
IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2005
No. 2280

MONTGOMERY COUNTY, MARYLAND,

Appellant

v.

WILDWOOD MEDICAL CENTER, LLC,

Appellee

On Appeal from the Circuit Court for Montgomery County, Maryland
(D. Warren Donohue, Judge)

BRIEF OF APPELLANT

Charles W. Thompson, Jr.
County Attorney

Marc P. Hansen
Deputy County Attorney

Karen L. Federman Henry
Principal Counsel for Appeals

Scott R. Foncannon
Associate County Attorney

101 Monroe Street, Third Floor
Rockville, Maryland 20850-2589
(240) 777-6700
Attorneys for Appellant

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STATEMENT OF THE CASE

This appeal arises from a refund claim submitted by Wildwood Medical Center, LLC, asking the Montgomery County Department of Finance to return the recordation and transfer taxes paid by Wildwood when it recorded a deed. (E. 1) Wildwood claimed an exemption from these taxes, based on a provision in the tax law that permits a tax-exempt transfer from a partnership to a limited liability company if the individual partners remain the same. (E.2-10) The department conducted an informal hearing and denied the claim for refund, because the property was not titled in the partnership name, but held by the partners as individuals. (E. 11) Wildwood appealed to the tax court, which held an evidentiary hearing where the parties submitted a series of deeds.¹ (E. 12-74, 143-213) The tax court agreed with Wildwood's interpretation of the statute and ruled that the exemption applied. (E. 215-222) The County filed a petition for judicial review, and the circuit court affirmed the tax court's ruling. (E. 233-235) The appeal to this Court followed the circuit court's decision.

QUESTIONS PRESENTED

- I. When property is titled in the names of individuals, rather than in the name of the partnership, does a transfer of that property to a limited liability company qualify for an exemption from transfer and recordation taxes?
- II. Did the tax court and the circuit court fail to adhere to the longstanding judicial tenet that tax-exemption statutes are to be strictly construed in favor of the taxing authority, which resulted in an erroneous expansion

¹State law authorizes the appeal to the tax court, followed by judicial review in the circuit court, and appeal to this Court. *See* Md. Code Ann., Tax-Prop. §14-512(d), § 14-513, and § 14-515 (2001).

of an exemption that conflicts with the prohibition against judicial legislation?

STATUTES, ORDINANCES, AND CONSTITUTIONAL PROVISIONS

The full text of all relevant statutes, ordinances, and constitutional provisions appears in the appendix to this brief.

STATEMENT OF FACTS

In December 2003, Wildwood presented a deed to the Montgomery County transfer office for processing. The deed conveyed title from several individuals and trustees of revocable trusts and family trusts “doing business as Wildwood Medical Center General Partnership, a Maryland General Partnership, party of the first part, Grantor, to Wildwood Medical Center, L.L.C., a Maryland Limited Liability Company, Grantee, party of the second part.” (E. 69-74) At the time, Wildwood asserted that the deed was exempt from State recordation tax and County transfer tax based on two sections of State law that allow an exemption from recordation tax and transfer tax for a written instrument that transfers title to real property from a predecessor entity or trustee or nominee of a predecessor entity to a limited liability company. *See* Md. Code Ann., Tax-Prop. § 12-108(y) and § 13-405(c). By definition, a predecessor entity includes a Maryland general partnership. The County reviewed the request, but denied the request for an exemption, and Wildwood paid the State recordation tax and the County transfer tax. The deed was processed and recorded among the land records of Montgomery County, after which Wildwood submitted a claim to the

Department of Finance seeking a refund of the recordation tax in the amount of \$ 36,035.25, and a refund of the transfer tax in the amount of \$ 52,224.00. (E. 1-11)

The chain of title, as shown by the series of deeds affecting the property between 1962 and 2003, reflected the numerous individuals or trustees of revocable family trusts who held an ownership interest in the property. (E. 12-74) The property was purchased originally by Alvin L. Aubinoe and Dorothy B. Aubinoe as tenants by the entirety from Cheshire Land Company in 1962. (E. 12-15) Alvin and Dorothy Aubinoe purchased several additional properties in 1965. (E. 16-29) After the death of Alvin and, later, Dorothy Aubinoe, individuals acquired title to portions of the property through inheritance or trusts, as reflected in the subsequent deeds recorded from 1983 to 2000. (E. 36-68, 163-164) The surveyor's certificate specifies individual ownership and includes no reference to a partnership or that the individuals do business as a partnership, although several surrounding properties reflect ownership by "Aubinoe and Griffith Limited Partnership" rather than individuals. (E. 75-77)

In addition to the absence of a deed showing title to the property having been transferred into the partnership's name, testimony presented on behalf of Wildwood conceded that title to the property was not in the name of the partnership and that no individual in the chain of title had taken title on behalf of the partnership. (E. 162) Neither partnership funds nor individual assets were used to acquire the property. (E. 163-164) Instead, each person acquired title through a gift. (E. 163) The partnership agreement was executed on December 22, 2003, and purported to take effect retroactively on January 1,

1982, even though many of the individual partners did not obtain an interest in the property until a number of years after the 1982 effective date. (E. 52-63, 156-157) The limited liability company documents reflect that it may have been created sometime in October 2003. (E. 84-99) The deed from the partnership to the limited liability company is dated December 23, 2003, and conveyed title to the subject property from several individuals or trustees of family trusts² “doing business as” Wildwood Medical Center General Partnership, a Maryland General Partnership, as the Grantor, to Wildwood Medical Center, LLC a Maryland Limited Liability Company, as the Grantee. (E. 69)

ARGUMENT

The Maryland Tax Court is an administrative agency of the State and final orders of the tax court are subject to judicial review. *Read v. Supervisor of Assessments of Anne Arundel County*, 354 Md. 383, 391, 731 A.2d 868, 872 (1999) (citing Md. Code Ann., Tax-Gen. §13-532(a) (2004); Md. Code Ann., State Gov’t § 10-222 and § 10-223 (2004)). Using the general principles of judicial review, the court determines whether “there was substantial evidence on the record as a whole to support the agency’s findings of fact and whether the agency’s conclusions of law were correct.” *Motor Vehicle Administration v. Atterbeary*, 368 Md. 480, 490-491, 796 A.2d 75, 81 (2002). The reviewing court may not substitute its

²The names listed as the Grantor included: Dorothy A. Shelton, formerly known as Dorothy Aubinoe Griffith; Alvin L. Aubinoe, III, Trustee of an unrecorded revocable trust known as the Alvin L. Aubinoe, III Trust; Victoria L. Aubinoe; Scot M. Aubinoe; Amanda M. Aubinoe; and Dorothy Aubinoe Shelton and Worthington H. Talcott, Jr., Trustees of the Dorothy Griffith Shelton Family Trust. (E. 69)

judgment for that of the tax court if substantial evidence supports the findings of the court. *Read*, 354 Md. at 392, 731 A.2d at 872. Questions of law, including statutory construction, are reviewed *de novo*. *Brown v. Comptroller*, 130 Md. App. 526, 532, 747 A.2d 232, 235 (2000). The tax court is not entitled to any deference regarding legal conclusions if they are erroneous. *Read*, 354 Md. at 392, 731 A.2d at 872. This Court's role is precisely the same as that of the circuit court—to apply the substantial evidence test to the tax court's decision and to determine whether the tax court's decision is legally correct. *Comptroller of the Treasury v. Phillips*, 384 Md. 583, 590, 865 A.2d 590, 594 (2005); *see also Seidlecki v. Employees' Retirement System of Baltimore County*, 2006 Md. App. LEXIS 49, *4-5 (April 11, 2006).

