

SENATE BILL 316

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Q6

2002 Regular Session
2r1001
CF 2r1803

By: **Senators Frosh, Currie, Hogan, Neall, Ruben, and Van Hollen**
Introduced and read first time: January 25, 2002
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Recordation and Transfer Taxes - Transfers of Controlling Interests**

3 FOR the purpose of imposing recordation and transfer taxes on the transfer of
4 controlling interest in certain entities owning certain interests in real property
5 in Maryland; requiring the filing of a certain report; providing for a filing fee;
6 establishing the rate of taxation and the method of calculation of tax liability;
7 exempting certain transfers; providing for interest and a penalty for certain
8 filings; requiring the Department of Assessments and Taxation to adopt certain
9 regulations; defining certain terms; providing for a delayed effective date; and
10 generally relating to the taxation of transfers of controlling interests in certain
11 entities.

12 BY adding to
13 Article - Tax - Property
14 Section 12-116 and 13-103
15 Annotated Code of Maryland
16 (2001 Replacement Volume and 2001 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Tax - Property**

20 12-116.

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

23 (2) "CONTROLLING INTEREST" MEANS:

24 (I) MORE THAN 50% OF THE TOTAL VALUE OF ALL CLASSES OF
25 STOCK OF A CORPORATION;

26 (II) MORE THAN 50% OF THE TOTAL INTEREST IN CAPITAL AND
27 PROFITS OF A PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER
28 UNINCORPORATED FORM OF DOING BUSINESS; OR

1 (III) MORE THAN 50% OF THE BENEFICIAL INTEREST IN A TRUST.

2 (3) "FINAL TRANSFER" MEANS THAT TRANSFER OF ANY PORTION OF A
3 CONTROLLING INTEREST WHICH COMPLETES THE TRANSFER OF A CONTROLLING
4 INTEREST IN A REAL PROPERTY ENTITY.

5 (4) "PLAN OF TRANSFER" MEANS AN INTENTIONAL PLAN OR PROGRAM
6 TO TRANSFER THE CONTROLLING INTEREST IN A REAL PROPERTY ENTITY.

7 (5) (I) "REAL PROPERTY" MEANS REAL PROPERTY LOCATED IN THE
8 STATE.

9 (II) "REAL PROPERTY" DOES NOT INCLUDE:

10 1. A LEASEHOLD, UNLESS CREATED BY A LEASE THAT IS
11 REQUIRED TO BE RECORDED UNDER § 3-101(A) OF THE REAL PROPERTY ARTICLE; OR

12 2. ANY MORTGAGE, DEED OF TRUST, OR OTHER LIEN UPON
13 OR SECURITY INTEREST IN REAL PROPERTY THAT SECURES AN INDEBTEDNESS.

14 (6) (I) "REAL PROPERTY ENTITY" MEANS A CORPORATION,
15 PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OTHER
16 UNINCORPORATED FORM OF DOING BUSINESS, OR TRUST THAT DIRECTLY OR
17 BENEFICIALLY OWNS REAL PROPERTY THAT:

18 1. CONSTITUTES AT LEAST 80% OF THE VALUE OF ITS
19 ASSETS; AND

20 2. HAS AN AGGREGATE VALUE OF AT LEAST \$500,000.

21 (II) FOR THE PURPOSES OF THIS PARAGRAPH, THE VALUE OF REAL
22 PROPERTY SHALL BE DETERMINED WITHOUT REDUCTION FOR ANY MORTGAGE,
23 DEED OF TRUST, OR OTHER LIEN UPON OR SECURITY INTEREST IN THE REAL
24 PROPERTY.

25 (B) (1) THE RECORDATION TAX IS IMPOSED ON THE TRANSFER OF A
26 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY AS IF THE REAL PROPERTY
27 DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY WERE
28 CONVEYED BY AN INSTRUMENT OF WRITING THAT IS RECORDED WITH THE CLERK
29 OF THE CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT UNDER §
30 12-102 OF THIS SUBTITLE.

31 (2) (I) THE RECORDATION TAX IS IMPOSED ON THE CONSIDERATION
32 PAYABLE FOR THE TRANSFER OF THE CONTROLLING INTEREST IN THE REAL
33 PROPERTY ENTITY.

34 (II) THE CONSIDERATION TO WHICH THE RECORDATION TAX
35 APPLIES IS REDUCED BY THE AMOUNT ALLOCABLE TO THE ASSETS OF THE REAL
36 PROPERTY ENTITY OTHER THAN REAL PROPERTY.

1 (III) THE REAL PROPERTY ENTITY HAS THE BURDEN OF
2 ESTABLISHING TO THE SATISFACTION OF THE DEPARTMENT THE CONSIDERATION
3 REFERRED TO IN SUBPARAGRAPH (I) OF THIS PARAGRAPH AND THE AMOUNT OF ANY
4 CONSIDERATION ALLOCABLE TO ASSETS OTHER THAN REAL PROPERTY REFERRED
5 TO IN SUBPARAGRAPH (II) OF THIS PARAGRAPH.

