

May 2, 2005

MEMORANDUM

TO: Clients of the Montgomery County Transfer/Recordation Office

FROM: Timothy L. Jones, Financial Programs Manager

SUBJECT: Assignments are Included in Consideration

This is to clarify the County's policy concerning calculation of State Recordation Tax on instruments of writing that are transferred to an assignee of the original purchaser when the assignment is not actually recorded.

It is the position and policy of the County that on all instruments of writing presented for processing, the consideration for calculation of recordation tax will also include the consideration paid for the assignment. State law clearly provides in Section 12-103 of the Tax-Property Article that recordation tax rates are applied to the "consideration payable or the principal amount of debt secured." Case law also indicates that consideration payable refers to the amount paid by the transferee in a transaction. *BF Saul REIT v. Clerk of Circuit Court, 110Md.App.455 (1996).*

When the transferee is also the assignee of the original purchaser's right to purchase the property, the consideration paid by the transferee/assignee includes the consideration paid for the assignment. The combination of the original purchase price and the assignment amount payable by the transferee reflects the actual taxable consideration for the transaction.

In conclusion, the County will be collecting both State Recordation Tax and County Transfer Tax based on a calculation of taxable consideration that includes consideration paid for the assignment.

**Note:** This information went to e-mail customers earlier. If you would like to be added to the e-mail list, please send your request to me at [timothy.jones@montgomerycountymd.gov](mailto:timothy.jones@montgomerycountymd.gov).

