



Senate Bill 202

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

MACo Position: **OPPOSE**

Date: February 13, 2013

To: Budget and Taxation Committee

From: Andrea Mansfield

The Maryland Association of Counties (MACo) **OPPOSES** SB 202. This bill 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 SB 202 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.

MACo believes SB 202 would create a loophole to enable business entities to avoid paying the recordation and transfer tax on the transfers of real property. In recent years, the state has added fairness to this tax system by closing similar loopholes with respect to controlling interest and indemnity deeds of trust. Counties respectfully request that additional loopholes not be enacted to avoid the payment of these taxes.

For these reasons, MACo urges the Committee to give SB 202 an **UNFAVORABLE** report.