



MARYLAND
Association of
COUNTIES

House Bill 1371

Recordation Tax - Collection by State Department of Assessments and Taxation - Distribution

MACo Position: **SUPPORT**

To: Ways and Means Committee

Date: February 28, 2018

From: Barbara Zektick

MACo submits the following support material, in addition to previously submitted testimony, in response to the Committee's request from the February 27, 2018, hearing on HB 1371. Please contact Barbara Zektick at bzektick@mdcounties.org or 410-269-0043 with any questions.

LARRY HOGAN
GOVERNOR

BOYD RUTHERFORD
LT. GOVERNOR



MICHAEL HIGGS
DIRECTOR

DENISE HERNDON
DEPUTY DIRECTOR

MEMORANDUM

To: Barbara Zektick, Esq., Associate Director, MACo

CC: Sharonne Bonardi, Esq., Deputy Comptroller

From: Michael Higgs, Esq., Director, SDAT *MH*

Re: Collection and Distribution of M&C Recordation Tax

Date: Friday, October 6, 2017

SDAT was approached earlier this year by Baltimore City Finance inquiring why the City was not receiving its share of the M&C (defined below) Recordation taxes collected by SDAT. After consulting with our colleagues in the Comptroller's Office and completing our internal investigation, SDAT hereby reports the following:

Taxes on Conveyance of Real Property: When Real Property is sold or transferred, the vast majority of those transactions occur upon a deed being recorded with the Clerk of the Court or Land Records office in the county in which the property is located. At that time, the parties submit payment of (1) State Transfer Tax (§ 13-201)¹, (2) County Transfer Tax (§ 13-401), and (3) Recordation Tax (§ 12-101) as a prerequisite to recordation. However, when Real Property ownership changes hands as a result of mergers or consolidations of business entities (M&C), those three taxes are paid at our SDAT office in Baltimore.

For M&C transfers, SDAT sends a copy of the receipt noting the payment of the three taxes to the Clerk/Land Records office (as applicable) of the county where the property is located following every transaction. Each month, SDAT pays to the applicable County Finance Office (CFO) the amount it collected for the County Transfer Tax (# 2 above). At the end of each fiscal year, SDAT transfers to the Comptroller the funds collected under the State Transfer Tax (#1 above).

For the Recordation Taxes (#3), where the County Court Clerk handles the transactions, the State's Clerk of the Court reports to the Comptroller a consolidated listing of all Recordation

¹ All references are to the Tax-Property Article.

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Taxes collected by its reporting jurisdictions. Where the County Land Records Offices collect the Recordation Tax directly, they, or the CFO, report annually to the Comptroller the total amount of Recordation Taxes collected for the preceding year. With those reported numbers, the Comptroller calculates the total amount of Recordation Tax collected statewide, and applies the percentage each county attributed to the state-wide take. *Those percentages determine the distribution of the Recordation Taxes collected by SDAT for M&C transactions.*

Problem: At some point about a decade ago, Counties received *via* legislation the option to begin collecting their own transfer/recordation-related taxes in local Land Records Offices, rather than relying on the Clerk of the Court to handle those collections, and recoup those monies from the State sometime later. When new procedures were put in place to effectuate this shift in responsibilities, it appears that the problems described herein came into being.

As the Recordation Tax statutes provide for both SDAT and the Comptroller to take out administrative fees for the transaction, a *factor* is applied to the total amount collected, and the Comptroller's office sends to SDAT a spreadsheet instructing SDAT how to disburse the funds (via percentage) in the fiscal year after that in which the funds were collected.² Because of the application of this factor, every year the Comptroller's spreadsheet sees SDAT disbursing 100% of the funds collected.

