



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Leon Rodriguez
County Attorney

MEMORANDUM

To: Jennifer E. Barrett, Director
Department of Finance

FROM: Scott R. Foncannon
Associate County Attorney

VIA: Karen Federman-Henry, Chief
Division of Finance and Procurement

DATE: February 29, 2008

RE: State Highway Administration Request for Exemption from the Agricultural
Transfer Tax

The State Highway Administration (SHA) contacted Jennifer Barrett by letter dated February 6, 2008, and requested that the County reconsider its position in connection with its interpretation of an exemption from the County farmland transfer tax. You have referred that letter to me, together with the attached legal memorandum dated January 22, 2008 for review and you have asked me to provide you with my opinion on the applicability of the County farmland transfer tax to the facts of this case.

For the reasons stated below, it is my opinion that the County farmland transfer tax as set forth in Sections 52-20(b)(1) and 52-21(d) of the Montgomery County Code (MCC or Code) applies to both of the transfers discussed in the letter from the SHA. The exemption from the County transfer tax in Section 52-24 (a)(1)(B) of the Code for transfers to the State does not apply to this transfer, because Section 52-24 (a)(2) of the Code clearly limits and restricts the application of the exemption from the farmland transfer tax to only those situations where the transferor is the State. The State is not the transferor in either transfer referred to in the letter from the SHA.

FACTS

The SHA has recently acquired two separate parcels of property in Montgomery County through condemnation. Both of these parcels have been assessed as farmland for five or more years preceding the transfer and, as a result, the transfers are subject to the Montgomery County farmland transfer tax under Section 52-20(b)(1) and 52-21(d) of the MCC. The State asserts that these transfers are exempt from the County's farmland transfer tax under Section 52-24 (a)(1)(B) of the Code because the transfer is to the State. A careful review of the legislative history of the County's transfer tax statute and the exemptions, in the context of the rules of statutory construction and interpretation, is necessary to analyze this issue.

LEGISLATIVE HISTORY

In 1961, the State Legislature originally authorized Montgomery County to levy and impose a transfer tax on the transfer of "any fee simple interest in real property...at a rate not to exceed one percent of the value of the consideration of said transfer." (1961 Md. Laws, Ch. 180) The same state law also established an exception in Section 2-127(b) of the Code (now referred to in the Code as an exemption) for any transfer to "municipal, county or state government or instrumentalities, agencies or political subdivisions thereof."

In 1968, by a local public law, the State Legislature authorized Montgomery County to adopt the farmland transfer tax law in House Bill 633. (1968 Md. Laws, Ch. 633) This bill repealed and re-enacted Section 2-127 of the MCC and created the 6% farmland transfer tax in much the same form as it appears today in the Code. Section 52-20(b)(1) and 52-21(d) both clearly and plainly state that the tax shall be paid by the transferor of such land. The purpose of the farmland transfer tax was to eliminate abuse by land speculators of the preferential assessment accorded farmland. This goal was achieved with the farmland transfer tax by allowing the County to recapture lost revenues from the transferor on the sale and transfer of the land. *Vournas v. Montgomery County*, 300 Md. 1223,131(1984). Also see *Rapley v. Montgomery County*, 261 Md. 98,100 (1971), for a discussion of the preferential assessment afforded agricultural property for real property tax purposes.

In 1970, the original exemption in Section 2-127(b) was amended by a local public law in House Bill 323. (1970 Md. Laws, Ch. 164) The specific purpose of House Bill 323, was "to restrict the exemption provisions to the transferor under subsection (a)(1) of this section."Id. Section 2-127 (a)(1) established the Montgomery County farmland transfer tax and Section 2-127 (b) created the exception to the tax, which exception is referred to in Bill 323 as an exemption. The purpose and intent of the Bill was clearly stated in the Bill and it was to restrict the exemption provisions to the transferor. The text of the original limitation and the restriction in the Bill support this purpose and intent:

Provided, however, no exemption shall be granted hereunder to a transfer under (a)(1) of this section unless the transferor be a non-profit hospital or

non-profit religious or charitable organization, association or corporation, or a municipal, county or state government, or instrumentality, agency or political subdivision thereof.

