

Chapter 224

(House Bill 1226)

AN ACT concerning

Recordation and Transfer Taxes – Transfer of Controlling Interest – Exemptions

FOR the purpose of altering a certain exemption from recordation and transfer taxes so as to provide that a transfer of a controlling interest in a real property entity is not subject to recordation and transfer taxes if the transfer of the real property owned by the real property entity between the same transferor and transferee of the controlling interest under the same circumstances would have been exempt under certain provisions of law; altering a certain exemption from recordation and transfer taxes so as to provide that the recordation and transfer tax is not imposed on the transfer of a controlling interest in a real property entity to another entity if the ownership interests in the transferee entity are owned by the same persons and in the same proportion who own the transferor entity or the real property entity the controlling interest of which was transferred; repealing a provision of law providing that recordation and transfer taxes are not imposed on the transfer of a controlling interest in a real property entity if each transferor, each transferee, and each real property entity are certain types of business entities; and generally relating to exemptions from recordation and transfer taxes for certain transfers of controlling interests in a real property entity.

BY repealing and reenacting, with amendments,
 Article – Tax – Property
 Section 12–117
 Annotated Code of Maryland
 (2012 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, without amendments,
 Article – Tax – Property
 Section 13–103
 Annotated Code of Maryland
 (2012 Replacement Volume and 2015 Supplement)

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

Article – Tax – Property

12–117.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Controlling interest” means:

(i) more than 80% of the total value of all classes of stock of a corporation;

(ii) more than 80% of the total interest in capital and profits of a partnership, association, limited liability company, or other unincorporated form of doing business; or

(iii) more than 80% of the beneficial interest in a trust.

(3) “Final transfer” means that transfer of any portion of a controlling interest that completes the transfer of a controlling interest in a real property entity.

(4) (i) “Plan of transfer” means an intentional plan or program to transfer the controlling interest in a real property entity.

(ii) “Plan of transfer” does not include a series of sales of shares of a publicly traded entity.

(5) (i) “Real property” means real property located in the State.

(ii) “Real property” does not include:

1. a leasehold, unless created by a lease that is required to be recorded under § 3–101(a) of the Real Property Article; or

2. any mortgage, deed of trust, or other lien on or security interest in real property that secures an indebtedness.

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

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

2. has an aggregate value of at least \$1,000,000.

(ii) For the purposes of this paragraph, the value of real property shall be determined without reduction for any mortgage, deed of trust, or other lien on or security interest in the real property.

(iii) “Real property entity” does not include an entity with land holdings that, other than homesites or areas of commercial activity related to agricultural production, are entirely subject to an agricultural use assessment under § 8–209 of this article.

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

(2) (i) The recordation tax is imposed on the consideration payable for the transfer of the controlling interest in the real property entity.

(ii) The consideration to which the recordation tax applies includes the amount of:

1. any mortgage, deed of trust, or other lien on or security interest in the real property directly or beneficially owned by the real property entity; and

2. any other debt or encumbrance of the real property entity.

(iii) The consideration to which the recordation tax applies is reduced by the amount allocable to the assets of the real property entity other than real property.

(iv) The real property entity has the burden of establishing to the satisfaction of the Department the consideration referred to in subparagraph (i) of this paragraph and the amount of any consideration allocable to assets other than real property referred to in subparagraph (iii) of this paragraph.

(v) If the real property entity fails to establish the amount of consideration referred to in subparagraph (i) of this paragraph, the recordation tax is imposed on the value of the real property, directly or beneficially owned by the real property entity, determined by the Department at the date of finality immediately before the date of the final transfer.

(3) Except as otherwise provided in § 12–103(d) of this title, the recordation tax is applied at the rate set under § 12–103(b) of this title by the county where the real property is located.

(c) (1) The transfer of a controlling interest in a real property entity is not subject to recordation tax if the transfer of the real property [by an instrument of writing] **OWNED BY THE REAL PROPERTY ENTITY** between the same [parties] **TRANSFEROR AND TRANSFEREE OF THE CONTROLLING INTEREST** and under the same circumstances would have been exempt under § 12–108 of this title.

