

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

Senate Bill 906 (Senator Klausmeier)
 Budget and Taxation

Income Tax - Payments - Sale of Real Property by Nonresidents

This bill requires that an affidavit stating the amount of net proceeds received by a transferor of real property must be included only in instances where the transferor of the property is a nonresident individual or entity subject to a withholding payment. The bill eliminates the provision that if the net proceeds are not included in a sworn affidavit, the amount must be included on the deed. In addition, the affidavit may not be part of public records.

The bill takes effect July 1, 2004.

Fiscal Summary

State Effect: General fund expenditure increase of \$116,300 in FY 2005 due to the hiring of three additional circuit court processing clerks to handle the separate processing of affidavits. Future years reflect annualization and inflation.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	116,300	119,900	127,500	135,700	144,600
Net Effect	(\$116,300)	(\$119,900)	(\$127,500)	(\$135,700)	(\$144,600)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: All deeds must either have the amount of net proceeds received by the transferor of the property listed on the deed or an affidavit accompanying the deed stating the amount of net proceeds received. Net proceeds is defined as the total payment received by the transferor of the property minus liens or mortgage(s) on the property that are being paid upon exchange of the property plus the transferor-paid settlement expenses disclosed on a settlement statement.

Background: Chapter 203 of 2003 established the requirement that the net proceeds received by a transferor of a property either be listed on the deed or stated on an affidavit accompanying the deed. The amount of net proceeds received by the transferor is part of public records. In order for a change of ownership in a sale or exchange of real property by a nonresident or nonresident entity to be recorded, the nonresident must pay a withholding based on the amount of net proceeds. The withholding is 7% of the net proceeds for a nonresident entity and 4.75% for a nonresident. This withholding collected by either the State Department of Assessments and Taxation or the Clerk of the Circuit Court must be transferred to the Comptroller within 30 business days. The Comptroller advises that approximately \$8 million in withholding taxes have been collected in the first quarter of fiscal 2004. It is estimated that the changes to the deed process enacted by Chapter 203 will increase tax collections by \$12 million in fiscal 2005.

State Fiscal Effect: General fund expenditures could increase by an estimated \$116,344 in fiscal 2005, which accounts for the bill's July 1, 2004 effective date. This estimate reflects the cost of hiring three processing clerks to handle the separate processing of affidavits. It includes a salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

According to the Administrative Office of the Courts, less than 5% of deeds are subject to withholding. The provisions of this bill require these affidavits to be processed and filed separately, the recording reference would need to be filed on affidavits, and the deed would need to be marked as having an affidavit received. In addition, the affidavits would need to be stored separately from the deeds. These additional responsibilities are unlikely to be absorbed with existing resources in counties such as Prince George's and Montgomery counties that process a large volume of deeds or in counties that process a high percentage of deeds from nonresidents, as is the case in Worcester and Garrett counties.

The Comptroller's Office advises that the bill could cause additional minimal increased expenditures due to increased auditing expenses due to additional work required to match an affidavit to the deed. Legislative Services advises that this can be absorbed within existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: HB 1358 (Delegate Cardin) – Ways and Means.

Information Source(s): Judiciary (Administrative Office of the Courts), Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - March 16, 2004
ncs/jr

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