



Agenda Date: 11/6/2007  
Agenda Placement: 6T

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Susan Ingalls for Robert Westmeyer - County Counsel  
County Counsel  
**REPORT BY:** Susan Ingalls, Paralegal, 259-8152  
**SUBJECT:** Approval of Professional Services Agreement with McDonough, Holland & Allen.

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### **RECOMMENDATION**

County Counsel and Assessor-Recorder-County Clerk request approval of and authorization for the Chair to sign an agreement with McDonough, Holland & Allen for a maximum amount of \$30,000 for the term July 1, 2007 through June 30, 2008 for legal services in connection with collection of documentary transfer tax from nonpaying entities in the County.

### **EXECUTIVE SUMMARY**

The Napa County Recorder has demanded payment from Constellation for documentary transfer tax on corporate stock transfers in the County. Certain entities have refused to pay the tax, most notably Constellation Brands for the majority stock purchase of the Robert Mondavi Corporation. The tax owed by Constellation exceeds \$250,000, and taxes owed by other non-paying entities are significant. Specialized legal services from McDonough, Holland & Allen are being sought to collect the tax and/or prepare for litigation if Constellation and other entities continue to object to paying the tax.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Funds in the amount of \$20,000 have been included in County Counsel FY 2007/2008 budget. If the payment exceeds \$20,000, it is likely that County Counsel's budget can absorb the extra \$10,000.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Without the service from McDonough, Holland & Allen, the County will risk not

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	collecting the transfer tax Constellation owes.
Is the general fund affected?	Yes
Future fiscal impact:	County Counsel will include this cost in their FY 2008/2009 budget if necessary.
Consequences if not approved:	Without the service from McDonough, Holland & Allen, the County will risk not collecting the transfer tax Constellation and other entities owe.
Additional Information:	

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **BACKGROUND AND DISCUSSION**

The Napa County Recorder has demanded payment of documentary transfer tax on corporate stock transfers in the County. Certain entities have refused to pay the tax, most notably Constellation Brands for the majority stock purchase of the Robert Mondavi Corporation. The amount of taxes owed by Constellation exceeds \$250,000. To date Constellation and other entities have refused to pay the taxes.

The collection of documentary transfer tax is an unsettled and unique area of law. No county in California has determined the appropriate collection mechanism for nonpaying entities. The resolution of this matter could therefore result in a statewide, precedent setting decision. Specialized tax counsel services were therefore sought from McDonough, Holland & Allen. On May 16, 2007, the Board approved an agreement with McDonough, Holland & Allen to provide the following services:

1. Review County Counsel's draft opinion regarding collection of documentary transfer tax on majority interest stock purchase transfers and provide comments/analysis as to the sustainability of the position;
2. Review the procedures the County has taken to date with Constellation (County demand letters and responses from Constellation's counsel);
3. Research and determine the appropriate mechanism for collecting documentary transfer tax from nonpaying entities;
4. Draft the final demand letter to Constellation and evaluate options if Constellation rejects the demand; and
5. Participate in a conference call with County Counsel and Recorder-County Clerk to discuss these issues.

They have completed the tasks above and the agreement expired on June 30, 2007.

The agreement before you today is the next stages of this matter and Robert R. Rubin, Esq. will provide the following services under the new agreement:

1. Review the County's Documentary Transfer Tax Ordinance and assist in providing advice necessary to update the Ordinance;
2. Assist the Recorder with preparing demand letters to non-paying entities subject to the Documentary Transfer Tax; and
3. Initiate and pursue litigation if necessary to prosecute non-paying entities for payment of the Documentary

Transfer Tax.

If tax counsel is unable to collect the tax, tax counsel will represent the County and the Napa County Recorder in any potential litigation.

**SUPPORTING DOCUMENTS**

None

CEO Recommendation: Approve

Reviewed By: Maiko Klieman