This case presents fundamental issues of statutory construction. The tax court failed to adhere to ordinary principles of statutory construction. Not only did the tax court fail to interpret the exemption according to the plain meaning, purpose, and the legislative history of the statute, but the court also ignored the principle that tax exemptions be construed strictly and in favor of the taxing authority. The undisputed evidence showed that title to the property was never transferred to the partnership or to a trustee or nominee on behalf of the partnership, and no deed in the chain of title showed the partnership as the title owner. (E.12-68, 162-163) The transfer to the limited liability company was the first taxable transfer—not a mere transfer from one entity structure to another. Using ordinary principles of statutory construction, these facts should have resulted in decisions by the tax court and

the circuit court affirming the County's denial of the refund of recordation and transfer taxes to Wildwood.

I. When property is titled in the names of individuals, rather than in the name of the partnership, a transfer of that property to a limited liability company does not qualify for an exemption from transfer and recordation taxes.

When using the appropriate principles of statutory construction, the statute plainly requires payment of the recordation and transfer tax for the conveyance in this case. The appellate courts repeatedly have explained that the goal of statutory construction is to “discern and effectuate the General Assembly’s intent. . . .” *Maryland-National Capital Park and Planning Commission v. State Dept. of Assessments and Taxation*, 110 Md. App. 677, 688, 678 A.2d 602, 607 (1996), *aff’d*, 348 Md. 2, 702 A.2d 690 (1997). To ascertain the legislative intent, the Court examines “the language of the enactment and gives that language its natural and ordinary meaning.” *Montgomery County v. Buckman*, 333 Md. 516, 523, 636 A.2d 448, 452 (1994). Where no ambiguity exists, no further review is needed. *Id.* And where a specific definition does not appear in the statute, the court will apply the ordinary and natural meaning of the word. *Brown v. State*, 285 Md. 469, 474, 403 A.2d 788, 791 (1979). In doing so, the appellate court may refer to dictionary definitions and common usage. *Id.* See also *Benson v. State*, 389 Md. 615, 634-635, 887 A.2d 525, 536 (2005); *Board of License Commissioners for Prince George’s County v. Global Express*, 2006 Md. App. LEXIS 52, *12 (April 12, 2006). Often the entire statutory scheme becomes relevant to consider the purpose behind the statute. *Comptroller v. Phillips*, 384 Md. at 591, 590 A.2d

at 594. Similarly, the legislative history of the enactment serves as an indication of the legislative purpose and intent. *Id.* Applying these principles to the exemption involved in this case shows that Wildwood is not eligible for the exemption.

The plain meaning of the statute reflects a technical requirement that differs from simple ownership or possession.

The key phrase in the exemption that Wildwood seeks states that “[a]n instrument of writing that transfers title to real property from a predecessor entity or a trustee or nominee of a predecessor entity to a limited liability company is not subject to recordation tax . . . ” if certain circumstances exist. Md. Code Ann., Tax-Prop. § 12-108(y)(2). Legal title of property ordinarily passes by execution of a deed, which then is recorded in the land records. *Kingsley v. Makay*, 253 Md. 24, 27, 251 A.2d 585, 587 (1969); *see also* Md. Code Ann., Real Prop. § 3-101(a) (2003). In this way, a deed serves as evidence of title and ownership.

The use of the word “title” by the Legislature plainly conveys an intent to exempt only the transfer of property titled in the partnership name to a limited liability company—not to any property used or owned by the partnership. The ordinary definition of “title” reflects this simple meaning:

6. *Law.* a. The coincidence of all the elements that constitute the fullest legal right to control and dispose of property or a claim. b. The aggregate means or body of events giving rise to this right; just cause of possession or control. c. The evidence of such means. d. The instrument constituting this evidence, such as a deed.

The American Heritage Dictionary of the English Language, New College Edition, at 1349 (1979). In legal usage, “[t]itle is the means whereby the owner of lands has the just

possession of his property.” Black’s Law Dictionary, at 1485 (Sixth Ed. 1990). And transfer of real property occurs through a deed:

A conveyance of realty; a writing signed by grantor, whereby title to realty is transferred from one to another. A written instrument, signed, and delivered, by which one person conveys land, tenements, or hereditaments to another.

Id. at 414 (internal citation omitted).

Wildwood attempted to avoid transfer and recordation taxes by transferring property titled in the name of several individuals to the limited liability company they created without having transferred the title to the partnership. (E. 69-74, 162-163) Yet, the express purpose of the statute is to exempt from recordation and transfer tax only those instruments of writing that transfer “title” to real property from a predecessor entity to a limited liability company. Md. Code Ann., Tax-Prop. §12-108(y). The clear and unambiguous language of the exemption requires that an instrument in writing must transfer “title” from a predecessor entity or a nominee or trustee for the predecessor entity. This transfer of title can occur only if title to the real property is in the name of the partnership or a trustee or nominee of the partnership in the first place.

In this case, that did not happen. Instead, Wildwood executed a partnership agreement as a means of avoiding the transfer and recordation tax when conveying title to the limited liability company, but at no time did the individuals transfer title to the partnership. (E. 12-68, 162-163) This does not satisfy the plain meaning of the exemption.

The purpose and intent of the statute leads to the same interpretation.

This basic requirement that the partnership have title to the property is evident from the purpose and intent of the statute. The State recordation tax is an excise tax imposed on the privilege of recording an instrument of writing and is imposed on every recording of an instrument of writing unless an exemption is expressly provided in the statute. *See* Md. Code Ann., Tax-Prop. §12-101, § 12-102, and § 12-109. Similarly, the County transfer tax is an excise tax imposed on all transfers of title to real property unless a specific exemption applies. Md. Code Ann., Tax-Prop. §13-401; Montg. Co. Code § 52-20 and § 52-21 (2004). Although Wildwood seeks to transfer title of the property held by individuals to the partnership without payment of transfer tax or recordation tax, thereby taking advantage of the exemption that applies to transfers of title from the partnership to a limited liability company, this significant loophole is not reflected in the language of the statute nor in the purpose and intent of the Legislature.

