

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 420
Ways and Means

(Delegate Kaiser, *et al.*)

Recordation Tax - Indemnity Mortgages

This bill applies the recordation tax 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 or the indemnity mortgage secures a loan for less than \$5.0 million. 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, 2011.

Fiscal Summary

State Effect: None.

Local Effect: Local government revenues increase by a significant amount beginning in FY 2012, depending on the number of transactions occurring each year and the value of each transaction. Local 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. Local recordation tax rates range from \$2.50 per \$500 in Baltimore, Howard, and Prince George’s counties 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 are estimated to collect \$266.1 million in local recordation taxes in fiscal 2011. This amount is only slight higher than amounts collected in fiscal 2010 and 2009. However, these amounts are significantly lower than the amounts collected in fiscal 2005 and 2006 when the soaring real estate market yielded recordation taxes totaling \$511.4 million in fiscal 2005 and \$619.0 million in fiscal 2006. **Exhibit 1** shows the local recordation tax rates and revenue collections for each jurisdiction for fiscal 2009 through 2011.

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 \$15 million annually, representing a 19% increase over current collections.

Exhibit 1
Local Recordation Taxes – Rates and Revenue Collections

County	Tax Rates	FY 2009	FY 2010	FY 2011
Allegany	\$3.25	\$1,242,338	\$1,235,868	\$1,250,000
Anne Arundel	3.50	28,419,042	28,976,000	30,000,000
Baltimore City	5.00	22,706,426	20,942,368	18,622,000
Baltimore	2.50	18,000,000	19,000,000	21,000,000
Calvert	5.00	5,799,985	5,690,348	5,700,000
Caroline	5.00	1,236,559	1,236,554	1,200,000
Carroll	5.00	9,248,039	9,224,371	8,000,000
Cecil	4.10	4,580,956	4,382,564	4,200,000
Charles	5.00	9,947,801	9,500,396	9,929,800
Dorchester	5.00	1,967,178	1,921,225	1,781,386
Frederick	6.00	10,415,103	10,686,142	10,442,200
Garrett	3.50	2,335,811	2,037,153	1,950,000
Harford	3.30	9,434,605	10,236,128	8,935,000
Howard	2.50	12,991,383	15,267,362	15,500,000
Kent	3.30	1,038,301	968,716	995,000
Montgomery	3.45	60,660,424	65,411,156	77,093,511
Prince George's	2.50	25,716,764	27,028,936	26,955,300
Queen Anne's	4.95	2,930,197	2,489,560	2,650,000
St. Mary's	4.00	5,260,423	4,974,956	4,900,000
Somerset	3.30	552,785	556,498	318,000
Talbot	3.30	3,016,205	2,934,335	3,200,000
Washington	3.80	4,683,063	3,933,626	3,500,000
Wicomico	3.50	2,845,744	2,590,719	2,770,000
Worcester	3.30	5,962,649	6,195,293	5,250,000
Total		\$250,991,781	\$257,420,274	\$266,142,197

Source: Maryland Association of Counties; Department of Legislative Services

Additional Information

Prior Introductions: SB 559/HB 260 of 2008 received hearings in the Senate Budget and Taxation Committee and House Ways and Means Committee, respectively, but no further action was taken on either bill. HB 409 of 2007 and HB 454 of 2006 received hearings in the House Ways and Means Committee, but no further action was taken.

Cross File: None.

Information Source(s): Cecil, Carroll, Montgomery, and St. Mary's counties; State Department of Assessments and Taxation; Department of Legislative Services

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ncs/hlb

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