

PROPONENT TESTIMONY; HB1609

TO: Maryland House of Delegates; House Ways and Means Committee

FROM: David K. Bowersox, Esquire
24 North Court Street
Westminster, MD 21157

HEARING DATE: March 10, 2020; 1:00 p.m.

Madam Chair and Members of the Ways and Means Committee:

HB1609 is remedial legislation protecting sellers of agricultural property under contract prior to July 1, 2019 from the perpetual “recapture” of State Agricultural Transfer Tax created by the adoption of Chapters 566 and 567, Acts 2019, effective July 1, 2019.

Prior to last year’s amendments, the Annotated Code provided for a gradual total amortization of the Agricultural Transfer Tax due on a sale of the property following the owner’s election to forego an agricultural assessment and pay their annual real property taxes on the property at regular assessed rates. If a property owner elected to forego the agricultural assessment and pay real property taxes for that property based on the full value assessment, after one year of payment based on full value assessment, a sale would be subject to an Agricultural Transfer Tax recapture of 75% of what would otherwise be payable if they had maintained their agricultural assessment. After two years of paying based on the regular assessment, a sale would only be subject to 50% of the Agricultural Transfer Tax; after three years, 25% and in the fourth and subsequent years of regular value assessment the recapture ceased so that no Agricultural Transfer Tax would be due as long as the property continued to pay annual real estate taxes based on the full value assessment.

Last year’s amendments changed that dramatically. Now, in the third and all subsequent years of annual real estate taxes based on regular assessed values, the Agricultural Transfer Tax recapture must be paid in the amount of 35%. Recapture at that rate will continue indefinitely no matter how many years the previously agriculturally assessed property continues paying annual taxes based on a resumed full value assessment.

Many of these agricultural properties are family properties. State Code provisions provide that where the contract of sale of the property is otherwise silent, the Seller, or the family, is responsible for the payment of the entirety of any Agricultural Transfer Tax due. The amount of Agricultural Transfer Tax on a parcel of over 20 acres is 5% of the total purchase price plus an additional 25% of that amount as a surcharge. This is a substantial sum of money which can be an unwelcome surprise to a Seller who may not be sophisticated in real estate transactional matters.

Not uncommonly settlement on contracts for these properties, particularly those of larger acreages, occurs after a period of time from the date of the contract or, settlement is conducted in phases with portions of the property being conveyed to a Seller over a number of years. This may be because the owner wishes to retain title until an agreed future date or, if the property is being developed, to satisfy contingencies that require periods of extensive State and local permitting, among other reasons.

In those cases, because of the significant percentage of Agricultural Transfer Tax relative to purchase price, the allocation of who pays the Agricultural Transfer Tax or how much of the Agricultural Transfer Tax typically becomes a significant issue of negotiations and a substantial financial component of contracts to sell this land.

HB1609 is intended to protect those citizens who have negotiated contracts prior to the July 1, 2019 effective date of last year's amendments extending into perpetuity recapture of State Agricultural Transfer Taxes even though settlement won't occur until after July 1, 2019. It only applies to those transactions pursuant to contracts of sale executed prior to the effective date of last year's legislation. Contracts negotiated after the July 1, 2019 effective date of last year's amendments would be subject to those amendments.

HB1609 is remedial, provides an equitable solution for an unintended consequence of last year's amendments to the Code, and acknowledges that the legislature is going to honor and respect contract terms negotiated in good faith prior to the effective date of last year's amendments.

Respectfully,

David K. Bowersox, Esquire