This language plainly and clearly limits and restricts the exemption in Section 2-127(b) to only those transfers where the transferor is the State or one of the other listed entities.

Through various County bills, the MCC and, specifically, Section 2-127 of the Code was reorganized and recodified into its current form. As part of that process, in 1973 the Montgomery County Council adopted County legislation specifically incorporating this limitation and restriction to the exemption into the Code to conform the County Code to the State law as adopted. (Montgomery County Bill No. 21-73, during the April Legislative Session, 1973.)

The purpose of Bill 21-73, was to incorporate the limitation on the exemption from the farmland transfer tax as provided in state law, and this appeared in the purpose clause as follows:

...[t]o provide that no exemption shall be granted to a transferor of farm assessed land unless the transferor be a non-profit hospital or non-profit religious or charitable organization, association, or corporation, or municipal, county or state government, or instrumentality, agency or political subdivision thereof.

The legislative history of the farmland transfer tax demonstrates a logical progression of first creating the tax to prevent the abuse that was observed as a result of land speculation. The legislature then realized that the general exemption in Section 52-24(a)(1)(B) frustrated the purpose of the farmland transfer tax and corrected the situation by restricting and limiting the general exemption with respect to the farm transfer tax by adoption of Section 52-24(a)(2).

STATUTORY INTERPRETATION AND CONSTRUCTION

When interpreting a statutory provision, the general rules of statutory construction, together with the special rules of construction for tax exemptions must be applied. The Maryland Court of Special Appeals summarized these rules in *Maryland-National Capital Park and Planning Commission v. State Dept.*, 110 Md. App. 677, 688, 678 A.2d 602, 607 (1996):

Ever mindful of our desire to discern and effectuate the General Assembly's intent, *Oaks v. Connors*, 339 Md. 24, 35,660 A.2d 423 (1965), we examine the language of the enactment and give to the language its natural and ordinary import, *Montgomery County v. Buckman*, 333 Md. 516, 523, 636 A.2d 448 (1994). If the language is plain and free from ambiguity and expresses a definite and sensible meaning, we will, ordinarily, end our inquiry. *Id.* We are not, however, rigidly bound to the precepts of the "plain meaning" rule. *Department of Gen. Servs. v. Harmans Assocs. Ltd. Partnership*, 98 Md.App. 535, 545, 633 A.2d 939 (1993). Where the General Assembly has chosen not to define a term used in a

statute, we will give that term its ordinary and natural meaning and will not resort to subtle or forced interpretations for the purpose of extending or limiting the operation of the statute. *Brown v. State*, 285 Md. 469, 474, 403 A.2d 788 (1979). Furthermore, we examine the entire statutory scheme and consider the purpose behind the particular statute before us. *Department of Public Safety v. Howard*, 339 Md. 357, 369, 663 A.2d 74 (1995). Cognizant that the language of the statute is the foundation from which our inquiry commences, we also review legislative history and the prior state of law, and contemplate the particular evil, abuse, or defect that the General Assembly wished to remedy with the enactment of the statute at issue. *Lemley v. Lemley*, 102 Md.App. 266, 290, 649 A.2d 1119 (1994). Moreover, the examination of related statutes is not beyond our reach. *GEICO v. Insurance Comm'r*, 332 Md. 124, 132, 630 A.2d 713 (1993).

