

Article - Tax - Property

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§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 between the same parties 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 if the ownership interests in the transferee business entity are held by the same persons and in the same proportion as in 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 Article 70B, § 9 of the Code.

(6) 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) 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.

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