

HOUSE BILL 1226

Q6

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CF SB 597

By: **Delegate A. Washington**

Introduced and read first time: February 12, 2016

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 17, 2016

CHAPTER _____

1 AN ACT concerning

2 **Recordation and Transfer Taxes – Transfer of Controlling Interest – Exemptions**

3 FOR the purpose of altering a certain exemption from recordation and transfer taxes so as
4 to provide that a transfer of a controlling interest in a real property entity is not
5 subject to recordation and transfer taxes if the transfer of the real property owned
6 by the real property entity between the same transferor and transferee of the
7 controlling interest under the same circumstances would have been exempt under
8 certain provisions of law; altering a certain exemption from recordation and transfer
9 taxes so as to provide that the recordation and transfer tax is not imposed on the
10 transfer of a controlling interest in a real property entity to another entity if the
11 ownership interests in the transferee entity are owned by the same persons and in
12 the same proportion who own the transferor entity or the real property entity the
13 controlling interest of which was transferred; repealing a provision of law providing
14 that recordation and transfer taxes are not imposed on the transfer of a controlling
15 interest in a real property entity if each transferor, each transferee, and each real
16 property entity are certain types of business entities; and generally relating to
17 exemptions from recordation and transfer taxes for certain transfers of controlling
18 interests in a real property entity.

19 BY repealing and reenacting, with amendments,
20 Article – Tax – Property
21 Section 12–117
22 Annotated Code of Maryland
23 (2012 Replacement Volume and 2015 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
2 Article – Tax – Property
3 Section 13–103
4 Annotated Code of Maryland
5 (2012 Replacement Volume and 2015 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
7 That the Laws of Maryland read as follows:

8 **Article – Tax – Property**

9 12–117.

10 (a) (1) In this section the following words have the meanings indicated.

11 (2) “Controlling interest” means:

12 (i) more than 80% of the total value of all classes of stock of a
13 corporation;

14 (ii) more than 80% of the total interest in capital and profits of a
15 partnership, association, limited liability company, or other unincorporated form of doing
16 business; or

17 (iii) more than 80% of the beneficial interest in a trust.

18 (3) “Final transfer” means that transfer of any portion of a controlling
19 interest that completes the transfer of a controlling interest in a real property entity.

20 (4) (i) “Plan of transfer” means an intentional plan or program to
21 transfer the controlling interest in a real property entity.

22 (ii) “Plan of transfer” does not include a series of sales of shares of a
23 publicly traded entity.

24 (5) (i) “Real property” means real property located in the State.

25 (ii) “Real property” does not include:

26 1. a leasehold, unless created by a lease that is required to
27 be recorded under § 3–101(a) of the Real Property Article; or

28 2. any mortgage, deed of trust, or other lien on or security
29 interest in real property that secures an indebtedness.

1 (6) (i) “Real property entity” means a corporation, partnership,
2 association, limited liability company, limited liability partnership, other unincorporated
3 form of doing business, or trust that directly or beneficially owns real property that:

4 1. constitutes at least 80% of the value of its assets; and

5 2. has an aggregate value of at least \$1,000,000.

6 (ii) For the purposes of this paragraph, the value of real property
7 shall be determined without reduction for any mortgage, deed of trust, or other lien on or
8 security interest in the real property.

9 (iii) “Real property entity” does not include an entity with land
10 holdings that, other than homesites or areas of commercial activity related to agricultural
11 production, are entirely subject to an agricultural use assessment under § 8–209 of this
12 article.

13 (b) (1) The recordation tax is imposed on the transfer of a controlling interest
14 in a real property entity as if the real property, directly or beneficially owned by the real
15 property entity, was conveyed by an instrument of writing that is recorded with the clerk
16 of the circuit court for a county or filed with the Department under § 12–102 of this title.

17 (2) (i) The recordation tax is imposed on the consideration payable for
18 the transfer of the controlling interest in the real property entity.

19 (ii) The consideration to which the recordation tax applies includes
20 the amount of:

21 1. any mortgage, deed of trust, or other lien on or security
22 interest in the real property directly or beneficially owned by the real property entity; and

23 2. any other debt or encumbrance of the real property entity.

24 (iii) The consideration to which the recordation tax applies is reduced
25 by the amount allocable to the assets of the real property entity other than real property.

26 (iv) The real property entity has the burden of establishing to the
27 satisfaction of the Department the consideration referred to in subparagraph (i) of this
28 paragraph and the amount of any consideration allocable to assets other than real property
29 referred to in subparagraph (iii) of this paragraph.

30 (v) If the real property entity fails to establish the amount of
31 consideration referred to in subparagraph (i) of this paragraph, the recordation tax is
32 imposed on the value of the real property, directly or beneficially owned by the real property
33 entity, determined by the Department at the date of finality immediately before the date of
34 the final transfer.

1 (3) Except as otherwise provided in § 12–103(d) of this title, the recordation
2 tax is applied at the rate set under § 12–103(b) of this title by the county where the real
3 property is located.

4 (c) (1) The transfer of a controlling interest in a real property entity is not
5 subject to recordation tax if the transfer of the real property [by an instrument of writing]
6 **OWNED BY THE REAL PROPERTY ENTITY** between the same [parties] **TRANSFEROR**
7 **AND TRANSFEREE OF THE CONTROLLING INTEREST** and under the same circumstances
8 would have been exempt under § 12–108 of this title.