Wildwood's interpretation would enable anyone who wishes to transfer their property to a limited liability company without payment of the required taxes simply to claim to be a partnership, state that the property belongs to the partnership, and then transfer the property to the limited liability company, tax-exempt. This method of avoiding the recordation tax and transfer tax on the transfer of title to the limited liability company creates a double exemption—the taxes were not paid for the transfer of title from the individual partners to

the partnership and no taxes are paid for the transfer of the property from the individual partners “doing business as the partnership” to the limited liability company.

The law is clear that transfers to partnerships are taxable. *Dean v. Pinder*, 312 Md. 154, 164-165, 538 A.2d 1184, 1189-1190 (1988). Despite the hybrid nature of a partnership, “a partnership has consistently been characterized for purposes of the State recordation and transfer taxes as an ‘entity’ separate and apart from its individual partners.” *See also* 62 Op. Att’y Gen. 842, 843 (1977). If the Legislature had intended to create a double exemption, it would have used language that exempted general transfers of partnership property, or transfers of property considered to be partnership property by law, or simply property used in the partnership. Instead, the Legislature limited the exemption only to the transfer of title from the partnership entity to the successor limited liability company with the same members. Certainly, the Legislature never intended to exempt the initial transfer of property to the partnership as part of the exemption in Tax-Prop. §12-108(y), but only the second transfer to a successor entity composed of the same individuals.

The legislative history of the tax law reflects no intent to exempt the first transfer of property from individuals to a business entity.

The original statute clearly states that the purpose and intent of the law was to exempt those instruments of writing that transfer title to real estate from a partnership to a limited liability company. Through several modifications, the Legislature never varied from this original purpose and intent. While the statute evolved to expand the types of entities that

could claim the exemption, at no time did it stray from the requirement that the instrument of writing must transfer title from the predecessor entity to the limited liability company.

The Legislature originally adopted the exemption in 1996. Md. Code Ann., Tax-Prop. §12-108(y). 1996 Md. Laws ch. 690. The title of the law described the bill as concerning: “Transfers from Partnerships to Limited Liability Companies” and its stated purpose was for “exempting from recordation tax and the State and county transfer taxes certain instruments of writing that transfer title to real property from a partnership to a limited liability company under certain circumstances.” (E. 129-130) The text of the original exemption supported the stated purpose and intent, providing:

(y) An instrument of writing that transfers title to real property from a partnership to a limited liability company is not subject to recordation tax if:

- (1) The members of the limited liability company are identical to the partners of the converting partnership; and
- (2) Each member’s allocation of the profits and losses of the limited liability company is identical to that member’s allocation of the profits and losses of the converting partnership.

(E. 130)

In 1997, the Legislature modified the statute “clarifying that an instrument of writing that transfers title to real property from certain entities to a limited liability company is not subject to recordation tax or State or county transfer tax under certain circumstances. . . .”

1997 Md. Laws ch. 683. (E. 132) The Legislature expanded the exemption to include transfers from several types of partnership entities, which were referred to as “predecessor

entities” and included a general partnership. (E. 133) Although the language slightly expanded the exemption to include transfers from a predecessor entity or trustee or nominee of the predecessor entity, it retained the provision that required transfer of title from the entity in order for the exemption to apply.

The law was amended again in 2000 to modify the definition of “predecessor entity” to include various types of foreign partnerships. 2000 Md. Laws ch. 692. (E.) The bill made no change to the requirement that transfer of title must be from a predecessor entity to the limited liability company. And the purpose clause plainly noted that it was “generally relat[ed] to conversions to limited liability companies and the recordation and State and county transfer tax exemption for certain transfers of real property from certain entities to a limited liability company.” (E. 135-136)

The most recent amendment to the law created a new exemption from recordation and transfer tax for transfers to a limited liability company by individuals involved in a real estate enterprise. 2001 Md. Laws ch. 573. (E. 139) The bill also modified the list of predecessor entities, but did not change the requirement that “title” must be transferred from the predecessor entity or its nominee or trustee to a limited liability company for the exemption to apply. (E. 140)

The enactment and modifications reflect a consistent intent to avoid double taxation regarding the same entity holding title to the same real property. By requiring that the members of the transferring partnership be identical to those of the receiving limited liability

company, the Legislature recognized the ability of an entity to redesignate its corporate structure without incurring transfer and recordation taxes.³ And it satisfies the step transaction doctrine, which neither allows form to prevail over substance in tax matters, nor allows a taxpayer to “escape tax liability by disguising the true nature of transactions with mere formalisms.” *Read*, 354 Md. at 396-397, 731 A.2d at 875. This Court should not allow Wildwood to skip a key step in obtaining the exemption created by the Legislature to avoid taxes that it owes.

The language of the statute along with the legislative history of the exemption makes it plain that the Legislature expected that the property was titled in the partnership name or that title was expressly held on behalf of the partnership and that transfer and recordation taxes had been paid on the transfer to the partnership prior to the change of corporate structure and transfer of the property to the limited liability company. In no event did the Legislature intend to create a double exemption from these taxes.

³The legislative record of the 1996 bill contains testimony that refers to the “paper” transfer of property when an entity changes its corporate structure. (Apx. 17, 26) The paper transfer carried a presumption that the owners paid a transfer tax on the initial sale of the property and should not have to do so a second time based on restructuring the entity with identical members. (Apx. 15, 17-20) None of the materials suggested an intent to create a double exemption, but only an effort to avoid a double tax on the same property in limited circumstances. (Apx. 15-27)

***The chain of title shows no conveyance to the partnership
prior to the transfer to the limited liability company.***

The uncontested facts establish that “title” was never transferred to the partnership. (E. 12-68, 162-163) Only once did the name of the partnership appear in a deed—when the parties purported to transfer the property to the limited liability company in December 2003. (E. 69) Although the partnership agreement executed on December 22, 2003, claimed that the partnership was established in 1982, and even if the property was treated as partnership property for Federal income tax purposes since that date, these events do not substitute for an actual transfer of title into the partnership name.

In this case, title to the property was acquired originally by Alvin L. Aubinoe and Dorothy B. Aubinoe as tenants by the entirety. (E. 12-29) Through a series of no-consideration conveyances between 1983 and 2000 (before and after the deaths of Alvin and Dorothy Aubinoe), the property was titled in the name of their descendants and trustees of those descendants’ trusts without any reference to the partnership nor any mention that the title owners held the property as trustees or nominees of the partnership. (E. 36-68) Wildwood has provided no evidence that the property was purchased with partnership assets, or that the property was purchased in the name of someone acting in their partnership capacity, or even that the partnership existed.

