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Fannie Mae, Freddie Mac, and the Federal Housing & Finance Agency (FHFA) are Exempt from Real Estate Transfer Taxes

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In *County of Oakland v. Federal Housing Finance Agency*, the Sixth Circuit published an opinion clarifying that Fannie Mae, Freddie Mac, and the Federal Housing & Finance Agency ("FHFA") are exempt from all taxation, which includes state and county real estate transfer taxes. This was an important decision because many counties throughout the nation have been suing, or contemplating suing, these entities for similar violations of other states' laws.

In this case, several different counties in Michigan, along with the State of Michigan, sought to recover transfer taxes from the defendants for real property transfers recorded by the defendants in Michigan. When Congress created each of the defendants, however, Congress expressly exempted them from "all" state and local taxes, except for taxes on real property. Importantly, the parties agreed here that the transfer taxes are excise taxes, not taxes on real property.

The district court found in favor of the plaintiff because it said that "all taxation" applied only to direct taxes, not excise taxes. As the Sixth Circuit said, though, "A straightforward reading of the statute leads to the unremarkable conclusion that when Congress said 'all taxation' it meant all taxation." Also importantly, the Sixth Circuit noted that Congress created a carve-out from all taxation by permitting taxes on real property, but did not provide a similar carve-out for the type of transfer taxes at issue here. In the end, the Sixth Circuit found that the plain and unambiguous language of the federal statute controlled and said that Fannie Mae, Freddie Mac, and the FHFA are exempt from the real estate transfer taxes.

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