

LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Empty Homes Tax Suspension Pending Litigation]

Ordinance amending the Business and Tax Regulations Code to suspend the Empty Homes Tax pending a final decision in *Eric Debbane, et al. v. City & County of San Francisco, et al.*, San Francisco Superior Court Case No. CGC-23-604600, retroactive to January 1, 2024, and to reinstate that tax so that the tax first applies in the tax year immediately following the calendar year of that final decision.

Background

At the November 2022 election the voters passed Proposition M, which imposes an Empty Homes Tax on keeping certain residential properties vacant. The Empty Homes Tax became effective commencing in calendar year 2024.

On February 9, 2023, several individuals, the San Francisco Apartment Association, the Small Property Owners of San Francisco Institute, and the San Francisco Association of Realtors filed a lawsuit seeking to invalidate the Empty Homes Tax, arguing that it violates State law and Federal and State Constitutions.

On November 26, 2024, the San Francisco Superior Court issued an order prohibiting the City from enforcing or administering the Empty Homes Tax on the grounds that the Empty Homes Tax violates State law and the Federal and State Constitutions. It issued this order despite clear case law precluding the use of California Code of Civil Procedure 526a to enjoin the collection of taxes.

The City believes that if it appealed the trial court's order on the grounds that Section 526a cannot be used to enjoin the collection of taxes, the Court of Appeal would overturn the trial court's decision on that basis and permit the City to continue to enforce and administer the Empty Homes Tax. But due to the unique circumstances of the Empty Homes Tax, the City would prefer that the Court of Appeal rule on the merits of petitioners' substantive statutory and constitutional arguments to give the City and taxpayers certainty as to the constitutionality and legality of the Empty Homes Tax.

Under current law, if the Court of Appeal overturns the trial court's decision on the merits, as the City believes it will, the City may be forced to collect the Empty Homes Taxes the trial court's order prohibited it from collecting during the appeal. These taxes – which may relate to residential vacancies from several years prior – may be administratively difficult and financially burdensome to collect because the owners of the properties may have changed and relevant documents may not be available to ascertain tax liability. And imposing taxes going back several years may place an undue burden on property owners, and would lead to significant uncertainty for both the City and property owners throughout the appeal.

Amendments to Current Law

To avoid the issues described above if the City's appeal is successful, this ordinance suspends the Empty Homes Tax, retroactive to calendar year 2024 (the payments for which would generally otherwise be due in April 2025), until the calendar year following the year in which the decision in the Empty Homes Tax Case becomes final and all appeals have been exhausted or the time for filing any such appeals has passed. The Empty Homes Tax would be reinstated so that the tax first applies in the tax year immediately following the calendar year of that final decision.

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