

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 372

(Senator Kasemeyer)

Budget and Taxation

Health and Government Operations

**Estates and Trusts – Transfer From Revocable Trust – Exemption From Taxes
and Fees**

This bill exempts from recordation and transfer taxes the transfer of real property without consideration if the transfer is made from a revocable trust to a beneficiary as a result of the death of the settlor of the trust. The bill also exempts from the motor vehicle excise tax and the titling fee vehicles that are transferred without consideration if the transfer is made from a revocable trust to a beneficiary as a result of the death of the settlor of the trust. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: State transfer tax and Transportation Trust Fund (TTF) revenues may decrease beginning in FY 2019 to the extent transfers pursuant to the bill occur. The number of affected transfers that may occur each year is not known. General fund revenues decrease as a result of commissions not being collected. State expenditures are not affected.

Local Effect: Local recordation tax revenues and transfer tax revenues in code counties may decrease beginning in FY 2019 to the extent transfers pursuant to the bill occur. Local highway user revenues may decrease beginning in FY 2019. The number of affected transfers that may occur each year is not known. Local expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: The transfer of property without consideration from an estate to specified types of trusts, or from specified types of trusts to one or more beneficiaries under specified circumstances, is exempt from recordation and transfer taxes. For these purposes, “consideration” does not include the amount of any obligation under a mortgage or deed of trust encumbering the transferred property.

The motor vehicle excise tax and the titling fee does not apply to certain vehicles that are transferred without consideration if the vehicle is transferred to or from specified trusts. For purposes of certain tax exemptions for property transferred to or from specified trusts, “consideration” does not include the amount of any obligation under other writings encumbering the transferred property.

Background: The counties and Baltimore City are authorized to impose locally established recordation tax rates on any business or person (1) conveying title to real property or (2) creating or giving notice of a security interest (*i.e.*, a lien or encumbrance) in real or personal property, by means of an instrument of writing.

The State and most counties impose a transfer tax. The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland homebuyers). In some jurisdictions, a local property transfer tax may be imposed on instruments transferring title to real property. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage.

For purposes of local recordation taxes, which are applied to each \$500 or fraction of \$500 of consideration payable or of the principal amount of the debt secured for an instrument of writing, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee. For purposes of the State transfer tax, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee.

State Fiscal Effect: State special fund revenues may decrease beginning in fiscal 2019 to the extent transfers pursuant to the bill occur. The amount of the revenue decrease due to the exemption depends on the number of transfers that occur pursuant to the bill and the amount of consideration associated with each transfer. As a point of reference, the State transfer tax on a transaction valued at \$250,000 is \$1,250. The State Department of Assessments and Taxation and the Judiciary were unable to provide information on the number of exemptions that occur from the current law exemption for specified trusts.

The clerks of the circuit court in several jurisdictions collect a number of different taxes and fees, including local recordation taxes. The Administrative Office of the Courts reports that the clerk of the circuit court collects local recordation taxes in the following 12 jurisdictions: Allegany; Calvert; Dorchester; Garrett; Harford; Kent; Queen Anne's; St. Mary's; Somerset; Washington; Wicomico; and Worcester. In the remaining jurisdictions, local finance offices are responsible for the collection of these taxes. The clerks of the court who collect the tax are entitled to a commission of between 3% and 5% of all public monies collected, which, unless otherwise specified, are remitted to the State's general fund. This will in turn decrease the amount of revenue remitted to the general fund.

The bill also exempts from the motor vehicle excise tax and titling fee certain vehicles that are transferred without consideration. As a result, TTF revenues may decrease beginning in fiscal 2019.

Local Fiscal Effect: Local recordation tax revenues may decrease beginning in fiscal 2019 to the extent transfers pursuant to the bill occur. In code counties – Allegany, Caroline, Charles, Kent, Queen Anne's, and Worcester – transfers that are exempt from the State transfer tax are also exempt from the county transfer tax. As a result, transfer tax revenues in the six code counties will also decrease beginning in fiscal 2019. The amount of the revenue decrease due to the exemption depends on the number of transfers that occur pursuant to the bill and the amount of consideration associated with each transfer. The number of affected transfers that may occur in any year is not known.

Local governments receive a portion of vehicle excise tax and titling fee revenues to support the construction and maintenance of local roads and other transportation facilities. Accordingly, local highway user revenues may decrease beginning in fiscal 2019 due to the vehicle excise tax and titling fee exemption specified by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Department of Legislative Services

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