited liability companies (LLCs), taxes imposed upon the transfer of real property have become an increasingly important issue for many taxpayers. Fortunately for taxpayers, the California Legislature recently has enacted legislation that may enable taxpayers to minimize their potential transfer tax liability.

### Background

Many states and localities have imposed a tax on the transfer of property located within the state or locality. The tax, known as the documentary transfer tax or real property transfer tax (hereinafter, the “transfer tax”), is largely based on the federal documentary stamp tax, which was repealed in 1976.<sup>1</sup> In California, counties and cities have been authorized to impose a tax on deeds of transfer of realty located within such county or city.<sup>2</sup> The amount of the tax is based on the consideration or value of the realty transferred. The county rate is fifty-five cents (\$0.55) for each five hundred dollars (\$500) of value, and the noncharter city rate is one-half of the county rate and is credited against the county tax due.<sup>3</sup> Charter cities, however, may impose transfer taxes at a rate higher than the county rate.<sup>4</sup> The transfer tax must be paid by the person who makes, signs or issues any document subject to the tax, or for whose use or benefit the document is made, signed or issued.<sup>5</sup>

### “Tax-Free” Transactions May be Subject to California Transfer Tax

A merger, reorganization or other corporate transaction that is “tax-free” for purposes of federal income or state franchise or corporation income tax is not necessarily free from transfer tax. In addition, tax-free transfers of realty involving partnerships or LLCs may be

subject to transfer tax in California, even though partnerships and some LLCs are treated as “passthrough” entities for federal and California income tax purposes. For example, a transfer of realty to a corporation or partnership that is not subject to federal income tax under IRC § 351 or IRC § 721, respectively, may be subject to transfer tax. Similarly, transfers of realty pursuant to a reorganization under IRC § 368 or a spin-off under IRC § 355 also may be subject to transfer tax. Thus, the transfer tax generally should apply to transactions involving the transfer of realty, including “tax-free” transactions, unless otherwise exempted.

### Statutory Exemptions from Transfer Tax

The California Revenue and Taxation Code, which provides the statutory authority for counties and cities to impose the transfer tax, specifically exempts from tax the following transactions:

- Instruments in writing given to secure a debt,<sup>6</sup>
- Transfers whereby the federal or any state government, or agency, instrumentality or political subdivision thereof, acquires title to realty,<sup>7</sup>

<sup>1</sup> Former Internal Revenue Code (“IRC”) § 4361.

<sup>2</sup> California Revenue and Taxation Code (“RTC”) § 11911(a), (b). Except for realty held by certain terminating partnerships, the transfer tax appears to apply strictly to the transfer of “lands, tenements, or other realty” and not to the transfer of interests in entities that may hold such realty. Compare RTC § 11911(a) with RTC § 64(c), (d) (transfer of ownership interests in legal entities that hold realty may be regarded as a change in ownership for property tax purposes) and IRC § 897(c) (transfer of interests in a corporation that holds realty may be treated as a disposition of real property for “FIRPTA” purposes).

<sup>3</sup> RTC § 11911(c).

<sup>4</sup> See Cal. Const. Art. XI, § 5.

<sup>5</sup> RTC § 11912.

<sup>6</sup> RTC § 11921.

<sup>7</sup> RTC § 11922.

- Transfers made to effect a plan of reorganization or adjustment (i) confirmed under the Federal Bankruptcy Act, (ii) approved in certain equity receivership proceedings or (iii) whereby a mere change in identity, form or place of organization is effected,<sup>8</sup>
- Certain transfers made to effect an order of the Securities and Exchange Commission relating to the Public Utility Holding Company Act of 1935,<sup>9</sup>
- Transfers of an interest in a partnership (or, beginning January 1, 2000, an entity treated as a partnership for federal income tax purposes) that holds realty, if (i) the partnership is treated as continuing under IRC § 708 and (ii) the continuing partnership continues to hold the realty,<sup>10</sup>
- Certain transfers in lieu of foreclosure,<sup>11</sup>
- Transfers, divisions or allocations of community, quasi-community or quasi-marital property between spouses pursuant to, or in contemplation of, a judgment under the Family Code,<sup>12</sup>
- Transfers by the State of California, or any political subdivision, agency or instrumentality thereof, pursuant to an agreement whereby the purchaser agrees to immediately reconvey the realty to the exempt agency,<sup>13</sup>
- Transfers by the State of California, or any political subdivision, agency or instrumentality thereof, to certain nonprofit corporations<sup>14</sup> and
- Transfers pursuant to certain *inter vivos* gifts or inheritances,<sup>15</sup>

Because the RTC provides the authority by which counties may impose the transfer tax, California's counties have adopted ordinances that generally provide for the above set of exemptions. However, the manner in which each county applies and interprets the above exemptions may vary greatly. In addition, because charter cities are not strictly bound by the transfer tax provisions of the RTC, the potential exists for even greater non-uniformity in the transfer tax area. As discussed below, the local county rules should be reviewed to determine whether a particular transaction will be exempt from transfer tax.

