

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 20
Ways and Means

(Delegate Luedtke)

Budget and Taxation

State Agricultural Land Transfer Tax – Alteration of Nonagricultural Use
Reduction and Exemptions

This bill repeals an exemption from the State agricultural land transfer tax for instruments of writing that convey property for land that has had the property tax paid for five full consecutive taxable years before the transfer on the basis of an assessment other than the farm or agricultural use assessment. In lieu of this exemption, the bill provides a partial transfer tax reduction. In addition, the bill exempts transfers of agricultural land from the agricultural land transfer tax if the land was previously subject to the tax for a previous transfer. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: Indeterminate impact on State special fund revenues beginning in FY 2020. The actual impact depends on the number of agricultural land transfers that are subject to the new transfer tax calculation and how many times agricultural land parcels are transferred. State expenditures are not affected.

Local Effect: Indeterminate impact on county revenues beginning in FY 2020. The actual impact depends on the number of agricultural land transfers that are subject to the new transfer tax calculation and how many times agricultural land parcels are transferred. County expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The agricultural land transfer tax is reduced by:

- 25% if property tax on the agricultural land was paid on the basis of any assessment other than the farm or agricultural use assessment for one full taxable year before a transfer;
- 50% if property tax on the agricultural land was paid on the basis of any assessment other than the farm or agricultural use assessment for two full consecutive taxable years before a transfer; and
- 65% if property tax on the agricultural land was paid on the basis of any assessment other than the farm or agricultural use assessment for three or more full consecutive taxable years before a transfer.

Current Law: An instrument of writing is not subject to the agricultural land transfer tax if the property tax on the land has been paid for five full consecutive taxable years before the transfer on the basis of an assessment other than the farm or agricultural use assessment.

Background: Agricultural land transfer taxes are paid by any person or business conveying title to agricultural land that is subject to the tax. Either the buyer or the seller, as determined by the contract of sale, may pay the tax. The tax base is the amount of consideration paid for the property, including the amount of any mortgage or deed of trust assumed by the grantee, less the value of any improvements or any land not subject to the tax. The amount of consideration paid must be stated in the instrument of writing that transfers title to agricultural land.

Tax Rates

The agricultural land transfer tax rates assessed are:

- 5% for transfers of 20 acres or more of agricultural land;
- 4% for transfers of less than 20 acres assessed for agricultural use or as unimproved agricultural land; or
- 3% for transfers of less than 20 acres assessed as improved agricultural land or agricultural land with certain site improvements.

The transfer tax is reduced by 25% for each consecutive full taxable year before the transfer was made if the property tax was paid on the basis of an assessment other than farm or agricultural use. A 25% surcharge is imposed on an instrument of writing transferring title of certain agricultural land as a separate charge independent of the State agricultural land transfer tax. The surcharge does not apply to transfers of two acres or less of agricultural land to a child or grandchild of the owner. When determining the rate of the agricultural land transfer tax to be imposed, the amount of agricultural land that is exempted from the tax may not be included in the amount of agricultural land that is transferred.

Exemptions

An instrument of writing is not subject to the agricultural land transfer tax if:

- the property tax on the land has been paid for five full consecutive taxable years before the transfer on the basis of an assessment other than the farm or agricultural use assessment;
- the amount of agricultural land transferred is not greater than the applicable residential minimum zoning size in effect at the time of transfer, and the transfer is to a member of the owner's immediate family for residential use; or
- the transferee declares that the land will remain in farm or agricultural use for at least five full consecutive taxable years.

Distribution of Revenues

The agricultural land transfer tax is collected by each county. Of the total collections, each county (except Montgomery) retains one-third of the funds and transfers the balance to the Comptroller, which are distributed as follows:

- up to \$200,000 annually from land that is entirely woodland to the Mel Noland Woodland Incentives Fund;
- \$2.76 million, plus 5.0% over the amount distributed for the preceding fiscal year, to the Maryland Agricultural Land Preservation Foundation;
- 37.5%, up to a maximum of \$4.0 million annually, to the Maryland Agricultural and Resource-Based Industry Development Corporation's Next Generation Farmland Acquisition Program; and
- any remaining revenue to the Maryland Agricultural Land Preservation Foundation.

