



LEGAL BULLETIN

MARYLAND TO TAX TRANSFERS OF CONTROLLING INTERESTS OF REAL ESTATE ENTITIES

Beginning on July 1, 2008, pursuant to the recently enacted Tax Reform Act of 2007 (the "Act"), the State of Maryland will impose recordation and transfer taxes on transfers of "controlling interests" of "real property entities." "Real property entities" are corporations, partnerships, limited liability companies, trusts, and other entities that, directly or indirectly, own real property located in the State of Maryland with an aggregate value of more than \$1 Million, if the real property comprises at least 80% of the entity's assets. A "controlling interest" is more than 80% of the ownership interests in the applicable entity.

Real Property Entities. For purposes of determining an entity's real property assets, leases of less than seven years and mortgages and other financing instruments are not included. Furthermore, the value of the real property is determined without regard to the amount of any mortgages or security instruments to which the real property assets are subject. Entities with land holdings that are entirely subject to agricultural assessment, other than home sites or areas of commercial activity related to agricultural production, are expressly excluded from the definition of real property entities.

Calculation of Tax. Transfer and recordation taxes are imposed on the transfer of the controlling interest as if the real property assets owned by the entity were conveyed by a recorded deed, based on the consideration payable for the interest being transferred. The consideration is deemed to include any financing to which the real property assets are subject, but is reduced by the amount of consideration allocated to any non-real property assets of the entity. Recordation and County transfer taxes are imposed at the rate established by the County in which the applicable real property assets are located.

Multiple Transfers. Multiple transfers of ownership interests are aggregated for purposes of determining whether a transfer of a controlling interest has occurred, if the transfers occur within a one year period and pursuant to an intentional plan to transfer the controlling interest. If the transfer of a controlling interest occurs through a series of transfers, the tax is imposed when the aggregate transfers reach 80% or more.

Exemptions from Tax. Specified transactions are excluded from taxation, including any transaction that would have been exempt had the real property been transferred by deed. Additionally, taxes are not imposed upon transfers where the ultimate ownership of the entity remains unchanged, or among certain parent/subsidiary and affiliated entities. Transfers of controlling interests in certain continuing care retirement facilities are also expressly exempt.

Exempt Transactions. Certain transfers are excluded from the Act altogether, including the pledge of stock or other interests in a real property entity as security for a loan, and the admission of new shareholders, partners, members or other owners of a real property entity incident to the raising of additional capital, if the effective management of the real property entity is substantially unchanged, and none of the new owners are expected to participate in the entity’s day-to-day management.

Reporting Requirements. Each real property entity is required to file a report with the State Department of Assessments and Taxation within 30 days after the transfer of a controlling interest in the entity. The report is to include the information necessary to establish the amount of the consideration, the amount of any non-real property assets, and any applicable exemptions from tax. The report is to be accompanied by payment of the applicable tax. Note that the tax is the obligation of the real property entity, and not the transferee or transferor of the controlling interest.

While the Act represents a significant change in the imposition of Maryland’s recordation and transfer taxes, planning opportunities remain available. Please feel free to contact a member of Rosenberg | Martin | Greenberg LLP’s Real Estate Group for further information.

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