### Recent California Rules Regarding LLCs and Other Legal Entities

In 1996, the California Legislature began to address the issue of whether transfer tax should apply when existing business entities such as corporations or partnerships

convert into or transfer real property to LLCs.<sup>16</sup> In 1998, the Legislature exempted such conversions or transfers from transfer tax, provided that the direct or indirect proportionate interests in the real property remained the same.<sup>17</sup> However, because such exemption was not codified in the RTC, some county recorder's offices refused to honor the exemption.<sup>18</sup>

In 1999, the California Legislature not only clarified but also broadened the transfer tax exemption by enacting

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<sup>8</sup> RTC § 11923. The exemption for a "mere change in identity, form or place or organization" under RTC § 11923(d) mirrors the language of IRC § 368(a)(1)(F). Thus, transfers of realty pursuant to an F reorganization should not be subject to transfer tax.

<sup>9</sup> RTC § 11924.

<sup>10</sup> RTC § 11925(a). In a partnership termination under IRC § 708, the terminating partnership is treated as having executed an instrument whereby all realty held by the partnership at the time of the termination was conveyed, for fair market value, less any liens or encumbrances remaining thereon. RTC § 11925(b). Only one tax may be imposed upon the termination of a partnership and any transfer of property made pursuant to the termination. RTC § 11925(c).

<sup>11</sup> RTC § 11926.

<sup>12</sup> RTC § 11927.

<sup>13</sup> RTC § 11928.

<sup>14</sup> RTC § 11929.

<sup>15</sup> RTC § 11930.

<sup>16</sup> See Cal. Stat. 1996, ch. 57, § 29 (SB 141) (declaring the Legislature's intent that such conversions or transfers shall not be subject to transfer tax).

<sup>17</sup> Cal. Stat. 1998, ch. 514, § 3 (AB 2292).

<sup>18</sup> See Robert S. Miller, *Careful Structuring Takes Bite Out of Transfer Tax*, *San Francisco Daily Journal*, Mar. 26, 1998. The refusal by some county recorders to apply this exception on such grounds appears unwarranted, because uncoded provisions enacted into law by the Legislature have equal force as law as codified provisions. See, e.g., *County of Los Angeles v. Payne*, 8 Cal. 2d 563, 574 (1937); *Crespin v. Kizer*, 226 Cal. App. 3d 498, 510 n.8 (1990); *In re Kali D.*, 37 Cal. App. 4th 381, 386 & n.5 (1995).

legislation codified as RTC § 11925(d).<sup>19</sup> RTC § 11925(d), effective January 1, 2000, provides:

No levy shall be imposed pursuant to this part by reason of any transfer between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership interests in the realty, whether represented by stock, membership interest, partnership interest, cotenancy interest, or otherwise, directly or indirectly, remain the same immediately after the transfer.

Thus, the direct or indirect proportionate interests in the real property must remain the same before and immediately after the transfer for the exemption to apply. The following examples illustrate the application of the exemption under RTC § 11925(d).

*Example 1.* Corporation X transfers realty to its wholly-owned subsidiary, Corporation Y, in a transaction described under IRC § 351. Such transfer is exempt from transfer tax under RTC § 11925(d), because Corporation X's direct or indirect interest in the realty is the same both before (*i.e.*, 100%) and immediately after (*i.e.*, 100%) the transfer.

*Example 2.* Same as Example 1, except that Corporation X owns 99 percent of the stock of Corporation Y. Such transfer is not exempt from transfer tax under RTC § 11925(d), because Corporation X's direct or indirect interest in the realty is not the same before (*i.e.*, 100%) and immediately after (*i.e.*, 99%) the transfer.

