

PRESIDENTIAL TITLE, LLC

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IN THE

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v.

MARYLAND TAX COURT

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MAYOR & CITY COUNCIL OF  
BALTIMORE, *et. al.*

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No. 21-RC-OO-0469

### **MEMORANDUM AND ORDER**

This case arises from a dispute between the Petitioner, Presidential Title, LLC (“Presidential”), and the Respondent, Mayor and City Council of Baltimore (“City”), regarding the propriety of the City to collect from Presidential certain amounts of recordation tax for the recordation of two deeds. The State of Maryland (“State”) was joined as a Respondent, representing those Clerks of Court who collect recordation taxes.<sup>1</sup>

The parties entered a Joint Statement of Facts (“SOF”). From the SOF this Court summarizes the relevant facts, as follows. Presidential is a title company that conducts closings for real estate sales. It conducted the closings for the sales of the two properties in Baltimore City at issue. Funding for the property purchases were secured through deeds of trust (“DOT”) characterized as purchase money mortgages (“PMM”). A portion of the funding secured by the DOT was not distributed at settlement, being withheld for future property improvements. That portion is described as construction holdback funds (“holdbacks”).

At the property closings, Presidential withheld funds for payment of the recordation tax on the amounts secured for the purchase of the properties, but not for the

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<sup>1</sup> Tax Property Article § 12-109(b) authorizes a county to designate a collector other than the Clerk of the Court.

holdbacks secured by the DOT. The City, as a condition for approving the DOT for recordation, insisted on recordation tax payments on the full holdback amounts reflected in the DOT. The City did not consider whether those amounts had been distributed. This action was consistent with City policy. Presidential paid the recordation tax on the holdbacks in accordance with this City policy.<sup>2</sup> Presidential now asks this Court to order a refund of those recordation tax payments.<sup>3</sup>

Insofar as these refund claims, this Court finds the issue now before it as two-fold. First, whether the exemption from recordation tax for a PPM extends to holdbacks secured by that mortgage. And second, whether the City's policy of requiring payment of a recordation tax on holdbacks reported in a DOT, as a condition for approving the recordation of that DOT, is permissible.

This Court finds that the PMM exemption does not extend to holdbacks, but that the City's collection policy is contrary to law. These conclusions arise from an analysis of the relevant statutes in the context of established principles of statutory construction.

Relying on Tax Property Article ("TP") § 12-108(i)(1), which defines a PMM, Presidential argues that the holdbacks fall under the umbrella of the exemption for a

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<sup>2</sup> Full factual details are found in Brief of Petitioner at pages 1–5, which this Court incorporates herein.

<sup>3</sup> This Court raised a possible mootness issue, if the holdbacks had been distributed, affording the parties an opportunity to present additional evidence in this regard at a supplemental hearing. The parties did not avail themselves of this opportunity. While the City contended the issuance of building permits evidences the holdbacks had been distributed, there was no evidence to support this contention. Regardless, the issuance of a building permit may not reflect distribution of the entire holdback. This Court also afforded the City and State the opportunity to present evidence regarding a suggested longstanding administrative practice. As the City and State did not avail themselves of this opportunity, there is no evidence in this regard for this Court to consider.

PPM. *Id.* at (i)(3). The funds secured by the subject DOT to purchase the properties meet the criteria for the exemption, but the funds secured for the holdbacks do not. In reaching this conclusion, this Court is mindful that exemptions are to be strictly construed.

*Gateway Terry, LLC v. Prince George's County*, 253 Md. App. 457, 465 (2022).

Presidential relies on what it suggests is the “plain meaning” of TP § 12-108(i)(1), asserting that precedent precludes going beyond that “plain meaning.” See *Comptroller v. FC-GEN*, 482 Md. 343, 379 (2022). But, the language of that statute indicates a PPM by definition is limited to only the portion of the mortgage funding the purchase of the property.<sup>4</sup> Specifically, one of the statutory criteria is that the mortgage “. . . is given by the transferee of real property with respect to the *property purchased*.” *Id.* at § 12-108(i)(3) (emphasis added). A holdback is not a component funding the property purchased and is thus not exempt from recordation tax. See 50 *Op. Md. Att’y Gen.* 428, 430 (1965). So, contrary to Presidential’s assertion, the statute’s “plain meaning” indicates a holdback is subject to the recordation tax.

Regardless, Presidential’s insistence on strictly limiting consideration to the “plain language” ignores an established principle of statutory construction. As the Supreme Court of Maryland (“Supreme Court”) has stated:

[w]e, however, do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.” *Id.* at 380, citing with approval *Wheeling v. Selene Fin. LP*, 473 Md. 356, 377 (2021).

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<sup>4</sup> “Mortgage” as used herein also includes DOT.

