

HOUSE BILL 1236

Q6

(3lr2389)

ENROLLED BILL

— Ways and Means/Budget and Taxation —

Introduced by ~~Delegates Hixson and A. Miller~~, **A. Miller, and Rosenberg**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Recordation and Transfer Taxes – Low Income Housing Projects –**
3 **Controlling Interest**

4 FOR the purpose of establishing the consideration used to calculate the recordation
5 and State and county transfer tax on certain transactions for which a
6 controlling interest is conveyed; ~~defining certain terms; making conforming and~~
7 ~~stylistic changes;~~ providing for the application of this Act; and generally relating
8 to the recordation of *and* State and county transfer taxes.

9 BY repealing and reenacting, with amendments,
10 Article – Tax – Property
11 Section ~~12-101(g) through (l), 12-103(a), 13-101(g) and (h), 13-103(a),~~
12 13-203(a), and 13-412
13 Annotated Code of Maryland
14 (2012 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 BY adding to
 2 Article – Tax – Property
 3 Section ~~12-101(a-1) and (g), 12-103(a-1), 12-103(a-1) 13-101(a-1) and (g), and~~
 4 ~~13-203(a-1), and 13-412(e)~~
 5 Annotated Code of Maryland
 6 (2012 Replacement Volume)

7 BY repealing
 8 Article – Tax – Property
 9 Section 12-117(a)(6)
 10 Annotated Code of Maryland
 11 (2012 Replacement Volume)

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

14 Article – Tax – Property

15 ~~12-101.~~

16 ~~(A-1) “ACTUAL PAYMENT” MEANS THE AMOUNT OF MONETARY~~
 17 ~~CONSIDERATION PAID FOR THE CONVEYANCE OF A CONTROLLING INTEREST IN~~
 18 ~~A REAL PROPERTY ENTITY THAT OWNS PROPERTY DEVELOPED UNDER SECTION~~
 19 ~~42 OF THE INTERNAL REVENUE CODE, THE LOW INCOME HOUSING TAX~~
 20 ~~CREDIT PROGRAM.~~

21 ~~(G) (1) “REAL PROPERTY ENTITY” MEANS A CORPORATION, A~~
 22 ~~PARTNERSHIP, AN ASSOCIATION, A LIMITED LIABILITY COMPANY, A LIMITED~~
 23 ~~LIABILITY PARTNERSHIP, ANY OTHER UNINCORPORATED FORM OF DOING~~
 24 ~~BUSINESS, OR A TRUST THAT DIRECTLY OR BENEFICIALLY OWNS REAL~~
 25 ~~PROPERTY THAT:~~

26 ~~(H) CONSTITUTES AT LEAST 80% OF THE VALUE OF ITS~~
 27 ~~ASSETS; AND~~

28 ~~(H) HAS AN AGGREGATE VALUE OF AT LEAST \$1,000,000~~
 29 ~~THAT IS DETERMINED WITHOUT REDUCTION FOR ANY MORTGAGE, DEED OF~~
 30 ~~TRUST, OR OTHER LIEN ON OR SECURITY INTEREST IN THE REAL PROPERTY.~~

31 ~~(2) “REAL PROPERTY ENTITY” DOES NOT INCLUDE AN ENTITY~~
 32 ~~WITH LAND HOLDINGS THAT, OTHER THAN HOMESITES OR AREAS OF~~
 33 ~~COMMERCIAL ACTIVITY RELATED TO AGRICULTURAL PRODUCTION, ARE~~
 34 ~~ENTIRELY SUBJECT TO AN AGRICULTURAL USE ASSESSMENT UNDER § 8-209 OF~~
 35 ~~THIS ARTICLE.~~

1 ~~[(g)] (H)~~ ~~“Recordation tax” means the tax imposed under this title.~~

2 ~~[(h)] (I)~~ ~~(1) “Security agreement” means an agreement that creates or~~
 3 ~~provides for a security interest.~~

4 ~~(2) “Security agreement” includes a financing statement filed under~~
 5 ~~the Maryland Uniform Commercial Code to perfect a security interest.~~

6 ~~[(i)] (J)~~ ~~(1) “Security interest” means an interest in real property or~~
 7 ~~personal property that secures payment or performance of an obligation.~~

8 ~~(2) “Security interest” includes a lien or encumbrance on real property~~
 9 ~~or personal property.~~

