

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 559

(Senator Madaleno, *et al.*)

Budget and Taxation

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, 2008.

Fiscal Summary

State Effect: None.

Local Effect: Local government revenues could 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 \$6.00 per \$500 in Frederick County. 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; however, the county has not imposed the 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 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.

The 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) and 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.

County governments collected \$508.5 million in local recordation taxes in fiscal 2007. This amount is significantly lower than the amounts collected in fiscal 2005 and 2006 when the soaring real estate market yielded recordation taxes totaling \$525.4 million in fiscal 2005 and \$619.0 million in fiscal 2006. If the current downward trend in the real estate market continues, local recordation taxes could reach a five-year low in fiscal 2008. Local officials are projecting to collect \$454.5 million in recordation taxes in fiscal 2008. **Exhibit 1** shows the local recordation tax rates and revenue collections for each jurisdiction.

Local Fiscal Effect: The bill could increase local government revenues by a significant amount. However, the amount of the overall 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 \$30 million annually, representing a 30% increase over current collections. Harford County estimates the recordation tax revenues could increase by about \$750,000 annually as a result of imposing the tax on indemnity mortgages, representing a 4% increase over current collections.

Additional Information

Prior Introductions: This bill was introduced as HB 409 of 2007 and HB 454 of 2006. The House Ways and Means Committee took no action on either bill.

Cross File: HB 260 (Delegate Kaiser, *et al.*) – Ways and Means.

Information Source(s): State Department of Assessments and Taxation, Carroll County, Harford County, Montgomery County, Prince George's County, Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2008
ncs/hlb

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Exhibit 1
Local Recordation Taxes – Rates and Revenue Collections

County	Local Tax Rates		Revenue Collections		
	FY 2008	FY 2005	FY 2006	FY 2007	FY 2008
Allegany	\$3.25	\$1,577,460	\$1,808,108	\$1,867,666	\$1,837,500
Anne Arundel	3.50	59,827,840	68,113,312	57,226,551	52,800,000
Baltimore City	5.00	36,599,163	55,628,000	46,550,000	48,700,000
Baltimore	2.50	41,628,848	49,960,828	40,718,075	37,257,038
Calvert	5.00	13,630,156	14,481,819	11,664,698	9,500,000
Caroline	5.00	2,952,177	3,941,174	3,114,738	3,000,000
Carroll	5.00	22,188,200	22,766,629	18,902,094	16,000,000
Cecil	4.10	7,539,241	9,603,661	8,441,301	8,200,000
Charles	5.00	24,998,742	29,759,035	26,559,471	20,306,400
Dorchester	5.00	4,060,939	4,792,334	3,790,983	3,927,359
Frederick	6.00	25,892,014	28,356,811	23,041,214	20,000,000
Garrett	3.50	3,706,081	3,877,203	3,436,399	3,200,000
Harford	3.30	20,424,258	23,662,735	19,283,896	19,422,470
Howard	2.50	24,876,072	27,870,355	22,531,964	21,857,855
Kent	3.30	1,848,101	2,023,589	2,148,600	1,530,000
Montgomery	3.45	127,300,257	141,100,857	105,988,139	92,020,000
Prince George's	2.20	49,995,036	70,203,010	63,668,099	51,556,700
Queen Anne's	3.30	5,841,060	6,845,259	6,039,956	5,500,000
St. Mary's	4.00	10,455,397	12,393,522	10,078,293	9,747,000
Somerset	3.30	1,301,235	1,509,071	1,139,878	880,000
Talbot	3.30	6,439,627	6,344,752	5,472,722	5,000,000
Washington	3.80	11,590,125	12,572,141	10,071,718	9,000,000
Wicomico	3.50	5,721,406	6,585,432	5,874,835	4,794,940
Worcester	3.30	14,982,660	14,788,218	10,905,366	8,500,000
Total		\$525,376,095	\$618,987,855	\$508,516,656	\$454,537,262

Source: Maryland Association of Counties; Department of Legislative Services