*Example 3.* Partner A and Partner B each own a 50 percent undivided interest in realty. Partner A and Partner B each contribute their 50 percent interest in the realty to Partnership AB, in which each partner will own a 50 percent interest after the transfer. The transfer is exempt from transfer tax.

*Example 4.* Member A transfers realty to an LLC, the interests of which after the transfer are owned 60 percent by Member A and 40 percent by an unrelated member, Member B. The LLC is treated as a partnership for federal income tax purposes and the transfer is not subject to federal income tax under IRC § 721. Such transfer is not exempt from transfer tax under RTC § 11925(d) because Member A's direct or indirect interest in the realty is not the same before (*i.e.*,

100%) and immediately after (*i.e.*, 60%) the transfer. *But see infra* text accompanying note 24 (under which a partial exemption from transfer tax may be possible).

### Additional Sources of Legal Authority to Claim Exemption from Tax

The RTC provides the statutory basis for counties to impose the transfer tax. However, because the RTC transfer tax provisions were patterned after the former federal documentary stamp tax, federal administrative regulations and interpretations of the federal tax arguably should apply to the California transfer tax.<sup>20</sup> Application of the former federal regulations and rulings may provide additional exemptions or partial exemptions from the transfer tax, including, but not limited to, the following transfers:

- Non-donative transfers for no consideration,<sup>21</sup>
- A transfer from an agent to its principal of real estate purchased for and with funds of the principal,<sup>22</sup>
- Transfers of real estate in a statutory merger or consolidation (*e.g.*, under IRC § 368(a)(1)(A)) from a constituent corporation to the continuing or new corporation<sup>23</sup> and

<sup>19</sup> Cal. Stat. 1999, ch. 75, § 1 (AB 1428). AB 1428 also provides that, for purposes of the exemption regarding the transfer of partnership interests under specified conditions, the term "partnership" shall include entities that are treated as partnerships for federal income tax purposes. *See* RTC § 11925(a); *see also* Treas. Reg. § 301.7701-2, -3 (relating to the classification of business entities for federal tax purposes). Thus, transfers of interests in a realty-holding LLC that is treated as a partnership for federal income tax purposes, should not be subject to transfer tax, provided that such transfer does not cause a termination under IRC § 708 and that the LLC continues to hold the realty.

<sup>20</sup> *See Brown v. County of Los Angeles*, 72 Cal. App. 4th 665, 668 (1999); *Thrifty Corp. v. County of Los Angeles*, 210 Cal. App. 3d 881, 884 (1989); 82 Op. Atty. Gen. Cal. 56 (1999); 62 Op. Atty. Gen. Cal. 87, 89 (1979).

<sup>21</sup> Former Treas. Reg. § 47.4361-2(b)(2); *see also* T.D. 6589, 1962-1 C.B. 228 (adopting the federal documentary stamp tax regulations). Note, however, that corporate stock received in exchange for a transfer of realty to a corporation may be regarded as consideration for transfer tax purposes. *See* Former Treas. Reg. § 47.4361-2(a)(7).

<sup>22</sup> Former Treas. Reg. § 47.4361-2(b)(5).

<sup>23</sup> Former Treas. Reg. § 47.4361-2(b)(12).

- Conveyances of realty from a partner to a partnership, subject to transfer tax only to the extent that the conveyance is a transfer of an undivided interest in the realty to members of the partnership other than the transferor.<sup>24</sup> *Example.* Partner A transfers a wholly-owned parcel of real property to Partnership AB, in which Partner A will own a 60 percent interest after the transfer. Such transfer should be subject to transfer tax only to the extent of 40 percent of the fair market value of the real property.

As mentioned above, because the transfer tax is applied at the county level, the transfer tax may not be imposed uniformly throughout all California counties. Each county generally has enacted its own local transfer tax ordinance and many county recorder's offices have published their own guidance regarding exempt transfers. Because some counties may provide for more generous exemptions than others, county ordinances and published guidance can be good sources of information.<sup>25</sup> For a list of links to the Internet websites of California counties, see [www.chp.ca.gov/html/county\\_sites.html](http://www.chp.ca.gov/html/county_sites.html). For greater assurance that a particular transaction will not be subject to transfer tax, taxpayers may seek a ruling or determination letter from the appropriate county recorder.