The Maryland Agricultural and Resource-Based Industry Development Corporation may use up to 3% of funds received for administrative costs for the Next Generation Farmland Acquisition Program. Funds received by the Maryland Agricultural Land Preservation Fund after a specified date can only be used in Priority Preservation areas, and the Maryland Agricultural Land Preservation Fund also has additional flexibility in using resources to purchase agricultural land easements.

Montgomery County retains two-thirds of its funds and transfers the balance to the Comptroller. The funds retained by each county are generally used as local matching funds under the State agricultural easement program and for other approved county agricultural preservation programs.

The counties must spend or encumber all agricultural transfer tax revenues within six years from the date of receipt or remit the unspent or unencumbered portion to the Comptroller for deposit into the Maryland Agricultural Land Preservation Fund.

In 1990, the General Assembly created a program giving counties the ability to retain a larger share of the agricultural land transfer tax revenues if certain requirements were met. Certification makes the county eligible for additional agricultural land preservation funding, primarily the ability to retain a greater share (75% rather than 33.3%) of agricultural land transfer tax revenue collected in the county from nonwoodland transfers.

State Fiscal Effect: Indeterminate impact on State special fund revenues beginning in fiscal 2020. The bill alters State special fund revenues in two ways: (1) altering the transfer tax calculation for land that was not previously subject to a farm or agricultural land use assessment; and (2) providing an exemption for the transfer of agricultural land that was previously subject to the agricultural land transfer tax.

In certain instances the transfer of agricultural land is exempt from the agricultural land transfer tax if, for the previous five years, the parcel did not receive an agricultural or farm use assessment. Under the bill, these transfers will be subject to an agricultural land transfer tax equal to 35% of the calculated agricultural land transfer tax. As a result, special fund revenues increase beginning in fiscal 2020, depending on the number of these types of transfers that occur each year. Exempting subsequent transfers of agricultural land from the transfer tax would likely reduce special fund revenues over time, depending on the number of times parcels are transferred. The actual impact on special fund revenues depends on the number of agricultural land transfers that are subject to the new tax calculation and how many times agricultural land parcels are transferred in the future, neither of which can be reliably estimated.

The State Department of Assessments and Taxation reports that 5,103 acres of land was subject to the agricultural land transfer tax in fiscal 2018. **Exhibit 1** shows the State share of agricultural land transfer tax collections for fiscal 2010 through 2018.

Exhibit 1
Maryland Agricultural Land Transfer Tax
Fiscal 2010-2018
(\$ in Millions)

| <u>Fiscal Year</u> | <u>State Share</u> | <u>% Change</u> |
|--------------------|--------------------|-----------------|
| 2010 | \$1.9 | 18.8% |
| 2011 | 1.4 | -26.3% |
| 2012 | 0.7 | -49.3% |
| 2013 | 3.0 | 322.5% |
| 2014 | 1.9 | -36.7% |
| 2015 | 1.7 | -10.5% |
| 2016 | 2.5 | 47.1% |
| 2017 | 1.8 | -28.0% |
| 2018* | 1.7 | -5.6% |

*Through May 2018

Source: Maryland Department of Agriculture; State Department of Assessments and Taxation; Comptroller of Maryland

Local Fiscal Effect: Indeterminate impact on county revenues beginning in fiscal 2020. The actual impact depends on the number of agricultural land transfers that are subject to the new tax calculation and how many times agricultural land parcels are transferred in the future, neither of which can be reliably estimated.

Additional Information

Prior Introductions: None.

Cross File: SB 344 (Senators Zucker and Feldman) - Budget and Taxation.

Information Source(s): Maryland Department of Agriculture; Department of Natural Resources; Maryland Department of Planning; Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Department of Legislative Services

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Analysis by: Michael Sanelli

Direct Inquiries to:
(410) 946-5510
(301) 970-5510