6 (IV) IF THE REAL PROPERTY ENTITY FAILS TO ESTABLISH THE
7 AMOUNT OF CONSIDERATION REFERRED TO IN SUBPARAGRAPH (I) OF THIS
8 PARAGRAPH, THE RECORDATION TAX IS IMPOSED ON THE VALUE OF THE REAL
9 PROPERTY DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY
10 DETERMINED BY THE DEPARTMENT AT THE DATE OF FINALITY IMMEDIATELY
11 BEFORE THE DATE OF THE FINAL TRANSFER.

12 (3) EXCEPT AS OTHERWISE PROVIDED IN § 12-103(D) OF THIS SUBTITLE,
13 THE RECORDATION TAX IS APPLIED AT THE RATE SET UNDER § 12-103(B) OF THIS
14 SUBTITLE BY THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

15 (C) (1) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
16 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IN ANY OF THE
17 CIRCUMSTANCES DESCRIBED IN § 12-108 OF THIS SUBTITLE.

18 (2) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
19 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY EFFECTED IN MORE THAN
20 ONE TRANSACTION IF:

21 (I) THE TRANSFER IS COMPLETED OVER A PERIOD OF MORE THAN
22 12 MONTHS; OR

23 (II) THE TRANSFER IS NOT MADE IN ACCORDANCE WITH A PLAN OF
24 TRANSFER.

25 (3) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
26 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY TO A REAL PROPERTY ENTITY
27 IF THE OWNERSHIP INTERESTS IN THE TRANSFEREE REAL PROPERTY ENTITY ARE
28 HELD BY THE SAME PERSONS AND IN THE SAME PROPORTION AS IN THE REAL
29 PROPERTY ENTITY THE CONTROLLING INTEREST OF WHICH WAS TRANSFERRED.

30 (4) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
31 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IF EACH TRANSFEROR, EACH
32 TRANSFEREE, AND EACH REAL PROPERTY ENTITY IS:

33 (I) A SUBSIDIARY CORPORATION, ALL OF THE STOCK OF WHICH IS
34 OWNED, DIRECTLY OR INDIRECTLY, BY A COMMON PARENT CORPORATION;

35 (II) A PARTNERSHIP, ALL OF THE INTERESTS IN WHICH ARE
36 OWNED, DIRECTLY OR INDIRECTLY, BY ONE OR MORE SUBSIDIARIES OR THE
37 COMMON PARENT CORPORATION; OR

38 (III) THE COMMON PARENT CORPORATION.

1 (5) THE REAL PROPERTY ENTITY HAS THE BURDEN OF ESTABLISHING
2 TO THE SATISFACTION OF THE DEPARTMENT THE APPLICABILITY OF ANY
3 EXEMPTION REFERRED TO IN PARAGRAPHS (1) THROUGH (4) OF THIS SUBSECTION.

4 (D) (1) THE REAL PROPERTY ENTITY SHALL FILE WITH THE DEPARTMENT A
5 REPORT OF ANY TRANSFER OF A CONTROLLING INTEREST IN THE REAL PROPERTY
6 ENTITY THAT IS COMPLETED WITHIN A PERIOD OF 12 MONTHS OR LESS WITHIN 30
7 DAYS FOLLOWING THE DATE OF THE FINAL TRANSFER.

8 (2) THE REPORT SHALL INCLUDE ALL INFORMATION TO ESTABLISH TO
9 THE SATISFACTION OF THE DEPARTMENT:

10 (I) THE CONSIDERATION REFERRED TO IN SUBSECTION (B)(2)(I) OF
11 THIS SECTION;

12 (II) THE AMOUNT OF ASSETS OTHER THAN REAL ESTATE
13 REFERRED TO IN SUBSECTION (B)(2)(II) OF THIS SECTION; AND

14 (III) ANY EXEMPTION PROVIDED FOR IN SUBSECTION (C) OF THIS
15 SECTION.

16 (3) THE REPORT SHALL BE ACCOMPANIED BY PAYMENT OF:

17 (I) A \$20 FILING FEE; AND

18 (II) ANY TAX, INTEREST, AND PENALTY THAT IS DUE.

19 (E) (1) IF ANY TAX DUE UNDER THIS SECTION REMAINS UNPAID FOR 30
20 DAYS AFTER THE DATE OF THE FINAL TRANSFER, THEN:

21 (I) INTEREST ON THE UNPAID AMOUNT SHALL ACCRUE
22 THEREAFTER AT THE RATE OF 1% PER MONTH; AND

23 (II) A PENALTY OF 10% OF THE UNPAID AMOUNT SHALL BE DUE.

