

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 727

(Senator Madaleno, *et al.*)

Budget and Taxation

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Recordation and Transfer Tax - Controlling Interest Transfers

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This bill alters the definition of a real property entity under the controlling interest transfer tax by repealing a requirement that the entity own real property of at least \$1 million in value. The bill also requires the articles of organization of a limited liability company to include the name and address of specified organizers, members, managers, and other authorized persons. Finally, the bill requires the State Department of Assessments and Taxation (SDAT) to determine if any transfer and recordation taxes are due if an amendment to the articles of organization of a limited liability company (LLC) indicates a change in the organizers, members, and other authorized persons.

The bill takes effect July 1, 2009.

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Fiscal Summary

**State Effect:** State special fund (transfer tax) revenues increase beginning in FY 2010. The amount of the increase depends on the number and value of property transfers. Under one set of assumptions, revenues may increase by \$218,400. Expenditures are not affected.

**Local Effect:** Local recordation and transfer tax revenues increase beginning in FY 2010. The amount of the increase depends on the number and value of property transfers. Under one set of assumptions, total revenues may increase by \$710,000. Expenditures are not affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Current Law:** Chapter 3 of the 2007 special session imposed recordation and transfer taxes on the transfer of real property with a value of \$1.0 million or more when the transfer is achieved through the sale of a “controlling interest” in a specified corporation, partnership, limited liability company, limited liability partnership, or other form of unincorporated business. Controlling interest is defined as more than 80% of the total value of the stock or the interest in capital and profits.

Specifically, the legislation (1) applies to transfers of controlling interests by entities that have tangible assets of which at least 80% are comprised of real property in Maryland that has an aggregate value of at least \$1.0 million; (2) exempts certain transfers (*e.g.*, mergers and dissolutions); and (3) requires a report be filed with SDAT upon the transfer of a controlling interest within 30 days of the final transfer.

The tax is to be imposed on the consideration payable for the transfer of controlling interest in the real property entity reduced by the amount allocable to assets other than the real property. Consideration includes any mortgage, deed of trust, or other lien on the real property directly or beneficially owned by the real property entity and any other debt or encumbrance of the real property entity. The entity has the burden of establishing the consideration related to the real property and if it fails to do so the tax is imposed on the most recent assessed value of the property.

**Background:** The 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.

The State and most counties also impose a transfer tax. The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland homebuyers). In some jurisdictions a local property transfer tax may be imposed on instruments transferring title to real property. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage.

Several other jurisdictions in the country currently tax the transfer of the controlling interest in an entity owning real property: California, Connecticut, Delaware, Illinois, Maine, New Jersey, New York, Pennsylvania, Virginia, and Washington; and the cities of Chicago, New York, Philadelphia, and the District of Columbia.

**State Fiscal Effect:** State special fund revenues may increase beginning in fiscal 2010. The amount of the increase depends on the number of property transfers and the assessed value of the property being transferred. It was estimated that imposing the State transfer tax on property transfers valued at \$1.0 million or more through the transfer of controlling interest may generate \$14.1 million annually beginning in fiscal 2009. The bill eliminates the \$1.0 million threshold for imposition of tax and applies the transfer tax on all such transfers, or for purposes of the estimate, property transfers valued at less than \$1.0 million.

**Exhibit 1** shows the number of real property accounts held by commercial LLCs, their current total assessed value, and fiscal 2009 county recordation and transfer tax rates. As shown in the exhibit, these 12,143 properties have a total assessment of \$4.4 billion. The average assessment is approximately \$359,700. If 1% of properties transfer in fiscal 2010 through the transfer of controlling interest, State special funds may increase by \$218,400.

**Local Fiscal Effect:** County recordation and transfer tax revenues may increase beginning in fiscal 2010. The amount of the increase depends on the number of property transfers and the assessed value of the property being transferred. It was estimated that imposing county recordation and transfer taxes on property transfers valued at \$1.0 million or more through the use of controlling interest may generate \$48.2 million annually beginning in fiscal 2009. The bill eliminates the \$1.0 million threshold for imposition of taxes and applies recordation and transfer taxes on all such transfers, or for purposes of the estimate, property transfers valued at less than \$1.0 million.

If 1% of properties transfer through the transfer of controlling interest, total county recordation and transfer tax revenues may increase by \$710,000.

**Small Business Effect:** This bill may increase the costs of small businesses purchasing or selling real property through a sale of the controlling interest.

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**Exhibit 1**  
**Commercial Limited Liability Companies Valued at Less than \$1.0 Million**  
**Fiscal 2009 Tax Rates**

<b>County</b>	<b>Accounts</b>	<b>Total Value</b>	<b>Recordation Tax Rate</b>	<b>Transfer Tax Rate</b>
Allegany	321	\$61,833,500	\$3.25	0.5%
Anne Arundel	850	390,166,300	3.50	1.0%
Baltimore City	2,146	553,140,750	5.00	1.5%
Baltimore	1,657	593,235,420	2.50	1.5%
Calvert	205	80,517,000	5.00	0.0%
Caroline	146	51,148,900	5.00	0.5%
Carroll	475	189,696,990	5.00	0.0%
Cecil	348	121,623,600	4.10	\$10/deed
Charles	301	123,823,200	5.00	0.0%
Dorchester	161	47,305,500	5.00	0.75%
Frederick	604	278,608,100	6.00	0.0%
Garrett	168	49,758,700	3.50	1.0%
Harford	625	285,323,310	3.30	1.0%
Howard	258	111,618,300	2.50	1.0%
Kent	110	41,332,300	3.30	0.5%
Montgomery	509	223,605,310	3.45	1.0%
Prince George's	860	318,772,000	2.50	1.4%
Queen Anne's	218	90,971,700	3.30	0.5%
St. Mary's	284	112,830,200	4.00	1.0%
Somerset	131	31,638,100	3.30	0.0%
Talbot	266	121,643,700	3.30	1.0%
Washington	532	193,457,870	3.80	0.5%
Wicomico	634	157,060,500	3.50	0.0%
Worcester	334	138,588,100	3.30	0.5%
<b>Total</b>	<b>12,143</b>	<b>\$4,367,699,350</b>		

Note: Recordation tax rate is per \$500 of consideration.

Source: State Department of Assessment and Taxation; Department of Legislative Services

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**Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 983 (Delegates Stukes and Cardin) - Ways and Means.

**Information Source(s):** State Department of Assessments and Taxation, Baltimore City, Harford County, Montgomery County, Talbot County, Department of Legislative Services

**Fiscal Note History:** First Reader - March 24, 2009  
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