Upon receiving notice from Baltimore City that it was not receiving its portion of SDAT-collected Recordation Taxes, SDAT began investigating the matter. A review of the records shows that problem apparently goes back to 2010. That year's Recordation Tax distribution spreadsheet indicates that 2 counties reported zero transactions: Anne Arundel & Howard, and as such, no money from the fund was disbursed to them. In 2011, the Comptroller's spreadsheet showed 8 jurisdictions getting 0% of the fund disbursement; 5 received nothing in 2012, 6 in 2013, 5 in 2014, and 3 in 2015. This resulted in most of the counties receiving slight windfalls in their annual payments, while the remaining counties did not receive any of the monies that should have been due to them for this tax. The breakdown most likely occurred where either (1) the Land Records Office didn't inform the CFO of the transactions, or (2) the CFO did not appreciate that they needed to send a year-end statement/invoice to the Comptroller in order to receive those M&C Recordation Taxes collected by SDAT. According to an email dated 7/7/14 from Laura Hill-McKinney, Revenue Specialist with the Comptroller, the Comptroller's office determined that the counties with no disbursements "either don't collect or collect the funds directly and no figures were supplied...."

Legal Issue: The law is clear that SDAT is required to collect M&C Recordation Taxes and,

² See attached Comptroller-prepared Recordation Tax distribution spreadsheets for the years 2009 – 2016.

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after deducting its administrative costs, it is directed to remit that money to the Comptroller for disbursement to the counties. The statute on point is 12-110(d) which is set forth *verbatim* here:

(d) (1) The Department shall deduct the cost of administering the recordation tax from the taxes collected under this title and credit those revenues to the fund established under § 1-203.3 of the Corporations and Associations Article.

(2) After deducting the revenues required under paragraph (1) of this subsection, the recordation tax collected under §§ 12-103(d) and 12-117 of this title shall be paid to the Comptroller. The Comptroller shall distribute the revenue to the counties in the ratio that the recordation tax collected in the prior fiscal year in each county bears to the total recordation tax collected in all counties in that year.

As the money as issue has already been fully disbursed, there remains no funds available for distribution absent a claw-back from the unduly enriched counties. While SDAT is committed to help identify and enact a solution, based on the law as written, any issue regarding the distribution of Recordation Taxes to the counties is the sole statutory responsibility of the Comptroller.

Fiscal Year 2009 Recordation Tax

COUNTY	RECORDATION TAX CLERKS	RECORDATION TAX COUNTY	TOTAL	DISTRIBUTION RATE
Allegany	1,237,982.20		1,237,982.20	0.48%
Anne Arundel	28,419,041.92		28,419,041.92	10.95%
Balto County		22,089,426.47	22,089,426.47	8.51%
Calvert	5,782,977.52		5,782,977.52	2.23%
Caroline	1,236,558.56		1,236,558.56	0.48%
Carroll		9,220,248.46	9,220,248.46	3.55%
Cecil	4,568,939.39		4,568,939.39	1.76%
Charles		9,910,699.41	9,910,699.41	3.82%
Dorchester	1,965,594.25		1,965,594.25	0.76%
Frederick		19,225,798.00	19,225,798.00	7.41%
Garrett	2,330,264.19		2,330,264.19	0.90%
Harford	9,426,529.78		9,426,529.78	3.63%
Howard	4,451,201.66		4,451,201.66	1.72%
Kent	1,035,199.99		1,035,199.99	0.40%
Montgomery		65,978,703.00	65,978,703.00	25.43%
Prince George's		24,033,014.49	24,033,014.49	9.26%
Queen Anne's	3,563,062.78		3,563,062.78	1.37%
St. Mary's	5,256,185.65		5,256,185.65	2.03%
Somerset	550,899.04		550,899.04	0.21%
Talbot	3,016,204.94		3,016,204.94	1.16%
Washington	4,669,752.35		4,669,752.35	1.80%
Wicomico	2,820,766.72		2,820,766.72	1.09%
Worcester	5,947,798.48		5,947,798.48	2.29%
Baltimore City	22,706,126.24		22,706,126.24	8.75%
Total	108,985,085.66	150,457,889.83	259,442,975.49	100.00%

