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Q6
HB 1082/96 - W&M

1997 Regular Session
7r2400
CF 7r1294

By: Senators Ruben, Middleton, and Boozer

Introduced and read first time: January 31, 1997

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Recordation and Transfer Taxes - Estate Planning Exemption**

3 FOR the purpose of exempting from the recordation tax and State and county transfer
4 taxes certain instruments of writing transferring property for estate planning
5 purposes under certain circumstances; imposing the recordation tax and State and
6 county transfer taxes on the transfer of an interest in certain entities under certain
7 circumstances; requiring the filing of a certain report of certain transfers of interests
8 in certain entities; requiring the payment of certain filing fees with certain reports,
9 as established by the Department of Assessments and Taxation; requiring certain
10 filings with the Department; prohibiting certain entities from conveying or accepting
11 any interest in real property or maintaining a suit in a court of the State until certain
12 filings are made; establishing the rate of taxation and the method of calculation of
13 tax liability; exempting certain transfers; providing for interest and a penalty for
14 certain unpaid taxes; and generally relating to the taxation under the recordation
15 tax and State and county transfer taxes of certain transfers for estate planning
16 purposes and the transfer of interests in certain estate planning entities.

17 BY adding to

18 Article - Tax - Property
19 Section 11-103, 12-102.1, 12-108(z), 13-202.1, and 13-410
20 Annotated Code of Maryland
21 (1994 Replacement Volume and 1996 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article - Tax - Property
24 Section 13-207(a)
25 Annotated Code of Maryland
26 (1994 Replacement Volume and 1996 Supplement)

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

2

1 **Article - Tax - Property**

2 11-103.

3 (A) IN THIS SECTION, "ESTATE PLANNING ENTITY" HAS THE MEANING
4 STATED IN § 12-102.1 OF THIS ARTICLE.

5 (B) ON RECEIPT OF AN INITIAL EXEMPTION FROM THE RECORDATION TAX
6 UNDER § 12-108(Z) OF THIS ARTICLE, AN ESTATE PLANNING ENTITY SHALL FILE
7 WITH THE DEPARTMENT:

8 (1) A CERTIFICATE UNDER OATH SETTING FORTH:

9 (I) ALL OF THE DIRECT AND BENEFICIAL OWNERS OF THE REAL
10 PROPERTY OF THE ESTATE PLANNING ENTITY WHO INITIALLY TRANSFERRED THE
11 REAL PROPERTY TO THE ESTATE PLANNING ENTITY;

12 (II) ALL OF THE LEGAL AND BENEFICIAL OWNERS OF ANY
13 INTEREST IN AN ENTITY THAT INITIALLY TRANSFERRED THE REAL PROPERTY TO
14 THE ESTATE PLANNING ENTITY; AND

15 (III) ALL OF THE LEGAL AND EQUITABLE OWNERS OF ANY
16 INTEREST IN THE ESTATE PLANNING ENTITY THAT IS THE TRANSFEREE OF THE
17 REAL PROPERTY;

18 (2) AN AFFIDAVIT UNDER OATH EXECUTED BY AN INDIVIDUAL WHO IS
19 A RESIDENT OF THE STATE AND IS AN OWNER OF AN INTEREST IN THE ESTATE
20 PLANNING ENTITY TO AFFIRM THAT AT THE TIME OF THE TRANSFER OF THE REAL
21 PROPERTY EITHER:

22 (I) THE ESTATE PLANNING ENTITY IS OWNED ENTIRELY BY
23 INDIVIDUALS WHO ARE NOT SUBJECT TO RECORDATION TAX UNDER § 12-108(Z) OF
24 THIS ARTICLE; OR

25 (II) THE RECORDATION TAX AND STATE AND LOCAL TRANSFER
26 TAXES HAVE BEEN PAID FOR ANY OWNERSHIP INTEREST HELD BY AN INDIVIDUAL
27 WHO IS SUBJECT TO THE RECORDATION TAX OR STATE AND LOCAL TRANSFER
28 TAXES; AND

29 (III) A FILING FEE OF \$500.

30 (C) NOT LESS THAN ONCE EVERY 5 YEARS FROM THE INITIAL FILING UNDER
31 SUBSECTION (A) OF THIS SECTION, AN AFFIDAVIT UNDER OATH EXECUTED BY AN
32 INDIVIDUAL RESIDENT OF THE STATE WHO IS AN OWNER OF AN INTEREST IN THE
33 ESTATE PLANNING ENTITY MUST BE FILED WITH THE DEPARTMENT THAT:

34 (1) SETS FORTH ALL OF THE LEGAL AND EQUITABLE OWNERS OF
35 INTERESTS IN THE ESTATE PLANNING ENTITY AT THAT TIME;

36 (2) AFFIRMS THAT:

37 (I) EACH OF THE LISTED OWNERS IS NOT SUBJECT TO THE
38 RECORDATION TAX UNDER § 12-108(Z) OF THIS ARTICLE OR THE STATE AND LOCAL
39 TRANSFER TAXES; OR

3

1 (II) THE RECORDATION TAX AND STATE AND LOCAL TRANSFER
2 TAXES PAYABLE UNDER §§ 12-102.1, 13-202.1, AND 13-410 OF THIS ARTICLE AND ANY
3 INTEREST AND PENALTIES ON THOSE TAXES HAVE BEEN PAID;

4 (3) IDENTIFIES ANY TRANSFEREES WHO ARE SUBJECT TO THE
5 RECORDATION TAX AND STATE AND LOCAL TRANSFER TAXES; AND

6 (4) IS ACCOMPANIED BY PAYMENT OF A \$250 FILING FEE.

7 (D) UNTIL THE CERTIFICATES AND AFFIDAVITS REQUIRED UNDER THIS
8 SECTION ARE FILED AND THE FEES ARE PAID, AN ESTATE PLANNING ENTITY MAY
9 NOT CONVEY OR ACCEPT ANY INTEREST IN REAL PROPERTY OR MAINTAIN A SUIT
10 IN ANY COURT OF THE STATE.

11 12-102.1.

12 (A) IN THIS SECTION, "ESTATE PLANNING ENTITY" MEANS A CORPORATION,
13 PARTNERSHIP, OR LIMITED LIABILITY COMPANY TO WHICH REAL PROPERTY HAS
14 BEEN TRANSFERRED BY AN INSTRUMENT OF WRITING EXEMPT FROM THE
15 RECORDATION TAX UNDER § 12-108(Z) OF THIS SUBTITLE.

16 (B) (1) THE RECORDATION TAX IS IMPOSED ON THE TRANSFER OF ANY
17 INTEREST IN AN ESTATE PLANNING ENTITY AS IF AN INTEREST IN THE REAL
18 PROPERTY DIRECTLY OR BENEFICIALLY OWNED BY THE ESTATE PLANNING ENTITY
19 WERE CONVEYED BY AN INSTRUMENT OF WRITING THAT IS RECORDED WITH THE
20 CLERK OF THE CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT
21 UNDER § 12-102 OF THIS SUBTITLE.

22 (2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
23 PARAGRAPH, THE RECORDATION TAX UNDER THIS SECTION IS IMPOSED ON THE
24 CONSIDERATION PAYABLE FOR THE TRANSFER OF THE INTEREST IN THE ESTATE
25 PLANNING ENTITY.

26 (II) THE CONSIDERATION TO WHICH THE RECORDATION TAX
27 APPLIES IS REDUCED BY THE AMOUNT ALLOCABLE TO THE ASSETS OF THE ESTATE
28 PLANNING ENTITY OTHER THAN REAL PROPERTY LOCATED IN THE STATE.

29 (III) AN ESTATE PLANNING ENTITY HAS THE BURDEN OF
30 ESTABLISHING TO THE SATISFACTION OF THE DEPARTMENT THE CONSIDERATION
31 PAYABLE FOR THE TRANSFER OF THE INTEREST IN THE ESTATE PLANNING ENTITY
32 AND THE AMOUNT OF ANY CONSIDERATION ALLOCABLE TO ASSETS OTHER THAN
33 REAL PROPERTY LOCATED IN THE STATE.

34 (IV) IF AN ESTATE PLANNING ENTITY FAILS TO ESTABLISH THE
35 CONSIDERATION PAYABLE FOR THE TRANSFER OF AN INTEREST IN THE ESTATE
36 PLANNING ENTITY, THE RECORDATION TAX IS IMPOSED ON THE VALUE OF THE
37 REAL PROPERTY LOCATED IN THE STATE DIRECTLY OR BENEFICIALLY OWNED BY
38 THE ESTATE PLANNING ENTITY DETERMINED BY THE DEPARTMENT AT THE DATE
39 OF FINALITY IMMEDIATELY BEFORE THE DATE OF THE TRANSFER.

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1 (3) THE RECORDATION TAX UNDER THIS SECTION IS APPLIED AT THE
2 RATE SET UNDER § 12-103(B) OF THIS SUBTITLE BY THE COUNTY WHERE THE REAL
3 PROPERTY IS LOCATED.

4 (C) (1) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF AN
5 INTEREST IN AN ESTATE PLANNING ENTITY IF AN INSTRUMENT OF WRITING
6 CONVEYING AN INTEREST IN THE REAL PROPERTY DIRECTLY OR BENEFICIALLY
7 OWNED BY THE ESTATE PLANNING ENTITY WOULD BE EXEMPT FROM
8 RECORDATION TAX UNDER § 12-108 OF THIS SUBTITLE.