The initial ownership as tenants by the entirety suggests that the property was not partnership property. *Williams v. Dovell*, 202 Md. 351, 358, 96 A.2d 484, 488 (1953). Only the tax returns and the partnership agreement suggest that the property might be treated as

partnership property. (E. 78-83, 100-128) The partnership agreement clearly was prepared only to support the claimed exemption—it was executed the day before the deed of transfer to the limited liability company but after the limited liability company was formed in October 2003. (E. 78-99) The critical link in the chain of title of the property remains absent—a transfer of title to the partnership. If the word “title” in the statute is to have any meaning, then the clear intent of the Legislature was to require title to come from the predecessor entity in order to claim the exemption. Inasmuch as title was never in the name of the partnership as the predecessor entity, no exemption applies upon transfer of the property to the limited liability company.

It is not a question of whether this property is partnership property, but rather, one of how the property is titled. The County concedes that property need not be titled in the partnership name to be partnership property for certain purposes. *Wilen v. Wilen*, 61 Md. App. 337, 352, 286 A.2d 775, 783 (1985). On the other hand, title cannot be held in abeyance or “allowed to drift about in an atmosphere of uncertainty. It must be vested in someone. . . .” *Calvary Presbyterian Church v. Presbytery of Baltimore*, 39 Md. App. 405, 417, 386 A.2d 357, 364 (1978). Legal title can pass only by virtue of legal proceedings or a deed. Md. Code Ann., Real Prop. § 3-101(a) and § 5-103; *see also Kingsley v. Makay*, 253 Md. at 27, 251 A.2d at 587. The title to the property defines and limits the scope of the exemption, not the use or possession of the property.

Not all partnership property qualifies for the exemption. The Maryland Revised Uniform Partnership Act describes partnership property as property acquired in the name of the partnership or in the name of a partner with an indication in the instrument transferring title of that person's capacity as a partner or of the existence of the partnership. Md. Code Ann., Corps. & Assns. §9A-204 (1999). In fact, the law includes a specific presumption that the property is not partnership property if it is not purchased with partnership assets or in the name of a partner in his capacity as a partner. Corps. & Assns. § 9A-204(c) and (d). Although some property can be considered partnership property without conveyance of title to the partnership name, it does not become eligible for the exemption unless title has transferred to the partnership.

In this case, the plain meaning of the statute requires that title be in the name of the predecessor entity to claim an exemption when transferring the property to an entity with the same individual members. The purpose of the law and the legislative history support this interpretation. The property was not purchased with partnership assets, but transferred to each partner individually by gift, not as a trustee or nominee of the partnership. (E. 162-163) The necessary step missing from Wildwood's chain of title is a transfer of title to the partnership prior to the transfer to the limited liability company. Without the transfer of title to the partnership, the transfer in 2003 reflected only a transfer from individuals to the limited liability company—not the transfer from one entity to another contemplated by the statute. The tax court misinterpreted the exemption and should be reversed.

II. The tax court and the circuit court failed to adhere to the longstanding judicial tenet that tax-exemption statutes are to be strictly construed in favor of the taxing authority, which resulted in an erroneous expansion of an exemption that conflicts with the prohibition against judicial legislation.

All transfers to a partnership are subject to State recordation tax and County transfer tax, including those from the partners to a wholly owned partnership. The tax applies because a separate legal entity takes ownership of the property and the transferors have received valuable consideration in the form of an increase in their partnership interest. *Dean v. Pinder*, 312 at 164, 538 A.2d at 1190. The exemption in this case allows a transfer of title from the partnership to a limited liability company, without payment of taxes, as long as the individuals and business interests remain constant. Md. Code Ann., Tax-Prop. §12-108(y). This makes sense when the individuals transferred property into the partnership and paid transfer and recordation taxes at that juncture. By allowing Wildwood to use the exemption in this particular instance, where no prior transfer to the partnership name occurred, the tax court created a loophole in the tax law contrary to established principles for interpreting exemptions.

When considering an exemption in a tax statute, the court must strictly construe the exemption and resolve any doubt in favor of the taxing authority. *Comptroller v. Martin G. Imbach, Inc.*, 101 Md. App. 138, 145, 643 A.2d 513, 516, *cert. denied*, 336 Md. 593, 650 A.2d 239 (1994). The law itself requires this narrow construction. Md. Code Ann., Tax-

Prop. § 7-101. And the Court of Appeals recognized this principle for interpreting tax exemptions long ago:

The taxing power is never presumed to be surrendered. Every assertion that it has been relinquished must, to be effective, be distinctly supported by clear and unambiguous legislative enactment. To doubt an exemption is to deny it. However, the tax exemption statute should not receive a strained or unreasonable construction that would defeat the purpose of the legislative enactment.

Suburban Propane Gas Corp. v. Tawes, 205 Md. 83, 87, 106 A.2d 119, 121 (1954). And “[i]n the final analysis, the real legislative intent prevails. The burden of showing that an exemption is allowed under the law falls upon the claimant.” *Maryland-National Capital Park and Planning Commission v. State Dept. of Assessments and Taxation*, 110 Md. App. at 689, 678 A.2d at 608. Only where a deliberate purpose of the legislature to grant an exemption is expressed in clear terms will the exemption apply. *Clarke v. Union Trust Company*, 192 Md. 127, 134, 63 A.2d 635, 638 (1949); *Comptroller v. Martin G. Imbach, Inc.*, 101 Md. App. at 144, 643 A.2d at 516. And the Court will not imply an exemption:

[T]he established rule is “not to extend the tax statute’s provisions by implication, beyond the clear import of the language used, to cases not plainly within the statute’s language, and not to enlarge the statute’s operation so as to embrace matters not specifically pointed out” and that “statutory tax exemptions are strictly construed in favor of the taxing authority.”

Comptroller v. Martin G. Imbach, Inc., 101 Md. App. 144-145, 643 A.2d at 518 (citation omitted).

As discussed above, the plain language, purpose and intent, and legislative history all support the narrow application of the exemption sought in this case. Instead, Wildwood

attempts to skip a step by transferring property directly from the partners as individuals to the limited liability company. Yet nothing in the statute or the legislative intent supports this construction.

Based on a strict construction of tax exemptions in favor of the taxing authority, as required by the long-established principles of statutory construction, the exemption found in Tax-Prop. § 12-108(y) does not apply to the transfer made by the individual partners to the limited liability company. The facts clearly indicate that “title” was never transferred to the partnership and taxed, even though it was a necessary preceding step to claiming an exemption from taxes when later transferring title to the property from the partnership entity to the limited liability company.

CONCLUSION

The tax court did not apply established statutory construction principles and did not adhere to the mandate that tax exemptions be construed narrowly and in favor of the taxing authority. The legislative history and the facts of this case show that, absent title being held by the partnership, the transfer of the property was the first taxable transfer and was subject to transfer and recordation tax. This Court should reverse the circuit court and the tax court

and order that the decision of the Department of Finance denying the refund claim be affirmed.

