SB 657

Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 657 (Senator DeGrange, *et al.*)

Budget and Taxation Ways and Means

Recordation Taxes and State and County Transfer Taxes - Debt Forgiven in "Short Sale"

This emergency bill clarifies that for the purposes of local recordation taxes and State and county transfer taxes, the consideration payable for an instrument of writing to which the taxes apply includes only the amount paid or delivered in return for the sale of the property and does not include any debt forgiven or no longer secured by a mortgage or deed of trust on the property.

Fiscal Summary

State Effect: None. The bill clarifies current law.

Local Effect: None. The bill clarifies current law.

Small Business Effect: None.

Analysis

Current Law: For purposes of local recordation taxes, which are applied to each $500 or fraction of $500 of consideration payable or of the principal amount of the debt secured for an instrument of writing, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee. For purposes of the State transfer tax, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee.

Background: Anne Arundel County recently decided to charge recordation taxes not only on the amount paid by a buyer, but also on the amount of debt forgiven by the seller's lender. The county based its tax assessment on the conclusion that any of the seller's debt forgiven by the lender under a short sale is consideration that should be added to the price paid for the property by the buyer to determine the amount of the recordation tax. In addition, the county viewed a short sale as analogous to a deed in lieu of foreclosure.

A short sale is an alternative to foreclosure. It usually occurs when a homeowner falls behind on his/her mortgage and is determined by the lender to be eligible for a short sale due to economic hardship. In a short sale, the homeowner/seller enters into a contract with a buyer for a negotiated price that is less than the mortgage balance owed on the property. The seller turns the proceeds of the sale over to the lender, and in exchange and to facilitate the sale, the lender agrees to remove the lien on the title. This is usually, based on the lender's own appraisal and analysis of what the property could reasonably be expected to bring at an unforced sale. The lender may agree to forgive part or all of the balance owed on the mortgage over the proceeds of the sale. As a result of a short sale, the seller does not have to go through foreclosure, thereby mitigating the damage to the individual's credit rating. The buyer purchases the property at a discount. The lender incurs a smaller loss than it might otherwise incur by going through foreclosure and taking the property into its inventory.

A deed in lieu of foreclosure is also an alternative to foreclosure. A homeowner who can no longer pay the mortgage transfers the property to the lender. The mortgage is considered paid, and the homeowner is thus released from the liability of the mortgage payments. The lender then sells the property to retrieve part or all of the loan balance.

However, a letter from the Attorney General's Office in response to questions regarding the county's decision, opined that the county's decision was not supported by State law, and that counties do not have the authority to include debt forgiven by the seller's lender in calculating the consideration on which the recordation tax is based. As a result, the county has reversed the decision to charge recordation taxes not only on the amount paid by a buyer, but also on the amount of debt forgiven by the seller's lender.

Additional Information

Prior Introductions: None.

Cross File: HB 590 (Delegates Ross and Ivey) - Ways and Means.

Information Source(s): Attorney General's Office, Department of Legislative Services

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