

SENATE BILL 111

Q6
HB 44/16 – W&M

7lr1282
CF HB 363

By: **Senator McFadden**

Introduced and read first time: January 13, 2017

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 8, 2017

CHAPTER _____

1 AN ACT concerning

2 **Recordation and Transfer Taxes – Exemptions – Property Conveyed From Sole**
3 **Proprietorship to Limited Liability Company**

4 FOR the purpose of exempting a transfer of real property from a sole proprietorship to a
5 limited liability company from recordation and transfer taxes if the sole member of
6 the limited liability company is identical to the converting sole proprietor and certain
7 other conditions are met; providing that the transfer of a controlling interest in a
8 limited liability company that is the product of an untaxed conversion from a sole
9 proprietorship is subject to the recordation and transfer tax under certain
10 circumstances; defining a certain term; and generally relating to an exemption from
11 recordation and transfer taxes for property conveyed from a sole proprietorship to a
12 limited liability company.

13 BY repealing and reenacting, with amendments,
14 Article – Tax – Property
15 Section 12–108(y) and 12–117(a)(6)(i) and (c)(1)
16 Annotated Code of Maryland
17 (2012 Replacement Volume and 2016 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Tax – Property
20 Section 12–117(a)(1) and (b)(1), 13–103(a) and (b), and 13–207(a)(18)
21 Annotated Code of Maryland
22 (2012 Replacement Volume and 2016 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.



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

Article – Tax – Property

12–108.

(y) (1) (i) In this subsection the following words have the meanings indicated.

(ii) “Foreign general partnership”, “foreign limited partnership”, “foreign limited liability partnership”, “foreign limited liability limited partnership”, and “foreign joint venture” mean, respectively, a partnership, limited partnership, limited liability partnership, limited liability limited partnership, or joint venture organized or formed under the laws of the United States, another state of the United States, or a territory, possession, or district of the United States.

(iii) “Predecessor entity” includes a:

1. Maryland general partnership or foreign general partnership;

2. Maryland limited partnership or foreign limited partnership;

3. Maryland limited liability partnership or foreign limited liability partnership;

4. Maryland limited liability limited partnership or foreign limited liability limited partnership; [and]

5. Maryland joint venture or foreign joint venture; AND

6. **SOLE PROPRIETORSHIP.**

(IV) “SOLE PROPRIETORSHIP” INCLUDES AN INDIVIDUAL WHO OWNS AN INTEREST IN REAL PROPERTY IN THE INDIVIDUAL’S NAME.

(2) An instrument of writing that transfers title to real property from a predecessor entity or a trustee or nominee of a predecessor entity to a limited liability company is not subject to recordation tax if:

(i) 1. the members of the limited liability company are identical to the partners of the converting general partnership, limited partnership, limited liability partnership, or limited liability limited partnership; [or]

1 2. the members of the limited liability company are identical
2 to the joint venturers of the converting joint venture; OR

3 **3. THE SOLE MEMBER OF THE LIMITED LIABILITY**
4 **COMPANY IS IDENTICAL TO THE CONVERTING SOLE PROPRIETOR;**

5 (ii) each member's allocation of the profits and losses of the limited
6 liability company is identical to that member's allocation of the profits and losses of the
7 converting predecessor entity; and

8 (iii) the instrument of writing that transfers title to real property
9 represents the dissolution of the predecessor entity for purposes of conversion to a limited
10 liability company.

11 12-117.

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

13 (6) (i) "Real property entity" means a corporation, partnership,
14 association, limited liability company, limited liability partnership, other unincorporated
15 form of doing business, or trust that directly or beneficially owns real property that:

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

17 2. **A.** has an aggregate value of at least \$1,000,000; OR

18 **B.** **IS THE PRODUCT OF AN UNTAXED CONVERSION FROM**
19 **A SOLE PROPRIETORSHIP EFFECTED UNDER THE EXEMPTION PROVIDED UNDER §**
20 **12-108(Y) OF THIS TITLE.**

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

25 (c) (1) **(I) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
26 **PARAGRAPH, THE transfer of a controlling interest in a real property entity is not subject**
27 **to recordation tax if the transfer of the real property owned by the real property entity**
28 **between the same transferor and transferee of the controlling interest and under the same**
29 **circumstances would have been exempt under § 12-108 of this title.**

30 **(II) SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT APPLY**
31 **TO TRANSACTIONS UNDER § 12-108(Y)(2)(I)3 OF THIS SUBTITLE.**

32 13-103.

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

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

8 (2) The taxes under this section are imposed on the consideration payable
9 for the transfer of the controlling interest in the real property entity or on the value of the
10 real property directly or beneficially owned by the real property entity, as provided in §
11 12–117(b)(2) of this article.

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

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

16 13–207.

17 (a) An instrument of writing is not subject to transfer tax to the same extent that
18 it is not subject to recordation tax under:

19 (18) § 12–108(y) or (bb) of this article (Transfer from predecessor entity or
20 real estate enterprise to limited liability company);

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
22 1, 2017.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.