

HOUSE BILL 363

Q6
HB 44/16 – W&M

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CF SB 111

By: **Delegates A. Miller, Chang, Ebersole, Jalisi, Kramer, Krebs, Lam, Mautz, West,
and K. Young**

Introduced and read first time: January 25, 2017

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Recordation and Transfer Taxes – Exemptions – Property Conveyed From Sole**
3 **Proprietorship to Limited Liability Company**

4 FOR the purpose of exempting a transfer of real property from a sole proprietorship to a
5 limited liability company from recordation and transfer taxes if the sole member of
6 the limited liability company is identical to the converting sole proprietor and certain
7 other conditions are met; providing that the transfer of a controlling interest in a
8 limited liability company that is the product of an untaxed conversion from a sole
9 proprietorship is subject to the recordation and transfer tax under certain
10 circumstances; defining a certain term; and generally relating to an exemption from
11 recordation and transfer taxes for property conveyed from a sole proprietorship to a
12 limited liability company.

13 BY repealing and reenacting, with amendments,
14 Article – Tax – Property
15 Section 12–108(y) and 12–117(a)(6)(i)
16 Annotated Code of Maryland
17 (2012 Replacement Volume and 2016 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Tax – Property
20 Section 12–117(a)(1) and (b)(1), 13–103(a) and (b), and 13–207(a)(18)
21 Annotated Code of Maryland
22 (2012 Replacement Volume and 2016 Supplement)

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

25 **Article – Tax – Property**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 12-108.

2 (y) (1) (i) In this subsection the following words have the meanings
3 indicated.

4 (ii) "Foreign general partnership", "foreign limited partnership",
5 "foreign limited liability partnership", "foreign limited liability limited partnership", and
6 "foreign joint venture" mean, respectively, a partnership, limited partnership, limited
7 liability partnership, limited liability limited partnership, or joint venture organized or
8 formed under the laws of the United States, another state of the United States, or a
9 territory, possession, or district of the United States.

10 (iii) "Predecessor entity" includes a:

11 1. Maryland general partnership or foreign general
12 partnership;

13 2. Maryland limited partnership or foreign limited
14 partnership;

15 3. Maryland limited liability partnership or foreign limited
16 liability partnership;

17 4. Maryland limited liability limited partnership or foreign
18 limited liability limited partnership; [and]

19 5. Maryland joint venture or foreign joint venture; **AND**

20 **6. SOLE PROPRIETORSHIP.**

21 **(IV) "SOLE PROPRIETORSHIP" INCLUDES AN INDIVIDUAL WHO**
22 **OWNS AN INTEREST IN REAL PROPERTY IN THE INDIVIDUAL'S NAME.**

23 (2) An instrument of writing that transfers title to real property from a
24 predecessor entity or a trustee or nominee of a predecessor entity to a limited liability
25 company is not subject to recordation tax if:

26 (i) 1. the members of the limited liability company are identical
27 to the partners of the converting general partnership, limited partnership, limited liability
28 partnership, or limited liability limited partnership; [or]

29 2. the members of the limited liability company are identical
30 to the joint venturers of the converting joint venture; **OR**

31 **3. THE SOLE MEMBER OF THE LIMITED LIABILITY**
32 **COMPANY IS IDENTICAL TO THE CONVERTING SOLE PROPRIETOR;**

1 (ii) each member's allocation of the profits and losses of the limited
2 liability company is identical to that member's allocation of the profits and losses of the
3 converting predecessor entity; and

4 (iii) the instrument of writing that transfers title to real property
5 represents the dissolution of the predecessor entity for purposes of conversion to a limited
6 liability company.

7 12-117.

8 (a) (1) In this section the following words have the meanings indicated.

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

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

13 2. **A.** has an aggregate value of at least \$1,000,000; **OR**

14 **B. IS THE PRODUCT OF AN UNTAXED CONVERSION FROM**
15 **A SOLE PROPRIETORSHIP EFFECTED UNDER THE EXEMPTION PROVIDED UNDER §**
16 **12-108(Y) OF THIS TITLE.**

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

21 13-103.

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

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

29 (2) The taxes under this section are imposed on the consideration payable
30 for the transfer of the controlling interest in the real property entity or on the value of the
31 real property directly or beneficially owned by the real property entity, as provided in §
32 12-117(b)(2) of this article.

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

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

5 13–207.

6 (a) An instrument of writing is not subject to transfer tax to the same extent that
7 it is not subject to recordation tax under:

8 (18) § 12–108(y) or (bb) of this article (Transfer from predecessor entity or
9 real estate enterprise to limited liability company);

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
11 1, 2017.