When courts interpret tax statutes and specifically tax exemptions, there are additional and specialized rules of construction that the Courts must follow. Exemptions from taxation should be rigidly construed and established beyond a reasonable doubt and it is only where a deliberate purpose of the legislature to grant an exemption is expressed in clear terms that a claim thereto can be maintained. *Clarke v. Union Trust Co.*, 192 Md. 127, 134, 63 A.2d 635, 638 (1949), *Comptroller v. Imbach*, 101 Md. App. 138, 144, 643 A.2d 513, 516 (1994). These additional rules were discussed by the Maryland Court of Special Appeals as follows

When interpreting tax exemptions, we strictly construe the exemption and resolve any doubt in the taxing authority's favor. *Comptroller v. Martin G. Imbach, Inc.*, 101 Md.App. 138, 145, 643 A.2d 513, *cert. denied*, 336 Md. 593, 650 A.2d 239 (1994); § 7-101 of the Tax-Property Article ("Property tax exemptions provided under this title shall be strictly construed."). In *Suburban Propane Gas Corp. v. Tawes*, 205 Md. 83, 87, 106 A.2d 119 (1954), Judge Collins recited for the Court of Appeals the judicial approach towards interpreting tax exemptions.

Of course, tax exemption statutes are to be strictly construed in favor of the State. 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. In the final analysis, the real legislative intent prevails. *Comptroller v. Fairchild Indus.*, 303 Md. 280, 288, 493 A.2d 341 (1985). The

burden of showing that an exemption is allowed under the law falls upon the claimant. *Pittman v. Housing Auth.*, 180 Md. 457, 460, 25 A.2d 466 (1942).

Maryland-National Capital Park and Planning Commission v. State Dept., 110 Md. App. 677, 689, 678 A.2d 602, 607(1996).

DISCUSSION

The proper interpretation of the limitation and restriction to the exemption in Section 52-24 (a)(2) requires you to read this Section together with the exemption in Section 52-24 (a)(1)(B) in the context of the entire statute and in light of the purpose of the limitation and restriction. The plain and ordinary language of the exemption when read together with the limitation on the exemption in the context of the requirement for strict construction of exemptions in favor of the County results in but one reasonable and logical interpretation. Section 52-24 (a)(2), limits the exemption in 52-24 (a)(1)(B), and states that the exemption only applies if the exempt entity (such as the State) is the transferor.

This interpretation is consistent with the requirement in the statute that the transferor pays the farmland transfer tax, and it is also consistent with the purpose of the farmland transfer tax when read in the context of the entire statutory scheme and structure of the County transfer tax statute. The purpose of the farmland transfer tax is to recapture the benefit of lower assessments enjoyed by the property owner (transferor) during the time of ownership. This is why the statute requires that the transferor pay the tax. The recapture occurs at the time of sale because the property is sold at its market value and not at the artificially low farm assessed value. If the State is the transferor the State would not have enjoyed the benefit of the lower assessment while they owned the property because the State would have been exempt from all property tax. There would be no need or basis to recapture the tax and this is why the exemption would apply and the State would be exempt if the State was the transferor. This interpretation and construction is also consistent with the principles of statutory construction and interpretation of an exemption affirmed by the Court of Special Appeals in *Comptroller v. Imbach*, 101 Md. App. 138, 149, 643 A.2d 513, 518 (1994)

“We decline to interpret the exemption statute in such a manner. In so concluding, we are guided by *John C. Louis Co.*, 285 Md. at 539, 404 A.2d 1045, which holds that the 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.” *C & P Telephone*, 317 Md. at 11-12, 561 A.2d 1034.”

The clear import of the language of the Montgomery County Code is that, unless the State or one of the other listed entities is the transferor, the exemption in 52-24 (a)(1)(B) of the Code does not apply. In this case the State has chosen to ignore the limitation and restriction on the exemption in Section 52-24(a)(2). The State wants the County to extend the exemption from the

tax for transfers to the State either because the State is required to reimburse the tax to the transferor or because other transfers to the State are exempt. The States interpretation would expand and extend the provisions of the exemption and ignore the plain language of the statute. The plain language of the statute together with the legislative history supports the County's interpretation and construction. The application of the exemption to the State is doubtful, and to doubt the exemption is to deny it.

