
By: Delegates Healey and Rosapepe

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Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Recordation and Transfer Taxes - Transfers of Controlling Interests**

3 FOR the purpose of imposing recordation and transfer taxes on the transfer of
4 controlling interest in certain entities owning certain interests in real property in
5 Maryland; requiring the filing of a certain report; providing for a filing fee;
6 establishing the rate of taxation and the method of calculation of tax liability;
7 exempting certain transfers; providing for interest and a penalty for certain filings;
8 requiring the Department of Assessments and Taxation to adopt certain
9 regulations; defining certain terms; providing for a delayed effective date; and
10 generally relating to the taxation of transfers of controlling interests in certain
11 entities.

12 BY adding to

13 Article - Tax - Property
14 Section 12-114 and 13-103
15 Annotated Code of Maryland
16 (1994 Replacement Volume and 1996 Supplement)

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

19 **Article - Tax - Property**

20 12-114.

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

23 (2) "CONTROLLING INTEREST" MEANS:

24 (I) MORE THAN 80% OF THE TOTAL VALUE OF ALL CLASSES OF
25 STOCK OF A CORPORATION;

26 (II) MORE THAN 80% OF THE TOTAL INTEREST IN CAPITAL AND
27 PROFITS OF A PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OR
28 OTHER UNINCORPORATED FORM OF DOING BUSINESS; OR

29 (III) MORE THAN 80% OF THE BENEFICIAL INTEREST IN A TRUST.

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1 (3) "FINAL TRANSFER" MEANS THAT TRANSFER OF ANY PORTION OF A
2 CONTROLLING INTEREST WHICH COMPLETES THE TRANSFER OF A CONTROLLING
3 INTEREST IN A REAL PROPERTY ENTITY.

4 (4) "PLAN OF TRANSFER" MEANS AN INTENTIONAL PLAN OR PROGRAM
5 TO TRANSFER THE CONTROLLING INTEREST IN A REAL PROPERTY ENTITY.

6 (5) (I) "REAL PROPERTY" MEANS REAL PROPERTY LOCATED IN THE
7 STATE.

8 (II) "REAL PROPERTY" DOES NOT INCLUDE:

9 1. A LEASEHOLD, UNLESS CREATED BY A LEASE THAT IS
10 REQUIRED TO BE RECORDED UNDER § 3-101(C) OF THE REAL PROPERTY ARTICLE;
11 OR

12 2. ANY MORTGAGE, DEED OF TRUST, OR OTHER LIEN UPON
13 OR SECURITY INTEREST IN REAL PROPERTY THAT SECURES AN INDEBTEDNESS.

14 (6) (I) "REAL PROPERTY ENTITY" MEANS A CORPORATION,
15 PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, OTHER
16 UNINCORPORATED FORM OF DOING BUSINESS, OR TRUST, THAT DIRECTLY OR
17 BENEFICIALLY OWNS REAL PROPERTY THAT:

18 1. CONSTITUTES AT LEAST 80% OF THE VALUE OF ITS
19 ASSETS; AND

20 2. HAS AN AGGREGATE VALUE OF AT LEAST \$500,000.

21 (II) FOR THE PURPOSES OF THIS PARAGRAPH, THE VALUE OF REAL
22 PROPERTY SHALL BE DETERMINED WITHOUT REDUCTION FOR ANY MORTGAGE,
23 DEED OF TRUST, OR OTHER LIEN UPON OR SECURITY INTEREST IN THE REAL
24 PROPERTY.

25 (B) (1) THE RECORDATION TAX IS IMPOSED ON THE TRANSFER OF A
26 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY AS IF THE REAL PROPERTY
27 DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY WERE
28 CONVEYED BY AN INSTRUMENT OF WRITING THAT IS RECORDED WITH THE CLERK
29 OF THE CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT UNDER
30 § 12-102 OF THIS SUBTITLE.

31 (2) (I) THE RECORDATION TAX IS IMPOSED ON THE CONSIDERATION
32 PAYABLE FOR THE TRANSFER OF THE CONTROLLING INTEREST IN THE REAL
33 PROPERTY ENTITY.

34 (II) THE CONSIDERATION TO WHICH THE RECORDATION TAX
35 APPLIES IS REDUCED BY THE AMOUNT ALLOCABLE TO THE ASSETS OF THE REAL
36 PROPERTY ENTITY OTHER THAN REAL PROPERTY.

37 (III) THE REAL PROPERTY ENTITY HAS THE BURDEN OF
38 ESTABLISHING TO THE SATISFACTION OF THE DEPARTMENT THE CONSIDERATION
39 REFERRED TO IN SUBPARAGRAPH (I) OF THIS PARAGRAPH AND THE AMOUNT OF

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1 ANY CONSIDERATION ALLOCABLE TO ASSETS OTHER THAN REAL PROPERTY
2 REFERRED TO IN SUBPARAGRAPH (II) OF THIS PARAGRAPH.

