
By: **Delegates Healey, Bozman, Heller, Conroy, Phillips, Hixson, Shriver,
and C. Davis**

Introduced and read first time: February 1, 2002
Assigned to: Ways and Means

Committee Report: Favorable with amendments
House action: Adopted with floor amendments
Read second time: March 23, 2002

CHAPTER _____

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
5 in 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
8 filings; requiring the Department of Assessments and Taxation to adopt certain
9 regulations; defining certain terms; providing for a delayed effective date;
10 requiring the Department of Assessments and Taxation to deduct and credit
11 certain revenues to a certain fund; and generally relating to the taxation of
12 transfers of controlling interests in certain entities.

13 BY repealing and reenacting, with amendments,
14 Article - Tax - Property
15 Section 12-110(d) and 13-209(a)
16 Annotated Code of Maryland
17 (2001 Replacement Volume and 2001 Supplement)

18 BY adding to
19 Article - Tax - Property
20 Section 12-116 and 13-103
21 Annotated Code of Maryland
22 (2001 Replacement Volume and 2001 Supplement)

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

3 **Article - Tax - Property**

4 12-110.

5 (d) (1) THE DEPARTMENT SHALL DEDUCT THE COST OF ADMINISTERING
6 THE RECORDATION TAX FROM THE TAXES COLLECTED UNDER THIS TITLE AND
7 CREDIT THOSE REVENUES TO THE FUND ESTABLISHED UNDER § 1-203.3 OF THE
8 CORPORATIONS AND ASSOCIATIONS ARTICLE.

9 (2) [The] AFTER DEDUCTING THE REVENUES REQUIRED UNDER
10 PARAGRAPH (1) OF THIS SUBSECTION, THE recordation tax collected under [§
11 12-103(d)] §§ 12-103(D) AND 12-116 of this title shall be paid to the Comptroller.
12 [After deduction of the cost to the Department of collecting the tax, the] THE
13 Comptroller shall distribute the revenue to the counties in the ratio that the
14 recordation tax collected in the prior fiscal year in each county bears to the total
15 recordation tax collected in all counties in that year.

16 12-116.

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
18 INDICATED.

19 (2) "CONTROLLING INTEREST" MEANS:

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

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

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

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

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

31 (II) "PLAN OF TRANSFER" DOES NOT INCLUDE A SERIES OF SALES
32 OF SHARES OF A PUBLICLY TRADED ENTITY.

33 (5) (I) "REAL PROPERTY" MEANS REAL PROPERTY LOCATED IN THE
34 STATE.

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

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

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

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

9 1. CONSTITUTES AT LEAST 80% OF THE VALUE OF ITS
10 ASSETS; AND

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

12 (II) FOR THE PURPOSES OF THIS PARAGRAPH, THE VALUE OF REAL
13 PROPERTY SHALL BE DETERMINED WITHOUT REDUCTION FOR ANY MORTGAGE,
14 DEED OF TRUST, OR OTHER LIEN UPON OR SECURITY INTEREST IN THE REAL
15 PROPERTY.

16 (III) "REAL PROPERTY ENTITY" DOES NOT INCLUDE AN ENTITY
17 WITH LAND HOLDINGS ENTIRELY SUBJECT TO AN AGRICULTURAL USE ASSESSMENT
18 UNDER § 8-209 OF THIS ARTICLE.

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

25 (2) (I) THE RECORDATION TAX IS IMPOSED ON THE CONSIDERATION
26 PAYABLE FOR THE TRANSFER OF THE CONTROLLING INTEREST IN THE REAL
27 PROPERTY ENTITY.

28 (II) THE CONSIDERATION TO WHICH THE RECORDATION TAX
29 APPLIES INCLUDES THE AMOUNT OF:

30 1. ANY MORTGAGE, DEED OF TRUST, OR OTHER LIEN UPON
31 OR SECURITY INTEREST IN THE REAL PROPERTY DIRECTLY OR BENEFICIALLY
32 OWNED BY THE REAL PROPERTY ENTITY; AND

33 2. ANY OTHER DEBT OR ENCUMBRANCE OF THE REAL
34 PROPERTY ENTITY.

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

1 ~~(III)~~ (IV) THE REAL PROPERTY ENTITY HAS THE BURDEN OF
2 ESTABLISHING TO THE SATISFACTION OF THE DEPARTMENT THE CONSIDERATION
3 REFERRED TO IN SUBPARAGRAPH (I) OF THIS PARAGRAPH AND THE AMOUNT OF ANY
4 CONSIDERATION ALLOCABLE TO ASSETS OTHER THAN REAL PROPERTY REFERRED
5 TO IN SUBPARAGRAPH ~~(II)~~ (III) OF THIS PARAGRAPH.

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

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

15 (C) (1) ~~THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A~~
16 ~~CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IN ANY OF THE~~
17 ~~CIRCUMSTANCES DESCRIBED IN THE TRANSFER OF A CONTROLLING INTEREST IN A~~
18 REAL PROPERTY ENTITY IS NOT SUBJECT TO RECORDATION TAX IF THE TRANSFER
19 OF THE REAL PROPERTY BY AN INSTRUMENT OF WRITING BETWEEN THE SAME
20 PARTIES AND UNDER THE SAME CIRCUMSTANCES WOULD HAVE BEEN EXEMPT
21 UNDER § 12-108 OF THIS SUBTITLE.