9 (2) The recordation tax is not imposed on the transfer of a controlling
10 interest in a real property entity effected in more than one transaction if:

11 (i) the transfer is completed over a period of more than 12 months;
12 or

13 (ii) the transfer is not made in accordance with a plan of transfer.

14 (3) The recordation tax is not imposed on the transfer of a controlling
15 interest in a real property entity to another [business] **ENTITY** if the ownership interests
16 in the transferee [business] entity are [held] **OWNED, DIRECTLY OR INDIRECTLY**, by the
17 same persons and in the same ~~proportion~~ [as in] **WHO PROPORTIONS AS THOSE PERSONS**
18 **OWN, DIRECTLY OR INDIRECTLY**, the **TRANSFEROR ENTITY OR THE** real property
19 entity the controlling interest of which was transferred.

20 (4) [The recordation tax is not imposed on the transfer of a controlling
21 interest in a real property entity if each transferor, each transferee, and each real property
22 entity is:

23 (i) a subsidiary corporation, all of the stock of which is owned,
24 directly or indirectly, by a common parent corporation;

25 (ii) a partnership, all of the interests in which are owned, directly or
26 indirectly, by one or more subsidiaries or the common parent corporation; or

27 (iii) the common parent corporation.

28 (5) The recordation tax is not imposed on the transfer of a controlling
29 interest in a real property entity if the transferee of the controlling interest in the real
30 property entity is:

31 (i) a nonstock corporation organized under Title 5, Subtitle 2 of the
32 Corporations and Associations Article; and

33 (ii) registered with the Department of Aging as a continuing care
34 retirement community under § 10–408 of the Human Services Article.

1 ~~[(6)] (5)~~ The real property entity has the burden of establishing to the
2 satisfaction of the Department the applicability of any exemption referred to in paragraphs
3 (1) through ~~[(5)] (4)~~ of this subsection.

4 (d) (1) The real property entity shall file with the Department a report of any
5 transfer of a controlling interest in the real property entity that is completed within a period
6 of 12 months or less within 30 days following the date of the final transfer.

7 (2) The report shall include all information to establish to the satisfaction
8 of the Department:

9 (i) the consideration referred to in subsection (b)(2)(i) of this section;

10 (ii) the amount of assets other than real estate referred to in
11 subsection (b)(2)(ii) of this section; and

12 (iii) any exemption provided for in subsection (c) of this section.

13 (3) The report shall be accompanied by payment of:

14 (i) a \$20 filing fee; and

15 (ii) any tax, interest, and penalty that is due.

16 (e) (1) If any tax due under this section remains unpaid for 30 days after the
17 date of the final transfer:

18 (i) interest on the unpaid amount shall accrue thereafter at the rate
19 of 1% per month; and

20 (ii) a penalty of 10% of the unpaid amount shall be due.

21 (2) Any tax, interest, and penalty due under this section is an obligation of
22 the real property entity.

23 (3) For reasonable cause, the Department may waive the imposition of
24 interest or penalty.

25 (f) This section does not apply to:

26 (1) a pledge of stock or other interest in a real property entity as security
27 for a loan; or

28 (2) the admission to the real property entity of additional shareholders,
29 partners, beneficial owners, or other members incident to the raising of additional capital
30 through a public or private offering of stock or other interests in the real property entity if:

1 (i) the effective management of the real property entity is not
2 substantially changed; and

3 (ii) under the terms of the offering, none of the new members is
4 expected to participate in the day-to-day management of the real property entity.

5 (g) (1) The Department shall adopt regulations to administer this section.

6 (2) The regulations shall include any additional standards and exemptions
7 to assure that:

8 (i) a tax is imposed when a transaction is structured involving a
9 controlling interest in a real property entity to avoid payment of the recordation tax;

10 (ii) exemptions provided by law when real property is transferred by
11 an instrument of writing are applicable; and

12 (iii) there is no double taxation of a single transaction.

13 13-103.

14 (a) In this section, “controlling interest”, “real property”, and “real property
15 entity” have the meanings stated in § 12-117 of this article.

16 (b) (1) The taxes under this title are imposed on the transfer of a controlling
17 interest in a real property entity as if the real property, directly or beneficially owned by
18 the real property entity, was conveyed by an instrument of writing that is recorded with
19 the clerk of the circuit court for a county or filed with the Department under § 13-202 of
20 this title.

21 (2) The taxes under this section are imposed on the consideration payable
22 for the transfer of the controlling interest in the real property entity or on the value of the
23 real property directly or beneficially owned by the real property entity, as provided in §
24 12-117(b)(2) of this article.

25 (3) (i) Except for the county transfer tax, the taxes under this section
26 shall be applied at the rates established in this title.

27 (ii) The county transfer tax shall be applied at the rate imposed by
28 the county where the real property is located.

29 (c) The taxes under this title are not imposed on the transfer of a controlling
30 interest in a real property entity in any of the circumstances described:

31 (1) in § 13-207 of this title that exempts an instrument of writing from the
32 transfer tax; or

1 (2) in § 12–117(c) of this article that exempts the transfer of a controlling
2 interest in a real property entity from the recordation tax.

3 (d) In each instance in which a controlling interest in a real property entity is
4 transferred, the provisions of § 12–117(d) and (e) of this article are applicable.

5 (e) This section does not apply in the circumstances described in § 12–117(f) of
6 this article.

7 (f) The Department shall adopt regulations to administer this section in the same
8 manner as in § 12–117(g) of this article.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
10 1, 2016.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.