

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 597

(Senator Peters, *et al.*)

Budget and Taxation

Ways and Means

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**Recordation and Transfer Taxes - Transfer of Controlling Interest - Exemptions**

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This bill exempts from the recordation tax and State transfer tax certain transfers of controlling interest between subsidiaries of the same limited liability companies (LLC) and transfers between an existing subsidiary LLC and a new LLC that have identical ownership.

The bill takes effect July 1, 2016.

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**Fiscal Summary**

**State Effect:** State transfer tax revenues may decrease beginning in FY 2017 depending on the number and value of transfers that occur pursuant to the bill. General fund revenues decrease as a result of commissions not being collected. State expenditures are not affected.

**Local Effect:** Local recordation tax revenues and transfer tax revenues in code counties may decrease beginning in FY 2017 depending on the number and value of transfers that occur pursuant to the bill. Local expenditures are not affected.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** The bill alters several recordation and transfer tax exemptions regarding the transfer of a controlling interest in a real property entity between certain parties.

The bill specifies that the transfer of a controlling interest in a real property entity is exempt from otherwise applicable recordation tax if the transfer of real property owned by the real property entity, between the same transferor and transferee of the controlling interest, and under the same circumstances, would have been exempt under § 12-108 of the Tax-Property Article. Section 12-117(c)(1) of the Tax-Property Article specifies that the recordation tax exemption applies to the transfer of a controlling interest in a real property entity “by an instrument of writing” (*i.e.*, instruments conveying title to or interest in real property) between the same “parties” and under the same circumstances that would qualify for an exemption under § 12-108.

The bill also modifies § 12-117(c)(3) of the Tax-Property Article by specifying that the recordation tax is not imposed on the transfer of a controlling interest in a real property entity to another entity if the ownership interests in the transferee entity are owned directly or indirectly by the same individuals and in the same proportions as the transferor entity.

The bill repeals § 12-117(c)(4) of the Tax-Property Article which exempts from recordation tax the transfer of a controlling interest in a real property entity if each party in the transaction is either the common parent corporation, a subsidiary corporation, or a partnership (with certain requirements attributable to each).

**Current Law:** Chapters 452 and 453 of 2013 exempted from the recordation tax and the State transfer tax the transfer of real property between a parent business entity and its wholly owned subsidiary or between subsidiaries wholly owned by the same parent business entity if the instrument of writing is for no consideration; nominal consideration; or consideration that comprises only the issuance, cancellation, or surrender of partnership interests, membership interests, or the ownership interest stock of a subsidiary business entity. Chapters 452 and 453 also exempted from the recordation tax and the State transfer tax the transfer of real property between a subsidiary business entity and its parent business entity under specified circumstances. A business entity is defined as a limited liability company or corporation. Ownership interest is defined as a membership interest or stock.

Chapter 129 of 2014 exempted from the recordation tax and the State transfer tax the transfer of real property between specified business entities as part of a reorganization under Section 368(a) of the Internal Revenue Code.

The bill is intended to update the statute regarding the transfer of controlling interest so that corporations and LLC that transfer controlling interest in real estate receive the same tax treatment under the same circumstances. Current law includes an exemption for situations where the transfer takes place between business entities owned by the same people, however, current statute applies the tax differently to corporations and LLCs under exactly the same circumstances.

Under current law transfers between subsidiaries of the same LLC and transfers between an existing subsidiary LLC and a new LLC that have identical ownership are taxable. However, transfers between subsidiaries of the same corporation and transfers between an existing subsidiary corporation and a new corporation that have identical ownership are not taxable.

**Background:** The counties and Baltimore City are authorized 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 State and most counties impose a 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 homebuyers). In some jurisdictions, a local property transfer tax may be imposed on instruments transferring title to real property. 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.

For purposes of local recordation taxes, which are applied to each \$500 or fraction of \$500 of consideration payable or of the principal amount of the debt secured for an instrument of writing, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee. For purposes of the State transfer tax, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee.

County governments collected \$699.4 million in local recordation and transfer taxes in fiscal 2014, and are expected to collect \$743.3 million in fiscal 2015 and \$748.1 million in fiscal 2016. These amounts are significantly lower than the amounts collected in fiscal 2006 when the soaring real estate market yielded recordation and transfer taxes totaling \$1.2 billion. **Exhibits 1 and 2** show estimated local recordation and transfer tax collections for fiscal 2014 through 2016.