9 (2) THE ESTATE PLANNING ENTITY HAS THE BURDEN OF ESTABLISHING
10 TO THE SATISFACTION OF THE DEPARTMENT THE APPLICABILITY OF AN
11 EXEMPTION UNDER THIS SUBSECTION.

12 (D) (1) AN ESTATE PLANNING ENTITY SHALL FILE WITH THE DEPARTMENT
13 A REPORT OF ANY TRANSFER OF AN INTEREST IN THE ESTATE PLANNING ENTITY
14 WITHIN 30 DAYS FOLLOWING THE DATE OF THE TRANSFER.

15 (2) THE REPORT SHALL INCLUDE ALL INFORMATION TO ESTABLISH TO
16 THE SATISFACTION OF THE DEPARTMENT:

17 (I) THE CONSIDERATION PAYABLE FOR THE TRANSFER OF THE
18 INTEREST IN THE ESTATE PLANNING ENTITY;

19 (II) THE AMOUNT ALLOCABLE TO THE ASSETS OF THE ESTATE
20 PLANNING ENTITY OTHER THAN REAL PROPERTY LOCATED IN THE STATE; AND

21 (III) ANY EXEMPTION UNDER SUBSECTION (C) OF THIS SECTION.

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

23 (I) A FILING FEE OF \$250; AND

24 (II) ANY TAX, INTEREST, AND PENALTY THAT ARE DUE UNDER
25 THIS SECTION AND UNDER § 13-202.1 OF THIS ARTICLE.

26 (E) (1) IF ANY TAX DUE UNDER THIS SECTION REMAINS UNPAID FOR 30
27 DAYS AFTER THE DATE OF A TRANSFER OF ANY INTEREST IN AN ESTATE PLANNING
28 ENTITY:

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

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

32 (2) ANY TAX, INTEREST, AND PENALTY DUE UNDER THIS SECTION ARE
33 OBLIGATIONS OF THE ESTATE PLANNING ENTITY.

34 (3) FOR REASONABLE CAUSE, THE DEPARTMENT MAY WAIVE THE
35 IMPOSITION OF INTEREST OR PENALTY UNDER THIS SECTION.

36 (F) THE DEPARTMENT SHALL REMIT TO THE CLERK OF THE CIRCUIT COURT
37 FOR EACH COUNTY ANY RECORDATION TAX COLLECTED UNDER THIS SECTION
38 THAT IS ATTRIBUTABLE TO REAL PROPERTY LOCATED IN THAT COUNTY.

5

1 12-108.

2 (Z) AN INSTRUMENT OF WRITING THAT TRANSFERS PROPERTY TO AN
3 ENTITY FOR ESTATE PLANNING PURPOSES IS NOT SUBJECT TO RECORDATION TAX
4 IF:

5 (1) EACH OF THE INDIVIDUALS WHO HAS AN OWNERSHIP INTEREST IN
6 THE TRANSFEROR AS A STOCKHOLDER OF A CORPORATION, PARTNER OF A
7 PARTNERSHIP, MEMBER OF A LIMITED LIABILITY COMPANY, INDIVIDUAL, OR SOME
8 COMBINATION OF THESE ENTITIES WILL, AFTER THE TRANSFER, HAVE AN
9 OWNERSHIP INTEREST IN THE TRANSFEREE AS A STOCKHOLDER OF A
10 CORPORATION, PARTNER OF A PARTNERSHIP, MEMBER OF A LIMITED LIABILITY
11 COMPANY, OR AN INTEREST IN SOME COMBINATION OF THESE ENTITIES;

12 (2) NO OTHER INDIVIDUALS HAVE AN OWNERSHIP INTEREST IN THE
13 TRANSFEREE;

14 (3) AN OWNERSHIP INTEREST IN THE TRANSFEREE IS THE ONLY
15 CONSIDERATION PAYABLE FOR THE TRANSFER; AND

16 (4) A STATEMENT UNDER OATH SIGNED BY EACH TRANSFEROR IS
17 RECORDED WITH THE INSTRUMENT OF WRITING CERTIFYING THAT THE TRANSFER
18 IS PRIMARILY FOR ESTATE PLANNING PURPOSES AND DECLARING THAT ANY
19 SUBSEQUENT TRANSFER OF ANY INTEREST IN THE ESTATE PLANNING ENTITY WILL
20 BE REPORTED UNDER § 12-102.1(D) OF THIS TITLE.

21 13-202.1.

22 (A) IN THIS SECTION, "ESTATE PLANNING ENTITY" HAS THE MEANING
23 STATED IN § 12-102.1 OF THIS ARTICLE.