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

25 (I) THE TRANSFER IS COMPLETED OVER A PERIOD OF MORE THAN
26 12 MONTHS; OR

27 (II) THE TRANSFER IS NOT MADE IN ACCORDANCE WITH A PLAN OF
28 TRANSFER.

29 (3) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
30 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY TO ~~A REAL PROPERTY ENTITY~~
31 ANOTHER BUSINESS IF THE OWNERSHIP INTERESTS IN THE TRANSFEREE ~~REAL~~
32 PROPERTY BUSINESS ENTITY ARE HELD BY THE SAME PERSONS AND IN THE SAME
33 PROPORTION AS IN THE REAL PROPERTY ENTITY THE CONTROLLING INTEREST OF
34 WHICH WAS TRANSFERRED.

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

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

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

4 (III) THE COMMON PARENT CORPORATION.

5 (5) THE RECORDATION TAX IS NOT IMPOSED ON THE TRANSFER OF A
6 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY IF THE TRANSFEREE OF THE
7 CONTROLLING INTEREST IN THE REAL PROPERTY ENTITY IS:

8 (I) A NONSTOCK CORPORATION ORGANIZED UNDER TITLE 5,
9 SUBTITLE 2 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; AND

10 (II) REGISTERED WITH THE DEPARTMENT OF AGING AS A
11 CONTINUING CARE RETIREMENT COMMUNITY UNDER ARTICLE 70B, § 9 OF THE CODE.

12 ~~(5)~~ (6) THE REAL PROPERTY ENTITY HAS THE BURDEN OF
13 ESTABLISHING TO THE SATISFACTION OF THE DEPARTMENT THE APPLICABILITY OF
14 ANY EXEMPTION REFERRED TO IN PARAGRAPHS (1) THROUGH ~~(4)~~ (5) OF THIS
15 SUBSECTION.

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

20 (2) THE REPORT SHALL INCLUDE ALL INFORMATION TO ESTABLISH TO
21 THE SATISFACTION OF THE DEPARTMENT:

22 (I) THE CONSIDERATION REFERRED TO IN SUBSECTION (B)(2)(I) OF
23 THIS SECTION;

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

26 (III) ANY EXEMPTION PROVIDED FOR IN SUBSECTION (C) OF THIS
27 SECTION.

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

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

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

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

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

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

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

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

5 (F) THIS SECTION DOES NOT APPLY TO:

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

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

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

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

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

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

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

24 (II) EXEMPTIONS PROVIDED BY LAW WHEN REAL PROPERTY IS
25 TRANSFERRED BY AN INSTRUMENT OF WRITING ARE APPLICABLE; AND

26 (III) THERE IS NO DOUBLE TAXATION OF A SINGLE TRANSACTION.

27 13-103.

28 (A) IN THIS SECTION, THE WORDS "CONTROLLING INTEREST", "REAL
29 PROPERTY", AND "REAL PROPERTY ENTITY" HAVE THE MEANINGS STATED IN § 12-116
30 OF THIS ARTICLE.

31 (B) (1) THE TAXES UNDER THIS TITLE ARE IMPOSED ON THE TRANSFER OF
32 A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY AS IF THE REAL PROPERTY
33 DIRECTLY OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY WERE
34 CONVEYED BY AN INSTRUMENT OF WRITING THAT IS RECORDED WITH THE CLERK
35 OF THE CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT UNDER §
36 13-202 OF THIS TITLE.

1 (2) THE TAXES UNDER THIS SECTION ARE IMPOSED ON THE
2 CONSIDERATION PAYABLE FOR THE TRANSFER OF THE CONTROLLING INTEREST IN
3 THE REAL PROPERTY ENTITY OR ON THE VALUE OF THE REAL PROPERTY DIRECTLY
4 OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY, AS PROVIDED IN §
5 12-116(B)(2) OF THIS ARTICLE.

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

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

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

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

15 (2) IN § 12-116(C) OF THIS ARTICLE THAT EXEMPTS THE TRANSFER OF A
16 CONTROLLING INTEREST IN A REAL PROPERTY ENTITY FROM THE RECORDATION
17 TAX.

18 (D) IN EACH INSTANCE IN WHICH A CONTROLLING INTEREST IN A REAL
19 PROPERTY ENTITY IS TRANSFERRED, THE PROVISIONS OF § 12-116(D) AND (E) OF THIS
20 ARTICLE ARE APPLICABLE.

21 (E) THIS SECTION DOES NOT APPLY IN THE CIRCUMSTANCES DESCRIBED IN §
22 12-116(F) OF THIS ARTICLE.

23 (F) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ADMINISTER THIS
24 SECTION IN THE SAME MANNER AS IN § 12-116(G) OF THIS ARTICLE.

25 13-209.

26 (a) (1) THE DEPARTMENT SHALL DEDUCT THE COST OF ADMINISTERING
27 THE TRANSFER TAX FROM THE TAXES COLLECTED UNDER THIS TITLE AND CREDIT
28 THOSE REVENUES TO THE FUND ESTABLISHED UNDER § 1-203.3 OF THE
29 CORPORATIONS AND ASSOCIATIONS ARTICLE.

30 (2) [The] AFTER DEDUCTING THE REVENUES REQUIRED UNDER
31 PARAGRAPH (1) OF THIS SUBSECTION, THE revenue from transfer tax is payable to
32 the Comptroller for deposit in a special fund.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 January 1, 2003.

