

SENATE BILL 727

Q6, C1

9lr1639

By: **Senators Madaleno, Frosh, Pinsky, Raskin, and Rosapepe**

Introduced and read first time: February 6, 2009

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Recordation and Transfer Tax – Controlling Interest Transfers**

3 FOR the purpose of altering the definition of real property entity for purposes of
4 certain provisions imposing recordation and transfer taxes on certain transfers
5 of a controlling interest in certain entities; requiring the articles of organization
6 of a limited liability company to include the name and address of certain
7 organizers, members, and authorized persons; requiring the State Department
8 of Assessments and Taxation to determine whether a certain tax is owed when
9 certain amendments to the articles of organization of a limited liability company
10 are filed; and generally relating to imposing the recordation and transfer tax on
11 certain transfers of a controlling interest in certain real property entities.

12 BY repealing and reenacting, with amendments,
13 Article – Tax – Property
14 Section 12–117(a)(6) and (g)
15 Annotated Code of Maryland
16 (2007 Replacement Volume and 2008 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article – Tax – Property
19 Section 12–117(b)(1)
20 Annotated Code of Maryland
21 (2007 Replacement Volume and 2008 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article – Corporations and Associations
24 Section 4A–101(a) and (c) and 4A–204(c)
25 Annotated Code of Maryland
26 (2007 Replacement Volume and 2008 Supplement)

27 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Corporations and Associations
2 Section 4A–204(a)
3 Annotated Code of Maryland
4 (2007 Replacement Volume and 2008 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Tax – Property**

8 12–117.

9 (a) (6) (i) “Real property entity” means a corporation, partnership,
10 association, limited liability company, limited liability partnership, other
11 unincorporated form of doing business, or trust that directly or beneficially owns real
12 property that[:

13 1.] constitutes at least 80% of the value of its assets[; and

14 2. has an aggregate value of at least \$1,000,000].

15 (ii) For the purposes of this paragraph, the value of real
16 property shall be determined without reduction for any mortgage, deed of trust, or
17 other lien on or security interest in the real property.

18 (iii) “Real property entity” does not include an entity with land
19 holdings that, other than homesites or areas of commercial activity related to
20 agricultural production, are entirely subject to an agricultural use assessment under §
21 8–209 of this article.

22 (b) (1) The recordation tax is imposed on the transfer of a controlling
23 interest in a real property entity, as if the real property directly or beneficially owned
24 by the real property entity, was conveyed by an instrument of writing that is recorded
25 with the clerk of the circuit court for a county or filed with the Department under §
26 12–102 of this title.

27 (g) (1) The Department shall adopt regulations to administer this section.

28 (2) The regulations shall include any additional standards and
29 exemptions to assure that:

30 (i) a tax is imposed when a transaction is structured involving
31 a controlling interest in a real property entity to avoid payment of the recordation tax;

32 (ii) exemptions provided by law when real property is
33 transferred by an instrument of writing are applicable; and

1 (iii) there is no double taxation of a single transaction.

2 (3) IF AN AMENDMENT TO THE ARTICLES OF ORGANIZATION OF A
3 LIMITED LIABILITY COMPANY FILED WITH THE DEPARTMENT INDICATES A
4 CHANGE IN THE ORGANIZERS, MEMBERS, OR AUTHORIZED PERSONS OF THE
5 LIMITED LIABILITY COMPANY, THE DEPARTMENT SHALL DETERMINE WHETHER
6 ANY TAX IS DUE UNDER THIS SECTION.

7 **Article – Corporations and Associations**

8 4A-101.

9 (a) In this title the following terms have the meanings indicated.

10 (c) “Authorized person” means any person, whether or not a member, who is
11 authorized by the articles of organization, by an operating agreement, or otherwise, to
12 execute or file a document required or permitted to be executed or filed on behalf of a
13 limited liability company or foreign limited liability company under this title, or to
14 otherwise act as an agent of the limited liability company.

15 4A-204.

16 (a) The articles of organization shall set forth:

17 (1) The name of the limited liability company;

18 (2) The purpose for which the limited liability company is formed;

19 (3) The address of its principal office in this State and the name and
20 address of its resident agent; [and]

21 (4) **THE NAME AND ADDRESS OF EACH ORGANIZER AND OF EACH**
22 **MEMBER WITH AUTHORITY TO EXECUTE INSTRUMENTS ON BEHALF OF THE**
23 **LIMITED LIABILITY COMPANY;**

24 (5) **IF THE COMPANY IS TO BE MANAGED BY AN AUTHORIZED**
25 **PERSON, THE NAME AND ADDRESS OF EACH AUTHORIZED PERSON; AND**

26 [(4)] (6) Any other provision, not inconsistent with law, which the
27 members elect to set out in the articles, including, but not limited to, a statement that
28 the authority of members to act for the limited liability company solely by virtue of
29 their being members is limited.

30 (c) An amendment to the articles of organization shall be:

31 (1) In writing;

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- 1 (2) Approved by unanimous consent of the members;
- 2 (3) Executed under the provisions of § 4A–206 of this subtitle; and
- 3 (4) Filed for record with the Department.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 July 1, 2009.