Case law supports the County's position as well. In the Case of *Vournas v. Montgomery County, supra*. the Maryland Court of Appeals had the opportunity to discuss and interpret the Montgomery County farmland transfer tax in the context of a transfer from a private owner to the Federal government as a result of a condemnation by the Federal government. The facts of this case are almost identical to the facts presented by the SHA. The Court held that the transfer of privately owned real property to the United States as a result of a condemnation was a transfer subject to the County's farmland transfer tax. This case also involved a Federal statute that required the Federal government to reimburse the land owner for expenses, including recording fees and transfer taxes, much like Section 12-106(b)(4) of the Real- Property Article, Annotated Code of Maryland, that requires the plaintiff in a condemnation case to pay all documentary stamps which may be required in the transfer of the property. The Court of Appeals in *Vournas* concluded that the tax was due.

Three of the arguments set out in the memorandum attached to the letter from the SHA require further comment and response to clarify the County's position. The memorandum argues that because the Maryland statute requires the plaintiff in a condemnation case to pay the costs of recording, Montgomery County is distinguishing the farmland transfer tax from other transfer tax. This is not the case. Based on the analysis discussed above for statutory construction, whether the State is required to reimburse the transferor for the taxes is of no consequence in the context of whether the farmland transfer tax is due and owing under these circumstances. The fact that the State has to reimburse the tax does not make the State the transferor and therefore exempt under County law.

Likewise, the argument that "logic also dictates that the exemption applies" because the costs of the tax would be added to the consideration for calculation purposes also misses the mark, and is itself illogical. The transfer tax applies to the consideration paid for purchase of the property transferred. The definition of consideration in Section 52-19 (a) of the Montgomery County Code does not include any reference to the costs of recording or recording taxes as additional consideration, and in 45 years of collecting transfer and recordation tax, the County has never included the costs of recording or recording taxes as additional consideration. This is not only inconsistent with the language of the Code, but it would make the calculation of transfer and recordation tax impossible. This would be a strained and illogical interpretation of the Code inconsistent with the principles of statutory construction.

The memorandum also suggests that because the Tax-Property Article contains language that exempts transfers to the State from recordation tax, transfer tax and recording costs, the Montgomery County law that only exempts the transferor from farmland transfer tax if the transferor is the State, does not apply in this case. The Montgomery County law is clear and unambiguous. The law exempts all transfers to the State except for those transfers that are subject

to the farmland transfer tax. The Code states that for transfers subject to the farmland transfer tax, transfers from the State are exempt but not transfers to the State. This is entirely consistent with the provision of the law that requires the transferor to pay the tax and the purpose of the law which is to recapture the benefit to the property owner of lower assessments, as discussed above. The State Highway Administration continues to ignore the County law that limits the application of the exemption that is contained in 52-24 (a)(2) of the Code.

The memorandum also refers to the right of the State to file a declaratory judgment action. It is difficult for me to determine how the State would have standing to challenge the application of the farmland transfer tax without first having paid the tax and, because there is an administrative remedy available, by paying the tax and requesting a refund, the transferors must first exhaust their administrative remedies in the Tax Court prior to appealing the case to the Circuit Court. In my opinion under the circumstances of this particular case, the transferors would be required to pay the farmland transfer tax and then exhaust their administrative remedies by requesting a refund and pursuing an appeal in the Tax Court.

CONCLUSION

For the reasons stated above, the County's farmland transfer tax applies to both of the parcels of property being transferred to the State as a result of a condemnation action. The exemption in 52-24(a)(1)(B) of the MCC which exempts transfers to the State is inapplicable to these transfers because of the provisions of Section 52-24(a)(2). This section limits and restricts the application of the exemption from the farmland transfer tax to those only transfers where the transferor is the State. The plain and unambiguous language of the statute, together with the rules of statutory construction, support this interpretation. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me.



Martin O'Malley, *Governor*
Anthony G. Brown, *Lt. Governor*

John D. Porcari, *Secretary*
Neil J. Pedersen, *Administrator*

Maryland Department of Transportation

February 6, 2008

Ms. Jennifer Barrett, Director of Finance
Montgomery County, Maryland
255 Rockville Pike, Suite L-15
Rockville, MD 20850

Re: Exemption from Agricultural Transfer Tax
Section 50-20(c), Montgomery County Code

Dear Ms. Barrett:

For many years now, Montgomery County has been assessing a county agricultural transfer tax on land condemned by the State Roads Commission of the State Highway Administration of the State of Maryland ("SHA"), when the condemnees had benefited from a tax assessment based on agricultural use. Until recently, the condemnations affected were primarily small strip takes. Since the amount of money involved in each case was relatively small, SHA paid the assessment in lieu of contesting it based upon the exemption provided for by county law.

