HB 1082

Department of Fiscal Services

Maryland General Assembly

FISCAL NOTE

House Bill 1082 (Delegate Kopp, et al.)
Ways and Means

Recordation and Transfer Taxes - Estate Planning Exemption

This bill exempts the transfer of property to a corporation, partnership, or limited liability company (LLC) from recordation and State and local transfer taxes if the transfer is for estate planning purposes. The bill also imposes recordation and transfer taxes on any transfers of ownership interest in an estate planning entity, unless the transfer of the entity's assets to the recipient would be otherwise exempt.

The bill is effective July 1, 1996.

Fiscal Summary

State Effect: Indeterminate effect on revenues and expenditures, as described below.

Local Effect: Indeterminate decrease in local recordation and transfer tax revenues, as described below.

Fiscal Analysis

Background: Under certain circumstances, current law exempts portions of direct transfers of real property between family members from recordation and transfer taxation. However, if a direct transfer is executed for estate planning purposes and gift taxes are to be avoided, the transfer could significantly complicate management of the property. On the other hand, if such a transfer is executed through the intermediary of a wholly owned partnership, corporation, or LLC, recordation and transfer taxes will be imposed when the property is transferred to the intermediate entity.

This bill is designed to allow parents to transfer portions of real property to their children each year through the use of a partnership, corporation, or LLC while maintaining management control over the property and avoiding recordation and transfer taxes.

Bill Summary: This bill exempts the transfer of property to a corporation, partnership, or LLC from recordation and State and local transfer taxes if:

- each of the individuals with ownership interest in the property maintain ownership interest in the estate planning entity after the transfer;
- no other individuals have an ownership interest in the estate planning entity;
- an ownership interest in the estate planning entity is the only consideration payable for the transfer; and
- the transferor signs a statement under oath that the transfer is primarily for estate planning purposes.

The bill also imposes recordation and transfer taxes on any subsequent transfers of ownership interest in the estate planning entity, unless the transfer of the entity's assets to the recipient would be otherwise exempt. The bill contains a number of reporting requirements for the implementation of this provision:

- Upon receiving an exemption for estate planning purposes, the estate planning entity must file a certificate with the Department of Assessments and Taxation (DAT) that sets forth: (1) all the owners of the real property who initially transferred it to the estate planning entity; (2) all the owners of an entity that initially transferred the real property to the estate planning entity; and (3) all of the owners of any interest in the estate planning entity to which the real property is transferred.
- Also upon receiving an exemption for estate planning purposes, and every five years thereafter, an owner of the estate planning entity must file an affidavit affirming that either (1) the entity is owned entirely by individuals who are not subject to recordation tax; or (2) the recordation and transfer taxes have been paid for an ownership interest held by an individual who is subject to the recordation and transfer taxes. In each filing after the first, the affidavit must also identify any transferees who are subject to the recordation and transfer taxes.
- The estate planning entity must also file with DAT a report of any transfer of interest in the estate planning entity within 30 days of the transfer. The report

must include the consideration payable for the transfer, the amount allocable to the assets of the estate planning entity other than real property located in the State, and any exemption from recordation and transfer taxes. The report must be accompanied by payment of a filing fee, any recordation and transfer taxes, penalties, or interest due on the transfer. If the taxes are not paid within 30 days of the transfer, interest on the unpaid amount accrues at 1% per month and a penalty of 10% is assessed.

State Revenues: State transfer tax revenues could decrease depending upon the number of transfers of real property to estate planning entities. This revenue loss could be slightly offset in later years by subsequent transfers of ownership interest in estate planning entities, depending upon how many of those transfers would be exempt. The State transfer tax rate is currently .5%. Because data is not available on the number or magnitude of transfers qualifying for the exemption, any decrease in revenues cannot be reliably estimated at this time.

Portions of the State transfer tax revenues are distributed to Program Open Space, the Agricultural Land Preservation Fund, and the Heritage Conservation Fund. Any decrease in transfer tax revenues will result in a decrease in funding for these programs.

In addition, this bill requires DAT to charge a filing fee for any transfer of interest in an estate planning entity. DAT estimates that this could increase revenues by $50,000 (1,000 transfers @ $50 = $50,000). However, the Department of Fiscal Services advises that there is not sufficient data to determine the number of transfers. Absent such data, the revenue increase cannot be reliable estimated.

To the extent that enactment of this bill provides incentive for more individuals to use this type of estate planning, the State could also realize a loss in estate and inheritance tax revenues in the long-term.

State Expenditures: This bill creates a new recordation and transfer tax exemption and applies the tax to an activity that has never been taxed (transfer of ownership interest in estate planning entities). To administer the exemption, the Administrative Office of the Clerks of Courts may need additional staff, depending upon the number of exemptions claimed.

To track transfers of ownership interests in estate planning entities and collect the applicable taxes, DAT may also need additional staff. DAT advises that it would need to hire one Charter Specialist and one Office Secretary, at a cost of $79,400 in fiscal 1997. However, the Department of Fiscal Services advises that the need for these additional positions depends upon the number of transfers that would be reported, which cannot be determined at this time.

Local Revenues: Local recordation and transfer tax revenues could decrease depending upon the number of transfers of real property to estate planning entities and the respective local tax rates. This revenue loss could be slightly offset in later years by subsequent transfers of ownership interest in the estate planning entities, depending upon how many of those transfers would be exempt. Because data is not available on the number or magnitude of transfers qualifying for the exemption, any decrease in revenues cannot be reliably estimated at this time.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Assessments and Taxation, Department of Natural Resources, Office of the Comptroller (Revenue Administration Division, Department of Fiscal Services

Fiscal Note History: First Reader - February 27, 1996
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Analysis by: Lisa Kleinschmidt
Reviewed by: John Rixey

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 841-3710
(301) 858-3710