3 (IV) IF THE REAL PROPERTY ENTITY FAILS TO ESTABLISH THE
4 AMOUNT OF CONSIDERATION REFERRED TO IN SUBPARAGRAPH (I) OF THIS
5 PARAGRAPH, THE RECORDATION TAX IS IMPOSED ON THE VALUE OF THE REAL
6 PROPERTY DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY
7 DETERMINED BY THE DEPARTMENT AT THE DATE OF FINALITY IMMEDIATELY
8 BEFORE THE DATE OF THE FINAL TRANSFER.

9 (3) EXCEPT AS OTHERWISE PROVIDED IN § 12-103(D) OF THIS SUBTITLE,
10 THE RECORDATION TAX IS APPLIED AT THE RATE SET UNDER § 12-103(B) OF THIS
11 SUBTITLE BY THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

12 (C) (1) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
13 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IN ANY OF THE
14 CIRCUMSTANCES DESCRIBED IN § 12-108 OF THIS SUBTITLE.

15 (2) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
16 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY EFFECTED IN MORE THAN
17 ONE TRANSACTION IF:

18 (I) THE TRANSFER IS COMPLETED OVER A PERIOD OF MORE
19 THAN 12 MONTHS; OR

20 (II) THE TRANSFER IS NOT MADE IN ACCORDANCE WITH A PLAN
21 OF TRANSFER.

22 (3) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
23 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY TO A REAL PROPERTY
24 ENTITY IF THE OWNERSHIP INTERESTS IN THE TRANSFEREE REAL PROPERTY
25 ENTITY ARE HELD BY THE SAME PERSONS AND IN THE SAME PROPORTION AS IN
26 THE REAL PROPERTY ENTITY FROM WHICH THE CONTROLLING INTEREST WAS
27 TRANSFERRED.

28 (4) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
29 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IF EACH TRANSFEROR,
30 EACH TRANSFEREE, AND THE REAL PROPERTY ENTITY IS:

31 (I) A SUBSIDIARY CORPORATION, ALL OF THE STOCK OF WHICH IS
32 OWNED, DIRECTLY OR INDIRECTLY, BY A COMMON PARENT CORPORATION;

33 (II) A PARTNERSHIP, ALL OF THE INTERESTS IN WHICH ARE
34 OWNED, DIRECTLY OR INDIRECTLY, BY ONE OR MORE SUBSIDIARIES OR THE
35 COMMON PARENT CORPORATION; OR

36 (III) THE COMMON PARENT CORPORATION.

37 (5) THE REAL PROPERTY ENTITY HAS THE BURDEN OF ESTABLISHING
38 TO THE SATISFACTION OF THE DEPARTMENT THE APPLICABILITY OF ANY
39 EXEMPTION REFERRED TO IN PARAGRAPHS (1) THROUGH (4) OF THIS SUBSECTION.

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1 (D) (1) THE REAL PROPERTY ENTITY SHALL FILE WITH THE DEPARTMENT
2 A REPORT OF ANY TRANSFER OF A CONTROLLING INTEREST IN THE REAL
3 PROPERTY ENTITY THAT IS COMPLETED WITHIN A PERIOD OF 12 MONTHS OR LESS
4 WITHIN 30 DAYS FOLLOWING THE DATE OF THE FINAL TRANSFER.

5 (2) THE REPORT SHALL INCLUDE ALL INFORMATION TO ESTABLISH TO
6 THE SATISFACTION OF THE DEPARTMENT:

7 (I) THE CONSIDERATION REFERRED TO IN SUBSECTION (B)(2)(I)
8 OF THIS SECTION;

9 (II) THE AMOUNT OF ASSETS OTHER THAN REAL ESTATE
10 REFERRED TO IN SUBSECTION (B)(2)(II) OF THIS SECTION; AND

11 (III) ANY EXEMPTION PROVIDED FOR IN SUBSECTION (C)(1) AND (2)
12 OF THIS SECTION.

13 (3) THE REPORT SHALL BE ACCOMPANIED BY PAYMENT OF:

14 (I) A \$20 FILING FEE; AND

15 (II) ANY TAX, INTEREST, AND PENALTY THAT IS DUE.

16 (E) (1) IF ANY TAX DUE UNDER THIS SECTION REMAINS UNPAID FOR 30
17 DAYS AFTER THE DATE OF THE FINAL TRANSFER, THEN:

18 (I) INTEREST ON THE UNPAID AMOUNT SHALL ACCRUE
19 THEREAFTER AT THE RATE OF 1% PER MONTH; AND

20 (II) A PENALTY OF 10% OF THE UNPAID AMOUNT SHALL BE DUE.