SHA has recently acquired, pursuant to a settlement of a condemnation action, a 36 acre parcel from landowners, Mr. and Mrs. Donald E. McNeill for \$3,825,000.00. The McNeils and SHA were informed that agricultural transfer tax is due on this condemnation in the amount of \$194,713.20. The parcel is identified as P500 and P710 on Tax Map KS22. There is another condemnation matter pending with respect to the ICC project, a 405 acre parcel. SHA has just arrived at a settlement with the owner in latter case for \$6.4 million in just compensation, including the Transferable Development Rights. Due to the significant sums at issue, SHA feels compelled to raise the exemption issue.

The purpose of this letter is to allow you an opportunity to reconsider your past policy of denying an exemption under section 50-20(c), Montgomery County Code, to forced acquisitions arising out of SHA's exercise, or threatened exercise, of its powers of eminent domain. A memorandum of law on this issue is attached hereto for your review and analysis. A written reply is requested within thirty (30) days. If you elect not to reconsider and grant the exemption to forced acquisitions arising out of the SHA's exercise, or threatened exercise, of its powers of eminent domain, a Complaint for Declaratory Judgment will be filed by SHA to obtain a court ruling that will cover all such real estate acquisitions by SHA. It is the intention of Mr. and Mrs. McNeill to join in this action to protect their interests.

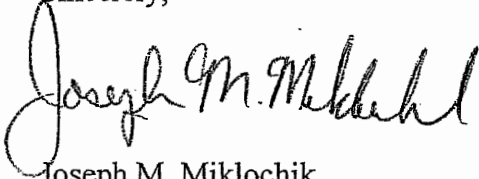
My telephone number/toll-free number is 410-545-2827 or 888-204-4245
Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street · Baltimore, Maryland 21202 · Phone: 410.479.0770 · www.marylandroads.com

Ms. Jennifer Barrett
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We look forward to hearing from you soon. If you have any questions or concerns that you would like to discuss, please do not hesitate to call Laurie R. Hanig at 410-424-0040 with respect to legal matters or to call me with respect to other issue at 410-545-2828, toll-free at 888-204-4245 or via email at jmiklochik@sha.state.md.us.

Sincerely,

A handwritten signature in black ink that reads "Joseph M. Miklochik". The signature is written in a cursive style with a large initial "J".

Joseph M. Miklochik
Director, Office of Real Estate

Enclosure

cc: Joseph P. Suntum, Esq.
Robert C. Park, Jr., Esq.
Laurie R. Hanig, Assistant Attorney General
Timothy Jones, Manager, Montgomery County Transfer Office
Scot Van Cannon, Assistant County Attorney

OFFICE OF THE ATTORNEY GENERAL

State Highway Administration
707 North Calvert Street
Baltimore, Maryland 21202
(410) 545-0040
Fax (410) 209-5007

MEMORANDUM

TO: Joseph Miklochik, Director, Office of Real Estate

FROM: Laurie R. Hanig, Assistant Attorney General *LRA*

RE: State Exemption from Montgomery County Agricultural Tax

DATE: January 22, 2008

To date, Montgomery County has refused to allow SHA to record deeds when farmland transfer tax is due from the transferor/grantor under section 52-21(d) of the Montgomery County Code. Previously, this came up on one occasion I became aware of after a real estate closing on an Option Contract, when the right of way agent was unable to record the deed. In that case, it was a minor strip taking and the tax due was comparatively nominal, so SHA paid it. The McNeil case is a total taking, and the tax due, according to Montgomery County, is \$194,713.20. Section 52-20(c) of the Montgomery County Code by plain language entitles SHA to an exemption when SHA records either a deed or an Inquisition.

