

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 824 (Montgomery County Delegation)
Ways and Means

Montgomery County - Recordation Tax - Indemnity Mortgages
MC 926-09

This bill imposes the recordation tax in Montgomery County on an “indemnity mortgage” in the same manner as if the guarantor was 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, 2009.

Fiscal Summary

State Effect: None.

Local Effect: Montgomery County revenues increase by approximately \$25 million annually beginning in FY 2010. County expenditures are not affected.

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. Indemnity mortgages, as defined by the bill, are not subject to the recordation 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.

The Montgomery County recordation tax rate in fiscal 2009 is \$3.45 per \$500. Montgomery County is projected to collect approximately \$72.3 million in recordation taxes in fiscal 2009. **Exhibit 1** shows the amount of recordation tax revenues collected in Montgomery County for fiscal 2006 through 2009.

Exhibit 1
Montgomery County Recordation Taxes
Fiscal 2006-2009

<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
\$141.1 million	\$106.0 million	\$79.4 million	\$72.3 million

Source: Maryland Association of Counties

Local Fiscal Effect: Montgomery County revenues may increase by a significant amount as a result of the bill. However, the amount of the overall increase depends on the number of transactions occurring each year and the value of each transaction.

Montgomery County indicates that based on the value of indemnity deeds of trust that were processed between July 1, 2008 and December 31, 2009, the amount of foregone recordation tax revenue for this time period is approximately \$14.5 million. For a full year, assuming a constant level of transactions, this amount would equate to \$29 million. However, due to the decline in economic conditions and the market slowdown, it is likely that the actual amount of increased revenue resulting from the bill may be somewhat less for fiscal 2010. Assuming that the value of these transactions decreases by 10% to 15% from fiscal 2009 to 2010, the resulting revenue increase from this bill would be approximately \$25 million.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Montgomery County, Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2009
mcp/hlb

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