Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 454 (Delegate Kaiser, *et al.*)
Ways and Means

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 of 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, 2006.

Fiscal Summary

State Effect: None.

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

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 seven jurisdictions – Baltimore

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

In the 1950s, the General Assembly granted Prince George's County the authority to impose a recordation tax on all deeds of trust, including indemnity mortgages.

Background: An indemnity mortgage works as follows. A lender agrees to loan money to a borrower on two conditions: (1) that a third party guarantees repayment of the loan; and (2) that the guarantor executes 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.

This bill is intended to eliminate a purported tax avoidance transaction in which an entity, in order to avoid recordation tax on a deed of trust, creates a limited liability company (LLC), has the LLC borrow money with the original entity as the third party guarantor of the debt. In that case, no recordation tax is paid on the LLC borrowing or the third party guarantee.

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 $5 million annually. Caroline County estimates that its recordation tax revenues would increase by approximately $24,000 annually. Calvert County estimates recordation tax revenues could increase by $1.4 million.

Additional Information

Prior Introductions: HB 665 of 2005 and HB 1490 of 2004, identical bills, were heard by the House Ways and Means Committee but no further action was taken.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Montgomery County, Prince George's County, Caroline County, Calvert County, Howard County, Baltimore City, Department of Legislative Services

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