

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1178 (Delegate Lafferty)

Environment and Transportation

Budget and Taxation

**Recordation and Transfer Taxes - Exemption - Purchase Money Mortgage or
Purchase Money Deed of Trust**

This emergency bill exempts a purchase money mortgage or purchase money deed of trust related to a transfer from a certified community development financial institution to the immediately preceding mortgagor or grantor under a residential property foreclosure procedure from recordation taxes and the State transfer tax.

The bill must be construed to apply retroactively to affect any recording on or after April 14, 2014, of an instrument of writing, purchase money mortgage, or purchase money deed of trust that is not subject to recordation tax.

Fiscal Summary

State Effect: State transfer tax revenues may decrease beginning in FY 2015 to the extent transfers pursuant to the bill occurred on or after April 14, 2014. The number of affected transfers is not known; however the revenue decrease is expected to be minimal. State expenditures are not affected.

Local Effect: Local recordation tax revenues and transfer tax revenues in code counties may decrease beginning in FY 2015 to the extent transfers pursuant to the bill occurred on or after April 14, 2014. The number of affected transfers is not known; however the revenue decrease is expected to be minimal. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: An instrument of writing that transfers residential real property from a certified community development financial institution to the immediately preceding mortgagor or grantor of the property under a residential property foreclosure procedure is not subject to local recordation taxes or the State transfer tax.

A purchase money mortgage or purchase money deed of trust is defined as a mortgage or deed of trust that (1) is given by the transferee of real property with respect to the property purchased; (2) is delivered as part of the same transaction as the instrument of writing that transfers the property purchased and that is subject to the recordation tax; (3) recites on its face that it secures, in whole or in part, the purchase money for the property or otherwise recites on its face that it is a purchase money mortgage or purchase money deed of trust; (4) is fully executed within 30 days of the date that the instrument of writing transferring the property is fully executed; and (5) is recorded no later than 30 days after the date that the instrument of writing transferring the property is duly recorded. A purchase money mortgage or a purchase money deed of trust is not subject to recordation tax.

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.

County governments collected \$694.7 million in local recordation and transfer taxes in fiscal 2013, and are expected to collect \$701.7 million in fiscal 2014 and \$724.6 million in fiscal 2015. 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. **Exhibits 1 and 2** show estimated local recordation and transfer tax collections for fiscal 2013 through 2015.

Chapter 233 of 2014 created a new option for homeowners facing foreclosure by enabling a certified community development financial institution (CDFI) to buy an owner-occupied residential property from a lender before foreclosure and transfer the property back to the immediately preceding homeowner. Chapter 233 also exempted an instrument of writing that transfers property under these narrowly drawn circumstances from recordation taxes and the State transfer tax.

Under Chapter 233, Boston Community Capital (BCC) reports that taxes are paid in full in the first step of these transactions (when the CDFI purchases the property from the lender), but the exemption applies in the second step when the CDFI sells/returns the property to the homeowner. BCC reports that these transactions are typically structured as a “short sale” with a re-transfer of title to the homeowner; for the counties, this is the same revenue result as on a standard short sale to resolve a foreclosure. To date, BCC reports that 27 Maryland families facing foreclosure have regained ownership of their home with a new mortgage through BCC.

State Fiscal Effect: State special fund revenues may decrease beginning in fiscal 2015 to the extent transfers pursuant to the bill occurred on or after April 14, 2014. It is assumed that a refund of the State transfer tax paid will be issued upon the bill’s enactment. The amount of the revenue decrease due to the exemption depends on the number of transfers that occur pursuant to the bill and the amount of consideration associated with each transfer. With regards to future years, the number of affected transfers that may occur in any year is not known; however the revenue decrease is expected to be minimal. As a point of reference, the State transfer tax on a transaction valued at \$250,000 is \$1,250.

Local Fiscal Effect: Local recordation tax revenues may decrease beginning in fiscal 2015 to the extent transfers pursuant to the bill occurred on or after April 14, 2014. In code counties – Allegany, Caroline, Charles, Kent, Queen Anne’s, and Worcester – transfers that are exempt from the State transfer tax are also exempt from the county transfer tax. As a result, transfer tax revenues in the six code counties will also decrease beginning in fiscal 2015. It is assumed that a refund of local recordation or transfer taxes paid will be issued upon the bill’s enactment. The amount of the revenue decrease due to the exemption depends on the number of transfers that occur pursuant to the bill and the amount of consideration associated with each transfer. With regards to future years, the number of affected transfers that may occur in any year is not known; however the revenue decrease is expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 18, 2015
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Exhibit 1
Recordation Tax Revenue Trend for Fiscal 2013-2015