Fiscal Year 2010 Recordation Tax

COUNTY	RECORDATION TAX CLERKS	RECORDATION TAX COUNTY	TOTAL	DISTRIBUTION RATE
Allegany	1,226,430.87		1,226,430.87	0.49%
Anne Arundel			0.00	0.00%
Balto County		20,027,561.77	20,027,561.77	8.79%
Calvert	5,646,506.37		5,646,506.37	2.25%
Caroline	776,332.93		776,332.93	0.31%
Carroll		9,154,577.85	9,154,577.85	3.67%
Cecil	50.60		50.60	0.00%
Charles		9,489,800.65	9,489,800.65	3.95%
Dorchester	1,915,801.36		1,915,801.36	0.76%
Frederick		19,668,612.00	19,668,612.00	7.83%
Garrett	2,019,458.52		2,019,458.52	0.80%
Harford	10,159,549.90		10,159,549.90	4.04%
Howard			0.00	0.00%
Kent	968,716.25		968,716.25	0.39%
Montgomery		69,370,279.00	69,370,279.00	27.62%
Prince George's		33,436,191.02	33,436,191.02	9.57%
Queen Anne's	3,727,253.50		3,727,253.50	1.48%
St. Mary's	4,974,955.25		4,974,955.25	1.98%
Somerset	552,368.66		552,368.66	0.22%
Talbot	2,934,334.93		2,934,334.93	1.17%
Washington	3,898,238.39		3,898,238.39	1.55%
Wicomico	2,569,289.08		2,569,289.08	1.02%
Worcester	6,150,271.84		6,150,271.84	2.45%
Baltimore City	20,942,367.91		20,942,367.91	8.34%
Total	68,461,926.36	161,147,022.29	229,608,948.65	100.00%

Fiscal Year 2011 Recordation Tax

COUNTY	RECORDATION TAX CLERKS	RECORDATION TAX COUNTY	TOTAL	DISTRIBUTION RATE
Allegany	1,071,503.16		1,071,503.16	1.17%
Anne Arundel			0.00	0.00%
Balto County			0.00	0.00%
Calvert	5,139,568.97		5,139,568.97	5.60%
Caroline			0.00	0.00%
Carroll		8,454,827.23	8,454,827.23	9.20%
Cecil			0.00	0.00%
Charles			0.00	0.00%
Dorchester	1,283,939.25		1,283,939.25	1.40%
Frederick		16,677,990.68	16,677,990.68	18.16%
Garrett	2,091,897.95		2,091,897.95	2.28%
Harford	8,973,634.64		8,973,634.64	9.77%
Howard			0.00	0.00%
Kent	824,383.15		824,383.15	0.90%
Montgomery			0.00	0.00%
Prince George's		22,929,915.01	22,929,915.01	24.96%
Queen Anne's	3,770,202.94		3,770,202.94	4.10%
St. Mary's	4,635,851.80		4,635,851.80	5.05%
Somerset	377,694.22		377,694.22	0.41%
Talbot	4,636,326.80		4,636,326.80	5.05%
Washington	3,504,273.73		3,504,273.73	3.81%
Wicomico	2,210,530.90		2,210,530.90	2.41%
Worcester	5,277,321.29		5,277,321.29	5.74%
Baltimore City			0.00	0.00%
Total	43,797,128.80	48,062,732.92	91,859,861.72	100.00%

