

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 999

(Senators Peters and DeGrange)

Budget and Taxation

Ways and Means

Recordation Tax - Exemptions

This bill alters an exemption from the recordation tax by expanding the definition of original mortgagor to include a person that has received property from the original mortgagor under a deed that was exempt from the recordation tax under specified circumstances. The bill alters the definition of business entity to include a limited partnership or statutory trust so that these entities will be exempt from the recordation tax for transfers between specified related business entities. The definitions of owner and ownership interest are altered to include limited partner or beneficial owner and limited partnership interest or beneficial interest, respectively. The bill alters an exemption from recordation tax for specified transfers of a controlling interest. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: General fund revenues decrease by a minimal amount as a result of commissions not being collected. State expenditures are not affected.

Local Effect: Local recordation tax revenues may decrease beginning in FY 2019 to the extent transfers pursuant to the bill occur. The number of affected transfers that may occur each year is not known. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: A mortgage or deed of trust is exempt from recordation tax if it secures the refinancing of an amount not greater than the unpaid principal amount secured by an

existing mortgage, indemnity mortgage, or deed of trust at the time of refinancing. The mortgage or deed of trust must be refinanced by the original mortgagor, spouse of the original mortgagor, or settlor of an inter vivos trust. An original mortgagor is a person who assumed a debt secured by real property that the person purchased and paid the recordation tax on the consideration paid for the property. This must include a statement under oath including the amount of unpaid outstanding principal of the original mortgage, indemnity mortgage, or deed of trust being refinanced. This applies to both residential and commercial refinancing.

The recordation tax is imposed on the transfer of a controlling interest in a real property entity as if the real property was conveyed by an instrument that is recorded or filed. The tax is imposed on the consideration payable for the transfer of controlling interest. The consideration includes the amount of any mortgage, deed of trust, or other lien or security interest in the real property owned by the entity or any other debt or encumbrance of the entity. The consideration is reduced by the amount allocable to the assets of the entity other than real property. The entity has the burden of establishing to the satisfaction of the State Department of Assessments and Taxation the consideration payable. If the consideration is not established, the tax is imposed on the value of the real property owned by the entity as determined by the date of finality immediately before the date of transfer. The tax is the responsibility of the real property entity, not the transferor or transferee of the controlling interest. The transfer from real property entity to another entity if the ownership interests are owned, directly or indirectly, by the same persons and in the same proportions in the transferor and transferee entities.

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. 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.

State Fiscal Effect: 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, expanding the exemptions from the recordation tax will in turn decrease the amount of revenues remitted to the general fund.

Local Fiscal Effect: Local recordation tax revenues may decrease beginning in fiscal 2019 to the extent transfers pursuant to the bill occur. The amount of the revenue decrease 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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