

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE

House Bill 1338 (Delegate Finifter)

Ways and Means

Limited Liability Companies - Tax Exemption for Transfers of Real Property to a Limited Liability Company and Conversions to a Limited Liability Company

This bill allows an instrument of writing transferring real property ownership when a foreign entity converts to a limited liability company (LLC) to be exempt from recordation and transfer taxes.

Fiscal Summary

State Effect: Potential decrease in special fund revenues. Expenditures would not be affected.

Local Effect: Potential decrease in local revenues. Expenditures would not be affected.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill changes the definition of a “predecessor entity” to include a State or foreign general partnership, limited partnership, limited liability partnership, limited liability limited partnership, proprietorship, or joint venture for purposes of an exemption from recordation and transfer taxes.

Current Law: Chapter 630 of 1996 provided an exemption from recordation and transfer taxes for transfers of real property from a predecessor entity to an LLC if: (1) the members of

the LLC are identical to the partners of the converting entity; (2) each member's allocation of the profits and losses of the LLC are identical to that member's allocation of the converting entity; and (3) the instrument of writing that transfers title to real property represents the dissolution of the predecessor entity for purposes of conversion to an LLC.

Background: The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland home buyers). The tax is collected by the clerks of the circuit court and transferred to the Comptroller of the Treasury.

State transfer tax revenues are special fund revenues dedicated for specific programs and are distributed as follows: 3% of total revenue is earmarked to defray administrative costs, and \$1 million to cover debt service expenses. The remaining revenues are approximately dedicated to the following: Program Open Space (76%), Agricultural Land Preservation Fund (17%), Heritage Conservation Fund (2%), and Rural Legacy Program (5%). Approximately 37% of State transfer tax revenues are distributed to local Program Open Space programs. Any decrease in transfer tax revenues would result in a funding decrease for these programs. The property transfer tax allocation to these programs for fiscal 2001 totals \$96,220,000.

A local property transfer tax may be imposed on instruments transferring title to real property. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage. Except in Prince George's County, mortgages are not subject to the tax.

The State imposes a recordation tax rate of \$1.65 per \$500 of consideration paid for transactions involving security agreements or articles of transfer of all or substantially all of the assets of a corporation in a merger, consolidation, or other transfer. The taxes are collected by the State Department of Assessments and Taxation (SDAT) and remitted to the Comptroller. After deducting the department's administrative costs, the net proceeds are distributed to the counties based on the ratio of recordation tax collected in the prior fiscal year in each county to total recordation tax collected. During fiscal 1999, the department collected \$3,755,041 in recordation tax. Of that amount, \$93,876 was retained by the department for administrative fees. The remainder was credited to the counties.

The counties and Baltimore City are authorized by law to impose locally established recordation tax rates on any business or person: (1) conveying title to real property; or (2) creating or giving notice of a security interest (i.e., a lien or encumbrance) in real or personal property, by means of an instrument of writing.

The clerks of the circuit court collect the county recordation taxes in all counties except Prince George's, where they are collected by the county director of finance. Fees ranging from 3% to 5% of the tax collected are retained by the clerks which is credited to the State

general fund. The remainder of the tax is remitted to the respective counties. Total recordation taxes collected during fiscal 1999 totaled \$180,053,530, while fees retained by the clerks totaled \$6,077,680.

Exhibit 1 provides a schedule of local recordation and transfer tax rates for fiscal 1999.

State Revenues: State transfer tax revenues could decrease depending on the number of foreign entities that convert to a limited liability company. The State transfer tax rate is 0.5% of the value of consideration paid, and revenues are dedicated to Program Open Space, the Rural Legacy Program, the Agricultural Land Preservation Fund, and the Heritage Preservation Fund. This exemption could also reduce fees received by the clerks of the courts for collecting local recordation and transfer taxes. The extent of the exemptions that would occur and collection fees that may be lost cannot be reliably estimated at this time.

Local Revenues: As with State transfer tax revenues, local recordation and transfer tax revenues could decrease depending on the number of foreign entities that convert to limited liability companies. The Department of Legislative Services does not have any information on which to base an estimate of the revenue loss.

Additional Information

Prior Introductions: The bill was introduced during the 1999 session as SB 675 but was withdrawn. It was also introduced during the 1998 session as HB 878 and received an unfavorable report from the House Ways and Means Committee.

Cross File: None.

Information Source(s): Department of Assessments and Taxation, Department of Legislative Services

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cm/jr

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Exhibit 1
Local Recordation and Transfer Tax Rates
FY 2000

<u>County</u>	<u>Recordation Tax Rate per \$500 of Consideration</u>	<u>Transfer Tax Rate (Percent of Transaction Value)</u>
Allegany	\$2.20	0.2%
Anne Arundel	\$3.50	1.0%
Baltimore City	\$2.75	1.5%
Baltimore	\$2.50	1.5%
Calvert	\$5.00	0.0%
Caroline	\$3.30	0.5%
Carroll	\$3.50	0.0%
Cecil	\$3.30	0.5%
Charles	\$5.00	0.0%
Dorchester	\$3.30	1.0%
Frederick	\$3.50	0.0%
Garrett	\$3.50	1.0%
Harford	\$3.30	1.0%
Howard	\$2.50	1.0%
Kent	\$3.30	0.5%
Montgomery	\$2.20	1.0%
Prince George's	\$2.20	1.4%
Queen Anne's	\$3.30	0.5%
St. Mary's	\$3.30	1.0%
Somerset	\$1.65	0.0%
Talbot	\$3.30	1.0%
Washington	\$3.80	0.0%
Wicomico	\$2.30	0.5%
Worcester	\$3.30	0.5%

Source: Department of Legislative Services
