

DEPARTMENT OF TAXATION

2019 Fiscal Impact Statement

1. **Patron** Ryan T. McDougle

3. **Committee** Senate Finance

4. **Title** Recordation Tax; Exemption for Property
Transferred by Deed of Distribution

2. **Bill Number** SB 1610

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would clarify that the Recordation Tax exemption for bequests and trust distributions includes conveyances that have been delayed until a power of appointment has been exercised or accelerated when a trust is decanted into a new trust so long as no consideration has passed between the parties.

If enacted during the 2019 Regular Session of the General Assembly, this bill would become effective July 1, 2019.

6. Budget amendment necessary: No.

7. No Fiscal Impact (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill to be routine and does not require additional funding.

Revenue Impact

As this bill clarifies existing exemptions for bequests and trust distributions to include conveyances that have been delayed until a power of appointment has been exercised or accelerated when a trust is decanted into a new trust, this bill would have no impact on state or local revenues.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

State Recordation Tax

Under current law, every deed or deed of trust admitted to record, except a deed exempt from taxation by law, is subject to a state recordation tax. Generally, the tax is imposed in the amount of \$0.25 per \$100 or fraction thereof of the amount of bonds or other obligations secured by the deed of trust. If the amount of the obligation cannot be ascertained, the tax is based on the fair market value of the property conveyed. An additional recordation tax may be imposed by cities and counties in an amount equal to one-third of the state tax.

Trust Decanting

2017 Senate Bill 913 (*2017 Acts of Assembly*, Chapter 592) created the Uniform Trust Decanting Act that permitted the process of “decanting” of trust assets whereby trust assets would be transferred from one trust to another trust. However, it is unclear whether the decanting of assets or the transfer of real estate by a trustee out of a trust to carry out the distributive terms of the trust are subject to the Recordation Tax where no consideration passes between the parties.

Under current law, decanting distributions and transfers to beneficiaries to carry out distributive terms of the trust may be subject to the Recordation Tax if the form of the transaction is strictly considered over the function. For example, the transfer itself may disqualify the deed from exemption, as in where assets are decanted to another trust, the transfer of title in the name of the original trustee to the new trustee would not qualify for any existing Recordation Tax exemptions. Practitioners are currently titling some deeds where no consideration passes between the parties but the deed’s form may arguably make it subject to the Recordation Tax as a “deed of confirmation,” exempt under *Va. Code* § 58.1-810(1), or a “deed of gift,” exempt under *Va. Code* § 58.1-811(D), to qualify for a Recordation Tax exemption.

Proposal

This bill would clarify that the Recordation Tax exemption for bequests and trust distributions includes conveyances that have been delayed until a power of appointment has been exercised or accelerated when a trust is decanted into a new trust so long as no consideration has passed between the parties. The bill would provide an exemption from the Recordation Tax so long as the deed is identified as a “deed of distribution” and no consideration has passed between the parties. The bill would define a “deed of distribution” to include deeds conveying property from an estate or trust (i) to the original beneficiaries of the trust from the trustee, (ii) the purpose of which is to comply with a devise or bequest in the decedent’s will or to transfer title to one or more beneficiaries after the death of the settlor as required by the trust document, (iii) that carries out the exercise of a power of appointment, or (iv) is pursuant to the exercise of power under the Uniform Trust Decanting Act.

If enacted during the 2019 Regular Session of the General Assembly, this bill would become effective July 1, 2019.

cc : Secretary of Finance

Date: 1/22/2019 VB
DLAS File Name: SB1610F161