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HOUSE BILL NO. 2161

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 17, 2015)

(Patrons Prior to Substitute—Delegates Minchew and DeSteph [HB 1968])

A BILL to amend and reenact §§ 58.1-803, 58.1-809, and 58.1-812 of the Code of Virginia, relating to deeds of trust or mortgages; maximum tax.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-803, 58.1-809, and 58.1-812 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-803. Deeds of trust or mortgages; maximum tax.

A. A 1. Except as provided in this section, a recordation tax on deeds of trust or mortgages is hereby imposed at a rate of 25 cents on every \$100 or portion thereof of the amount of bonds or other obligations secured thereby. In the event of an open, credit line, or revolving deed of trust, the amount of the obligation for purposes of this section shall be the maximum amount which secured that may be outstanding at any one time, regardless of the amount owed or outstanding at the time the instrument is recorded.

2. In any case in which the amount which may be secured under a deed of trust or mortgage is not ascertainable, or in which the obligations described are not fully secured because they exceed the fair market value of the property conveyed, the tax shall be based upon the fair market value of the property conveyed, determined as of the date of the deed of trust or mortgage. The fair market value of the property shall include the value of any realty required by the terms of the deed of trust or mortgage to be constructed thereon.

B. On deeds of trust or mortgages upon the works and property of a railroad lying partly within the Commonwealth and partly without the Commonwealth, the tax shall be only upon such proportion of the amount of bonds, or other obligations secured thereby, as the number of miles of the line of such company in the Commonwealth bears to the whole number of miles of the line of such company conveyed by such deed of trust or mortgage.

~~Upon~~ On deeds of trust or mortgages conveying ~~other~~ (i) property lying partly within the Commonwealth and partly ~~without~~ outside the Commonwealth or (ii) property within the Commonwealth to secure bonds or obligations secured by deeds of trust or mortgages on property outside the Commonwealth, the tax herein imposed shall be only upon such proportion of the ~~debt secured bonds or obligations~~ as the actual value of the property located within the Commonwealth, or which may be brought into the Commonwealth, bears to the actual value of the entire amount of property conveyed by such deed of trust or mortgage or to the entire amount of property conveyed by all of such deeds of trust or mortgages to secure the bonds or obligations, as applicable, subject to the limitations set forth in subdivision A 2.

C. On deeds of trust or mortgages, which provide for an initial issue of bonds, to be followed thereafter by additional bonds, unlimited in amount, if such deed of trust or mortgage provides that as and when such additional bonds are issued a supplemental indenture shall be recorded in the office in which the original deed of trust or mortgage is first recorded, which supplement shall contain a statement as to the amount of the additional bonds to be issued, then the tax shall be paid upon the initial amount of bonds when the original deed of trust is recorded and thereafter on each additional amount of bonds when the supplemental indenture relating to such additional bonds is recorded.

D. 1. On deeds of trust ~~or~~, mortgages ~~which~~, or other instruments that are supplemental to ~~or~~, wrap around existing deeds of trust, or which modify the terms of an existing debt with the same lender deed of trust or mortgage, on which the tax imposed hereunder has already been paid, the tax shall be paid only on that portion of the face amount of the bond or obligation secured thereby which is in addition to the amount of the ~~existing~~ original debt or obligation secured by a deed of trust or mortgage on which tax has been paid. The tax shall be calculated using the rate scale in subsection F, starting at the point on the scale that applies to the first dollar in excess of the amount of the original debt or obligation secured by the prior instrument. In the event of an open, credit line, or revolving deed of trust, the additional amount secured shall be the amount by which the original obligation secured by the supplemental instrument exceeds the maximum obligation secured by the prior instrument, regardless of the amount owed or outstanding at the time those instruments were recorded. The instrument shall certify the amount of the ~~existing~~ original debt or obligation secured, subject to the limitation set forth in subdivision A 2.

2. If the principal amount of the obligation secured by the prior instrument is increased by the supplemental instrument, the tax imposed under this section shall be paid only on the amount of the

60 increase over the original amount secured by the prior instrument. If the bonds or other obligations
61 secured by a prior instrument were not fully secured because they exceeded the fair market value of the
62 property conveyed and the tax paid on the prior instrument was based upon the fair market value of the
63 property conveyed pursuant to subdivision A 2, then the foregoing tax shall be paid on the increase, if
64 any, in the value of such property since the recordation of the prior instrument.

65 3. The supplemental instrument, or any cover sheet submitted with the supplemental instrument, shall
66 include the original principal amount of the bonds or other obligations secured by the prior instrument,
67 the deed book and page number or instrument number, as applicable, of the prior instrument, and, if
68 applicable with regard to the calculation of the tax paid on the prior instrument, any increase in the
69 fair market value of the property conveyed.

70 D. E. 1. On deeds of trust or mortgages, the purpose of which is to ~~refinance~~ secure the refinancing
71 of an existing debt, which debt is secured by a deed of trust or mortgage on which the tax imposed
72 hereunder has been paid, the tax shall be paid ~~only on that portion of~~ on the amount of the bond or
73 other obligation secured thereby ~~determined~~, subject to the limitation set forth in subdivision A 2, in
74 accordance with the following schedule:

75 On the first \$10 million of value as determined pursuant to this section, 18 cents (\$0.18) upon every
76 \$100 or portion thereof;

77 On the next \$10 million of value as determined pursuant to this section, 16 cents (\$0.16) upon every
78 \$100 or portion thereof;

79 On the next \$10 million of value as determined pursuant to this section, 14 cents (\$0.14) upon every
80 \$100 or portion thereof;

81 On the next \$10 million of value as determined pursuant to this section, 12 cents (\$0.12) upon every
82 \$100 or portion thereof; and

83 On all over \$40 million of value as determined pursuant to this section, 10 cents (\$0.10) upon every
84 \$100 or portion thereof, incorporated into this section.

