



Agenda Date: 5/16/2006  
Agenda Placement: 6L

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Krishan Chopra for Robert Westmeyer - County Counsel  
County Counsel  
**REPORT BY:** Brandi Periera, Paralegal, 251-1090  
**SUBJECT:** Approval of Professional Services Agreement with McDonough, Holland & Allen.

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### **RECOMMENDATION**

County Counsel and the 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 May 16, 2006 through June 30, 2007 for legal services in connection with collection of documentary transfer tax from nonpaying entities in the County.

### **EXECUTIVE SUMMARY**

The Napa County Recorder-Clerk 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. Specialized legal services from McDonough, Holland & Allen are being sought to collect the tax and/or prepare for litigation if Constellation continues to object to paying the tax.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	For FY 05-06, \$10,000 will be paid out of Central Services budget. For FY 06-07, \$20,000 will be paid out of County Counsel's budget. County Counsel has budgeted enough to absorb this cost in FY 06-07.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Without the service from McDonough, Holland & Allen, the County will risk not collecting the transfer tax Constellation owes.

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Is the general fund affected?	Yes
Future fiscal impact:	County Counsel has enough budgeted in their FY 06-07 budget to absorb the cost.
Consequences if not approved:	Without the service from McDonough, Holland & Allen, the County will risk not collecting the transfer tax Constellation owes.
Additional Information:	None

### **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-Clerk 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 has 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 are therefore being sought from McDonough, Holland & Allen. Robert R. Rubin, Esq. will provide the following services under the agreement:

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.

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

### **SUPPORTING DOCUMENTS**

None

CEO Recommendation: Approve  
Reviewed By: Maiko Klieman