Section 52-19 (b)(2) defines a transfer as when "real property subject to section 52-21 is transferred to a **government agency on the assessment records and removed from the tax rolls under the laws of eminent domain.**" (Emphasis added.) Notwithstanding the fact that the Montgomery County Code imposes the tax on the transferor, the ordinance defines transfer to cover conveyances in which a State government agency is a transferee via eminent domain. In the next subsection, it provides an exemption.

Section 52-20(c) states in pertinent part:

No transfer of any interest in such property shall be taxed hereunder where the transfer is to... **any municipal, county or State government, or instrumentalities, agencies or political subdivisions thereof....** (Emphasis added.)

Section 52-21 is the provision that levies all the county's property taxes and sets the rates. Section 52-21(d) is the agricultural/farmland transfer tax subsection and is at issue

in *Vournas v. Montgomery County*, 300 Md. 123 (1984). The Court of Appeals in *Vournas* stated:

By Chapter 180 of the Laws of 1961, now codified at § 52-20 of the Montgomery County Code, the General Assembly expressly authorized the County to levy and impose a tax on the transfer of “any fee simple interest in real property ... at a rate not to exceed one percent of the value of the consideration for such transfer” (emphasis added). *Although certain exemptions were expressly established,^{FN2} there was no express exemption from taxation for the transfer of privately owned real property to the United States as a result of condemnation.* In 1961, by Ordinance No. 4-109, now codified at § 52-21, the County levied a tax on “all transfers in Montgomery County of a fee simple interest in real property ...” *The County established exemptions similar to those of the enabling act.^{FN3}* There was no express exemption for land transferred to the United States by condemnation. (emphasis added).

FN2. Chapter 180 of the Laws of 1961 provided in pertinent part:

“(b) No transfer of any interest in such property shall be taxed hereunder where the transfer is to any nonprofit, hospital, religious or charitable organization, association or corporation, nor to any municipal, county or state government, or instrumentalities, agencies or political subdivisions thereof.”

FN3. Ordinance No. 4-109 provided in pertinent part:

“Sec. 5. No transfer of any interest in such property shall be taxed hereunder where the transfer is to any non-profit hospital; non-profit religious or charitable organization, association or corporation; nor to any municipality, county or state government, or instrumentalities, agencies or political subdivisions thereof. A transfer, by will or descent, or real property is not subject to tax hereunder.”

The court further noted that “[t]he purpose of this enactment was to eliminate abuse by land speculators of the preferential treatment accorded farmland” and “was to be achieved by permitting the County to recapture lost revenues resulting from the preferential assessment.” *Vournas*, 300 Md. at 131.

The court in *Vournas* then explained the basis of its ruling that the agricultural tax on the transfer to the United States under power of eminent domain had to be paid by the transferor as follows:

42 U.S.C § 4653 expressly authorized federal reimbursement to an owner of real property condemned by the United States for the amount of any local transfer tax incurred. This section made it plain that a transfer of property to the United States as a result of condemnation would not be immune from a local transfer tax if assessed against the owner of the condemned property-the transferor.

This section of the federal code states in pertinent part as follows:

§ 4653. Expenses incidental to transfer of title to United States

The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for--

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States.

The Maryland Annotated Code has an entirely different provision on transfer taxes arising out of eminent domain proceedings. The relevant sections of the Maryland Code, in pertinent part, are Real Property Article, section 12-106(a), which requires Plaintiff to pay all costs in the trial court, and Real Property Article, section 12-106(b)(4), which states that:

The costs in a condemnation proceeding include... [t]he cost of... all documentary stamps which may be required in the transfer of the property to the plaintiff....

Unlike the applicable federal reimbursement provision, the Maryland Code requires the state, as transferee/grantee, to pay the cost of all documentary stamps required in the transfer.

