

GATEWAY TERRY, LLC,

Petitioner

v.

PRINCE GEORGE'S COUNTY,
MARYLAND, *et al.*,

Respondents

* IN THE
* MARYLAND TAX COURT
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* Case No. 18-RC-00-0566
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MEMORANDUM AND ORDER

In the present case, the Petitioner, Gateway Terry, LLC (“Gateway Terry” or “Petitioner”), has appealed the denial of a refund claim by the Respondents, Prince George’s County, Maryland (the “County”) and the State of Maryland (the “State”). Respondents denied the refund claim in the amount of \$4,568,270 for county transfer taxes, state recordation taxes and state transfer taxes paid on the recording of a deed conveying property to the Petitioner, an entity owned and controlled by the Los Angeles County Employees Retirement Association (“LACERA”) located in Los Angeles, California. Petitioner claims that LACERA and Petitioner fall within the definition of “the State” for purposes of the exemptions from taxes under the Annotated Code of Maryland, Tax-Property Article, Sections 12-108 and 13-207, as well as Sections 10-187 and 10-188 of the Prince George’s County Code.

Respondents contend that the exemptions in Sections 12-108(a)(1) and 13-207(a) of the Tax-Property Article do not exempt transfers to California, its agencies or its political subdivisions.

In addition, the County claims that the deed is also not exempt from county transfer taxes under Sections 10-187 and 10-188 of the Prince George's County Code, which only exempts transfers of property to the State of Maryland. Moreover, Respondents also claim that the aforesaid exemption statutes do not exempt transfers of property to limited liability companies.

The relevant facts are not in dispute. In November 2017, Petitioner purchased Terrapin Row Condominium, a group of residential condominium units in Prince George's County, for \$186,460,000. Petitioner presented seven (7) typical transaction documents, including a Special Warranty Deed (the "Deed") and Purchase Money Deed of Trust, for recordation in the land records of Prince George's County. The Treasury Division in the Office of Finance for Prince George's County and the Clerk of the Circuit Court, Land Records Division, reviewed the documents prior to recording in the County land records. Transfer and recordation taxes were calculated on the consideration stated in the Deed of \$186,460,000. The County collected \$2,610,440 in County Transfer Tax, as well as \$1,025,530 in State Recordation Tax. The Clerk of the Circuit Court collected \$932,300 in State Transfer Tax.

On July 5, 2018, Petitioner filed this tax appeal seeking a refund of all taxes paid in connection with the recordation of the Deed. Petitioner argues that LACERA formed Gateway Terry, LLC as a single-member limited liability company so that it could purchase real estate in Maryland to invest the retirement funds that LACERA holds for the benefit of the employees of the Los Angeles County government. LACERA claims that it invested the Los Angeles County employees' retirement funds in assets through Petitioner in order to limit liability arising from ownership of the real estate and to protect the other assets and retirement funds that LACERA holds. Petitioner contends that LACERA, as its sole member, qualified Petitioner as a political

subdivision of the State of California and concludes that Petitioner qualified for the applicable exemptions from the State of Maryland recordation and transfer taxes and the Prince George's County transfer tax.

Petitioner reviewed the Tax-Property Article of the Code of Maryland and determined that Section 12-108(a) of the Tax-Property Article of the Code of Maryland provides an exemption from the Maryland recording tax for instruments of writing filed by (i) the United States; (ii) the State; (iii) an agency of the State; or (iv) a political subdivision in the State” and that Section 1-101(gg) of the very same Tax-Property Article of the Code of Maryland defines “State” to mean “(1) a state, possession, or territory of the United States; (2) the District of Columbia; or (3) the Commonwealth of Puerto Rico.” In addition, Petitioner contended that Section 13-207(a)(1) of the Tax-Property Article of the Code of Maryland provides an exemption from the Maryland transfer tax for instruments of writing that are exempt from the Maryland recordation tax pursuant to Section 12-108(a). Section 13-402.1(a) of the Tax-Property Article of the Code of Maryland provides the authority for Prince George's County to impose a transfer tax on instruments of writing filed in its county. However, Section 13-402.1(b) of the Tax-Property Article of the Code of Maryland states that a county's transfer tax does not apply to an instrument of writing that is exempt from the Maryland transfer tax under Section 13-207.

