

SENATE BILL 111

Q6
HB 44/16 – W&M

7lr1282
CF 7lr0499

By: **Senator McFadden**

Introduced and read first time: January 13, 2017

Assigned to: Budget and Taxation

A BILL ENTITLED

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; and generally relating to an exemption from recordation and transfer
11 taxes for property conveyed from a sole proprietorship to a limited liability company.

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

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

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

24 **Article – Tax – Property**

25 12–108.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 (ii) "Foreign general partnership", "foreign limited partnership",
4 "foreign limited liability partnership", "foreign limited liability limited partnership", and
5 "foreign joint venture" mean, respectively, a partnership, limited partnership, limited
6 liability partnership, limited liability limited partnership, or joint venture organized or
7 formed under the laws of the United States, another state of the United States, or a
8 territory, possession, or district of the United States.

9 (iii) "Predecessor entity" includes a:

10 1. Maryland general partnership or foreign general
11 partnership;

12 2. Maryland limited partnership or foreign limited
13 partnership;

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

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

18 5. Maryland joint venture or foreign joint venture; **AND**

19 **6. SOLE PROPRIETORSHIP.**

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

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

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

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

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

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

4 12–117.

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

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

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

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

11 **B. IS THE PRODUCT OF AN UNTAXED CONVERSION FROM**
12 **A SOLE PROPRIETORSHIP EFFECTED UNDER THE EXEMPTION PROVIDED UNDER §**
13 **12–108(Y) OF THIS TITLE.**

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

18 13–103.

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

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

26 (2) The taxes under this section are imposed on the consideration payable
27 for the transfer of the controlling interest in the real property entity or on the value of the
28 real property directly or beneficially owned by the real property entity, as provided in §
29 12–117(b)(2) of this article.

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

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

1 13–207.

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

4 (18) § 12–108(y) or (bb) of this article (Transfer from predecessor entity or
5 real estate enterprise to limited liability company);

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
7 1, 2017.