Respectfully submitted,

Charles W. Thompson, Jr.
County Attorney

Marc P. Hansen
Deputy County Attorney

Karen L. Federman Henry
Principal Counsel for Appeals

Scott R. Foncannon
Associate County Attorney

Statement pursuant to Maryland Rule 8-504(a)(8): This brief was prepared with proportionally spaced type, using Times New Roman font and 13pt type size.

APPENDIX

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Corps. & Assns. (1999)

§ 9A-204. When property is partnership property.

(a) *In general.* Property is partnership property if acquired in the name of:

- (1) The partnership; or
- (2) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) *Transfer.* Property is acquired in the name of the partnership by a transfer to:

- (1) The partnership in its name; or
- (2) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) *Partnership property presumption.* Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) *Separate property presumption.* Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

Real Prop. (2003)

§ 3-101. Deeds required to be executed and recorded; exceptions; memorandum of lease.

(a) *General rule.* Except as otherwise provided in this section, no estate of inheritance or freehold, declaration or limitation of use, estate above seven years, or deed may pass or take effect unless the deed granting it is executed and recorded.

* * *

§ 5-103. Assignment, grant, or surrender of interest in property.

No corporeal estate, leasehold or freehold, or incorporeal interest in land may be assigned, granted, or surrendered, unless it is in writing signed by the party assigning, granting, or surrendering it, or his agent lawfully authorized by writing, or by act and operation of law.

State Gov't (2004)

§ 10-222. Judicial review.

(a) Review of final decision.

- (1) Except as provided in subsection (b) of this section, a party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision as provided in this section.
- (2) An agency, including an agency that has delegated a contested case to the Office, is entitled to judicial review of a decision as provided in this section if the agency was a party before the agency or the Office.

(b) Review of interlocutory order. Where the presiding officer has final decision-making authority, a person in a contested case who is aggrieved by an interlocutory order is entitled to judicial review if:

- (1) the party would qualify under this section for judicial review of any related final decision;
- (2) the interlocutory order:
 - (i) determines rights and liabilities; and
 - (ii) has immediate legal consequences; and
- (3) postponement of judicial review would result in irreparable harm.

(c) Jurisdiction and venue. Unless otherwise required by statute, a petition for judicial review shall be filed with the circuit court for the county where any party resides or has a principal place of business.

(d) Parties.

- (1) The court may permit any other interested person to intervene in a proceeding under this section.
- (2) If the agency has delegated to the Office the authority to issue the final administrative decision pursuant to § 10-205(a)(3) of this subtitle, and there are 2 or more other parties with adverse interests remaining in the case, the agency may decline to participate in the judicial review. An agency that declines to participate shall inform the court in its initial response.

(e) Stay of enforcement.

- (1) The filing of a petition for judicial review does not automatically stay the enforcement of the final decision.
- (2) Except as otherwise provided by law, the final decision maker may grant or the reviewing court may order a stay of the enforcement of the final decision on terms that the final decision maker or court considers proper.

(f) Additional evidence before agency.

- (1) Judicial review of disputed issues of fact shall be confined to the record for judicial review supplemented by additional evidence taken pursuant to this section.

- (2) The court may order the presiding officer to take additional evidence on terms that the court considers proper if:
 - (i) before the hearing date in court, a party applies for leave to offer additional evidence; and
 - (ii) the court is satisfied that:
 - 1. the evidence is material; and
 - 2. there were good reasons for the failure to offer the evidence in the proceeding before the presiding officer.
 - (3) On the basis of the additional evidence, the final decision maker may modify the findings and decision.
 - (4) The final decision maker shall file with the reviewing court, as part of the record:
 - (i) the additional evidence; and
 - (ii) any modifications of the findings or decision.
- (g) *Proceeding.*
- (1) The court shall conduct a proceeding under this section without a jury.
 - (2) A party may offer testimony on alleged irregularities in procedure before the presiding officer that do not appear on the record.
 - (3) On request, the court shall:
 - (i) hear oral argument; and
 - (ii) receive written briefs.
- (h) *Decision.* In a proceeding under this section, the court may:
- (1) remand the case for further proceedings;
 - (2) affirm the final decision; or
 - (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
 - (i) is unconstitutional;
 - (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
 - (iii) results from an unlawful procedure;
 - (iv) is affected by any other error of law;
 - (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (vi) is arbitrary or capricious.

§ 10-223. Appeals to Court of Special Appeals.

- (a) *Scope of section.* This section does not apply to:
- (1) a case that arises under Title 16 of the Transportation Article unless a right to appeal to the Court of Special Appeals is specifically provided; or
 - (2) a final judgment on actions of the Inmate Grievance Office.

(b) *Right of appeal.*

- (1) A party who is aggrieved by a final judgment of a circuit court under this subtitle may appeal to the Court of Special Appeals in the manner that law provides for appeal of civil cases.
- (2) An agency that was a party in the circuit court may appeal under paragraph (1) of this subsection.

Tax-Gen. (2004)

§ 13-532. Judicial review.

(a) *In general.*

- (1) A final order of the Tax Court is subject to judicial review as provided for contested cases in §§ 10-222 and 10-223 of the State Government Article.
- (2) Any party to the Tax Court proceeding, including a governmental unit, may appeal a final order of the Tax Court to the circuit court.

(b) *Enforcement of orders.* When an order of the Tax Court is subject to judicial review, that order is enforceable unless the reviewing court grants a stay upon such condition, security or bond as it deems proper.

Tax-Prop. (2001)

§ 7-101. Exemptions - Strict rule of construction.

Property tax exemptions provided under this title shall be strictly construed.

§ 12-101. Definitions.

* * *

(c) *Instrument of writing.*

- (1) “Instrument of writing” means a written instrument that:
 - (i) conveys title to or creates or gives notice of a security interest in real property; or
 - (ii) creates or gives notice of a security interest in personal property.
- (2) “Instrument of writing” includes:
 - (i) a deed or contract;
 - (ii) a mortgage, deed of trust, or other contract that creates an encumbrance on real property;
 - (iii) a lease of real property;
 - (iv) an assignment of a lessee's interest in real property;
 - (v) articles of transfer;
 - (vi) a security agreement;
 - (vii) articles of merger or other document which evidences a merger of foreign corporations, foreign partnerships, foreign limited liability companies, or foreign limited partnerships; and

- (viii) articles of consolidation or other document which evidences a consolidation of foreign corporations.

* * *

§ 12-102. Imposition of tax.

Except as otherwise provided in this title, recordation tax is imposed on an instrument of writing:

- (1) recorded with the clerk of the circuit court for a county; or
- (2) filed with the Department and described in § 12-103 (d) of this title.

§ 12-108. Exemptions from tax.