21 (2) ANY TAX, INTEREST, AND PENALTY DUE UNDER THIS SECTION IS AN
22 OBLIGATION OF THE REAL PROPERTY ENTITY.

23 (3) FOR REASONABLE CAUSE, THE DEPARTMENT MAY WAIVE THE
24 IMPOSITION OF INTEREST OR PENALTY.

25 (F) THIS SECTION DOES NOT APPLY TO:

26 (1) A PLEDGE OF STOCK OR OTHER INTEREST IN A REAL PROPERTY
27 ENTITY AS SECURITY FOR A LOAN; OR

28 (2) THE ADMISSION TO THE REAL PROPERTY ENTITY OF ADDITIONAL
29 SHAREHOLDERS, PARTNERS, BENEFICIAL OWNERS, OR OTHER MEMBERS INCIDENT
30 TO THE RAISING OF ADDITIONAL CAPITAL THROUGH A PUBLIC OR PRIVATE
31 OFFERING OF STOCK OR OTHER INTERESTS IN THE REAL PROPERTY ENTITY IF:

32 (I) THE EFFECTIVE MANAGEMENT OF THE REAL PROPERTY
33 ENTITY IS NOT SUBSTANTIALLY CHANGED; AND

34 (II) UNDER THE TERMS OF THE OFFERING, NONE OF THE NEW
35 MEMBERS IS EXPECTED TO PARTICIPATE IN THE DAY-TO-DAY MANAGEMENT OF
36 THE REAL PROPERTY ENTITY.

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1 (G) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER
2 THIS SECTION.

3 (2) THE REGULATIONS SHALL INCLUDE ANY ADDITIONAL STANDARDS
4 AND EXEMPTIONS TO ASSURE THAT:

5 (I) A TAX IS IMPOSED WHEN A TRANSACTION IS STRUCTURED
6 INVOLVING A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY TO AVOID
7 PAYMENT OF THE RECORDATION TAX;

8 (II) EXEMPTIONS PROVIDED BY LAW WHEN REAL PROPERTY IS
9 TRANSFERRED BY 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, THE WORDS "CONTROLLING INTEREST", "REAL
13 PROPERTY", AND "REAL PROPERTY ENTITY" HAVE THE MEANINGS STATED IN §
14 12-114 OF THIS ARTICLE.

15 (B) (1) THE TAXES UNDER THIS TITLE ARE IMPOSED ON THE TRANSFER OF
16 A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY AS IF THE REAL
17 PROPERTY DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY
18 WERE CONVEYED BY AN INSTRUMENT OF WRITING THAT IS RECORDED WITH THE
19 CLERK OF THE CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT
20 UNDER § 13-202 OF THIS TITLE.

21 (2) THE TAXES UNDER THIS SECTION ARE IMPOSED ON THE
22 CONSIDERATION PAYABLE FOR THE TRANSFER OF THE CONTROLLING INTEREST IN
23 THE REAL PROPERTY ENTITY OR ON THE VALUE OF THE REAL PROPERTY
24 DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY, AS
25 PROVIDED IN § 12-114(B)(2) OF THIS ARTICLE.

26 (3) (I) EXCEPT FOR THE COUNTY TRANSFER TAX, THE TAXES UNDER
27 THIS SECTION SHALL BE APPLIED AT THE RATES ESTABLISHED IN THIS TITLE.

28 (II) THE COUNTY TRANSFER TAX SHALL BE APPLIED AT THE RATE
29 IMPOSED BY THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

30 (C) THE TAXES UNDER THIS TITLE ARE NOT IMPOSED ON THE TRANSFER OF
31 A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IN ANY OF THE
32 CIRCUMSTANCES DESCRIBED:

33 (1) IN § 13-207 OF THIS TITLE THAT EXEMPTS AN INSTRUMENT OF
34 WRITING FROM THE TRANSFER TAX; OR

35 (2) IN § 12-114(C) OF THIS ARTICLE THAT EXEMPTS THE TRANSFER OF A
36 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY FROM THE RECORDATION
37 TAX.

38 (D) IN EACH INSTANCE IN WHICH A CONTROLLING INTEREST IN A REAL
39 PROPERTY ENTITY IS TRANSFERRED, THE PROVISIONS OF § 12-114(D) AND (E) OF
40 THIS ARTICLE ARE APPLICABLE.

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1 (E) THIS SECTION DOES NOT APPLY IN THE CIRCUMSTANCES DESCRIBED IN §
2 12-114(F) OF THIS ARTICLE.

3 (F) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER THIS
4 SECTION IN THE SAME MANNER AS IN § 12-114(G) OF THIS ARTICLE.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 January 1, 1998.