

## Article - Tax - Property

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§12–105.

(a) (1) For a deed, deed of trust, or mortgage transferring title to real property located partly in the State, the recordation tax applies to the consideration payable or the principal amount of the debt secured in the same ratio that the value of the real property that is located in the State bears to the value of the entire property.

(2) For a security agreement covering personal property that is not exempt under § 12–108(k) of this title and is located partly in this State, recordation tax applies to the principal amount of the debt secured in the same ratio that the value of the nonexempt personal property located in this State bears to the value of the entire personal property.

(3) For transactions that involve instruments of writing described in both paragraphs (1) and (2) of this subsection, the recordation tax applies to the consideration payable or the principal amount of the debt secured in the same ratio that the sum of the values of the real property and the nonexempt personal property located in this State bears to the value of the entire property.

(b) Except if recorded with the Interstate Commerce Commission as provided by federal law, for a deed of trust, mortgage, or contract or agreement for the rolling stock or equipment of a railroad, the recordation tax applies to the debt secured in the same ratio that the number of miles of line of the railroad in the State bears to the number of miles of line of the entire railroad.

(c) If a lease of real property creating a perpetually renewable ground rent is recorded without a transfer of the reversionary estate for full consideration other than the ground rent being recorded at the same time, the recordation tax applies to the redemption sum as determined under § 8–804 of the Real Property Article plus any additional consideration payable. If the lease is recorded at the same time with the transfer of the reversionary estate created for full consideration, the lease is not subject to recordation tax.

(d) For a lease of real property for a term of more than 7 years not perpetually renewable, the recordation tax applies to:

(1) the average annual rent over the term of the lease, including renewals, capitalized at 10% plus any additional consideration payable, other than rent; or

(2) if the average annual rent cannot be determined, the greater of:

(i) 105% of the minimum average annual rent as determined by the lease, capitalized at 10% plus any additional consideration payable, other than rent; or

(ii) 60% of the assessment of the real property subject to lease.

(e) (1) In this subsection, “document”:

(i) means any document that publicizes or gives constructive notice of an unrecorded lease; and

(ii) includes:

1. an attornment agreement;

2. a memorandum of a lease; and

3. an assignment of a lease.

(2) A document may be recorded only if the original lease is submitted and recordation tax on the document and the original lease is paid.

(3) Subject to § 12–111 of this title, the lessee is chargeable with recordation tax on the original lease. If a lessee fails or refuses to pay recordation tax after a demand is made, the party offering for recordation the original lease may:

(i) pay recordation tax; and

(ii) sue the lessee to recover the amount of recordation tax paid, with interest from the date of payment of recordation tax.

(4) Recordation tax has to be paid on the original lease only if the original lease was required to be recorded under § 3–101 of the Real Property Article.

(f) (1) Except as provided in paragraph (4) of this subsection, if the total amount of secured debt has not been incurred at the time of recording or filing the instrument of writing, the recordation tax applies only to the principal amount of the debt incurred at that time.

(2) Except as provided in paragraphs (3), (4), and (6) of this subsection, on or before 7 days after any additional debt is incurred after recording

or filing an instrument of writing, a statement under oath of the amount of additional debt shall be filed with the clerk of the circuit court or with the Department, and the recordation tax shall be paid on the additional debt by the debtor.

(3) If the additional debt under paragraph (2) of this subsection is applied to repayment of the debt previously incurred, the recordation tax does not apply to the additional debt.

(4) The recordation tax may be computed and paid on the maximum outstanding principal sum, however expressed, that is stated to be secured by the instrument of writing, without regard to the amount of secured debt actually incurred, advanced, or readvanced.

(5) When credit is originally extended under paragraph (1) of this subsection to a consumer borrower, as defined in § 12-901 of the Commercial Law Article, the lender shall inform the borrower that:

(i) the borrower may pay the recordation tax under paragraphs (1) and (2) or paragraph (4) of this subsection; and

(ii) if the borrower elects to pay the recordation tax as additional debt is incurred under paragraph (2) of this subsection, the consumer borrower is responsible for payment of the additional tax and any penalty provided by § 14-1012 of this article.

(6) (i) This paragraph applies to construction loans for over \$100,000 for which the total amount of secured debt has not been incurred at the time of recording or filing the instrument of writing.

(ii) At the time that additional debt is incurred, the lender shall issue a draft payable to the appropriate collector of the recordation tax in the amount of the recordation tax due under this subsection.

(iii) The funds for the draft may be proceeds from the additional debt that is incurred or from the borrower.

(iv) Until the recordation tax is paid as required under paragraph (2) of this subsection, the borrower shall remain liable for the recordation tax that is due on the additional debt.

(7) (i) In this paragraph, "indemnity mortgage" includes any mortgage, deed of trust, or other security interest in real property that secures a guarantee of repayment of a loan for which the guarantor is not primarily liable.

(ii) Except as provided in subparagraph (iii) of this paragraph:

1. secured debt with respect to an indemnity mortgage recorded on or after July 1, 2012, is deemed to be incurred for purposes of this subsection when and to the same extent as debt is incurred on the guaranteed loan; and

2. the recordation tax applies under this subsection in the same manner as if the guarantor were primarily liable for the guaranteed loan.

(iii) This paragraph does not apply:

1. to the extent that recordation tax is paid on another instrument of writing that secures payment of the guaranteed loan;

2. to an indemnity mortgage that secures a guarantee of repayment of a loan or series of loans that are part of the same transaction for less than \$12,500,000; or

3. to a supplemental instrument of writing that confirms, corrects, modifies, supplements, or amends and restates a previously recorded instrument of writing regardless of whether recordation tax was paid on the instrument of writing, to the extent of the outstanding principal balance of the guaranteed loan immediately prior to the time the supplemental instrument of writing is entered into.

(iv) Recordation tax that is otherwise due on the recording of an indemnity mortgage may be allocated in the same manner described in subsection (a) of this section or calculated on the amount of the debt stated to be secured.

(g) (1) For a transfer under § 12–106 of this title, the recordation tax applies to the value of the real property determined by the Department at the date of finality immediately before the date of transfer.

(2) For a transfer by articles of merger, articles of consolidation, or other documents which evidence a merger or consolidation of foreign corporations, foreign limited liability companies, foreign partnerships, or foreign limited partnerships, the recordation tax applies to the value of the real property determined by the Department at the date of finality immediately before the date of the merger or consolidation.

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