Fiscal Year 2012 Recordation Tax

COUNTY	RECORDATION TAX CLERKS	RECORDATION TAX COUNTY	TOTAL	DISTRIBUTION RATE
Allegany	1,071,503.16		1,071,503.16	0.55%
Anne Arundel			0.00	0.00%
Balto County		20,397,974.36	20,397,974.36	10.38%
Calvert	5,139,568.97		5,139,568.97	2.62%
Caroline			0.00	0.00%
Carroll		8,454,827.23	8,454,827.23	4.30%
Cecil			0.00	0.00%
Charles		8,457,293.91	8,457,293.91	4.30%
Dorchester	1,283,939.25		1,283,939.25	0.65%
Frederick		16,677,990.68	16,677,990.68	8.49%
Garrett	2,091,897.95		2,091,897.95	1.06%
Harford	8,973,634.64		8,973,634.64	4.57%
Howard			0.00	0.00%
Kent	824,383.15		824,383.15	0.42%
Montgomery		75,790,212.00	75,790,212.00	38.57%
Prince George's		22,929,915.01	22,929,915.01	11.67%
Queen Anne's	3,770,202.94		3,770,202.94	1.92%
St. Mary's	4,635,851.80		4,635,851.80	2.36%
Somerset	377,694.22		377,694.22	0.19%
Talbot	4,636,326.80		4,636,326.80	2.36%
Washington	3,504,273.73		3,504,273.73	1.78%
Wicomico	2,210,530.90		2,210,530.90	1.12%
Worcester	5,277,321.29		5,277,321.29	2.69%
Baltimore City			0.00	0.00%
Total	43,797,128.80	152,708,213.19	196,505,341.99	100.00%

FY2013

COUNTY	RECORDATION TAX CLERKS	RECORDATION TAX COUNTY	TOTAL	DISTRIBUTION RATE
Allegany	1,628,602.66		1,628,602.66	0.55%
Anne Arundel			0.00	0.00%
Balto County		26,429,147.55	26,429,147.55	10.38%
Calvert	6,083,948.54		6,083,948.54	2.62%
Caroline			0.00	0.00%
Carroll		10,422,432.20	10,422,432.20	4.30%
Cecil			0.00	0.00%
Charles			0.00	4.30%
Dorchester	1,131,583.08		1,131,583.08	0.65%
Frederick		23,986,029.00	23,986,029.00	8.49%
Garrett	1,599,392.56		1,599,392.56	1.06%
Harford	10,064,222.28		10,064,222.28	4.57%
Howard			0.00	0.00%
Kent	942,384.70		942,384.70	0.42%
Montgomery		93,137,519.00	93,137,519.00	38.57%
Prince George's		31,448,729.25	31,448,729.25	11.67%
Queen Anne's	4,190,152.65		4,190,152.65	1.92%
St. Mary's	6,483,124.25		6,483,124.25	2.36%
Somerset	443,480.05		443,480.05	0.19%
Talbot	4,107,600.42		4,107,600.42	2.36%
Washington	4,440,364.78		4,440,364.78	1.78%
Wicomico	1,920,569.26		1,920,569.26	1.12%
Worcester	4,468,182.28		4,468,182.28	2.69%
Baltimore City			0.00	0.00%
Total	47,503,607.51	185,423,857.00	232,927,464.51	100.00%

FOR FISCAL YEAR ENDED JUNE 30, 2014

COUNTY	RECORDATION TAX CLERKS	RECORDATION TAX COUNTY	TOTAL	DISTRIBUTION RATE
Allegany	1,628,602.66		1,628,602.66	0.67%
Anne Arundel			0.00	0.00%
Balto County		26,429,147.55	26,429,147.55	10.83%
Calvert	6,083,948.54		6,083,948.54	2.49%
Caroline			0.00	0.00%
Carroll		10,422,432.20	10,422,432.20	4.27%
Cecil			0.00	0.00%
Charles			11,094,837.04	4.55%
Dorchester	1,131,583.08		1,131,583.08	0.46%
Frederick		23,986,029.00	23,986,029.00	9.83%
Garrett	1,599,392.56		1,599,392.56	0.66%
Harford	10,064,222.28		10,064,222.28	4.12%
Howard			0.00	0.00%
Kent	942,384.70		942,384.70	0.39%
Montgomery		93,137,519.00	93,137,519.00	38.17%
Prince George's		31,448,729.25	31,448,729.25	12.89%
Queen Anne's	4,190,152.65		4,190,152.65	1.72%
St. Mary's	6,483,124.25		6,483,124.25	2.66%
Somerset	443,480.05		443,480.05	0.18%
Talbot	4,107,600.42		4,107,600.42	1.68%
Washington	4,440,364.78		4,440,364.78	1.82%
Wicomico	1,920,569.26		1,920,569.26	0.79%
Worcester	4,468,182.28		4,468,182.28	1.83%
Baltimore City			0.00	0.00%
Total	47,503,607.51	185,423,857.00	244,022,301.55	100.00%

