

SENATE BILL 597

Q6

6lr2764

By: **Senators Peters, DeGrange, Edwards, Guzzone, King, Manno, and Serafini**
Introduced and read first time: February 5, 2016
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Recordation and Transfer Taxes – Transfer of Controlling Interest – Exemptions**

3 FOR the purpose of altering a certain exemption from recordation and transfer taxes so as
4 to provide that a transfer of a controlling interest in a real property entity is not
5 subject to recordation and transfer taxes if the transfer of the real property owned
6 by the real property entity between the same transferor and transferee of the
7 controlling interest under the same circumstances would have been exempt under
8 certain provisions of law; altering a certain exemption from recordation and transfer
9 taxes so as to provide that the recordation and transfer tax is not imposed on the
10 transfer of a controlling interest in a real property entity to another entity if the
11 ownership interests in the transferee entity are owned by the same persons and in
12 the same proportion who own the transferor entity or the real property entity the
13 controlling interest of which was transferred; repealing a provision of law providing
14 that recordation and transfer taxes are not imposed on the transfer of a controlling
15 interest in a real property entity if each transferor, each transferee, and each real
16 property entity are certain types of business entities; and generally relating to
17 exemptions from recordation and transfer taxes for certain transfers of controlling
18 interests in a real property entity.

19 BY repealing and reenacting, with amendments,
20 Article – Tax – Property
21 Section 12–117
22 Annotated Code of Maryland
23 (2012 Replacement Volume and 2015 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article – Tax – Property
26 Section 13–103
27 Annotated Code of Maryland
28 (2012 Replacement Volume and 2015 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Tax – Property**

4 12–117.

5 (a) (1) In this section the following words have the meanings indicated.

6 (2) “Controlling interest” means:

7 (i) more than 80% of the total value of all classes of stock of a
8 corporation;

9 (ii) more than 80% of the total interest in capital and profits of a
10 partnership, association, limited liability company, or other unincorporated form of doing
11 business; or

12 (iii) more than 80% of the beneficial interest in a trust.

13 (3) “Final transfer” means that transfer of any portion of a controlling
14 interest that completes the transfer of a controlling interest in a real property entity.

15 (4) (i) “Plan of transfer” means an intentional plan or program to
16 transfer the controlling interest in a real property entity.

17 (ii) “Plan of transfer” does not include a series of sales of shares of a
18 publicly traded entity.

19 (5) (i) “Real property” means real property located in the State.

20 (ii) “Real property” does not include:

21 1. a leasehold, unless created by a lease that is required to
22 be recorded under § 3–101(a) of the Real Property Article; or

23 2. any mortgage, deed of trust, or other lien on or security
24 interest in real property that secures an indebtedness.

25 (6) (i) “Real property entity” means a corporation, partnership,
26 association, limited liability company, limited liability partnership, other unincorporated
27 form of doing business, or trust that directly or beneficially owns real property that:

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

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

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

4 (iii) "Real property entity" does not include an entity with land
5 holdings that, other than homesites or areas of commercial activity related to agricultural
6 production, are entirely subject to an agricultural use assessment under § 8–209 of this
7 article.

8 (b) (1) The recordation tax is imposed on the transfer of a controlling interest
9 in a real property entity as if the real property, directly or beneficially owned by the real
10 property entity, was conveyed by an instrument of writing that is recorded with the clerk
11 of the circuit court for a county or filed with the Department under § 12–102 of this title.

12 (2) (i) The recordation tax is imposed on the consideration payable for
13 the transfer of the controlling interest in the real property entity.

14 (ii) The consideration to which the recordation tax applies includes
15 the amount of:

16 1. any mortgage, deed of trust, or other lien on or security
17 interest in the real property directly or beneficially owned by the real property entity; and

18 2. any other debt or encumbrance of the real property entity.

19 (iii) The consideration to which the recordation tax applies is reduced
20 by the amount allocable to the assets of the real property entity other than real property.

21 (iv) The real property entity has the burden of establishing to the
22 satisfaction of the Department the consideration referred to in subparagraph (i) of this
23 paragraph and the amount of any consideration allocable to assets other than real property
24 referred to in subparagraph (iii) of this paragraph.

25 (v) If the real property entity fails to establish the amount of
26 consideration referred to in subparagraph (i) of this paragraph, the recordation tax is
27 imposed on the value of the real property, directly or beneficially owned by the real property
28 entity, determined by the Department at the date of finality immediately before the date of
29 the final transfer.

30 (3) Except as otherwise provided in § 12–103(d) of this title, the recordation
31 tax is applied at the rate set under § 12–103(b) of this title by the county where the real
32 property is located.

33 (c) (1) The transfer of a controlling interest in a real property entity is not
34 subject to recordation tax if the transfer of the real property [by an instrument of writing]
35 **OWNED BY THE REAL PROPERTY ENTITY** between the same [parties] **TRANSFEROR**

1 **AND TRANSFEREE OF THE CONTROLLING INTEREST** and under the same circumstances
2 would have been exempt under § 12–108 of this title.

3 (2) The recordation tax is not imposed on the transfer of a controlling
4 interest in a real property entity effected in more than one transaction if:

5 (i) the transfer is completed over a period of more than 12 months;
6 or

7 (ii) the transfer is not made in accordance with a plan of transfer.