**State Fiscal Effect:** State special fund revenues may decrease beginning in fiscal 2017 to the extent transfers pursuant to the bill occur. The amount of the revenue decrease due to the exemption depends on the number of transfers that occur pursuant to the bill and the amount of consideration associated with each transfer. The number of affected transfers that may occur in any year is not known. As a point of reference, the State transfer tax on a transaction valued at \$250,000 is \$1,250.

The clerks of the circuit court in several jurisdictions collect a number of different taxes and fees, including local recordation taxes. The Administrative Office of the Courts reports that the clerk of the circuit court collects local recordation taxes in the following

12 jurisdictions: Allegany, Calvert, Dorchester, Garrett, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Washington, Wicomico, and Worcester. In the remaining jurisdictions, local finance offices are responsible for the collection of these taxes. The clerks of the court who collect the tax are entitled to a commission of between 3% and 5% of all public monies collected, which, unless otherwise specified, are remitted to the State's general fund. As a result, any decrease in local recordation tax revenue will also decrease the amount of revenue remitted to the general fund.

**Local Fiscal Effect:** Local recordation tax revenues may decrease beginning in fiscal 2017 depending on the number and value of transfers that occur pursuant to the bill.

In code counties – Allegany, Caroline, Charles, Kent, Queen Anne's, and Worcester – transfers that are exempt from the State transfer tax are also exempt from the county transfer tax. As a result, transfer tax revenues in the six code counties will also decrease beginning in fiscal 2017. The amount of the revenue decrease due to the exemption depends on the number of transfers that occur pursuant to the bill and the amount of consideration associated with each transfer. The number of affected transfers that may occur in any year is not known.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1226 (Delegate A. Washington) - Ways and Means.

**Information Source(s):** Judiciary (Administrative Office of the Courts), State Department of Assessments and Taxation, Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2016  
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**Exhibit 1**  
**Recordation Tax Revenue Trend for Fiscal 2014-2016**

County	FY 2014	FY 2015	FY 2016	FY 2014-2015		FY 2015-2016		Average Annual Difference
				\$ Difference	% Difference	\$ Difference	% Difference	
Allegany	\$1,643,304	\$1,031,559	\$1,250,000	-\$611,745	-37.2%	\$218,441	21.2%	-12.8%
Anne Arundel	38,552,477	40,000,000	40,000,000	1,447,523	3.8%	0	0.0%	1.9%
Baltimore City	37,777,173	34,111,426	29,054,000	-3,665,747	-9.7%	-5,057,426	-14.8%	-12.3%
Baltimore	26,429,148	29,000,000	30,000,000	2,570,852	9.7%	1,000,000	3.4%	6.5%
Calvert	6,170,922	6,308,065	6,300,000	137,143	2.2%	-8,065	-0.1%	1.0%
Caroline	1,104,166	1,662,328	1,200,000	558,162	50.6%	-462,328	-27.8%	4.2%
Carroll	10,576,850	11,760,716	12,600,000	1,183,866	11.2%	839,284	7.1%	9.1%
Cecil	4,617,831	5,204,845	5,000,000	587,014	12.7%	-204,845	-3.9%	4.1%
Charles	11,094,837	16,918,000	11,300,000	5,823,163	52.5%	-5,618,000	-33.2%	0.9%
Dorchester	1,222,975	1,262,253	1,600,000	39,278	3.2%	337,747	26.8%	14.4%
Frederick	24,174,915	25,906,397	24,897,097	1,731,482	7.2%	-1,009,300	-3.9%	1.5%
Garrett	1,694,481	1,500,000	1,500,000	-194,481	-11.5%	0	0.0%	-5.9%
Harford	10,607,920	10,834,734	10,200,000	226,814	2.1%	-634,734	-5.9%	-1.9%
Howard	18,978,127	21,239,512	21,002,213	2,261,385	11.9%	-237,299	-1.1%	5.2%
Kent	999,378	1,122,571	1,178,700	123,193	12.3%	56,129	5.0%	8.6%
Montgomery	94,367,721	92,786,977	100,796,043	-1,580,744	-1.7%	8,009,066	8.6%	3.3%
Prince George's	30,944,735	34,372,200	36,950,100	3,427,465	11.1%	2,577,900	7.5%	9.3%
Queen Anne's	4,446,657	4,328,350	5,032,550	-118,307	-2.7%	704,200	16.3%	6.4%
St. Mary's	5,488,287	5,494,821	5,700,000	6,534	0.1%	205,179	3.7%	1.9%
Somerset	457,646	401,764	460,000	-55,882	-12.2%	58,236	14.5%	0.3%
Talbot	4,943,298	5,887,703	5,200,000	944,405	19.1%	-687,703	-11.7%	2.6%
Washington	4,657,341	6,024,153	5,800,000	1,366,812	29.3%	-224,153	-3.7%	11.6%
Wicomico	2,634,927	2,860,521	2,912,805	225,594	8.6%	52,284	1.8%	5.1%
Worcester	5,142,527	5,437,913	5,500,000	295,386	5.7%	62,087	1.1%	3.4%
<b>Total</b>	<b>\$348,727,643</b>	<b>\$365,456,808</b>	<b>\$365,433,508</b>	<b>\$16,729,165</b>	<b>4.8%</b>	<b>-\$23,300</b>	<b>0.0%</b>	<b>2.4%</b>