(2) The recordation tax is not imposed on the transfer of a controlling interest in a real property entity effected in more than one transaction if:

(i) the transfer is completed over a period of more than 12 months;

or

(ii) the transfer is not made in accordance with a plan of transfer.

(3) The recordation tax is not imposed on the transfer of a controlling interest in a real property entity to another **[business] ENTITY** if the ownership interests in the transferee **[business] entity** are **[held] OWNED, DIRECTLY OR INDIRECTLY**, by the same persons and in the same ~~proportion~~ **[as in] WHO PROPORTIONS AS THOSE PERSONS OWN, DIRECTLY OR INDIRECTLY**, the **TRANSFEROR ENTITY OR THE** real property entity the controlling interest of which was transferred.

(4) **[The** recordation tax is not imposed on the transfer of a controlling interest in a real property entity if each transferor, each transferee, and each real property entity is:

(i) a subsidiary corporation, all of the stock of which is owned, directly or indirectly, by a common parent corporation;

(ii) a partnership, all of the interests in which are owned, directly or indirectly, by one or more subsidiaries or the common parent corporation; or

(iii) the common parent corporation.

(5)] The recordation tax is not imposed on the transfer of a controlling interest in a real property entity if the transferee of the controlling interest in the real property entity is:

(i) a nonstock corporation organized under Title 5, Subtitle 2 of the Corporations and Associations Article; and

(ii) registered with the Department of Aging as a continuing care retirement community under § 10–408 of the Human Services Article.

[(6) (5)] The real property entity has the burden of establishing to the satisfaction of the Department the applicability of any exemption referred to in paragraphs (1) through **[(5) (4)]** of this subsection.

(d) (1) The real property entity shall file with the Department a report of any transfer of a controlling interest in the real property entity that is completed within a period of 12 months or less within 30 days following the date of the final transfer.

(2) The report shall include all information to establish to the satisfaction of the Department:

(i) the consideration referred to in subsection (b)(2)(i) of this section;

(ii) the amount of assets other than real estate referred to in subsection (b)(2)(ii) of this section; and

(iii) any exemption provided for in subsection (c) of this section.

(3) The report shall be accompanied by payment of:

(i) a \$20 filing fee; and

(ii) any tax, interest, and penalty that is due.

(e) (1) If any tax due under this section remains unpaid for 30 days after the date of the final transfer:

(i) interest on the unpaid amount shall accrue thereafter at the rate of 1% per month; and

(ii) a penalty of 10% of the unpaid amount shall be due.

(2) Any tax, interest, and penalty due under this section is an obligation of the real property entity.

(3) For reasonable cause, the Department may waive the imposition of interest or penalty.

(f) This section does not apply to:

(1) a pledge of stock or other interest in a real property entity as security for a loan; or

(2) the admission to the real property entity of additional shareholders, partners, beneficial owners, or other members incident to the raising of additional capital through a public or private offering of stock or other interests in the real property entity if:

(i) the effective management of the real property entity is not substantially changed; and

(ii) under the terms of the offering, none of the new members is expected to participate in the day-to-day management of the real property entity.

(g) (1) The Department shall adopt regulations to administer this section.

(2) The regulations shall include any additional standards and exemptions to assure that:

- (i) a tax is imposed when a transaction is structured involving a controlling interest in a real property entity to avoid payment of the recordation tax;
- (ii) exemptions provided by law when real property is transferred by an instrument of writing are applicable; and
- (iii) there is no double taxation of a single transaction.

13-103.

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

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

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

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

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

(c) The taxes under this title are not imposed on the transfer of a controlling interest in a real property entity in any of the circumstances described:

(1) in § 13-207 of this title that exempts an instrument of writing from the transfer tax; or

(2) in § 12-117(c) of this article that exempts the transfer of a controlling interest in a real property entity from the recordation tax.

(d) In each instance in which a controlling interest in a real property entity is transferred, the provisions of § 12-117(d) and (e) of this article are applicable.

(e) This section does not apply in the circumstances described in § 12-117(f) of this article.

(f) The Department shall adopt regulations to administer this section in the same manner as in § 12-117(g) of this article.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2016.

Approved by the Governor, April 26, 2016.