* * *

(y) *Transfers from certain entities to limited liability company.*

- (1)
 - (i) In this subsection the following words have the meanings indicated.
 - (ii) “Foreign general partnership”, “foreign limited partnership”, “foreign limited liability partnership”, “foreign limited liability limited partnership”, and “foreign joint venture” mean, respectively, a partnership, limited partnership, limited liability limited partnership, or joint venture organized or formed under the laws of the United States, another state of the United States, or a territory, possession, or district of the United States.
 - (iii) “Predecessor entity” includes a:
 - 1. Maryland general partnership or foreign general partnership;
 - 2. Maryland limited partnership or foreign limited partnership;
 - 3. Maryland limited liability partnership or foreign limited liability partnership;
 - 4. Maryland limited liability limited partnership or foreign limited liability limited partnership; and
 - 5. Maryland joint venture or foreign joint venture.
- (2) An instrument of writing that transfers title to real property from a predecessor entity or a trustee or nominee of a predecessor entity to a limited liability company is not subject to recordation tax if:
 - (i)
 - 1. the members of the limited liability company are identical to the partners of the converting general partnership, limited partnership, limited liability partnership, or limited liability limited partnership; or
 - 2. the members of the limited liability company are identical to the joint venturers of the converting joint venture;

- (ii) each member's allocation of the profits and losses of the limited liability company is identical to that member's allocation of the profits and losses of the converting predecessor entity; and
- (iii) the instrument of writing that transfers title to real property represents the dissolution of the predecessor entity for purposes of conversion to a limited liability company.

* * *

§ 12-109. Payment of recordation tax.

(a) *When recordation tax payable.*

- (1) An instrument of writing that is taxable under this title may not be recorded in any county until the recordation tax has been paid as provided by subsection (b) of this section.
- (2) An instrument of writing that is taxable under this title may not be filed with the Department until the recordation tax has been paid as provided by subsection (b) of this section.

(b) *Where paid.*

- (1) Except as provided in paragraph (2) of this subsection, the recordation tax on an instrument of writing or a security agreement recorded under subsection (a) (1) of this section in any county shall be paid to the collector or the clerk of the circuit court for the county, as designated by the governing body of the county.
- (2) In Prince George's County, the recordation tax on an instrument of writing or a security agreement recorded under subsection (a) (1) of this section shall be paid to the Director of Finance of Prince George's County.
- (3) The recordation tax on articles of transfer, articles of merger, articles of consolidation or other documents which evidence a merger or consolidation of foreign corporations, foreign partnerships, foreign limited liability companies, or foreign limited partnerships filed with the Department shall be paid to the Department.

§ 13-401. Definition.

In this subtitle, “county transfer tax” means the transfer tax imposed by a county.

§ 13-405. Tax on corporate, limited liability company, or partnership transfers.

(a) *Applicability of tax.* Except as provided in subsection (c) of this section, county transfer tax applies to conveyances that transfer the real property of a corporation to its stockholders, a limited liability company to its members, or a partnership to its partners on:

- (1) liquidation;
- (2) dissolution; or
- (3) termination.

(b) *Determination of consideration.* For a conveyance that is taxable under this section, county transfer tax applies to the value of the real property determined by the Department at the date of finality immediately before the date of transfer.

(c) *Exemptions from tax.* A corporate, limited liability company, or partnership transfer as described in § 12-108(p), (q), (v), (w), (y), and (bb) of this article is not subject to the county transfer tax.

§ 14-512. Appeals to Maryland Tax Court.

* * *

(d) *From recordation or transfer tax refund determination.* The person who submitted a tax refund claim under § 14-907 or § 14-908 of this title may appeal any final action taken under § 14-911 of this title to the Maryland Tax Court on or before 30 days from the date that the notice of disallowance is received by the person. However, if a refund claim under § 14-911 of this title is not allowed or disallowed on or before 6 months from the date of filing the claim, the person who filed the claim may:

- (1) deem the claim to be finally disallowed; and
- (2) submit an appeal to the Maryland Tax Court.

* * *

§ 14-513. Appeals from Maryland Tax Court.

Any party to a Maryland Tax Court proceeding may appeal a final decision of the Maryland Tax Court to the circuit court for the county in which the property is located.

§ 14-515. Appeals to Court of Special Appeals.

Any party to a proceeding in the circuit court under § 14-513 of this subtitle may appeal a final decision of the circuit court to the Court of Special Appeals.

Montgomery County Code (2004)

§ 52-20. Authority to levy tax.

(a) The county council for Montgomery County is empowered and authorized to levy and impose by resolution or ordinance a tax to be paid and collected on the transfer in Montgomery County of:

- (1) Any fee simple interest in real property, except by way of mortgage, deed of trust, or deed of trust for the benefit of creditors;
- (2) Stock or other evidence of ownership in a cooperative housing corporation or similar entity; and
- (3) Any leasehold interest in real property, where such lease contains a covenant for perpetual renewal; and

(4) Any nonresidential leasehold interest in real property where there is a simultaneous or subsequent transfer of the fee interest in the real property to:

- (i) Any transferee or assignee of the leasehold; or
- (ii) Any entity in which a transferee or assignee of the leasehold has any interest.

(b) The rate of such tax shall not exceed:

(1) Six percent of the value of the consideration for any transfer of land, excluding improvements thereon, which, while owned by the transferor, has been assessed at any time during the five years preceding transfer on the basis of being actively devoted to farm or agricultural use. The tax shall be paid by the transferor of such land; or

(2) Six percent of the value of the consideration for any transfer of real property which, after the effective date of any such rate of tax has been rezoned to a more intensive use at the instance of the transferor, transferee, or any other person who has or had at the time of application for rezoning a financial, contractual, or proprietary interest in the property, but excluding the value of improvements constructed after such rezoning; or

(3) Four percent of the value of the consideration for the initial transfer of a residential unit subject to a condominium regime offered for rent for residential purposes prior to the establishment of the condominium regime. The tax shall be paid by the initial transferor of the residential unit. The tax shall be in addition to the tax provided in paragraph (5) of this subsection; or

(4) Four percent of the value of the consideration for the initial transfer of stock or other evidence of membership in a cooperative housing corporation or similar entity where such stock corresponds to a residential unit which is being converted from rental status to a system of cooperative housing corporation ownership under which title to a multi-unit residential facility is held by a corporation, the shareholders or members of which, by virtue of such ownership or membership, are entitled to enter into an occupancy agreement for a particular residential unit. This tax shall not be applicable to transfers made pursuant to the purchase of a building by or on behalf of a bona fide tenants association. The tax shall be paid by the initial transferor of the residential unit and shall be in addition to the tax provided in paragraph (5) of this subsection; or

(5) One percent of the value of the consideration for any other transfer including any nonresidential leasehold interest and fee interest under subsection (a)(4) of this section based on the:

(i) Average annual rent over the term of the lease, including renewals, capitalized at 10 percent plus any additional consideration payable, other than rent; or

(ii) If the average annual rent can not be determined, the greater of:

- 1. 105 percent of the minimum average annual rent, as determined by the lease, capitalized at 10 percent, plus any additional consideration payable, other than rent; or

2. 150 percent of the assessment of the real property subject to lease.

