

### Maryland Real Estate Transfer Tax Alert

May 6, 2008

---

#### Tax Changes Loom For Transfers of Controlling Interests in Maryland Real Property Entities

By Bruce L. Benshoof

The Maryland Department of Assessments and Taxation has proposed regulations regarding recordation and transfer taxes on the transfer of a controlling interest in a real property entity. They are set to take effect July 1, 2008.

The proposed regulations appear in the April 25, 2008, issue of the Maryland Register, Pages 919-930. Our earlier e-alert, dated November 20, 2007, provides an overview of the new statute.

According to the statute, the regulations should ensure that:

- (i) a tax is imposed when a transaction is structured involving a controlling interest in a real property entity to avoid payment of the recordation tax;
- (ii) exemptions provided by law when real property is transferred by an instrument of writing are applicable; and
- (iii) there is no double taxation of a single transaction.

Tellingly, only the first purpose is restated as part of the proposed regulations, some of which are particularly controversial:

- **Beneficial ownership:** The statute defines a “real property entity” as “a corporation, partnership, association, limited liability company, limited liability partnership, other unincorporated form of doing business, or trust that directly or beneficially owns [Maryland] real property that: 1. constitutes at least 80 percent of the value of its assets; and 2. has an aggregate value of at least \$1 million.” Under the proposed regulations, beneficial ownership of real property is defined to include ownership, directly or through multiple tiers, of an interest in an entity or trust that directly owns the property. In other words, a parent entity is treated as if it directly owns its proportionate share of a subsidiary's assets. If at least 80 percent of the assets of a parent entity consist of ownership of Maryland real property through one or more subsidiaries and the aggregate value of the real property is at least \$1 million, then the parent entity itself would be a “real property entity”—and a transfer of more than 80 percent of the interests in that parent entity would make the parent entity liable for the tax.

- **Step transaction doctrine:** Notwithstanding the exemption provided in the statute for multiple-step transfers completed over more than 12 months, the proposed regulations expressly incorporate the judicial step transaction doctrine in order to treat earlier steps as having all occurred at the same time as the step that affects the transfer of more than 80 percent of the interests in the real property entity. For example, if seller agrees to sell to buyer 50 percent of the interests in a real property entity today and the remaining 50 percent more than 12 months later, the transfer would appear to fall within the statutory exemption for transfers “completed over a period of more than 12 months.” However, under the proposed regulations, if the two steps could be treated as a single transaction under the step-transaction doctrine as defined in *Read v. Supervisor of Assessments*, 354 Md. 383, 731 A.2d 868 (1999), then both steps would be treated as having occurred at the time of the second step and the exemption would be denied.

One bright spot is that transfers prior to July 1, 2008, would not be included in determining whether there has been a transfer of a controlling interest in a real property entity. For example, if a seller and buyer of membership interests in a real property entity have a contract to transfer 50 percent of those interests on June 15 and transfer the remaining 50 percent on July 15, the first step would not be included and the transfer occurring after July 1 would not be sufficient to trigger the tax.

The department is accepting comments on the proposed regulations through May 27, 2008.

Many questions remain, but there are planning opportunities in contemplation of the new tax. If you need assistance with your transactions, please contact your Ballard Spahr attorney.

*Bruce L. Benshoof is of counsel with Ballard Spahr and may be reached at 410.528.5532 or benshoof@ballardspahr.com. He was assistant attorney general to the Clerks of the Maryland Circuit Courts from June 2004 to April 2007.*

---

**Ballard Spahr Andrews & Ingersoll, LLP**

**Baltimore**

18th Floor  
300 East Lombard Street  
Baltimore, MD 21202-3268  
410.528.5600  
Fax: 410.528.5650

**Bethesda**

7th Floor  
4800 Montgomery Lane  
Bethesda, MD 20814-3401  
301.664.6200  
Fax: 301.664.6299

**Denver**

Suite 2300  
1225 17th Street  
Denver, CO 80202-5596  
303.292.2400  
Fax: 303.296.3956

**Las Vegas**

Suite 1750  
100 City Parkway  
Las Vegas, NV 89106-4610  
702.471.7000  
Fax: 702.471.7070

**Los Angeles**

Suite 800  
2029 Century Park East  
Los Angeles, CA 90067  
424.204.4400  
Fax: 424.204.4350

**Philadelphia**

51st Floor  
1735 Market Street  
Philadelphia, PA 19103-7599  
215.665.8500  
Fax: 215.864.8999

**Phoenix**

3300 Tower, Suite 1800  
3300 North Central Avenue  
Phoenix, AZ 85012-2518  
602.798.5400  
Fax: 602.798.5595

**Salt Lake City**

Suite 800  
One Utah Center  
201 South Main Street  
Salt Lake City, UT 84111-2221  
801.531.3000  
Fax: 801.531.3001

**Voorhees, NJ**

Plaza 1000 -- Suite 500  
Main Street  
Voorhees, NJ 08043-4636  
856.761.3400  
Fax: 856.761.1020

**Washington, DC**

Suite 1000 South  
601 13th Street, N.W.  
Washington, DC 20005-3807  
202.661.2200  
Fax: 202.661.2299

**Wilmington, DE**

12th Floor  
919 North Market Street  
Wilmington, DE 19801-3034  
302.252.4465  
Fax: 302.252.4466

This newsletter is a periodic publication of Ballard Spahr Andrews & Ingersoll, LLP and is intended to alert the recipients to new developments in the law. It should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your situation and specific legal questions you have.

This publication is available online at [www.ballardspahr.com](http://www.ballardspahr.com)

©2008 Ballard Spahr Andrews & Ingersoll, LLP  
All Rights Reserved

