

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 328

(Senator Kasemeyer)

Budget and Taxation

Ways and Means

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Estates and Trusts - Transfers - Recordation and Transfer Taxes

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This bill exempts from recordation and transfer taxes the transfer of property without consideration from an estate, to specified types of trusts, or from specified types of trusts to one or more beneficiaries under specified circumstances, and provides for purposes of these exemptions that “consideration” does not include the amount of any obligation under a mortgage or deed of trust encumbering the transferred property.

The bill takes effect July 1, 2011.

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Fiscal Summary

**State Effect:** Potential decrease in State transfer tax revenues. Expenditures are not affected.

**Local Effect:** Potential decrease in local recordation and transfer tax revenues. Local expenditures are not affected.

**Small Business Effect:** None.

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Analysis

**Current Law:** When distribution in kind is made, the personal representative must execute and deliver an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the title of the distributee to the property. Costs payable as a condition of the recordation of a deed must be paid by the estate. A State or local excise tax may not be imposed upon the transfer of property or the recordation of an instrument executed without consideration by a personal

representative. In addition to other indexing, any such deed recorded among the land records must be indexed in the grantor index under the name of the decedent.

**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 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.

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.

The bill is intended to provide for the uniform application of recordation and transfer tax exemptions regarding transfers of property without consideration from estates or specified trusts. Under current law, clerks of court in some counties treat the assumed mortgage in a transfer of property from an estate as consideration and impose transfer and recordation taxes on the transaction.

**State Fiscal Effect:** State special fund revenues would decrease to the extent that properties are transferred pursuant to the bill (from estates with no consideration and to and from trusts under circumstances). However, the amount of any decrease depends on the number of transfers that occur pursuant to the bill and the amount of any assumed mortgage for each property. However, at this time, the number of property transfers that occur in these manners cannot be reliably estimated.

As a point of reference, the State transfer tax on a property valued at \$250,000 is \$1,250. An exemption pursuant to the bill would result in a special fund revenue decrease of \$1,250 for each property transfer affected.

**Local Fiscal Effect:** Local recordation and transfer tax revenues would decrease to the extent that properties are transferred pursuant to the bill (from estates with no consideration and to and from trusts, under certain circumstances). However, the amount

of any decrease depends on the number of properties that are transferred and the amount of any assumed mortgage for each property. However, at this time, the number of property transfers occurring in these manners cannot be reliably estimated.

As a point of reference, **Exhibit 1** shows the estimated effect of one exemption pursuant to the bill in each county. **Exhibits 2** and **3** show the current county transfer and recordation tax rates and estimated revenues for fiscal 2009 through 2011.

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### **Additional Information**

**Prior Introductions:** SB 929 of 2010 passed the Senate, but the House Ways and Means Committee took no action on the bill.

**Cross File:** HB 521 (Delegate Carter, *et al.*) - Ways and Means.

**Information Source(s):** State Department of Assessments and Taxation, Comptroller's Office, Judiciary (Administrative Office of the Courts), Register of Wills, Department of Legislative Services

**Fiscal Note History:** First Reader - February 20, 2011  
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**Exhibit 1**  
**Transfer and Recordation Tax Exemption by County**

<b>County</b>	<b>Average Assessment</b>	<b>Transfer Tax Rates FY 2011</b>	<b>Recordation Tax Rates FY 2011</b>	<b>Estimated Revenue Decrease</b>
Allegany	\$106,756	0.50%	\$3.25	(\$1,228)
Anne Arundel	254,274	1.00%	3.50	(4,323)
Baltimore City	112,721	1.50%	5.00	(2,818)
Baltimore	214,045	1.50%	2.50	(4,281)
Calvert	342,575	0.00%	5.00	(3,426)
Caroline	188,644	0.50%	5.00	(2,830)
Carroll	293,465	0.00%	5.00	(2,935)
Cecil	238,648	\$10 per deed	4.10	(1,967)
Charles	271,916	0.00%	5.00	(2,719)
Dorchester	166,889	0.75%	5.00	(2,921)
Frederick	272,111	0.00%	6.00	(3,265)
Garrett	136,169	1.00%	3.50	(2,315)
Harford	268,959	1.00%	3.30	(4,465)
Howard	356,056	1.00%	2.50	(5,341)
Kent	232,430	0.50%	3.30	(2,696)
Montgomery	459,769	1.00%	3.45	(7,770)
Prince George's	202,103	1.40%	2.50	(3,840)
Queen Anne's	337,949	0.50%	4.95	(5,035)
St. Mary's	263,066	1.00%	4.00	(4,735)
Somerset	135,777	0.00%	3.30	(896)
Talbot	271,216	1.00%	3.30	(4,502)
Washington	196,722	0.50%	3.80	(2,479)
Wicomico	169,333	0.00%	3.50	(1,185)
Worcester	210,978	0.50%	3.30	(2,447)
<b>Total</b>	<b>\$268,183</b>			<b>(\$80,418)</b>

Source: Maryland Association of Counties; Department of Legislative Services

**Exhibit 2**  
**Local Transfer Taxes – Rates and Revenue Collections**

<b>County</b>	<b>Tax Rates</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
Allegany	0.50%	\$425,465	\$441,940	\$395,000
Anne Arundel	1.00%	27,391,962	30,752,000	30,000,000
Baltimore City	1.50%	23,388,980	26,022,596	18,622,000
Baltimore	1.50%	36,000,000	38,000,000	40,000,000
Calvert	0.00%	0	0	0
Caroline	0.50%	326,455	373,983	376,210
Carroll	0.00%	0	0	0
Cecil	\$10 per deed	22,383	23,509	23,500
Charles	0.00%	0	0	0
Dorchester	0.75%	862,195	977,338	634,454
Frederick	0.00%	0	0	0
Garrett	1.00%	1,395,679	1,206,104	912,000
Harford	1.00%	9,146,528	11,098,307	9,160,578
Howard	1.00%	18,370,976	21,276,812	18,000,000
Kent	0.50%	449,736	481,441	435,000
Montgomery	1.00%	64,771,739	65,520,000	75,490,000
Prince George's	1.40%	66,992,498	68,767,410	69,659,900
Queen Anne's	0.50%	49,647	93,002	155,000
St. Mary's	1.00%	4,389,061	4,483,543	4,400,000
Somerset	0.00%	0	0	0
Talbot	1.00%	2,958,214	2,848,707	3,200,000
Washington	0.50%	1,617,340	1,417,424	1,390,000
Wicomico	0.00%	0	0	0
Worcester	0.50%	2,843,502	3,254,790	2,500,000
<b>Total</b>		<b>\$261,402,360</b>	<b>\$277,038,906</b>	<b>\$275,353,642</b>

Source: Maryland Association of Counties; Department of Legislative Services

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**Exhibit 3**  
**Local Recordation Taxes – Rates and Revenue Collections**

<b>County</b>	<b>Tax Rates</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
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
<b>Total</b>		<b>\$250,991,781</b>	<b>\$257,420,274</b>	<b>\$266,142,197</b>

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