HB 1045

Department of Legislative Services

Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1045 (Delegate Elmore, *et al.*)

Ways and Means Budget and Taxation

Income Tax - Sales of Property by Nonresidents

This bill requires that certain payments be made to either the Clerk of the Circuit Court or the Department of Assessments and Taxation in order to record a change of ownership in a sale or exchange of real property by a nonresident or nonresident entity. The payment is to be transferred to the Comptroller within three business days as a withholding for income taxes due on the sale of the property. The payment is either 4.75% of the total payment for a nonresident or 7% of the total payment for a nonresident entity. Certain exemptions from the payment are specified in the bill.

Fiscal Summary

State Effect: General fund income tax revenues could increase by approximately $10 million in FY 2004 taking into account the bill's October 1 effective date. Future year estimates reflect annualization.

($ in millions)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
GF Revenue	$10	$12	$12	$12	$12
Expenditure	$0	$0	$0	$0	$0
Net Effect	$10	$12	$12	$12	$12

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local income tax revenues are not affected because nonresidents do not pay local income tax.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill requires that certain amounts be paid based on the total payment before the change in ownership can be recorded in the assessment books. Total payment is defined as the net proceeds of a sale actually paid to a transferor if the transferor is a nonresident or nonresident entity, including the fair market value of any property to be transferred.

Exemptions from withholding or reduced tax withholding apply if:

- a certification under penalties of perjury that the transferor is a resident of the State or is a resident entity is provided;
- the transferor presents to the Clerk of the Circuit Court or the Department of Assessments and Taxation a certificate issued by the Comptroller stating that: no tax is due from that transferor in connection with that sale or exchange of property; a reduced amount of tax is due from that transferor in connection with that sale or exchange of property and stating the reduced amount that should be collected by the clerk or the department before recordation or filing; or the transferor has satisfied the transferor's tax liability or has provided adequate security to cover such liability;
- the property is transferred pursuant to foreclosure of a mortgage, deed of trust, or other lien instrument or a deed in lieu of foreclosure;
- the property is transferred by the United States, the State, or a unit or political subdivision of the State; and
- a certification that the property transfer is the transferor's principal residence.

The amounts withheld and transferred to the Comptroller are deemed to be on behalf of the transferor. The transferee, title insurance producer, title insurer, settlement agent, closing attorney, lending institution, and real estate agent or broker are not liable for any amount required to be collected. The bill specifies that it does not impose a tax on a transferor or affect any liability of the transferor for any tax, nor does it prohibit the Comptroller from collecting any taxes due from the transferor in any other manner authorized. The Comptroller must adopt regulations to administer the bill's requirements. The Comptroller must study the fiscal, regulatory, and administrative effects of income tax withholding on sales or property by nonresidents and nonresident entities and report its findings to the Governor and the Senate Budget and Taxation Committee and the House Ways and Means Committee by December 1, 2004.

Current Law/Background: In most cases, a real estate sale by a nonresident involves property that is not the individual's primary residence, meaning the sale may trigger a capital gain that is taxable under Maryland income tax. No Maryland income taxes, however, are currently withheld against this tax liability, nor would the taxpayer have made other Maryland withholdings (against wages, for example). Given that the nonresident may not file a Maryland return and the federal return would not necessarily indicate Maryland taxable income, it is difficult to collect Maryland taxes owed from these transactions.

State Revenues: The increase in State income tax revenues from the provisions of this bill cannot be reliably estimated at this time, but based roughly on the experience of other states, it is reasonable to assume that the provision would increase tax collections by $12 million on an annualized basis ($10 million in fiscal 2004). It is assumed that the vast majority of the revenues would be personal income taxes. At least three other states – Vermont, Rhode Island, California – currently require withholding of taxes on such sales.

Additional Information

Prior Introductions: None.

Cross File: None, but HB 936 and SB 656 have similar provisions.

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

Fiscal Note History: First Reader - March 13, 2003
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