

SENATE BILL 129

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Q6  
SB 774/97 - B&T

1998 Regular Session  
8r1121

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By: **Senator Haines**

Introduced and read first time: January 21, 1998

Assigned to: Budget and Taxation

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

19 BY adding to  
20 Article - Tax - Property  
21 Section 11-103, 12-102.1, 12-108(z), 13-202.1, and 13-410  
22 Annotated Code of Maryland  
23 (1994 Replacement Volume and 1997 Supplement)

24 BY repealing and reenacting, with amendments,  
25 Article - Tax - Property  
26 Section 13-207(a)  
27 Annotated Code of Maryland  
28 (1994 Replacement Volume and 1997 Supplement)

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

1 **Article - Tax - Property**

2 11-103.

3 (A) IN THIS SECTION, "ESTATE PLANNING ENTITY" HAS THE MEANING STATED  
4 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 WITH  
7 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; AND15 (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 A  
19 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; OR25 (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 (3) A FILING FEE OF \$500.

30 (C) NOT LESS THAN ONCE EVERY 5 YEARS FROM THE INITIAL FILING UNDER  
31 SUBSECTION (B) 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:

1 (I) EACH OF THE LISTED OWNERS:

2 1. IS NOT SUBJECT TO THE RECORDATION TAX UNDER §  
3 12-108(Z) OF THIS ARTICLE OR THE STATE AND LOCAL TRANSFER TAXES; OR

4 2. RECEIVED AN INTEREST IN THE ESTATE PLANNING  
5 ENTITY BY A TRANSFER EXEMPT FROM THE RECORDATION TAX UNDER § 12-102.1(C)  
6 OF THIS ARTICLE; OR

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

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

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

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

17 12-102.1.

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

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

28 (2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
29 PARAGRAPH, THE RECORDATION TAX UNDER THIS SECTION IS IMPOSED ON THE  
30 CONSIDERATION PAYABLE FOR THE TRANSFER OF THE INTEREST IN THE ESTATE  
31 PLANNING ENTITY.

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

35 (III) AN ESTATE PLANNING ENTITY HAS THE BURDEN OF  
36 ESTABLISHING TO THE SATISFACTION OF THE DEPARTMENT THE CONSIDERATION  
37 PAYABLE FOR THE TRANSFER OF THE INTEREST IN THE ESTATE PLANNING ENTITY

1 AND THE AMOUNT OF ANY CONSIDERATION ALLOCABLE TO ASSETS OTHER THAN  
2 REAL PROPERTY LOCATED IN THE STATE.

3 (IV) IF AN ESTATE PLANNING ENTITY FAILS TO ESTABLISH THE  
4 CONSIDERATION PAYABLE FOR THE TRANSFER OF AN INTEREST IN THE ESTATE  
5 PLANNING ENTITY, THE RECORDATION TAX IS IMPOSED ON THE VALUE OF THE REAL  
6 PROPERTY LOCATED IN THE STATE DIRECTLY OR BENEFICIALLY OWNED BY THE  
7 ESTATE PLANNING ENTITY DETERMINED BY THE DEPARTMENT AT THE DATE OF  
8 FINALITY IMMEDIATELY BEFORE THE DATE OF THE TRANSFER.

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

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

17 (2) THE ESTATE PLANNING ENTITY HAS THE BURDEN OF ESTABLISHING  
18 TO THE SATISFACTION OF THE DEPARTMENT THE APPLICABILITY OF AN EXEMPTION  
19 UNDER THIS SUBSECTION.

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

23 (2) THE REPORT SHALL INCLUDE ALL INFORMATION TO ESTABLISH TO  
24 THE SATISFACTION OF THE DEPARTMENT:

25 (I) THE CONSIDERATION PAYABLE FOR THE TRANSFER OF THE  
26 INTEREST IN THE ESTATE PLANNING ENTITY;

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

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

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

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

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

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

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

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

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

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

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

11 12-108.

