House Bill 372

Recordation and Transfer Taxes – Transfer of Property Between Related Entities - Exemption

MACo Position: **OPPOSE**
Date: March 28, 2013

To: Budget and Taxation Committee
From: Andrea Mansfield

The Maryland Association of Counties (MACo) **OPPOSES** HB 372. This bill creates a broad new tax exemption for related business entities, but may unintentionally create new and unfair tax avoidance mechanisms. **The companion bill, SB 202, was amended by the Budget and Taxation Committee to address these concerns, and MACo would seek to have the House bill treated in the same fashion.**

HB 372 would exempt from the recordation and transfer tax the transfer of real property between parent business entities and wholly-owned subsidiaries if the transfer of real property is for no consideration, nominal consideration, or consideration that comprises only the issuance, cancellation, or surrender of the ownership interest of a subsidiary business entity. "Business entity" is defined as a partnership, limited partnership, limited liability company, or corporation.

MACo is concerned that the application of this overly broad exemption would substantially limit the number of transactions subject to the recordation and transfer tax without proper verification. Under current law, the exemption from the recordation and transfer tax applies to transfers of real property between corporations and subsidiary corporations. Existing law also provides for an exemption for Limited Liability Companies for transfers from predecessor entities and transfers for a real estate enterprise. In each of these situations, clear documentation exists to verify that these entities are related and a true parent/subsidiary relationship exists between the entities.

The expansion specified in HB 372 makes this much more difficult. The added business entities have much less documentation available to review to determine whether a true parent/subsidiary relationship between the entities exists. Without formal documentation specifying the parties, counties would need to rely solely on an affidavit in an effort to get an instrument of writing on record without paying transfer or recordation taxes. Although affidavits are helpful, objective documentation clearly indicating the relationship between the entities is preferred.

The Senate crossfile, SB 202, has already been heard by this committee and voted out favorable with amendments to narrow the bill's focus to only incorporate limited liability companies, in addition to corporations which are already eligible for an exemption under current law. The bill has also been amended to be effective for a period of 5 years and terminate on June 30, 2018. Should the committee look favorably upon HB 372, MACo respectfully requests that the bill be amended to mirror the Senate crossfile.