County	FY 2013	FY 2014	FY 2015	FY 2013-2014 \$ Difference	FY 2014-2015 \$ Difference	Average Annual Difference
Allegany	\$1,692,145	\$1,643,304	\$1,100,000	-\$48,841	-\$543,304	-19.4%
Anne Arundel	42,040,038	38,000,000	39,000,000	-4,040,038	1,000,000	-3.7%
Baltimore City	32,329,642	35,000,000	31,868,000	2,670,358	-3,132,000	-0.7%
Baltimore	30,578,527	24,620,000	25,500,000	-5,958,527	880,000	-8.7%
Calvert	5,909,376	6,171,000	6,120,000	261,624	-51,000	1.8%
Caroline	1,301,909	1,104,166	1,100,000	-197,743	-4,166	-8.1%
Carroll	9,955,395	10,576,850	11,800,000	621,455	1,223,150	8.9%
Cecil	5,535,807	4,617,831	4,800,000	-917,976	182,169	-6.9%
Charles	11,104,089	11,094,837	14,500,000	-9,252	3,405,163	14.3%
Dorchester	1,434,291	1,222,975	1,534,386	-211,316	311,411	3.4%
Frederick	24,339,679	24,174,915	23,958,789	-164,764	-216,126	-0.8%
Garrett	2,386,470	1,500,000	1,500,000	-886,470	0	-20.7%
Harford	10,699,395	10,607,920	10,649,468	-91,475	41,548	-0.2%
Howard	21,837,593	18,978,128	22,300,000	-2,859,465	3,321,872	1.1%
Kent	962,237	999,378	1,040,000	37,141	40,622	4.0%
Montgomery	104,597,908	100,493,338	110,297,490	-4,104,570	9,804,152	2.7%
Prince George's	30,641,413	34,670,500	37,755,500	4,029,087	3,085,000	11.0%
Queen Anne's	4,614,108	4,430,158	4,596,350	-183,950	166,192	-0.2%
St. Mary's	5,688,996	5,488,287	5,400,000	-200,709	-88,287	-2.6%
Somerset	441,941	457,646	450,000	15,705	-7,646	0.9%
Talbot	5,493,728	4,943,298	5,060,000	-550,430	116,702	-4.0%
Washington	5,213,999	4,657,341	5,500,000	-556,658	842,659	2.7%
Wicomico	2,502,251	2,634,927	2,757,621	132,676	122,694	5.0%
Worcester	6,648,659	5,142,527	6,000,000	-1,506,132	857,473	-5.0%
Total	\$367,949,596	\$353,229,326	\$374,587,604	-\$14,720,270	\$21,358,278	0.9%

Source: Department of Legislative Services, County budgets

Exhibit 2
Transfer Tax Revenue Trend for Fiscal 2013-2015

County	FY 2013	FY 2014	FY 2015	FY 2013-2014 \$ Difference	FY 2014-2015 \$ Difference	Average Annual Difference
Allegany	\$300,696	\$478,515	\$375,000	\$177,819	-\$103,515	11.7%
Anne Arundel	38,996,647	38,000,000	39,000,000	-996,647	1,000,000	0.0%
Baltimore City	27,506,213	35,000,000	27,354,000	7,493,787	-7,646,000	-0.3%
Baltimore	52,962,566	52,000,000	52,500,000	-962,566	500,000	-0.4%
Calvert	0	0	0	0	0	N/A
Caroline	377,400	344,652	280,000	-32,748	-64,652	-13.9%
Carroll	63,462	25,000	30,000	-38,462	5,000	-31.2%
Cecil	23,946	25,009	23,000	1,063	-2,009	-2.0%
Charles	0	0	0	0	0	N/A
Dorchester	619,002	634,992	600,000	15,990	-34,992	-1.5%
Frederick	0	0	0	0	0	N/A
Garrett	1,424,217	1,300,000	1,300,000	-124,217	0	-4.5%
Harford	10,854,827	11,646,254	11,200,000	791,427	-446,254	1.6%
Howard	25,253,440	26,900,788	27,000,000	1,647,348	99,212	3.4%
Kent	451,355	559,650	531,000	108,295	-28,650	8.5%
Montgomery	85,409,703	95,010,000	98,680,000	9,600,297	3,670,000	7.5%
Prince George's	69,475,489	72,036,700	77,692,100	2,561,211	5,655,400	5.7%
Queen Anne's	1,351,064	1,461,174	1,200,000	110,110	-261,174	-5.8%
St. Mary's	4,268,826	5,016,978	5,350,000	748,152	333,022	11.9%
Somerset	0	0	0	0	0	N/A
Talbot	3,024,512	3,341,976	2,750,000	317,464	-591,976	-4.6%
Washington	1,484,247	1,593,811	1,400,000	109,564	-193,811	-2.9%
Wicomico	0	0	0	0	0	N/A
Worcester	2,912,622	3,165,273	2,750,000	252,651	-415,273	-2.8%
Total	\$326,760,234	\$348,540,772	\$350,015,100	\$21,780,538	\$1,474,328	3.5%

Source: Department of Legislative Services, County Budgets