Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1277 (Delegates Gordon and Cardin)
Ways and Means Budget and Taxation

Income Tax - Payments - Sale of Property by Nonresidents

This bill provides that for every deed or instrument of writing that effects a change of ownership on the assessment books related to the sale of property by a nonresident for which a specified payment is required, the total payment must be described on a form specified by the Comptroller. The bill provides for an exemption from the requirement for property transferred pursuant to a deed or other instrument of writing that includes a required statement of consideration indicating that the consideration payable is zero. The bill also alters the definition of "net proceeds" with regards to payments on the sale of property by nonresidents. Finally, the bill defines specified terms for purposes of a requirement that specified payments be made before a deed or other instrument of writing may be recorded under specified circumstances.

Fiscal Summary

State Effect: None. The bill clarifies existing law.

Local Effect: None.

Small Business Effect: None.

Analysis

Background: Chapter 203 of 2003 requires that certain payments be made to either the Clerk of the Circuit Court or the State Department of Assessments and Taxation (SDAT) 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 30 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 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. Given that the nonresident may not file a Maryland return and the federal return would not necessarily indicate Maryland taxable income, it was difficult to collect Maryland taxes owed from these transactions. Based roughly on the experience of other states, it was estimated that this provision of Chapter 203 could increase tax collections by $12 million on an annualized basis ($10 million in fiscal 2004).

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 15, 2004
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