### Special Rules Regarding Liens, Encumbrances and Assumptions of Mortgages

*Liens and encumbrances remaining on property.* The transfer tax generally is imposed on the amount of the consideration or value of the real property conveyed, exclusive of the value of any lien or encumbrance remaining on the property at the time of transfer or sale.<sup>26</sup> Thus, transfer tax is imposed on the net consideration paid for, or the net value of, the realty conveyed. The amount of the net consideration or net value should be determined by subtracting from gross consideration or gross value, the amount of all liens or encumbrances on the realty existing before the sale and not removed thereby.<sup>27</sup> Thus, the amount of any liens or encumbrances on the realty are excluded from the transfer tax base, provided that the lien or encumbrance (i) existed before the sale and (ii) is not removed from the property by or in the sales transaction.<sup>28</sup>

*Assumptions of mortgages and other liabilities.* Where the buyer or transferee acquires realty and assumes the debts or mortgage of the seller or transferor, the amount of such debts or mortgage may constitute consideration for transfer tax purposes.<sup>29</sup> Under this analysis, where the buyer or transferee acquires realty and other assets in connection with the transfer, the amount of the debt or

mortgage is allocated to such other assets based on the *pro rata* portion of the assumed liabilities not directly attributable to the realty.<sup>30</sup>

*Example.* Corporation X receives as a liquidating distribution realty and other assets valued at \$400,000 and \$180,000, respectively, from Corporation Y.<sup>31</sup> Corporation X assumes the liabilities of Corporation Y consisting of a \$220,000 mortgage on the realty and \$60,000 not directly attributable to such realty. The gross consideration paid for the realty is the sum of (i) the liabilities assumed by Corporation X that are directly attributable to the realty (*i.e.*, \$220,000) and (ii) the *pro rata* portion of the liabilities assumed by Corporation X that are not directly attributable to the realty (*i.e.*, \$30,000). Such *pro rata* portion is determined by multiplying the ratio of the adjusted value of the realty of \$180,000 (*i.e.*, \$400,000 fair market value less the \$220,000 mortgage) to the adjusted value of all the assets transferred (*i.e.*, \$400,000 plus \$180,000 less the \$220,000 mortgage) by the amount of the liabilities not directly attributable to the realty (*i.e.*, \$60,000). Thus, the gross

<sup>24</sup> M.T. 4, 42-2 C.B. 275.

<sup>25</sup> See, *e.g.*, the taxpayer's guide, "Documentary Transfer Tax Status," which is available on the Internet website of the Registrar-Recorder/County Clerk of the County of Los Angeles at <http://regrec.co.la.ca.us/scripts/dttform.htm>.

<sup>26</sup> RTC § 11911.

<sup>27</sup> See former Treas. Reg. § 47.4361-1(b).

<sup>28</sup> But see Rev. Rul. 54-197, 1954-1 C.B. 276 (amount of the mortgage excluded from the transfer tax base, where realty is purchased subject to an existing mortgage, but the mortgage is not "removed by the sale" of the realty even though the purchaser agrees with the mortgagee to pay the mortgage at the same time that the purchaser takes title to the realty); *Nassif v. Delaney*, 52-2 U.S.T.C. ¶ 9433 (D. Mass. 1952).

<sup>29</sup> See Rev. Rul. 67-415, 1967-2 C.B. 383. However, where property is acquired in a foreclosure sale, the transfer tax should be based on the purchase price paid at the foreclosure sale, plus costs, without regard to the amount of indebtedness attached to the property and assumed by the purchaser. See *Brown, supra* (applying former Treas. Reg. § 47.4361-2(a)(4) relating to foreclosure sales).

<sup>30</sup> *Id.*

<sup>31</sup> Based on Rev. Rul. 67-415, *supra*.

consideration is \$250,000 (*i.e.*, the assumed \$220,000 mortgage plus the \$30,000 *pro rata* portion of the assumed debt). The net consideration upon which transfer tax is imposed is \$30,000 (*i.e.*, \$250,000 gross consideration less the \$220,000 mortgage).

### Step Transaction Doctrine May Apply

Although the incidence of transfer tax, similar to the sales and use tax, largely derives from the form of the taxpayer's transactions, county recorders may attempt to apply the step transaction doctrine to impose transfer tax on multi-step transactions.<sup>32</sup> For example, assume that Corporation X transfers realty to a single member LLC and subsequently conveys all of the interests in such LLC to an unrelated entity, Corporation Y. In form, the first step should be exempt from tax under RTC § 11925(d) and the second step should not be subject to tax because

the transfer of interests in an LLC should not be regarded as a transfer of realty for transfer tax purposes. However, if the two steps are part of an integrated plan and are not separated by any length of time, the transaction may be susceptible to attack under the step transaction doctrine. Thus, where realty is transferred in a series of steps pursuant to a plan of reorganization or other corporate restructuring, taxpayers may wish to consult a tax advisor or seek a ruling or determination letter from the county recorder prior to the transaction.