24 (2) ANY TAX, INTEREST, AND PENALTY DUE UNDER THIS SECTION IS AN
25 OBLIGATION OF THE REAL PROPERTY ENTITY.

26 (3) FOR REASONABLE CAUSE, THE DEPARTMENT MAY WAIVE THE
27 IMPOSITION OF INTEREST OR PENALTY.

28 (F) THIS SECTION DOES NOT APPLY TO:

29 (1) A PLEDGE OF STOCK OR OTHER INTEREST IN A REAL PROPERTY
30 ENTITY AS SECURITY FOR A LOAN; OR

31 (2) THE ADMISSION TO THE REAL PROPERTY ENTITY OF ADDITIONAL
32 SHAREHOLDERS, PARTNERS, BENEFICIAL OWNERS, OR OTHER MEMBERS INCIDENT
33 TO THE RAISING OF ADDITIONAL CAPITAL THROUGH A PUBLIC OR PRIVATE
34 OFFERING OF STOCK OR OTHER INTERESTS IN THE REAL PROPERTY ENTITY IF:

1 (I) THE EFFECTIVE MANAGEMENT OF THE REAL PROPERTY
2 ENTITY IS NOT SUBSTANTIALLY CHANGED; AND

3 (II) UNDER THE TERMS OF THE OFFERING, NONE OF THE NEW
4 MEMBERS IS EXPECTED TO PARTICIPATE IN THE DAY-TO-DAY MANAGEMENT OF THE
5 REAL PROPERTY ENTITY.

6 (G) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER
7 THIS SECTION.

8 (2) THE REGULATIONS SHALL INCLUDE ANY ADDITIONAL STANDARDS
9 AND EXEMPTIONS TO ASSURE THAT:

10 (I) A TAX IS IMPOSED WHEN A TRANSACTION IS STRUCTURED
11 INVOLVING A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY TO AVOID
12 PAYMENT OF THE RECORDATION TAX;

13 (II) EXEMPTIONS PROVIDED BY LAW WHEN REAL PROPERTY IS
14 TRANSFERRED BY AN INSTRUMENT OF WRITING ARE APPLICABLE; AND

15 (III) THERE IS NO DOUBLE TAXATION OF A SINGLE TRANSACTION.

16 13-103.

17 (A) IN THIS SECTION, THE WORDS "CONTROLLING INTEREST", "REAL
18 PROPERTY", AND "REAL PROPERTY ENTITY" HAVE THE MEANINGS STATED IN § 12-116
19 OF THIS ARTICLE.

20 (B) (1) THE TAXES UNDER THIS TITLE ARE IMPOSED ON THE TRANSFER OF
21 A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY AS IF THE REAL PROPERTY
22 DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY WERE
23 CONVEYED BY AN INSTRUMENT OF WRITING THAT IS RECORDED WITH THE CLERK
24 OF THE CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT UNDER §
25 13-202 OF THIS TITLE.

26 (2) THE TAXES UNDER THIS SECTION ARE IMPOSED ON THE
27 CONSIDERATION PAYABLE FOR THE TRANSFER OF THE CONTROLLING INTEREST IN
28 THE REAL PROPERTY ENTITY OR ON THE VALUE OF THE REAL PROPERTY DIRECTLY
29 OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY, AS PROVIDED IN §
30 12-116(B)(2) OF THIS ARTICLE.

31 (3) (I) EXCEPT FOR THE COUNTY TRANSFER TAX, THE TAXES UNDER
32 THIS SECTION SHALL BE APPLIED AT THE RATES ESTABLISHED IN THIS TITLE.

33 (II) THE COUNTY TRANSFER TAX SHALL BE APPLIED AT THE RATE
34 IMPOSED BY THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

35 (C) THE TAXES UNDER THIS TITLE ARE NOT IMPOSED ON THE TRANSFER OF A
36 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IN ANY OF THE
37 CIRCUMSTANCES DESCRIBED:

1 (1) IN § 13-207 OF THIS TITLE THAT EXEMPTS AN INSTRUMENT OF
2 WRITING FROM THE TRANSFER TAX; OR

3 (2) IN § 12-116(C) OF THIS ARTICLE THAT EXEMPTS THE TRANSFER OF A
4 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY FROM THE RECORDATION
5 TAX.

6 (D) IN EACH INSTANCE IN WHICH A CONTROLLING INTEREST IN A REAL
7 PROPERTY ENTITY IS TRANSFERRED, THE PROVISIONS OF § 12-116(D) AND (E) OF THIS
8 ARTICLE ARE APPLICABLE.

9 (E) THIS SECTION DOES NOT APPLY IN THE CIRCUMSTANCES DESCRIBED IN §
10 12-116(F) OF THIS ARTICLE.

11 (F) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER THIS
12 SECTION IN THE SAME MANNER AS IN § 12-116(G) OF THIS ARTICLE.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 January 1, 2003.