10 ~~[(j)] (K)~~ ~~“Subsidiary corporation” includes any corporation that is a~~
 11 ~~subsidiary of either a parent corporation or any other subsidiary corporation of the~~
 12 ~~parent corporation.~~

13 ~~[(k)] (L)~~ ~~“Successor” has the meaning stated in § 1-101(y) of the~~
 14 ~~Corporations and Associations Article.~~

15 ~~[(l)] (M)~~ ~~(1) “Supplemental instrument of writing” means an instrument~~
 16 ~~of writing that confirms, corrects, modifies, or supplements a previously recorded~~
 17 ~~instrument of writing.~~

18 ~~(2) “Supplemental instrument of writing” includes an instrument of~~
 19 ~~writing that secures a debt and grants a security interest in property in addition to or~~
 20 ~~in substitution for property described in the previously recorded instrument of writing.~~

21 12-103.

22 (a) (1) [The] **EXCEPT AS PROVIDED IN SUBSECTION (A-1) OF THIS**
 23 **SECTION, THE** recordation tax rates under this section are applied to each \$500 or
 24 fraction of \$500 of consideration payable or of the principal amount of the debt secured
 25 for an instrument of writing.

26 (2) The consideration:

27 (i) includes the amount of any mortgage or deed of trust
 28 assumed by the grantee; and

29 (ii) subject to item (i) of this paragraph, includes only the
 30 amount paid or delivered in return for the sale of the property and does not include
 31 the amount of any debt forgiven or no longer secured by a mortgage or deed of trust on
 32 the property.

1 (A-1) (1) THE RECORDATION TAX RATES UNDER THIS SECTION ARE
 2 APPLIED TO EACH \$500 OR FRACTION OF \$500 OF CONSIDERATION PAID FOR
 3 THE CONVEYANCE OF A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY
 4 AS DEFINED IN § 12-117 OF THIS SUBTITLE THAT HAS DEVELOPED REAL
 5 PROPERTY UNDER SECTION 42 OF THE INTERNAL REVENUE CODE, THE LOW
 6 INCOME HOUSING TAX CREDIT PROGRAM.

7 (2) THE CONSIDERATION UNDER THIS SUBSECTION SHALL BE
 8 THE ACTUAL PAYMENT MADE BY THE PURCHASER TO THE SELLER FOR THE
 9 PURCHASE OF THE INTEREST.

10 ~~12-117.~~

11 (a) ~~[(6) (i) "Real property entity" means a corporation, partnership,~~
 12 ~~association, limited liability company, limited liability partnership, other~~
 13 ~~unincorporated form of doing business, or trust that directly or beneficially owns real~~
 14 ~~property that:~~

15 ~~1. constitutes at least 80% of the value of its assets; and~~

16 ~~2. has an aggregate value of at least \$1,000,000.~~

17 ~~(ii) For the purposes of this paragraph, the value of real~~
 18 ~~property shall be determined without reduction for any mortgage, deed of trust, or~~
 19 ~~other lien on or security interest in the real property.~~

20 ~~(iii) "Real property entity" does not include an entity with land~~
 21 ~~holdings that, other than homesites or areas of commercial activity related to~~
 22 ~~agricultural production, are entirely subject to an agricultural use assessment under §~~
 23 ~~8-200 of this article.]~~

24 ~~13-101.~~

25 ~~(A-1) "ACTUAL PAYMENT" HAS THE MEANING STATED IN § 12-101 OF~~
 26 ~~THIS ARTICLE.~~

27 ~~(G) (1) "REAL PROPERTY ENTITY" MEANS A CORPORATION, A~~
 28 ~~PARTNERSHIP, AN ASSOCIATION, A LIMITED LIABILITY COMPANY, A LIMITED~~
 29 ~~LIABILITY PARTNERSHIP, ANY OTHER UNINCORPORATED FORM OF DOING~~
 30 ~~BUSINESS, OR A TRUST THAT DIRECTLY OR BENEFICIALLY OWNS REAL~~
 31 ~~PROPERTY THAT:~~

32 ~~(i) CONSTITUTES AT LEAST 80% OF THE VALUE OF ITS~~
 33 ~~ASSETS; AND~~

1 ~~(H) HAS AN AGGREGATE VALUE OF AT LEAST \$1,000,000~~
 2 ~~THAT IS DETERMINED WITHOUT REDUCTION FOR ANY MORTGAGE, DEED OF~~
 3 ~~TRUST, OR OTHER LIEN ON OR SECURITY INTEREST IN THE REAL PROPERTY.~~