The obvious purpose of the PPM exemption is to preclude a property purchaser being taxed twice for the same transaction, i.e., for the property's purchase and the mortgage providing funding for that purchase. *Case of Eastmet Corp.*, 907 F.2nd 1487, 1491 (1990); 50 *Op. Md. Att'y Gen.*, *supra.* at 429. As a holdback is not a consideration for the property's purchase, as stated in the deed, to exempt it from the recordation tax would be contrary to the purpose of the PPM exemption.

Further, the Supreme Court has stated that "[i]n every case, the statute must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense." *FC-GEN*, 482 Md. at 380. Exempting the holdback, as Presidential argues, would lead to an absurd result. For example, raw land is often purchased with the intent of developing that land. The cost of the raw land is generally significantly less than the development cost. So, if the development cost is funded through a holdback rolled into the mortgage, which also funds the land purchase, according to Presidential's position that holdback funding would be exempt from recordation tax. Of course, if the development cost is funded through a separate mortgage, that funding would not be exempt. This absurd result is certainly inconsistent with the intent of TP § 12-108(i).

The City's policy of requiring recordation tax payments on the full amount of mortgage secured holdbacks, as a condition for approving mortgage recordation, regardless of whether holdbacks have been distributed in whole or in part, is contrary to law.<sup>5</sup> The compelling support for this conclusion is the statutory authorization for recordation tax payments to be made as holdbacks are distributed. TP § 12-105(f)(1).

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<sup>5</sup> While the State supported the City's position that a holdback incorporated into a PMM was not exempt from recordation, it did not offer a position on this issue.

TP §§ 12-105(f)(1) & (4) offer a mortgagor the option to pay recordation tax on holdbacks, as they are distributed, or on the full secured amount. *P.G. County v. Brown*, 348 Md. 708, 711–12 (1998). Recognition of the option to pay the recordation tax as holdback distributions are made is longstanding, being first enacted in 1939. 1939 *Md. Laws Chapter 277*; *Brown*, 348 Md. at 712; See 82 *Op. Md. Att’y Gen.* 171, 172 (1997); See also 60 *Op. Md. Att’y Gen.* 671, 673 (1975); 58 *Op. Md. Att’y Gen.* 792, 794 (1973), 43 *Op. Md. Att’y Gen.* 353, 353–4 (1958) (each considering the predecessors to TP § 12-105(f)).

There are certain procedural requirements if payment upon distribution is elected. For amounts below \$100,000, the mortgagor is responsible for paying the recordation tax as the holdbacks are distributed, while for loans above \$100,000, the lender is to pay the recordation tax as the holdbacks are disturbed.<sup>6</sup> TP §§ 12-105(f)(2) & (6), respectively.

The above cited provisions reflect a comprehensive framework for deferring payment of recordation tax until holdback distributions are made. The City’s policy renders these provisions meaningless, which is a result contrary to statutory construction principles. *Fisher v. E. Corr. Inst.*, 425 Md. 699, 707 (2012).

While the City may concede the holdbacks would not be subject to recordation tax until distributed, it argues Presidential cannot avail itself of this benefit as it “. . . misrepresents the ‘nature of the transactions’ . . . by claiming that these instruments are fully exempt under TP § 12-108(i).” City’s Brief at 14. Although this Court has rejected

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<sup>6</sup> This provision was added in 1994, which legislative history, extracted from the bill file, indicates was to assure payment when larger sums were at issue. 1994 *Md. Laws Chapter 646*. See attached letters from bill sponsors Delegates J. Ernest Bell, II and George W. Owings, III. These letters reflect the longstanding recognition that holdbacks are subject to recordation tax as they are distributed.

Presidential's argument that the holdbacks are exempt, this Court does not question that their argument is made in good faith. Presidential now making the argument before this Court does not compromise Presidential's ability to argue the benefit of the holdbacks not being taxable until distribution.

This Court also rejects the City's argument that Presidential is not entitled to the refunds as it failed to "show" that the holdbacks were not fully disbursed at recordation. This argument ignores the specific reporting and payment requirements for holdback disbursement taxation detailed at TP §§ 12-105(f)(2) & (6).

By comparing the deed considerations with the DOT amounts, the City easily extracted the exempt PMM amount from the holdback amounts it chose to tax. Hence, any argument that the recordings were not sufficiently explicit or were misleading is specious.<sup>7</sup>

As Presidential only withheld sufficient funds at settlement to fund recordation tax payments for the purchase of the two properties, it is obvious further recordation payment was envisioned only as holdback distributions were made. By denying this option the City violated clear and longstanding statutory rights.