Source: Department of Legislative Services, County Budgets

**Exhibit 2**  
**Transfer Tax Revenue Trend for Fiscal 2014-2016**

County	FY 2014	FY 2015	FY 2016	FY 2014-2015		FY 2015-2016		Average Annual Difference
				\$ Difference	% Difference	\$ Difference	% Difference	
Allegany	\$478,515	\$387,898	\$425,000	-\$90,617	-18.9%	\$37,102	9.6%	-5.8%
Anne Arundel	38,982,623	43,000,000	40,000,000	4,017,377	10.3%	-3,000,000	-7.0%	1.3%
Baltimore City	36,767,342	36,801,230	28,499,000	33,888	0.1%	-8,302,230	-22.6%	-12.0%
Baltimore	53,627,948	65,000,000	67,000,000	11,372,052	21.2%	2,000,000	3.1%	11.8%
Calvert	0	0	0	0	N/A	0	N/A	N/A
Caroline	344,652	534,257	250,000	189,605	55.0%	-284,257	-53.2%	-14.8%
Carroll	0	0	0	0	N/A	0	N/A	N/A
Cecil	25,009	27,836	1,254,878	2,827	11.3%	1,227,042	4408.1%	608.4%
Charles	0	0	4,683,200	0	N/A	4,683,200	N/A	N/A
Dorchester	634,992	703,685	826,614	68,693	10.8%	122,929	17.5%	14.1%
Frederick	0	0	0	0	N/A	0	N/A	N/A
Garrett	1,492,070	1,307,500	1,403,500	-184,570	-12.4%	96,000	7.3%	-3.0%
Harford	11,646,255	11,200,000	12,800,000	-446,255	-3.8%	1,600,000	14.3%	4.8%
Howard	26,907,783	30,252,673	28,000,000	3,344,890	12.4%	-2,252,673	-7.4%	2.0%
Kent	559,650	674,613	708,343	114,963	20.5%	33,730	5.0%	12.5%
Montgomery	91,220,828	89,510,000	97,040,000	-1,710,828	-1.9%	7,530,000	8.4%	3.1%
Prince George's	73,462,773	81,988,000	86,087,400	8,525,227	11.6%	4,099,400	5.0%	8.3%
Queen Anne's	1,461,174	1,679,000	1,729,370	217,826	14.9%	50,370	3.0%	8.8%
St. Mary's	5,016,977	5,573,007	4,250,000	556,030	11.1%	-1,323,007	-23.7%	-8.0%
Somerset	0	0	0	0	N/A	0	N/A	N/A
Talbot	3,341,976	3,505,646	3,200,000	163,670	4.9%	-305,646	-8.7%	-2.1%
Washington	1,593,811	2,399,022	1,500,000	805,211	50.5%	-899,022	-37.5%	-3.0%
Wicomico	0	0	0	0	N/A	0	N/A	N/A
Worcester	3,165,273	3,278,524	3,000,000	113,251	3.6%	-278,524	-8.5%	-2.6%
<b>Total</b>	<b>\$350,729,651</b>	<b>\$377,822,891</b>	<b>\$382,657,305</b>	<b>\$27,093,240</b>	<b>7.7%</b>	<b>\$4,834,414</b>	<b>1.3%</b>	<b>4.5%</b>

Source: Department of Legislative Services, County Budgets