

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1072
Ways and Means

(Delegate Mizeur, *et al.*)

Recordation and Transfer Taxes - Oil or Gas Mineral Interests

This bill clarifies that recordation and transfer taxes apply to an instrument of writing that conveys title to, or a leasehold interest in, an oil or gas mineral interest. The bill also increases the State transfer tax rate to 2% for an instrument of writing that conveys title to, or a leasehold interest in, an oil or gas mineral interest.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: State transfer tax revenues may increase beginning in FY 2013 to the extent transfers pursuant to the bill occur. State expenditures are not affected.

Local Effect: The bill is not expected to significantly affect county recordation and transfer tax revenue. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: 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.

Background:

The Marcellus Shale

The Marcellus Shale formation is a geologic feature in the Appalachian Range which has recently attracted significant attention from the energy industry for its rich natural gas deposits contained within 117 counties in seven states. Geologists have long known about the natural gas resources contained within the formation but had considered the gas to be not economically recoverable until the recent development of new drilling technologies including horizontal drilling and high-volume hydraulic fracturing, which have led to a boom in domestic energy production in the United States.

The Marcellus Shale primarily underlies New York, Ohio, Pennsylvania, Virginia, West Virginia, and Western Maryland, with a negligible share also found in Kentucky. Production wells have been drilled in New York, Ohio, Pennsylvania, and West Virginia, and several companies have expressed interest in drilling into the formation in Maryland. In Maryland, the formation is located in Allegany, Garrett, and Washington counties; however, the only anticipated areas of gas production are in Garrett and Western Allegany counties. Applications for permits to produce gas from the Marcellus Shale in Maryland using horizontal drilling and high-volume hydraulic fracturing were first filed in 2010. As of December 2011, the Maryland Department of the Environment has received seven permit applications, of which only two are still active.

Recordation and Transfer Tax Revenue

County governments collected \$529.5 million in local recordation and transfer taxes in fiscal 2010, and are expected to collect \$519.4 million in fiscal 2011 and \$547.4 million in fiscal 2012. These amounts are significantly lower than the amounts collected in fiscal 2006 when the soaring real estate market yielded recordation and transfer taxes totaling \$1.2 billion. **Exhibit 1** and **Exhibit 2** show estimated local recordation and transfer tax collections for fiscal 2011 and 2012.

Exhibit 1
County Recordation Tax Collections
Fiscal 2011 and 2012

County	Tax Rate	FY 2011	FY 2012
Allegany	\$3.25	\$1,250,000	\$1,070,079
Anne Arundel	3.50	30,000,000	33,000,000
Baltimore City	5.00	19,425,608	20,545,000
Baltimore	2.50	18,423,084	21,000,000
Calvert	5.00	5,700,000	5,500,000
Caroline	5.00	1,200,000	1,200,000
Carroll	5.00	8,000,000	8,000,000
Cecil	4.10	4,200,000	4,000,000
Charles	5.00	10,000,000	10,000,000
Dorchester	5.00	1,781,386	1,849,386
Frederick	6.00	10,442,200	10,442,200
Garrett	3.50	1,950,000	2,200,000
Harford	3.30	8,935,000	10,200,000
Howard	2.50	15,500,000	17,000,000
Kent	3.30	995,000	700,000
Montgomery	3.45	60,015,000	60,198,000
Prince George's	2.50	26,065,800	24,587,100
Queen Anne's	4.95	2,650,000	2,650,000
St. Mary's	4.00	4,900,000	5,000,000
Somerset	3.30	318,000	400,000
Talbot	6.00	3,200,000	5,650,000
Washington	3.80	4,550,000	4,550,000
Wicomico	3.50	2,770,000	2,134,000
Worcester	3.30	5,250,000	5,750,000
Total		\$247,521,078	\$257,625,765

Source: Department of Legislative Services

Exhibit 2
County Transfer Tax Collections
Fiscal 2011 and 2012

County	Tax Rate	FY 2011	FY 2012
Allegany	0.50%	\$395,000	\$395,000
Anne Arundel	1.00%	30,000,000	32,000,000
Baltimore City	1.50%	21,844,845	23,687,000
Baltimore	1.50%	36,318,030	40,000,000
Calvert	0.00%	0	0
Caroline	0.50%	376,210	283,609
Carroll	0.00%	0	0
Cecil	\$10/deed	23,500	23,000
Charles	0.00%	0	0
Dorchester	0.75%	634,454	760,084
Frederick	0.00%	0	0
Garrett	1.00%	900,000	1,200,000
Harford	1.00%	9,160,578	11,200,000
Howard	1.00%	18,000,000	20,000,000
Kent	0.50%	435,000	335,000
Montgomery	1.00%	74,820,000	83,340,000
Prince George's	1.40%	67,547,800	65,798,800
Queen Anne's	0.50%	155,000	155,000
St. Mary's	1.00%	4,400,000	3,900,000
Somerset	0.00%	0	0
Talbot	1.00%	3,200,000	3,200,000
Washington	0.50%	1,160,300	800,000
Wicomico	0.00%	0	0
Worcester	0.50%	2,500,000	2,750,000
Total		\$271,870,717	\$289,827,493

Source: Department of Legislative Services

State Fiscal Effect: The bill increases the State transfer tax rate to 2% for an instrument of writing that conveys title to, or a leasehold interest in, an oil or gas mineral interest. As a result, State transfer tax revenues will increase for each transfer of leasehold interest in an oil or gas mineral interest. The amount of the increase depends on the number of leases and the consideration of each, neither of which can be reliably estimated.

According to land records data from Garrett County, there are 691 existing leases or memoranda of lease, most of which have been recorded since 2005. There are also additional leases that have not been recorded. Similar data could not be obtained from Allegany County, although the extent of oil or gas leasing activity is expected to be relatively low in Allegany County.

Local Fiscal Effect: The bill is not expected to significantly affect local recordation and transfer tax revenues. To the extent counties are not imposing the taxes on these leases for mineral interests, county revenues will increase. However, the amount of any revenue increase is not expected to be significant as noted previously, the vast majority of leases for oil and gas mineral interests have occurred in Garrett County. The Garrett County Clerk of the Court advises that recordation and transfer taxes are currently collected on leases for an oil or gas mineral interest, if the lease is for a period of seven or more years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Garrett and Washington counties, State Department of Assessments and Taxation, Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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