4 ~~(2) "REAL PROPERTY ENTITY" DOES NOT INCLUDE AN ENTITY~~
 5 ~~WITH LAND HOLDINGS THAT, OTHER THAN HOMESITES OR AREAS OF~~
 6 ~~COMMERCIAL ACTIVITY RELATED TO AGRICULTURAL PRODUCTION, ARE~~
 7 ~~ENTIRELY SUBJECT TO AN AGRICULTURAL USE ASSESSMENT UNDER § 8 209 OF~~
 8 ~~THIS ARTICLE.~~

9 ~~[(g)](H) "Subsidiary corporation" includes any corporation that is a~~
 10 ~~subsidiary of either a parent corporation or any other subsidiary corporation of the~~
 11 ~~parent corporation.~~

12 ~~[(h)](I) "Successor" has the meaning stated in § 1-101(y) of the~~
 13 ~~Corporations and Associations Article.~~

14 ~~13-103.~~

15 ~~(a) In this section, "controlling interest" [,] AND "real property" [,] and "real~~
 16 ~~property entity" [,] have the meanings stated in § 12-117 of this article.~~

17 13-203.

18 (a) (1) Except AS PROVIDED IN ~~SUBSECTION (A-1)~~ SUBSECTIONS
 19 (A-1) AND (B) OF THIS SECTION, AND EXCEPT as provided in subsection (b) of this
 20 ~~section,~~ the rate of the transfer tax is 0.5% of the consideration payable for the
 21 instrument of writing.

22 (2) The consideration:

23 (i) includes the amount of any mortgage or deed of trust
 24 assumed by the grantee; and

25 (ii) subject to item (i) of this paragraph, includes only the
 26 amount paid or delivered in return for the sale of the property and does not include
 27 the amount of any debt forgiven or no longer secured by a mortgage or deed of trust on
 28 the property.

29 (A-1) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,
 30 THE RATE OF THE TRANSFER TAX IS 0.5% OF THE CONSIDERATION PAID FOR
 31 THE TRANSFER OF A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY AS
 32 DEFINED IN § 13-103 OF THIS TITLE THAT HAS DEVELOPED REAL PROPERTY

1 UNDER SECTION 42 OF THE INTERNAL REVENUE CODE, THE LOW INCOME
2 HOUSING TAX CREDIT PROGRAM.

3 (2) THE CONSIDERATION UNDER THIS SUBSECTION SHALL BE
4 THE ACTUAL PAYMENT MADE BY THE PURCHASER TO THE SELLER FOR THE
5 PURCHASE OF THE INTEREST.

6 13-412.

7 (a) (1) Except AS PROVIDED IN SUBSECTION (C) OF THIS SECTION
8 AND ~~EXCEPT as provided in~~ paragraph (2) of this subsection, a county transfer tax
9 shall apply to the consideration payable for an instrument of writing.

10 (2) If a county transfer tax applies to mortgages or deeds of trust, the
11 county transfer tax shall apply to the consideration payable or the principal amount of
12 the debt secured for an instrument of writing.

13 (b) [The] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,
14 THE consideration:

15 (1) includes the amount of any mortgage or deed of trust assumed by
16 the grantee; and

17 (2) subject to item (1) of this subsection, includes only the amount paid
18 or delivered in return for the sale of the property and does not include the amount of
19 any debt forgiven or no longer secured by a mortgage or deed of trust on the property.

20 (c) (1) A COUNTY TRANSFER TAX APPLIES TO THE CONSIDERATION
21 PAID FOR THE TRANSFER OF A CONTROLLING INTEREST IN A REAL PROPERTY
22 ENTITY AS DEFINED IN § 13-103 OF THIS TITLE THAT HAS DEVELOPED REAL
23 PROPERTY UNDER SECTION 42 OF THE INTERNAL REVENUE CODE, THE LOW
24 INCOME HOUSING TAX CREDIT PROGRAM.

25 (2) THE CONSIDERATION UNDER THIS SUBSECTION SHALL BE
26 THE ACTUAL PAYMENT MADE BY THE PURCHASER TO THE SELLER FOR THE
27 PURCHASE OF THE INTEREST.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 July 1, 2013, and shall be applicable to all instruments of writing recorded or filed on
30 or after July 1, 2013.