Petitioner's construction and interpretation of the statutes requires the Court to expand the exemption for conveyances to “the State” or an agency of “the State.” The Court is unable to conclude that the Petitioner, through its sole member, LACERA, is an agency or political subdivision of the State of California or that exemptions for conveyances to “the State” or an

agency of “the State” are exemptions that apply not just to Maryland but to every state in the United States.

Neither State recordation tax nor State transfer tax applies “if the instrument of writing transfer property to...(i) the United States; (ii) *the State*; (iii) an agency of *the State*; or (iv) a political subdivision of *the State*” under Section 12-108(a) and Section 13-207(a)(1). The central issue in the present case is whether “the State” means Maryland. The Maryland Code generally distinguishes between “state” and “State.” The lower-case term “state” means “a state, possession, territory, or commonwealth of the United States, or...the District of Columbia,” while the upper-case term “State” “means Maryland.”

The Court finds that ordinary and plain meaning of “the State” refers only to Maryland. The presence of the definite article “the” (rather than the indefinite article “a”) in the phrase “the State” suggests that it refers to only one state, Maryland. If the Legislature wanted to extend the exemption under Section 12-108(a) to *any* state, it would have done so expressly with the phrase “a state.”

In addition, the legislative history and the pre-recodification version of Section 12-108 suggests that only transfers in Maryland were intended to be exempt. Article 81, Section 277, which was the predecessor to Section 12-108, exempted “conveyances to: (1) *This State*; (2) Any agency of *this State*; or (3) Any political subdivision of *this State*.” When this language was moved to the current Section 12-108, the move was derived *without substantive change*. The Court agrees with Respondents that “the State” was intended to mean the same thing as the old phrase “this State” which means “Maryland.”

The Court also finds that the County correctly applied its law to tax the Gateway Terry, LLC transaction. Under Sections 10-187 and 10-188 of the County Code, the County collects transfer tax and exempts from County transfer tax “[c]onveyances to *the State*, any agency of *the State*, or any political subdivision of *the State*.” “State means the State of Maryland” under County Code Section 1-102(a)(33). Even if Petitioner was an agency or political subdivision of California, it clearly would not be exempt from the County’s transfer tax.

The Court concludes that the exemption for conveyances to “the State” and agencies of “the State” under Sections 12-108(a)(1) and 13-207(a)(1) of the Tax-Property Article, as well as under Sections 10-187 and 10-188 of the Prince George’s County Code, exempt only conveyances to Maryland, not conveyances to California. Petitioner is not an agency or political subdivision of Maryland which is exempt from recordation and transfer taxes.

Finally, the Court further find that Petitioner’s Deed is taxable regardless of the definition of “the State.” The Deed conveyed property to a limited liability company which was not a transfer to California, its agency or its political subdivision. The conveyance was “to an entity,” not to the entity’s members who remain “distinct” from the company. A member of a limited liability company only has a personal property membership interest in the limited liability company, not a legal title interest in any property titled and owned by the limited liability company. LACERA, as the sole member of Gateway Terry, LLC, has a personal property membership interest which is distinct from the real property title vested in Gateway Terry, LLC. Recordation and transfer taxes are applicable to the transfers of the real property interest.

Accordingly, it is, this 22nd day of October, 2019, ORDERED, by the Maryland Tax Court, that denial of Petitioner’s claim for a refund of County transfer taxes, State recordation

taxes and State transfer taxes paid to Respondents in the amount of \$4,568,270 is hereby
AFFIRMED.

CC: Stanley S. Jutkowitz, Esq.
Justin T. Baham, Esq.
Joseph Dudek, Esq.
Russell A. Arlotta, Esq.

CERTIFIED TRUE COPY
TEST: John T. Hearn, 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.