

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1490
Ways and Means

(Delegate Kaiser, *et al.*)

Recordation Tax - Indemnity Mortgages

This bill provides that the recordation tax applies to an “indemnity mortgage” in the same manner as if the guarantor were primarily liable for the guaranteed loan, unless the recordation tax is paid on another instrument of writing that secures the payment of the guaranteed loan. An indemnity mortgage includes any mortgage, deed or trust, or other security interest in real property that secures a guarantee of repayment of a loan for which the guarantor is not primarily liable.

The bill takes effect July 1, 2004.

Fiscal Summary

State Effect: None.

Local Effect: Local government revenues would increase depending on the number of transactions occurring each year and the value of each transaction. The increase would be significant.

Small Business Effect: Minimal.

Analysis

Current Law: Counties and Baltimore City are authorized 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. Local rates range from \$2.20 per \$500 in Prince George’s County to \$5.00 per \$500 in Calvert, Caroline, Carroll,

Charles, Dorchester, and Frederick counties. Indemnity mortgages, as defined by the bill, are not subject to the recordation tax.

Background: An indemnity mortgage works as follows. A lender agrees to loan money to a borrower on two conditions: (1) that a third party guarantee repayment of the loan; and (2) that the guarantor execute a mortgage on real property to secure the guarantee. An indemnity mortgage is the instrument that manifests the pledge of the property. An indemnity mortgage is recorded so as to establish a lien on the property.

Local Fiscal Effect: The bill could increase local government revenues by a significant amount. However, the amount of the overall local government revenue increase cannot be reliably estimated and depends on the number of transactions occurring each year and the value of each transaction. Montgomery County estimates that subjecting indemnity mortgages to the recordation tax could increase county revenues by approximately \$10 million annually.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Montgomery County, Frederick County, Washington County Clerk of the Circuit Court, Department of Legislative Services

Fiscal Note History: First Reader - March 18, 2004
lc/hlb

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