

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 111

(Senator McFadden)

Budget and Taxation

Ways and Means

**Recordation and Transfer Taxes - Exemptions - Property Conveyed From Sole
Proprietorship to Limited Liability Company**

This bill exempts from recordation and transfer taxes the transfer of real property from a sole proprietorship to a limited liability company if the sole member of the limited liability company is identical to the converting sole proprietor and specified other conditions are met. The bill also clarifies that the transfer of a controlling interest in a limited liability company that is the product of an untaxed conversion from a sole proprietorship is subject to the recordation and transfer tax under specified circumstances.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: State transfer tax revenues may decrease beginning in FY 2018 to the extent transfers pursuant to the bill occur. The number of affected transfers that may occur each year is not known. General fund revenues decrease as a result of commissions not being collected. State expenditures are not affected.

Local Effect: Local recordation tax revenues and transfer tax revenues in code counties may decrease beginning in FY 2018 to the extent transfers pursuant to the bill occur. The number of affected transfers that may occur each year is not known. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: 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 (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 (2) the members of the limited liability company are identical to the joint venturers of the converting joint venture.

A 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.

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 \$765.0 million in local recordation and transfer taxes in fiscal 2015, and are expected to collect \$819.5 million in fiscal 2016 and \$877.2 million in fiscal 2017. **Exhibits 1** and **2** show estimated local recordation and transfer tax collections for fiscal 2015 through 2017.

State Fiscal Effect: State special fund revenues may decrease beginning in fiscal 2018 to the extent transfers pursuant to the bill occur. 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. The number of affected transfers that may occur in any year is not known. As a point of reference, the State transfer tax on a transaction valued at \$250,000 is \$1,250.

The clerks of the circuit court in several jurisdictions collect a number of different taxes and fees, including local recordation taxes. The Administrative Office of the Courts reports that the clerk of the circuit court collects local recordation taxes in the following 12 jurisdictions: Allegany, Calvert, Dorchester, Garrett, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Washington, Wicomico, and Worcester. In the remaining jurisdictions, local finance offices are responsible for the collection of these taxes. The clerks of the court who collect the tax are entitled to a commission of between 3% and 5% of all public monies collected, which, unless otherwise specified, are remitted to the State's general fund. This will in turn decrease the amount of revenue remitted to the general fund.

Local Fiscal Effect: Local recordation tax revenues may decrease beginning in fiscal 2018 to the extent transfers pursuant to the bill occur. 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 2018. 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. The number of affected transfers that may occur in any year is not known.

Additional Information

Prior Introductions: A similar bill, HB 44 of 2016, passed the House and received a hearing in the Senate Budget and Taxation Committee, but no further action was taken on the bill.

Cross File: HB 363 (Delegate Miller, A. – Ways and Means) is identified as a cross file; however, the bills are not identical.

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

Fiscal Note History: First Reader - January 31, 2017
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Analysis by: Michael Sanelli

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Exhibit 1
Recordation Tax Revenue Trend for Fiscal 2015-2017

County	FY 2015	FY 2016	FY 2017	FY 2015-2016		FY 2016-2017		Average Annual Difference
				\$ Difference	% Difference	\$ Difference	% Difference	
Allegany	\$25,910,575	\$24,859,683	\$27,149,213	-\$1,050,892	-4.1%	\$2,289,530	9.2%	2.4%
Anne Arundel	444,302,777	455,000,000	463,000,000	10,697,223	2.4%	8,000,000	1.8%	2.1%
Baltimore City	307,764,022	311,206,939	317,656,198	3,442,917	1.1%	6,449,259	2.1%	1.6%
Baltimore	696,334,824	713,149,282	739,104,822	16,814,458	2.4%	25,955,540	3.6%	3.0%
Calvert	71,289,228	74,550,000	80,000,000	3,260,772	4.6%	5,450,000	7.3%	5.9%
Caroline	12,279,932	11,800,000	12,450,000	-479,932	-3.9%	650,000	5.5%	0.7%
Carroll	139,356,970	143,410,440	152,106,065	4,053,470	2.9%	8,695,625	6.1%	4.5%
Cecil	53,954,296	55,717,765	56,439,257	1,763,469	3.3%	721,492	1.3%	2.3%
Charles	109,709,956	125,817,400	120,591,000	16,107,444	14.7%	-5,226,400	-4.2%	4.8%
Dorchester	11,829,991	11,966,549	12,520,637	136,558	1.2%	554,088	4.6%	2.9%
Frederick	195,202,656	192,924,600	205,212,335	-2,278,056	-1.2%	12,287,735	6.4%	2.5%
Garrett	11,921,943	10,821,000	11,950,000	-1,100,943	-9.2%	1,129,000	10.4%	0.1%
Harford	193,733,708	203,407,621	213,000,000	9,673,913	5.0%	9,592,379	4.7%	4.9%
Howard	394,985,296	415,900,442	430,586,155	20,915,146	5.3%	14,685,713	3.5%	4.4%
Kent	12,973,495	13,000,000	12,386,099	26,505	0.2%	-613,901	-4.7%	-2.3%
Montgomery	1,310,821,061	1,438,080,452	1,487,577,240	127,259,391	9.7%	49,496,788	3.4%	6.5%
Prince George's	523,596,668	539,304,600	554,692,100	15,707,932	3.0%	15,387,500	2.9%	2.9%
Queen Anne's	42,889,715	44,767,650	46,448,552	1,877,935	4.4%	1,680,902	3.8%	4.1%
St. Mary's	81,002,813	86,700,000	89,028,917	5,697,187	7.0%	2,328,917	2.7%	4.8%
Somerset	6,882,133	6,150,000	6,800,000	-732,133	-10.6%	650,000	10.6%	-0.6%
Talbot	28,562,934	28,000,000	26,000,000	-562,934	-2.0%	-2,000,000	-7.1%	-4.6%
Washington	73,603,292	74,910,000	77,500,000	1,306,708	1.8%	2,590,000	3.5%	2.6%
Wicomico	46,070,753	41,496,963	46,022,556	-4,573,790	-9.9%	4,525,593	10.9%	-0.1%
Worcester	13,690,331	14,900,000	18,300,000	1,209,669	8.8%	3,400,000	22.8%	15.6%
Total	\$4,808,669,369	\$5,037,841,386	\$5,206,521,146	\$229,172,017	4.8%	\$168,679,760	3.3%	4.1%