(c) No transfer of any interest in such property shall be taxed hereunder where the transfer is to any nonprofit hospital or nonprofit religious or charitable organization, association or corporation, nor to any municipal, county or State government, or instrumentalities, agencies or political subdivisions thereof; provided, that no exemption shall be granted hereunder to a transfer under paragraph (b)(1) of this section unless the transferor is a nonprofit hospital or nonprofit religious or charitable organization, association or corporation, or a municipal, county or State government, or instrumentality, agency or political subdivision thereof. The county council may provide for any additional exemptions from the provisions of this section.

(d) No tax levied pursuant to this section shall apply to transfers pursuant to contracts or agreements entered into prior to the effective date of such tax.

(e) The county council is further empowered and authorized to fix a penalty not in excess of one thousand dollars or imprisonment not exceeding six months, or both such fine and imprisonment, for violation of the provisions of any resolution or ordinance of the county council adopted pursuant to this section.

§ 52-21. Levied; amount.

There is hereby levied a tax on (1) all transfers in the county of a fee simple interest in real property, except by way of mortgage, deed of trust or deed of trust for the benefit of creditors, (2) the initial transfer of stock or other evidence of ownership in a cooperative housing corporation or similar entity, and (3) all transfers of a leasehold interest in real property where the lease or instrument by which a leasehold interest is demised contains a covenant for perpetual renewal, known as ground rent. The tax shall be computed on the value of the full consideration for such transfer at the following rates:

(a) On improved residential property:

(1) One-quarter of one (0.25) percent on property where the value of the full consideration is less than forty thousand dollars (\$40,000.00);

(2) One-half of one (0.50) percent on property where the value of the full consideration is forty thousand dollars (\$40,000.00) or more, but less than seventy thousand dollars (\$70,000.00); and

(3) One (1) percent on property where the value of the full consideration is seventy thousand dollars (\$70,000.00) or more.

Where the transfer is subject both to the tax imposed by this subsection and the tax imposed by another subsection of this section, the tax imposed by the other subsection shall be the only tax imposed on the transfer. "Improved property" means real property that includes a structure that is under roof, plastered or ceiled, and trimmed.

(b) On improved nonresidential property, one (1) percent regardless of the value of the full consideration.

Where the transfer is subject both to the tax imposed by this subsection and the tax imposed by another subsection of this section, the tax imposed by the other subsection shall be the only tax imposed on the transfer. "Improved property" means real property that includes a structure that is under roof, plastered or ceiled, and trimmed.

(c) On unimproved property, one (1) percent regardless of the value of the full consideration.

(d) On land assessed as farmland, a percentage of the value of the consideration for the transfer of land, excluding improvements thereon, which, while owned by the transferor, has been assessed and taxed at any time during the five (5) years preceding transfer on the basis of being actively devoted to farm or agricultural use, said tax to be paid by the transferor of such land, which percentage shall vary according to the following schedule:

(1) Land assessed and taxed to the transferor for one (1) year on the basis of farm or agricultural use, two and four-tenths (2.4) percent.

(2) Land assessed and taxed to the transferor for two (2) years on the basis of farm or agricultural use, three and eight-tenths (3.8) percent.

(3) Land assessed and taxed to the transferor for three (3) years on the basis of farm or agricultural use, five and two-tenths (5.2) percent.

(4) Land assessed and taxed to the transferor for more than three (3) years on the basis of farm or agricultural use, six (6) percent.

(5) Land zoned Rural Density Transfer Zone (RDT) or its successor zone, or land covered by a permanent easement prohibiting development for residential or other nonagricultural use, one (1) percent.

Improvements and land which were not assessed based on farm or agricultural use and are not subject to the farmland transfer tax levied under this subsection and are transferred as a part of a transaction including a transfer of land previously assessed as farmland, shall be taxed as provided in other subsections of this section as if such improvements and land were not part of a transaction including farmland. Consideration for the improvements and non-farm-assessed land shall be presumed to be the total full cash value most recently determined by the supervisor of assessments based on the most recent notice of assessment. The presumption may be rebutted by clear and convincing evidence.

Where the transfer is subject both to the tax imposed by this subsection and the tax imposed by subsection (e) of this section, the tax imposed by subsection (e) shall be the only tax imposed on the transfer.

The county executive may from time to time issue written regulations adopted under method (3) of section 2A-15 of this Code, pertaining to the collection of the tax levied in this subsection.

(e) On rezoned property, six (6) percent of the value of the consideration for any transfer of real property which, after July 1, 1971, has been rezoned to a more intensive use at the instance of the transferor, transferee, or any other person who has or had at the time of application for rezoning a financial, contractual or proprietary interest in the property,

excluding the value of improvements constructed after such rezoning. "Rezoned" as used herein shall mean the classification, reclassification or change from one zone to another of any property by local map amendment by the county council sitting as the district council for that portion of the Maryland-Washington Regional District located within Montgomery County, on the "Zoning Map of the Maryland-Washington Regional District in Montgomery County, Maryland" dated May 31, 1958, and subsequent amendments thereto. "Rezoned to a more intensive use" shall mean a classification, reclassification or change in zone which permits a greater number of dwelling units per acre in any residential zone, or which permits a greater number of permitted uses regardless of area in a commercial zone or industrial zone, or is from any residential zone to any commercial or industrial zone, or is from any industrial zone to any commercial zone. "Rezoned to a more intensive use" shall not include:

(1) A zoning from a residential zone to a Planned Unit Development Zone under division 59-C-7 granted after January 1, 1980, if the approved development plan, including any amendments to the plan, does not increase the total number of permitted dwelling units and does not permit commercial or industrial uses, provided however, that the transfer shall be subject to additional tax under this subsection if at any time an amendment to the development plan increases the total number of permitted dwelling units or permits commercial or industrial uses;

(2) A zoning from a residential zone to a commercial zone within one (1) year after the property was down zoned from a commercial zone of equal or greater intensity to a residential zone by sectional map amendment; or

(3) A rezoning from an industrial zone to a commercial zone which:

(i) Is necessitated by a previously adopted amendment to the zoning ordinance text, that was not upon application or at the instance of the transferor, transferee, owner or former owner of the real property, or by any person who has or has previously had an interest of any kind in the property, including a contractual interest; and

(ii) Allows establishment or continuance of a use or uses which were permitted uses on the property under the industrial zone immediately prior to the text amendment, to which use or uses the property was restricted by bona fide covenants recorded among the land records prior to July 1, 1971, and which covenants are in effect at the time of a transfer.

