

SENATE BILL 120

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Q6  
HB 557/02 - W&M

2003 Regular Session  
3lr0258  
CF 3lr0477

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By: **Senators Miller, Frosh, Middleton, Hollinger, and Currie**  
Introduced and read first time: January 23, 2003  
Assigned to: Budget and Taxation

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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  
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 2002 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 2002 Supplement)

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

25 **Article - Tax - Property**

26 12-110.

27 (d) (1) THE DEPARTMENT SHALL DEDUCT THE COST OF ADMINISTERING  
28 THE RECORDATION TAX FROM THE TAXES COLLECTED UNDER THIS TITLE AND

1 CREDIT THOSE REVENUES TO THE FUND ESTABLISHED UNDER § 1-203.3 OF THE  
2 CORPORATIONS AND ASSOCIATIONS ARTICLE.

3 (2) [The] AFTER DEDUCTING THE REVENUES REQUIRED UNDER  
4 PARAGRAPH (1) OF THIS SUBSECTION, THE recordation tax collected under [§  
5 12-103(d)] §§ 12-103(D) AND 12-116 of this title shall be paid to the Comptroller.  
6 [After deduction of the cost to the Department of collecting the tax, the] THE  
7 Comptroller shall distribute the revenue to the counties in the ratio that the  
8 recordation tax collected in the prior fiscal year in each county bears to the total  
9 recordation tax collected in all counties in that year.

10 12-116.

11 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
12 INDICATED.

13 (2) "CONTROLLING INTEREST" MEANS:

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

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

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

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

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

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

27 (5) (I) "REAL PROPERTY" MEANS REAL PROPERTY LOCATED IN THE  
28 STATE.

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

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

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

34 (6) (I) "REAL PROPERTY ENTITY" MEANS A CORPORATION,  
35 PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY, LIMITED LIABILITY



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

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

10 (C) (1) THE TRANSFER OF A CONTROLLING INTEREST IN A REAL PROPERTY  
11 ENTITY IS NOT SUBJECT TO RECORDATION TAX IF THE TRANSFER OF THE REAL  
12 PROPERTY BY AN INSTRUMENT OF WRITING BETWEEN THE SAME PARTIES AND  
13 UNDER THE SAME CIRCUMSTANCES WOULD HAVE BEEN EXEMPT UNDER § 12-108 OF  
14 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 THAN  
19 12 MONTHS; OR

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

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

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

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

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

35 (III) THE COMMON PARENT CORPORATION.

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

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

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

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

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

12 (2) THE REPORT SHALL INCLUDE ALL INFORMATION TO ESTABLISH TO  
13 THE SATISFACTION OF THE DEPARTMENT:

14 (I) THE CONSIDERATION REFERRED TO IN SUBSECTION (B)(2)(I) OF  
15 THIS SECTION;

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

18 (III) ANY EXEMPTION PROVIDED FOR IN SUBSECTION (C) OF THIS  
19 SECTION.

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

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

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

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

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

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

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

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

32 (F) THIS SECTION DOES NOT APPLY TO:

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

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

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

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

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

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

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

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

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

20 13-103.

21 (A) IN THIS SECTION, "CONTROLLING INTEREST", "REAL PROPERTY", AND  
22 "REAL PROPERTY ENTITY" HAVE THE MEANINGS STATED IN § 12-116 OF THIS  
23 ARTICLE.

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

30 (2) THE TAXES UNDER THIS SECTION ARE IMPOSED ON THE  
31 CONSIDERATION PAYABLE FOR THE TRANSFER OF THE CONTROLLING INTEREST IN  
32 THE REAL PROPERTY ENTITY OR ON THE VALUE OF THE REAL PROPERTY DIRECTLY  
33 OR BENEFICIALLY OWNED BY THE REAL PROPERTY ENTITY, AS PROVIDED IN §  
34 12-116(B)(2) OF THIS ARTICLE.

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

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

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

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

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

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

14 (E) THIS SECTION DOES NOT APPLY IN THE CIRCUMSTANCES DESCRIBED IN §  
15 12-116(F) OF THIS ARTICLE.

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

18 13-209.

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

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

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 January 1, 2004.