



House Bill 44

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

MACo Position: **SUPPORT**

Date: March 29, 2016

To: Budget and Taxation Committee

From: Andrea E. Mansfield

The Maryland Association of Counties (MACo) **SUPPORTS** HB 44. This bill would create a new exemption from the transfer and recordation tax for the transfer of property from a sole proprietorship to a limited liability company (LLC) if the sole member of the limited liability company is identical to the converting sole proprietor.

Current law offers a variety of exemptions for transfers accomplishing a corporate restructuring. Small business owners who operate as sole proprietors are not able to benefit from these exemptions. HB 44 could benefit small business in the state by extending these same exemptions to the transfer of property from a sole proprietorship to an LLC if the owner of the business is the same.

While MACo supports the goal of the legislation, it would like to make the Committee aware that this change could indirectly empower some property owners to trigger a new avenue for tax avoidance: (1) declare the self-owned property to be held as a sole proprietorship, (2) transfer it to an LLC without tax consequences, and (3) sell the membership of the LLC to another person, again without tax consequences. To limit this opportunity for abuse, the Committee may wish to consider limiting the application of HB 44 to properties subject to the “controlling interest” threshold already in Maryland law.

The working definition of sole proprietorship may also benefit from refinement, for parallel reasons. A clear definition to exclude a “corporate shell” transaction could focus the bill’s effects more clearly on the intended beneficiaries.

Accordingly, MACo **SUPPORTS** HB 44 and offers to work with the Committee to develop appropriate language to avoid creating inadvertent unfair tax loopholes.