The basis on which the recording office of the Montgomery County Circuit Court distinguishes this agricultural transfer tax from other transfer taxes, with respect to Real Property Article, section 12-106(b)(4), is unclear. This provision seems to clearly apply to the agricultural transfer tax, because section 52-22 of the Montgomery County Code requires that, before the deed or instrument of conveyance may be presented for recordation, the tax must be paid to Montgomery County at the Office of Finance, where an official stamp will be affixed on the deed or instrument of conveyance.

Logic also dictates that the exemption applies, because, if the exemption does not apply, as soon as SHA pays the agricultural transfer tax based upon the just compensation agreed to or set forth in an inquisition, the previously computed amount of the tax immediately becomes insufficient. The Montgomery County Code, in sec 52-29(a), defines the consideration on which the tax is assessed as "everything of value included in the actual price paid or to be paid to a transferor to a third party on behalf of a transferor." Taken literally, agricultural transfer tax is due not only on the just compensation or market value of the land taken, but on the amount of transfer tax paid as well, since this tax assessed against the transferor is being paid by the State/transferee under Real Property Article, section 12-106(b)(4).

The cardinal rule of statutory construction is to implement legislative intent. The court first examines the plain meaning of the statutory language. After considering "the

particular and broad objectives of the legislation and the overall purpose of the scheme,” if the statutory language is clear and unambiguous, the court does not search any further and applies the statute as written. *Piper Rudnick LLP v. Hartz*, 386 Md. 201, 218, 872 A.2d 58 (2005). The court attempts to “analyze the statutory scheme as a whole and attempt to harmonize provisions dealing with the same subject so that each may be given effect.” *Clipper Windpower, Inc. v. Sprenger*, 399 Md. 539, 554 (2007).

Legislative intent to exempt the state from all taxes imposed is clear from the number of similar exemption provisions to be found in the Maryland Annotated Code. The current state enabling statute for country transfer taxes in the Tax-Property Article provides as follows:

13-402.1. Tax on written instruments permitted

(a) The governing body of a county that has adopted home rule powers under Article XI-F of the Maryland Constitution may impose a transfer tax on an instrument of writing:

- (1) recorded with the clerk of the circuit court for the county; or
- (2) filed with the Department.

(b) A transfer tax imposed under this section:

- (1) may not exceed 0.5%; and
- (2) does not apply to an instrument of writing exempt from the State transfer tax under § 13-207 of this title.

Section 13-207 references section 12-108(a) and both make the legislative intent of the General Assembly unequivocally clear:

§ 13-207. Additional exemptions

(a) An instrument of writing is not subject to transfer tax to the same extent that it is not subject to recordation tax under:

- (1) § 12-108(a) of this article (Transfer to government or public agency);

* * * *

§ 12-108. Exemptions

(a)(1) Except as provided in paragraph (2) of this subsection, an instrument of writing is not subject to recordation tax, if the instrument of writing transfers property to or grants a security interest to:

- (i) the United States;
- (ii) the State;

- (iii) an agency of the State; or
- (iv) a political subdivision in the State.

The Courts and Judicial Proceedings Article, likewise, prohibits the clerk of the circuit courts from charging the State any fees without the State's prior consent.

§ 7-202. Charges by courts

- (b) The clerk may not charge the State, any county, municipality, or Baltimore City any fee provided by this subtitle, unless the State, county, municipality, or Baltimore City first gives its consent.

I am unable to ascertain any legally cognizable basis on which Montgomery County may differentiate its agricultural transfer tax from other transfer taxes requiring stamps so as to render the express exemption under section 52-20(c) of the Montgomery County Code inapplicable to that tax. My recommendation, therefore, is that SHA ask Montgomery County to reconsider its position and honor the exemption, or set forth the legal basis on which it relies in refusing to honor the exemption. In the latter case, the explanation will allow SHA to consider whether to file a declaratory judgment action asking the Circuit Court to construe the state statutes and county code provisions set forth herein, and issue a declaration of the rights of the State and Montgomery County. *Pressman v. D'Alesandro*, 211 Md. 50 (1956); *Prince Georges County v. Board of Trustees of Prince Georges Community College*, 269 Md. 9 (1973).