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

14 (1) EACH OF THE INDIVIDUALS WHO HAS AN OWNERSHIP INTEREST IN  
15 THE TRANSFEROR AS A STOCKHOLDER OF A CORPORATION, PARTNER OF A  
16 PARTNERSHIP, MEMBER OF A LIMITED LIABILITY COMPANY, INDIVIDUAL, OR SOME  
17 COMBINATION OF THESE ENTITIES WILL, AFTER THE TRANSFER, HAVE AN  
18 OWNERSHIP INTEREST IN THE TRANSFEREE AS A STOCKHOLDER OF A  
19 CORPORATION, PARTNER OF A PARTNERSHIP, MEMBER OF A LIMITED LIABILITY  
20 COMPANY, OR AN INTEREST IN SOME COMBINATION OF THESE ENTITIES;

21 (2) NO OTHER INDIVIDUALS HAVE AN OWNERSHIP INTEREST IN THE  
22 TRANSFEREE;

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

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

30 13-202.1.

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

33 (B) (1) THE TRANSFER TAX IS IMPOSED ON THE TRANSFER OF AN INTEREST  
34 IN AN ESTATE PLANNING ENTITY AS IF THE REAL PROPERTY DIRECTLY OR  
35 BENEFICIALLY OWNED BY THE ESTATE PLANNING ENTITY WERE CONVEYED BY AN  
36 INSTRUMENT OF WRITING THAT IS RECORDED WITH THE CLERK OF THE CIRCUIT

1 COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT UNDER § 13-202 OF THIS  
2 SUBTITLE.

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

7 (3) THE TRANSFER TAX SHALL BE APPLIED TO THE TRANSFER OF AN  
8 INTEREST IN AN ESTATE PLANNING ENTITY AT THE RATE ESTABLISHED IN THIS  
9 SUBTITLE.

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

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

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 ARE  
22 OBLIGATIONS OF THE ESTATE PLANNING ENTITY.

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

25 13-207.

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

28 (1) § 12-108(a) of this article (Transfer to government or public agency);

29 (2) § 12-108(c) of this article (Transfer between relatives);

30 (3) § 12-108(d) of this article (Transfer between spouses);

31 (4) § 12-108(e) of this article (Supplemental instrument);

32 (5) § 12-108(f) of this article (Previously recorded instrument);

33 (6) § 12-108(l) of this article (Judgments);

34 (7) § 12-108(n) of this article (Order of satisfaction);

- 1 (8) § 12-108(o) of this article (Participation agreement);
- 2 (9) § 12-108(p) of this article (Transfer of corporate property between  
3 related corporations);
- 4 (10) § 12-108(q) of this article (Corporate or partnership conveyance);
- 5 (11) § 12-108(r) of this article (Land installment contracts);
- 6 (12) § 12-108(s) of this article (Options to purchase real property);
- 7 (13) § 12-108(t) of this article (Deed for prior contract of sale);
- 8 (14) § 12-108(u) of this article (Leases of 7 years or less);
- 9 (15) § 12-108(v) of this article (Mergers);
- 10 (16) § 12-108(w) of this article (Consolidations);
- 11 (17) § 12-108(x) of this article (Cooperative housing corporations); [or]
- 12 (18) § 12-108(y) of this article (Transfer from predecessor entity to limited  
13 liability company); OR
- 14 (19) § 12-108(Z) OF THIS ARTICLE (TRANSFERS TO AN ESTATE PLANNING  
15 ENTITY).

16 13-410.

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

19 (B) AN INSTRUMENT OF WRITING IS NOT SUBJECT TO COUNTY TRANSFER TAX  
20 TO THE SAME EXTENT IT IS NOT SUBJECT TO RECORDATION TAX UNDER § 12-108(Z)  
21 OF THIS ARTICLE (TRANSFERS TO AN ESTATE PLANNING ENTITY).

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

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

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
28 effect July 1, 1998.