<sup>32</sup> California courts have not expressly applied the step transaction to the transfer tax. However, the step transaction doctrine has been applied in a number of California property tax cases. *See, e.g., McMillin-BCED/Miramar Ranch North v. County of San Diego*, 31 Cal. App. 4th 545 (1995); *Shuwa Investments Corp. v. County of Los Angeles*, 1 Cal. App. 4th 1635 (1991).

## Appellate Court Rules on Timing of Tax Refund

Richard E. Nielsen

In a decision which could have far-reaching ramifications, on June 14, 2000, a California Court of Appeal in *Geneva Towers Limited Partnership v. City and County of San Francisco* (No. A088355) 2000 Daily Journal D.A.R. 6335 ruled that when the Revenue and Taxation Code ("RTC") does not specify the length of limitations period to bring a tax refund action in a property tax matter, the court may rely on Code of Civil Procedure ("CCP") sections. This case involved the application of RTC § 5141(b) which provides that a claimant has the option of considering a claim rejected, and suing the county for the refund, if the board of supervisors takes no action within six months. No provision in the Revenue and Taxation Code sets forth a limitations period for bringing the action in this situation. RTC § 5141(a) provides that a complaint for refund shall be commenced within six months from and after the date that the board of supervisors or city council rejects a claim for refund.

In *Geneva*, the Court concluded that the statute of limitations for filing a lawsuit under RTC § 5141(b) commences to run on the first day on which the claimant could file suit without board action, *i.e.*, six months after the refund claim was filed with the board of supervisors.

The Court next addressed the issue of how much time a claimant has to file suit after deeming the claim to be denied. The Court observed that CCP § 312 provides that civil actions, without exception, can only be commenced within periods prescribed in CCP §§ 312-366.2, after the cause of action shall have accrued, unless where, in special cases, a different limitations period is prescribed by statute. The Court concluded that since no limitations period is set forth for lawsuits filed under RTC § 5141, the CCP comes into play. The Court then selected CCP § 343. Under CCP § 343, an action for relief not otherwise provided for must be commenced within four years after the cause of action shall have accrued.

In other words, where a refund claim has been deemed denied by a claimant under RTC § 5141(b), the suit for refund must be commenced within four years from the date the cause of action accrued (six months from filing the claim)—or within four years and six months after the claim was filed.

The Court's conclusion in *Geneva* is significant since it imposes a statute of limitations in a situation where it was believed that there was no deadline to bring an action provided the taxing authority did not act to deny the claim. Since RTC § 5141(b) is similar to RTC §§ 19385 (corporation franchise tax and personal income tax) and 6934 (sales and use tax), its ramifications could be broad. Stay tuned.

*Richard E. Nielsen is of counsel in the San Francisco office of Pillsbury Madison & Sutro LLP. A copy of this article can also be found as part of the firm's world wide web Tax Page at <http://www.pmstax.com/state/geneva0007.html>.*

## Federal and California Internet Tax Freedom Acts—What Do They Mean?

**Jeffrey M. Vesely**  
**Richard E. Nielsen**

A large segment of the public seriously misunderstands exactly what occurred on October 21, 1998 when Congress passed and the President signed into law the Internet Tax Freedom Act of 1998 (the “Federal Act”). Most people mistakenly believe that due to the Federal Act transactions completed over the internet are not subject to tax. The Federal Act did nothing of the kind. Effective October 1, 1998, the Federal Act bars states and their political subdivisions from imposing (1) taxes on internet access, unless such tax was generally imposed and actually enforced prior to the effective date and (2) multiple or discriminatory taxes on electronic commerce. The moratorium runs for three years and bars **new** taxes but not the applicability of existing taxes and their underlying principles to transactions conducted over the internet. The Federal Act specifies that it is not to be construed so as to expand the duty of any taxpayer to collect taxes beyond that which existed before the passage of the Federal Act.