85 2. The instrument shall certify the deed book and page number *or instrument number, as applicable*,
86 of the recorded instrument on which the tax for the original debt was paid. For purposes of this
87 subsection, the term "value" means ~~the portion of~~ the amount of the bond or other obligation secured by
88 ~~the property conveyed by the refinancing deed of trust.~~

89 E. F. The maximum tax on the recordation of any deed of trust or mortgage or on any indenture
90 supplemental thereto, other than instruments subject to ~~subsection D~~ subdivision E 1, shall be determined
91 in accordance with the following schedule:

92 On the first \$10 million of value as determined pursuant to this section, 25 cents (\$0.25) upon every
93 \$100 or portion thereof;

94 On the next \$10 million of value as determined pursuant to this section, 22 cents (\$0.22) upon every
95 \$100 or portion thereof;

96 On the next \$10 million of value as determined pursuant to this section, 19 cents (\$0.19) upon every
97 \$100 or portion thereof;

98 On the next \$10 million of value as determined pursuant to this section, 16 cents (\$0.16) upon every
99 \$100 or portion thereof; and

100 On all over \$40 million of value as determined pursuant to this section, 13 cents (\$0.13) upon every
101 \$100 or portion thereof, incorporated into this section.

102 **§ 58.1-809. When supplemental writings not taxable.**

103 Sections 58.1-803, 58.1-807, and 58.1-808 are not to be construed as requiring the payment of any
104 tax for the recordation of any deed of trust, deed of subordination, mortgage, contract, agreement,
105 modification, addendum, or other writing *that is* supplemental to any ~~such deed of trust, mortgage,~~
106 contract, agreement, modification, addendum, or other writing theretofore admitted to record; ~~hereinafter~~
107 ~~called the prior instrument~~, upon which the tax herein imposed has been paid, or which is exempt from
108 the tax herein imposed by reason of subsection C of § 58.1-804, when the sole purpose and effect of the
109 supplemental instrument ~~or writing~~ is to wrap around a prior instrument, to convey property, in addition
110 to or in substitution, in whole or in part, of the property conveyed in a prior instrument, to secure or to
111 better secure the payment of the amount contracted for in a prior instrument, to alter the priority of ~~the~~
112 ~~a prior instrument~~, or to modify the terms, conditions, parties, or provisions of ~~such a prior instruments~~
113 ~~instrument~~, other than to increase the amount of the principal obligation secured thereby.

114 The assumption of a deed of trust shall not be separately taxable under §§ § 58.1-801, 58.1-803 or §
115 58.1-807, whether such assumption is by a separate instrument or included in the deed of conveyance.

116 **§ 58.1-812. Payment prerequisite to recordation; exceptions; assessment and collection of tax;**
117 **penalty for misrepresentation.**

118 A. Except as otherwise provided in this chapter, no deed, deed of trust, contract or other instrument
119 shall be admitted to record without the payment of the tax imposed thereon by law and the fee pursuant
120 to § 58.1-817, as applicable. However, after payment of the tax imposed by this chapter, when an
121 instrument is first offered for recordation, such instrument may thereafter be recorded in the office of

any other clerk without the payment of any tax except any local recordation tax as provided in Article 1 (§ 58.1-3800 et seq.) of Chapter 38 of this title. Any instrument may also be recorded free of tax and fee in the office of the clerk where such instrument was originally recorded when the record containing such instrument has been destroyed.

B. The tax on every deed, deed of trust, contract or other instrument shall be determined and collected by the clerk in whose office the instrument is first offered for recordation. The clerk may ascertain the consideration of the deed or of the instrument, the actual value of the property conveyed, and the qualification of the deed or instrument for any exemption claimed by inquiry, affidavit, declaration or other extrinsic evidence acceptable to the clerk. The fee shall be \$1 on every recorded deed pursuant to § 58.1-817 and shall be collected by the clerk in whose office the deed is offered for recordation.

C. Any person who knowingly misrepresents the consideration for the interest in property conveyed by a deed or other instrument or any of the other information requested by the clerk of court pursuant to this section shall be guilty of a Class 1 misdemeanor. If an understatement of the consideration is false or fraudulent with intent to evade a tax, a penalty equal to 100 percent of the tax due on the understatement shall be added to the amount of the tax due, plus interest on the tax at a rate determined in accordance with § 58.1-15 from the time the tax was required by law to be filed until paid.

D. Except as otherwise specifically provided, nothing contained in this chapter shall limit the right of the parties to any deed, deed of trust, contract, lease, or other instrument to allocate responsibility for the payment of the recordation taxes and fees imposed under this chapter among themselves in any manner they determine. A clerk who in good faith collects such taxes and fees upon recordation of a deed, deed of trust, contract, lease, or other instrument in reliance upon information provided by the person submitting such deed, deed of trust, contract, lease, or other instrument for recordation shall have no personal liability for any deficiency in the amount of such taxes or fees collected that is later determined to be due and payable.

2. That the provisions of this act shall be applicable to transactions occurring on or after July 1, 2015.