

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 766

(Senator Ready, *et al.*)

Budget and Taxation

Ways and Means

Agricultural Land Transfer Tax - Rate Determination

This bill provides that when determining the rate of the agricultural land transfer tax to be imposed, the amount of agricultural land that is subject to a specified exemption may not be included in the amount of agricultural land that is transferred.

The bill takes effect June 1, 2015.

Fiscal Summary

State Effect: Special fund revenues decrease by a minimal amount beginning in FY 2016. Expenditures are not affected.

Local Effect: Local agricultural land transfer tax revenues decrease by a minimal amount beginning in FY 2016. Expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law/Background: Agricultural land transfer taxes are paid by any person or business conveying title to agricultural land that is subject to the tax. Either the buyer or the seller, as determined by the contract of sale, may pay the tax. The tax base is the amount of consideration paid for the property, including the amount of any mortgage or deed of trust assumed by the grantee, less the value of any improvements or any land not subject to the tax. The amount of consideration paid must be stated in the instrument of writing that transfers title to agricultural land.

The agricultural land transfer tax rates are (1) 5% for transfers of 20 acres or more of agricultural land; (2) 4% for transfers of less than 20 acres assessed for agricultural use or as unimproved agricultural land; or (3) 3% for transfers of less than 20 acres assessed as improved agricultural land or agricultural land with certain site improvements. The transfer tax is reduced by 25% for each consecutive full taxable year before the transfer was made if the assessment was based on other than farm or agricultural use.

A 25% surcharge is imposed on an instrument of writing transferring title of certain agricultural land. The surcharge does not apply to transfers of agricultural land to a child or grandchild of the owner.

An instrument of writing conveys title to or provides a leasehold interest in real property. The term includes a deed or contract, a lease, an assignment of a lessee's interest, and articles of transfer. The term does not include a mortgage, deed of trust, or other contract that creates an encumbrance on real property, or other security agreements.

An instrument of writing is not subject to the agricultural land transfer tax if (1) the property tax on the land has been paid for five full consecutive taxable years before the transfer on the basis of an assessment other than the farm or agricultural use assessment; (2) the amount of agricultural land transferred is not greater than the applicable residential minimum zoning size in effect at the time of transfer and the transfer is to a member of the owner's immediate family for residential use; or (3) the transferee declares that the land will remain in farm or agricultural use for at least five full consecutive taxable years.

The agricultural land transfer tax is collected by each county. Of the total collections, each county (except Montgomery) retains one-third of the funds and transfers the balance to the Comptroller, which are distributed as follows:

- up to \$200,000 annually from land that is entirely woodland to the Mel Noland Woodland Incentives Fund;
- \$2.76 million, plus 5.0% over the amount distributed for the preceding fiscal year, to the Maryland Agricultural Land Preservation Foundation;
- 37.5%, up to a maximum of \$4.0 million annually, to the Maryland Agricultural and Resource-Based Industry Development Corporation's Next Generation Farmland Acquisition Program; and
- any remaining revenue to the Maryland Agricultural Land Preservation Foundation.

The Maryland Agricultural and Resource-Based Industry Development Corporation may use up to 3% of funds received for administrative costs for an installment purchase agreement program and the Next Generation Farmland Acquisition Program. Funds received by the Maryland Agricultural Land Preservation Fund after a specified date can

only be used in Priority Preservation areas, and the Maryland Agricultural Land Preservation Fund also has additional flexibility in using resources to purchase agricultural land easements.

Montgomery County retains two-thirds of its funds and transfers the balance to the Comptroller. The monies retained by each county are generally used as local matching funds under the State agricultural easement program and for other approved county agricultural preservation programs.

The counties must spend or encumber all agricultural transfer tax revenues within three years from the date of receipt or remit the unspent or unencumbered portion to the Comptroller for deposit into the Maryland Agricultural Land Preservation Fund.

State Fiscal Effect: Special fund revenues decrease by a minimal amount beginning in fiscal 2016 depending on the number of transactions that occur each year, the number of acres subject to the agricultural land transfer tax, and the value of the non-tax exempt land transferred.

Under current law, if a person transfers 50 acres of agricultural land, of which 1 acre is to be used as a home site (taxable) and 49 acres remain in agricultural use and are therefore tax exempt, the top tax rate of 5% is imposed on the 1 acre of taxable land because the total amount of land transferred was greater than 20 acres. Under the bill, the new tax rate for the 1 acre of taxable agricultural land will be 3% as the tax exempt 49 acres cannot be included as part of the total amount of land that is transferred. As a result of the lower tax rate imposed on transferred agricultural land, State special fund revenues will decrease. The amount of the decrease cannot be reliably estimated, but is assumed to be minimal as only a few of these types of transfers occur each year.

As a point of reference, the State share of agricultural land transfer tax collections was \$1.2 million in fiscal 2014.

Local Fiscal Effect: Local agricultural land transfer tax revenues will decrease beginning in fiscal 2016 in the same manner as State revenues, as discussed above.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Department of Legislative Services

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