The Federal Act specifies that its provisions are not to be construed to impair or supersede current state or local statutory provisions pertaining to taxation that are otherwise permissible. Further, the Federal Act specifies that it does not affect liability for taxes accrued and enforced before the effective date of its enactment. Accordingly, existing state taxes are not impacted by the Federal Act, contrary to the beliefs of much of the public.

The California Tax Freedom Act (“California Act”) became effective January 1, 1999. The California Act places a three-year ban on new local taxes on internet or online services. It prevents the State and local governments from levying taxes and fees on companies offering interactive computer services and access to the internet until federal

laws and regulations on internet taxation are developed. The California Act prohibits the imposition or collection of tax on internet access, online services, or the use of the internet access or online services.

In response to complaints by local retailers, California legislation is currently pending to “clarify” sales and use tax nexus law concerning dot.com subsidiaries of companies with California nexus. Assembly Bill No. 2412 (“AB 2412”) would provide that if a remote seller holds a substantial ownership interest in a retailer maintaining sales locations in California and sells the same or similar products under the same or similar name as the retailer located within the State, the remote seller is required to collect use tax from the purchaser. Also, if the stores or employees of the instate retailer are used to promote the remote seller, the remote seller would be required to collect use tax from the purchaser. AB 2412 provides that the retailer maintaining sales locations in the State under these circumstances would be presumed to be an agent of the remote seller; therefore, the remote seller would be required to collect use tax.

Another piece of legislation is pending which would prevent any new taxes on access to the internet, and on any ‘bit’ or ‘byte’ taxes. Assembly Bill No. 1784 would also extend for three additional years the current moratorium under the California Act discussed above which is set to expire in January 2002.

The foregoing is but a brief discussion of the confusing nature of the existing moratoria at the federal and California state levels. The moratoria do not prevent taxation of internet transactions under existing law and do not overturn traditional use tax collection principles if substantial nexus is found to exist. The moratoria ban new taxes but not the application of existing jurisprudence to transactions conducted over the internet. Similar to the controversy concerning mail order operations, if the internet seller has sufficient physical presence (e.g., employees, property, offices) in a state, it will be required to collect use tax if the transaction is otherwise taxable. The moratoria do not affect these principles.

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*Jeffrey M. Vesely is a tax partner and Richard E. Nielsen of counsel in the San Francisco office of Pillsbury Madison & Sutro LLP. A copy of this article can also be found as part of the firm’s Tax Page on the world wide web at <http://www.pmstax.com/state/internet0007.html>.*

## Appellate Court in Unpublished Opinion Affirms Trial Court Decision that Solar Energy Tax Credit Is Limited to the Separate Tax Liability of the Company that Held an Ownership Interest

Jeffrey M. Vesely

On June 12, 2000, in *Guy F. Atkinson Company of California v. Franchise Tax Board* (A085075), the First Appellant District, Division Three, in an unpublished opinion, rejected the taxpayer's contention that a solar energy tax credit should apply to the combined tax liability of the entire unitary group of companies of which it was a part. Revenue and Taxation Code section 23601 provided a tax credit to the taxpayer who owned the premises on which the solar energy system was installed. The statute defined owner as duly recorded holders of legal title, etc. WBL Solar (through its partnership interest in Luz, the owner of the premises) was the only member of the unitary group that technically held an ownership interest in the premises on which the solar energy system was installed. Thus, the Court concluded WBL was the only member of the unitary group entitled to utilize the solar energy tax credit and apply it against its own separate tax liability.

In ruling for the Franchise Tax Board, the Court concluded that the statute was unambiguous on its face

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and therefore, there was no need to go beyond the words of the statute to extrinsic aids such as legislative history. Also, the Court concluded that neither the Uniform Division of Income for Tax Purposes Act (UDITPA) nor the policies underlying UDITPA mandated a different result. It concluded that even in a unitary setting, the ultimate tax liability remains that of the individual company and it is this ultimate tax liability to which tax credits are applied.

Since the decision is presently unpublished, it is not precedential and cannot be cited as authority. Nevertheless, the Court's decision sustains the FTB's position that credits, even in a unitary setting, are entity specific and may not be used to offset the tax liability of other members of the unitary group. While *Atkinson* only addresses the solar energy tax credit and possibly could be distinguished on that basis, if published, it would most likely be applied to other tax credits.

As of the date of this writing, the decision is not yet final. The Court of Appeal has rejected the FTB's request to have the opinion published. That request is now before the California Supreme Court. Finally, it is uncertain whether the taxpayer will seek review by the California Supreme Court.