Accordingly, it is this FOURTH day of OCTOBER 2023, by the Maryland Tax Court **ORDERED** that Presidential is entitled to a refund for recordation tax levied on any undistributed holdbacks with applicable interest, as the City's policy of levying a

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<sup>7</sup> In the context of this argument, the City suggests Presidential's failure to submit affidavits detailing the secured debt incurred with the DOTs violates TP § 12-104(a)(2). This suggestion ignores the two disjunctives at TP § 12-104(a), which direct the consideration payable, **or** the secured debt incurred to be described in the recitals, **or** the affidavit. *Id.* at (a); (a)(1) & (2). Complying with the statute, the DOT did recite the consideration in the recitals.

recordation tax on undistributed holdbacks, as a condition for approving deed recordation, is invalid.<sup>8</sup>

CC: Geoffrey Polk, Esq.

N. Tucker Meneely, Esq.

Steven Potter, Esq.

Mark Weisnser, Esq.

**CERTIFIED TRUE COPY**

**TEST:** Andrew Berg, Clerk

**NOTICE:** You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.

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<sup>8</sup> Issues raised, but not specifically addressed, were deemed *de minimus*, irrelevant, or without merit.



HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401-1991

February 23, 1994

The Honorable Sheila E. Hixon  
Chairman, Ways & Means Committee  
Annapolis, Maryland 21401-1991

RE: HB 1202 - Recordation Tax - Construction Loans  
Date of hearing: March 3, 1994

Dear Sheila:

The referenced bill deals with the collection process with regard to the recordation tax, also referred to as revenue stamps, on construction loans for \$100,000 or more. A recordation tax is imposed on nearly all mortgages. The rate varies from one jurisdiction to another. A significant percentage of the tax is local revenue. The State receives a small percentage for collecting it. The rate is \$6.60 per \$1000 of mortgage money in Calvert and St. Mary's Counties. It's \$10 per \$1000 in Charles County.

In those instances when disbursement of loan proceeds are in a series of draws, Maryland law permits the recordation tax to be paid in increments. In effect a borrower by law is permitted to pay the local office responsible for collecting the tax the applicable recordation tax due on a draw within seven days of receiving the draw. It's basically an unchecked honor system.

The party making the construction loan, referred to as lender in the statute, received its security interest in the real estate that is collateral for the construction loan when the lien instrument is recorded at the local Court House. The lender's lien status is not adversely affected if the borrower fails to pay revenue stamps on subsequent construction draws. The construction draw tax collector, ordinarily the Clerk of Court, is not part of the process after the lien has been recorded. Except for loans to a consumer borrower, there is no requirement in law that a borrower be told by the lender of the requirement to pay the recordation tax as a draw is made. A consumer borrower is defined by statute as an individual receiving a loan or other extension of credit for personal, household or family purposes or an individual receiving a commercial loan or other extension of credit for any commercial purpose not in excess of \$75,000, secured by residential real property.



Chairman Hixon  
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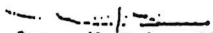
The climate is ripe under current law for the recordation tax to go unpaid as loan draws are made. When asked about the process recently in response to a news article in a Calvert County paper, a Clerk of Court reported that her office is "not set up to monitor this. We don't go back and check if they borrow more money at a later date. This is probably happening all over the state." An unnamed source in another county was quoted as saying the avoidance of the recordation tax "is a very common practice in the industry. How many projects have been done where tax wasn't paid? There's no way to monitor it. We've watched multi-million dollar projects go forward and seven months later they're getting releases on projects. We are wondering if they've ever paid (taxes) on their draw schedule." An Assistant Attorney General familiar with the issue was quoted as saying "It's a problem because it's an honor system and it doesn't work." A spokesperson from the State Auditor's office is quoted as saying: "It's like trying to find a needle in a haystack because of the thousands of transaction statewide everyday."

HB 1202 requires that as each loan draw is made that the lender issue a draft payable to the appropriate tax collector in an amount commensurate with the revenue stamps due on the draw. The funds for the draft may be either from the borrower's funds or funds from the construction draw.

HB 1202 is designed to address the problems about which we write. It deserves careful consideration.

Very truly yours,

  
J. Ernest Bell, II

  
George W. Owings, III



HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401-1991

March 29, 1994

The Honorable Laurence Levitan  
Chairman, Senate Budget & Tax Committee  
Annapolis, Maryland 21401-1991

RE: HB 1202 - Recordation Tax - Construction Loans  
Date of hearing: April 1, 1994

Dear Larry:

The referenced bill deals with the collection process with regard to the recordation tax, also referred to as revenue stamps, on construction loans for \$100,000 or more. A recordation tax is imposed on nearly all mortgages. The rate varies from one jurisdiction to another. A significant percentage of the tax is local revenue. The State receives a small percentage for collecting it. The rate is \$6.60 per \$1000 of mortgage money in Calvert and St. Mary's Counties. It's \$10 per \$1000 in Charles County.

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HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401-1991

Chairman Levitan  
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HB 1202 is designed to address the problems about which we write.

Very truly yours,

*Chime*

J. Ernest Bell, II

*George W. Swings, III*  
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