

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 353 (Delegate Finifter)
Ways and Means

Recordation Tax and State and County Transfer Taxes - Exemption for Transfer to Subsidiary Limited Liability Company

This bill exempts from recordation and transfer taxes a transfer of real property from a parent partnership or parent limited liability company (LLC) to a subsidiary LLC wholly owned by the same parent company.

The bill is effective July 1, 2001.

Fiscal Summary

State Effect: Potential significant decrease in special fund transfer tax revenues. Expenditures would not be affected.

Local Effect: Potential significant loss in recordation and transfer taxes. *This bill imposes a mandate on a unit of local government.*

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: This bill exempts from recordation and transfer taxes an instrument of writing that transfers title to real property from a parent partnership or parent LLC to a subsidiary LLC wholly owned by the same parent partnership or parent LLC. The parent partnership or parent LLC must be an original member of the subsidiary LLC and the transfer must be for:

- no consideration;
- nominal consideration; or
- consideration that comprises only the issuance of a membership interest in the subsidiary LLC.

Current Law: Chapter 630 of 1996 provided an exemption from recordation and transfer taxes for transfers of real property from a predecessor entity to an LLC if: (1) the members of the LLC are identical to the partners of the converting entity; (2) each member's allocation of the profits and losses of the LLC are identical to that member's allocation of the converting entity; and (3) the instrument of writing that transfers title to real property represents the dissolution of the predecessor entity for purposes of conversion to an LLC.

Background:

State Transfer Tax

The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland home buyers). The tax is collected by the clerks of the circuit court and transferred to the Comptroller of the Treasury.

State transfer tax revenues are special fund revenues dedicated for specific programs and are distributed as follows: 3% of total revenue is earmarked to defray administrative costs and \$1 million to cover debt service expenses. The remaining revenues are approximately dedicated to the following: Program Open Space (76%), Agricultural Land Preservation Fund (17%), Heritage Conservation Fund (2%), and Rural Legacy Program (5%). Approximately 50% of Program Open Space revenues are distributed to local Program Open Space programs. Any decrease in transfer tax revenues would result in a funding decrease for these programs. The property transfer tax allocation to these programs for fiscal 2002 totals \$109,761,300.

Local Transfer Tax

A local property transfer tax may be imposed on instruments transferring title to real property. Local transfer tax rates range from .2% to 1.5% of a transaction's value. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage. Except in Prince George's County, mortgages are not subject to the tax.

Local Recordation Tax

The counties and Baltimore City are authorized by law to impose locally established recordation tax rates on any business or person: (1) conveying title to real property; or (2) creating or giving notice of a security interest (i.e., a lien or encumbrance) in real or personal property, by means of an instrument of writing.

The clerks of the circuit court collect the county recordation taxes in all counties except Prince George's, where they are collected by the county director of finance. Fees ranging from 3% to 5% of the tax collected are retained by the clerks, which are credited to the State general fund. The remainder of the tax is remitted to the respective counties. Total recordation taxes collected during fiscal 2000, the latest year for which information is available, totaled \$198,303,150 while fees retained by the clerks totaled \$6,982,069.

Local Fiscal Effect: County recordation and transfer taxes could significantly decrease if this bill were to allow the continuous transfer of property between parties without being subject to taxation. First, the bill allows a parent partnership or parent LLC to transfer real property to a subsidiary LLC without being subject to recordation and transfer tax, resulting in some revenue loss to the counties. The revenue loss would probably be minimal as this type of transfer is unusual. The secondary effect of the bill, however, could enable any partnership or LLC that owns a number of properties to use a simple, multi-step process to avoid taxation on any future sales of property. This could be accomplished by:

- forming a new subsidiary LLC;
- transferring one piece of property to the subsidiary LLC; and
- selling the ownership interest in the subsidiary LLC.

Since the property remains titled to the LLC, no recordation or transfer taxes would be incurred. It is assumed that the loss in revenue from these types of transactions would be significant.

State Fiscal Effect: Similar to the effect on local governments, if this bill allows the continuous transfer of real property between parties without being subject to the State transfer tax, State special fund revenues could decrease significantly.

Small Business Effect: Allowing the transfer of property without being subject to recordation and transfer taxes could be potentially meaningful to small business.

Additional Information

Prior Introductions: Similar legislation was introduced during the 2000 session as HB 239 which was not reported out of the Ways and Means Committee.

Cross File: None.

Information Source(s): Department of Assessments and Taxation, Maryland Association of Counties, Department of Legislative Services

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