The tax levied and imposed in this subsection shall not apply to transfers which are made pursuant to a bona fide written contract or agreement of sale entered into prior to July 1, 1971; provided, that the director of finance may require satisfactory proof that the contract or agreement was entered into prior to such date. There shall be deducted from the consideration as defined in section 59-19 the cost or expense actually incurred by the transferor for public improvements such as sewer, water, roads, sidewalks, storm drainage structures and permanent soil erosion and sediment control measures, subject to the submission to the director of finance of satisfactory proof of such costs or expenses documented by certificates from public agencies where applicable; provided, that the rate of

such tax on a single transfer shall not exceed six (6) percent of the bona fide market value consideration for the transfer. Where a transfer is subject both to the tax imposed by this subsection and the tax imposed by subsection (d), the tax imposed by this subsection shall be the only tax imposed on the transfer. Any tax collected under this subsection shall be collected only once after each rezoning to a more intensive use, and all transfers not subsequent to a rezoning to a more intensive use shall be taxable at the rates applicable under other subsections of this section. The county executive may from time to time issue written regulations under method (3) of section 2A-15 of this Code, pertaining to the collection of the tax levied in this subsection.

(f) On condominium property, four (4) percent of the value of the consideration for the initial transfer of a residential unit subject to a condominium regime, which unit was offered for rent for residential purposes prior to the establishment of the condominium regime.

(1) The tax shall be paid by the transferor initially transferring a unit and shall be in addition to the taxes imposed under subsection (a) of this section.

(2) No transfer of any interest in real property shall be taxed under this subsection where:

a. The transfer is pursuant to a bona fide contract or agreement for sale of the individual unit entered into prior to July 28, 1980; or

b. The transfer is of a unit in a condominium regime established by recording a declaration, bylaws and condominium plat, prior to July 28, 1980, pursuant to the provisions and requirements of the Horizontal Property Act, title 11, Real Property Article, Maryland Code Annotated. For purposes of this subsection, residential units contained in an expanding condominium regime established by recording a declaration, bylaws and condominium plat prior to July 28, 1980, but not added to the established condominium regime by said date, shall continue to be exempt from taxation under this subsection provided the unit becomes a condominium unit in an established condominium regime by the last date for establishment of units in the expanded condominium as contained in the declaration filed prior to July 28, 1980, either as a part of the original expanding condominium or as a part of a separate condominium.

(3) All taxes and interest collected and received pursuant to this subsection shall be paid into a special fund to be used to preserve multiunit rental residential facilities, to support construction of new rental facilities, to provide rental assistance and financing assistance to eligible persons, to otherwise mitigate the impact on tenants displaced or threatened with displacement by the conversion of a multiunit residential rental facility to a condominium or cooperative, to provide affordable housing, and for any other purpose related to the loss of rental housing as set forth in regulations to be adopted by the county executive. The executive must transfer any balance in this fund not committed to an existing project, and any revenue the fund receives after May 15, 1988, to support the Montgomery Housing Initiative established under section 25B-9.

(4) The county executive may adopt regulations, under method (2) of section 2A-15 of this Code, for the implementation of the purposes set forth above. Expenditures from the fund shall be authorized by appropriation by the county council.

(5) Where the transfer of a unit is subject to this tax and is subject to tax under subsection (d) or (e) of this section the director of finance shall collect at the rate which shall yield the highest return; and all taxes and interest collected shall be paid into the special fund provided in paragraph (3) of this subsection.

(g) On cooperative housing, four (4) percent of the value of the consideration for the initial transfer of stock or other evidence of membership in a cooperative housing corporation or similar entity where such stock corresponds to a residential unit which is being converted from rental status to a system of cooperative housing corporation ownership under which title to a multi-unit residential facility is held by a corporation, the shareholders or members of which, by virtue of such ownership or membership, are entitled to enter into an occupancy agreement for a particular residential unit.

(1) The tax shall be paid by the transferor initially transferring the stock or other evidence of membership in a cooperative housing corporation or similar entity, corresponding to a residential unit, and shall be in addition to other taxes imposed by subsection (a) of this section.

(2) No transfer of stock or other evidence of ownership in a cooperative housing corporation or similar entity shall be taxed under this article where:

a. The transfer is made pursuant to the purchase of a building by or on behalf of a bona fide tenants' association; or

b. The transfer is made pursuant to a bona fide contract or agreement for sale of the stock or other evidence of membership corresponding to a residential unit entered into prior to July 1, 1981; or

c. The transfer is of stock or other evidence of membership in a cooperative housing corporation which, prior to July 1, 1981, had been specifically incorporated as a cooperative and was the owner in fee simple of the multifamily residential facility.

(3) All taxes and interest collected and received pursuant to this subsection shall be paid into the special fund established under subsection (f)(3) of this section.

(4) The county executive may adopt regulations, under method (2) of section 2A-15 of this Code, for the implementation of the purposes set forth above. Expenditures from the fund shall be authorized by appropriation by the county council.

(5) Where the transfer of the stock corresponding to a residential unit is subject to this tax and is subject to tax under subsection (d) or (e) of this section the director of finance shall collect at the rate which shall yield the highest return; and all taxes and interest collected shall be paid into the special fund provided in subsection (f) of this section.

(6) The tax levied by this subsection shall be paid prior to the actual transfer of the stock or other evidence of membership. The tax shall be paid to the county at the office of

the director of finance and shall be evidenced by the affixing of an official stamp upon the stock certificate, membership certificate or other instrument of conveyance, showing the amount of the tax paid. At the time of payment, the person paying such tax shall present to the director, in a form prescribed by the director, a signed statement setting forth the actual and true value of the consideration for the transfer. The person paying the tax shall be given a receipt for such payment. This paragraph shall be applicable to this subsection only and shall supersede any of the provisions of section 52-22, to the extent they are inconsistent.

(7) For purposes of this subsection, a transfer or issuance of stock or other evidence of membership from the cooperative housing corporation to the developer shall not be deemed to be the initial transfer. The county executive may from time to time issue written regulations, adopted under method (2) of section 2A-15 of this Code, to define any terms or to effectuate the purposes of this subsection.

(8) It shall be the duty of the transferor to keep and preserve, for a period of three (3) years, a record of transfers that have occurred and the amount of consideration for each transfer. The director of finance, or his designee, shall have the right to inspect these records at all reasonable times.

(h) On any nonresidential leasehold interest in real property, one percent of the value of the consideration, where there is a simultaneous or later transfer of the fee interest in the real property to any transferee or assignee of the leasehold, or any entity in which a transferee or assignee of the leasehold has any interest. The consideration for tax purposes must be:

(1) The average annual rent over the term of the lease, including renewals, capitalized at ten (10) percent, plus any additional consideration payable, other than rent; or

(2) If the average annual rent cannot be determined, the greater of:

(i) One hundred five (105) percent of the minimum average annual rent, as determined by the lease, capitalized at ten (10) percent, plus any additional consideration payable, other than rent; or

(ii) One hundred fifty (150) percent of the assessed value of the real property subject to lease.

(i) Where transfers are taxable under more than one subsection of this section, the director of finance must collect the tax at the rate which yields the highest return.