8 (3) The recordation tax is not imposed on the transfer of a controlling
9 interest in a real property entity to another **[business] ENTITY** if the ownership interests
10 in the transferee **[business] entity** are **[held] OWNED, DIRECTLY OR INDIRECTLY**, by the
11 same persons and in the same proportion **[as in] WHO OWN, DIRECTLY OR INDIRECTLY**,
12 the **TRANSFEROR ENTITY OR THE** real property entity the controlling interest of which
13 was transferred.

14 (4) **[The** recordation tax is not imposed on the transfer of a controlling
15 interest in a real property entity if each transferor, each transferee, and each real property
16 entity is:

17 (i) a subsidiary corporation, all of the stock of which is owned,
18 directly or indirectly, by a common parent corporation;

19 (ii) a partnership, all of the interests in which are owned, directly or
20 indirectly, by one or more subsidiaries or the common parent corporation; or

21 (iii) the common parent corporation.

22 **[(5)]** The recordation tax is not imposed on the transfer of a controlling
23 interest in a real property entity if the transferee of the controlling interest in the real
24 property entity is:

25 (i) a nonstock corporation organized under Title 5, Subtitle 2 of the
26 Corporations and Associations Article; and

27 (ii) registered with the Department of Aging as a continuing care
28 retirement community under § 10–408 of the Human Services Article.

29 **[(6)](5)** The real property entity has the burden of establishing to the
30 satisfaction of the Department the applicability of any exemption referred to in paragraphs
31 (1) through **[(5)](4)** of this subsection.

1 (d) (1) The real property entity shall file with the Department a report of any
2 transfer of a controlling interest in the real property entity that is completed within a period
3 of 12 months or less within 30 days following the date of the final transfer.

4 (2) The report shall include all information to establish to the satisfaction
5 of the Department:

6 (i) the consideration referred to in subsection (b)(2)(i) of this section;

7 (ii) the amount of assets other than real estate referred to in
8 subsection (b)(2)(ii) of this section; and

9 (iii) any exemption provided for in subsection (c) of this section.

10 (3) The report shall be accompanied by payment of:

11 (i) a \$20 filing fee; and

12 (ii) any tax, interest, and penalty that is due.

13 (e) (1) If any tax due under this section remains unpaid for 30 days after the
14 date of the final transfer:

15 (i) interest on the unpaid amount shall accrue thereafter at the rate
16 of 1% per month; and

17 (ii) a penalty of 10% of the unpaid amount shall be due.

18 (2) Any tax, interest, and penalty due under this section is an obligation of
19 the real property entity.

20 (3) For reasonable cause, the Department may waive the imposition of
21 interest or penalty.

22 (f) This section does not apply to:

23 (1) a pledge of stock or other interest in a real property entity as security
24 for a loan; or

25 (2) the admission to the real property entity of additional shareholders,
26 partners, beneficial owners, or other members incident to the raising of additional capital
27 through a public or private offering of stock or other interests in the real property entity if:

28 (i) the effective management of the real property entity is not
29 substantially changed; and

1 (ii) under the terms of the offering, none of the new members is
2 expected to participate in the day-to-day management of the real property entity.

3 (g) (1) The Department shall adopt regulations to administer this section.

4 (2) The regulations shall include any additional standards and exemptions
5 to assure that:

6 (i) a tax is imposed when a transaction is structured involving a
7 controlling interest in a real property entity to avoid payment of the recordation tax;

8 (ii) exemptions provided by law when real property is transferred by
9 an instrument of writing are applicable; and

10 (iii) there is no double taxation of a single transaction.

11 13–103.

12 (a) In this section, “controlling interest”, “real property”, and “real property
13 entity” have the meanings stated in § 12–117 of this article.

14 (b) (1) The taxes under this title are imposed on the transfer of a controlling
15 interest in a real property entity as if the real property, directly or beneficially owned by
16 the real property entity, was conveyed by an instrument of writing that is recorded with
17 the clerk of the circuit court for a county or filed with the Department under § 13–202 of
18 this title.

19 (2) The taxes under this section are imposed on the consideration payable
20 for the transfer of the controlling interest in the real property entity or on the value of the
21 real property directly or beneficially owned by the real property entity, as provided in §
22 12–117(b)(2) of this article.

23 (3) (i) Except for the county transfer tax, the taxes under this section
24 shall be applied at the rates established in this title.

25 (ii) The county transfer tax shall be applied at the rate imposed by
26 the county where the real property is located.

27 (c) The taxes under this title are not imposed on the transfer of a controlling
28 interest in a real property entity in any of the circumstances described:

29 (1) in § 13–207 of this title that exempts an instrument of writing from the
30 transfer tax; or

31 (2) in § 12–117(c) of this article that exempts the transfer of a controlling
32 interest in a real property entity from the recordation tax.

1 (d) In each instance in which a controlling interest in a real property entity is
2 transferred, the provisions of § 12–117(d) and (e) of this article are applicable.

3 (e) This section does not apply in the circumstances described in § 12–117(f) of
4 this article.

5 (f) The Department shall adopt regulations to administer this section in the same
6 manner as in § 12–117(g) of this article.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
8 1, 2016.