Source: Department of Legislative Services, County Budgets

Exhibit 2
Transfer Tax Revenue Trend for Fiscal 2015-2017

County	FY 2015	FY 2016	FY 2017	FY 2015-2016		FY 2016-2017		Average Annual Difference
				\$ Difference	% Difference	\$ Difference	% Difference	
Allegany	\$1,031,559	\$1,250,000	\$1,100,000	\$218,441	21.2%	-\$150,000	-12.0%	3.3%
Anne Arundel	42,870,526	48,000,000	47,000,000	5,129,474	12.0%	-1,000,000	-2.1%	4.7%
Baltimore City	34,111,424	32,054,000	35,634,000	-2,057,424	-6.0%	3,580,000	11.2%	2.2%
Baltimore	28,446,146	35,000,000	36,500,000	6,553,854	23.0%	1,500,000	4.3%	13.3%
Calvert	6,308,065	6,300,000	6,426,000	-8,065	N/A	126,000	N/A	N/A
Caroline	1,662,328	1,200,000	1,400,000	-462,328	-27.8%	200,000	16.7%	-8.2%
Carroll	11,888,637	12,600,000	13,500,000	711,363	N/A	900,000	N/A	N/A
Cecil	5,204,845	5,000,000	5,000,000	-204,845	-3.9%	0	0.0%	-2.0%
Charles	16,918,007	11,300,000	11,300,000	-5,618,007	N/A	0	0.0%	N/A
Dorchester	1,262,253	1,600,000	1,600,000	337,747	26.8%	0	0.0%	12.6%
Frederick	25,906,397	24,897,097	28,556,714	-1,009,300	N/A	3,659,617	N/A	N/A
Garrett	1,807,149	1,500,000	1,500,000	-307,149	-17.0%	0	0.0%	-8.9%
Harford	13,048,109	10,500,000	12,450,000	-2,548,109	-19.5%	1,950,000	18.6%	-2.3%
Howard	21,239,512	23,000,000	23,175,000	1,760,488	8.3%	175,000	0.8%	4.5%
Kent	1,075,095	1,178,700	943,492	103,605	9.6%	-235,208	-20.0%	-6.3%
Montgomery	98,826,280	100,796,043	142,712,779	1,969,763	2.0%	41,916,736	41.6%	20.2%
Prince George's	34,105,770	43,531,500	45,272,700	9,425,730	27.6%	1,741,200	4.0%	15.2%
Queen Anne's	5,071,011	5,032,550	4,618,775	-38,461	-0.8%	-413,775	-8.2%	-4.6%
St. Mary's	5,494,821	5,700,000	5,500,000	205,179	3.7%	-200,000	-3.5%	0.0%
Somerset	401,765	460,000	410,000	58,235	N/A	-50,000	N/A	N/A
Talbot	5,887,703	5,200,000	5,300,000	-687,703	-11.7%	100,000	1.9%	-5.1%
Washington	6,078,677	5,800,000	5,800,000	-278,677	-4.6%	0	0.0%	-2.3%
Wicomico	2,860,521	2,912,805	3,012,805	52,284	N/A	100,000	N/A	N/A
Worcester	5,437,913	5,500,000	5,500,000	62,087	1.1%	0	0.0%	0.6%
Total	\$376,944,513	\$390,312,695	\$444,212,265	\$13,368,182	3.5%	\$53,899,570	13.8%	8.6%

Source: Department of Legislative Services, County Budgets