24 (B) (1) THE TRANSFER TAX IS IMPOSED ON THE TRANSFER OF AN
25 INTEREST IN AN ESTATE PLANNING ENTITY AS IF THE REAL PROPERTY DIRECTLY
26 OR BENEFICIALLY OWNED BY THE ESTATE PLANNING ENTITY WERE CONVEYED BY
27 AN INSTRUMENT OF WRITING THAT IS RECORDED WITH THE CLERK OF THE
28 CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT UNDER § 13-202
29 OF THIS SUBTITLE.

30 (2) THE TRANSFER TAX IS IMPOSED ON THE CONSIDERATION PAYABLE
31 FOR THE TRANSFER OF THE INTEREST IN THE ESTATE PLANNING ENTITY OR ON
32 THE VALUE OF THE REAL PROPERTY DIRECTLY OR BENEFICIALLY OWNED BY THE
33 ESTATE PLANNING ENTITY, AS PROVIDED IN § 12-102.1(B)(2) OF THIS ARTICLE.

34 (3) THE TRANSFER TAX SHALL BE APPLIED TO THE TRANSFER OF AN
35 INTEREST IN AN ESTATE PLANNING ENTITY AT THE RATE ESTABLISHED IN THIS
36 SUBTITLE.

37 (C) THE TRANSFER TAX IS NOT IMPOSED ON THE TRANSFER OF AN INTEREST
38 IN AN ESTATE PLANNING ENTITY IF AN INSTRUMENT OF WRITING CONVEYING AN
39 INTEREST IN THE REAL PROPERTY DIRECTLY OR BENEFICIALLY OWNED BY THE
40 ESTATE PLANNING ENTITY WOULD BE EXEMPT FROM TRANSFER TAX UNDER §
41 13-207 OF THIS SUBTITLE.

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1 (D) (1) IF ANY TAX DUE UNDER THIS SECTION REMAINS UNPAID FOR 30
2 DAYS AFTER THE DATE OF A TRANSFER OF ANY INTEREST IN AN ESTATE PLANNING
3 ENTITY:

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

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

7 (2) ANY TAX, INTEREST, AND PENALTY DUE UNDER THIS SECTION ARE
8 OBLIGATIONS OF THE ESTATE PLANNING ENTITY.

9 (3) FOR REASONABLE CAUSE, THE DEPARTMENT MAY WAIVE THE
10 IMPOSITION OF INTEREST OR PENALTY UNDER THIS SECTION.

11 13-207.

12 (a) An instrument of writing is not subject to transfer tax to the same extent that
13 it is not subject to recordation tax under:

14 (1) § 12-108(a) of this article (Transfer to government or public agency);

15 (2) § 12-108(c) of this article (Transfer between relatives);

16 (3) § 12-108(d) of this article (Transfer between spouses);

17 (4) § 12-108(e) of this article (Supplemental instrument);

18 (5) § 12-108(f) of this article (Previously recorded instrument);

19 (6) § 12-108(l) of this article (Judgments);

20 (7) § 12-108(n) of this article (Order of satisfaction);

21 (8) § 12-108(o) of this article (Participation agreement);

22 (9) § 12-108(p) of this article (Transfer of corporate property between
23 related corporations);

24 (10) § 12-108(q) of this article (Corporate or partnership conveyance);

25 (11) § 12-108(r) of this article (Land installment contracts);

26 (12) § 12-108(s) of this article (Options to purchase real property);

27 (13) § 12-108(t) of this article (Deed for prior contract of sale);

28 (14) § 12-108(u) of this article (Leases of 7 years or less);

29 (15) § 12-108(v) of this article (Mergers);

30 (16) § 12-108(w) of this article (Consolidations);

31 (17) § 12-108(x) of this article (Cooperative housing corporations); [or]

32 (18) § 12-108(y) of this article (Transfer from partnership to limited liability
33 company); OR

7

1 (19) § 12-108(Z) OF THIS ARTICLE (TRANSFERS TO AN ESTATE PLANNING
2 ENTITY).

3 13-410.

4 (A) IN THIS SECTION, "ESTATE PLANNING ENTITY" HAS THE MEANING
5 STATED IN § 12-102.1 OF THIS ARTICLE.

6 (B) AN INSTRUMENT OF WRITING IS NOT SUBJECT TO COUNTY TRANSFER
7 TAX TO THE SAME EXTENT IT IS NOT SUBJECT TO RECORDATION TAX UNDER §
8 12-108(Z) (TRANSFERS TO AN ESTATE PLANNING ENTITY).

9 (C) (1) A TRANSFER OF AN INTEREST IN AN ESTATE PLANNING ENTITY IS
10 SUBJECT TO COUNTY TRANSFER TAX TO THE SAME EXTENT IT IS SUBJECT TO
11 RECORDATION TAX UNDER § 12-102.1 OF THIS ARTICLE.

12 (2) THE COUNTY TRANSFER TAX UNDER THIS SUBSECTION IS APPLIED
13 AT THE RATE SET BY THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 1997.