Fiscal Year 2015 Recordation Tax

COUNTY	RECORDATION TAX CLERKS	RECORDATION TAX COUNTY	TOTAL	DISTRIBUTION RATE
Allegany	975,913.30		975,913.30	0.30%
Anne Arundel		42,870,526.04	42,870,526.04	13.39%
Balto County		30,578,526.61	30,578,526.61	9.55%
Calvert	5,905,177.74		5,905,177.74	1.84%
Caroline	11,760,715.96		11,760,715.96	3.67%
Carroll		11,760,715.96	11,760,715.96	3.67%
Cecil			0.00	0.00%
Charles		16,918,006.81	16,918,006.81	5.28%
Dorchester	1,177,952.08		1,177,952.08	0.37%
Frederick		25,655,824.00	25,655,824.00	8.01%
Garrett	1,693,297.77		1,693,297.77	0.53%
Harford	12,488,855.33		12,488,855.33	3.90%
Howard			0.00	0.00%
Kent	1,006,931.25		1,006,931.25	0.31%
Montgomery		99,121,397.00	99,121,397.00	30.95%
Prince George's		34,552,268.50	34,552,268.50	10.79%
Queen Anne's	4,755,363.81		4,755,363.81	1.48%
St. Mary's	5,205,564.84		5,205,564.84	1.63%
Somerset	375,507.03		375,507.03	0.12%
Talbot	(5,088.00)		(5,088.00)	0.00%
Washington	5,704,840.29		5,704,840.29	1.78%
Wicomico	2,687,531.58		2,687,531.58	0.84%
Worcester	5,096,736.77		5,096,736.77	1.59%
Baltimore City			0.00	0.00%
Total	58,829,299.75	261,457,264.92	320,286,564.67	100.00%

Fiscal Year 2016 Recordation Tax

COUNTY	RECORDATION TAX CLERKS	RECORDATION TAX COUNTY	TOTAL	DISTRIBUTION RATE
Allegany	1,314,617.46		1,314,617.46	0.30%
Anne Arundel		50,006,124.32	50,006,124.32	11.44%
Balto County		36,662,372.55	36,662,372.55	8.38%
Calvert	7,498,291.99		7,498,291.99	1.71%
Caroline		1,601,962.16	1,601,962.16	0.37%
Carroll		13,986,823.00	13,986,823.00	3.20%
Cecil		5,302,872.92	5,302,872.92	1.21%
Charles		15,398,329.30	15,398,329.30	3.52%
Dorchester	1,690,135.17		1,690,135.17	0.39%
Frederick		31,011,510.00	31,011,510.00	7.09%
Garrett	1,679,037.92		1,679,037.92	0.38%
Harford	13,693,919.32		13,693,919.32	3.13%
Howard	24,885,535.00		24,885,535.00	5.69%
Kent	1,015,088.41		1,015,088.41	0.23%
Montgomery		108,672,867.00	108,672,867.00	24.85%
Prince George's		45,178,841.25	45,178,841.25	10.33%
Queen Anne's	5,190,762.60		5,190,762.60	1.19%
St. Mary's	5,985,162.94		5,985,162.94	1.37%
Somerset	409,542.73		409,542.73	0.09%
Talbot		6,216,903.00	6,216,903.00	1.42%
Washington	6,487,938.08		6,487,938.08	1.48%
Wicomico	2,723,678.08		2,723,678.08	0.62%
Worcester	6,403,114.67		6,403,114.67	1.46%
Baltimore City		44,273,452.00	44,273,452.00	10.12%
Total	78,976,824.37	358,312,057.50	437,288,881.87	100.00%