

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 314 (Delegate V. Clagett)
Ways and Means

Recordation and Transfer Tax - Land Trusts - Exemption

This bill provides that the transfer of a conservation easement or a fee simple title to a land trust are exempt from recordation and transfer taxes.

The bill is effective July 1, 2003.

Fiscal Summary

State Effect: Potential minimal decrease in special fund transfer tax revenues.

Local Effect: Potential minimal decrease in recordation and transfer tax revenues.

Small Business Effect: Potential minimal.

Analysis

Current Law: The transfer of a conservation easement and a fee simple title to a land trust is subject to recordation and transfer taxes. Although there is no specific exemption from recordation and transfer taxes on the transfer of land easements to land trusts, the Department of Legislative Services was informed that, as a matter of courtesy, the clerks of the circuit court currently do not assess these taxes.

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 after 3% of total revenues earmarked to defray administrative cost. 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 50% of Program Open Space 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 for fiscal 2003 totals \$97,461,000. As part of the Budget Reconciliation and Financing Act of 2002, approximately \$47 million of the total transfer tax revenues in fiscal 2003 were transferred to the State general fund. The proposed Budget Reconciliation and Financing Act of 2003 would make significant changes to the distribution of transfer tax revenues for fiscal 2003, 2004, and 2005.

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 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.

Background: Conservation easements limit land to specific uses and protect it from development. These voluntary legal agreements are created between private landowners and land trusts, conservation organizations, or government agencies. A land trust is a private, tax-exempt, nonprofit corporation that seeks to preserve land through land acquisition or land donations.

The Maryland Environmental Trust (MET) is a statewide local land trust governed by a citizen board of trustees. MET works with over 40 private nonprofit land trusts. These land trusts can hold conservation easements independently or jointly with MET (currently 40,000 acres are co-held between a local land trust and MET). In addition, some of these land trusts acquire and manage land.

State Fiscal Effect: The exemption of transfers of conservation easements and fee simple title to real property to land trust could minimally decrease State transfer tax revenues. As noted above, the Department of Legislative Services was informed that, as a matter of courtesy, the clerks of the circuit court currently do not assess transfer and recordation taxes on a transfer of a conservation easement to a land trust. Therefore the State would only realize a loss of transfer tax revenues on transfers of fee simple title to

real property to a land trust. The number of such transfers in any given year cannot be reliably estimated but appears to be very limited. MET estimates that less than ten such transfers occur in any given year. Most of these transfers are for little or no consideration.

Local Fiscal Effect: For the same reasons noted above, county recordation and transfer tax revenues could decrease minimally. Montgomery County advises that fewer than five transfers occur each year and any foregone revenues would be minimal. Prince George's County advised that the fiscal impact would be extremely minor and that the majority of these transfers are for no consideration.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Assessments and Taxation; Maryland Environmental Trust; Harford Land Trust, Inc.; Southern Calvert Land Trust; Montgomery County; Prince George's County; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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