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HOUSE BILL NO. 197

Offered January 9, 2008

Prefiled December 27, 2007

A BILL to amend and reenact § 58.1-803 of the Code of Virginia, relating to the recordation tax on the refinancing or modification of the terms of an existing debt.

Patron—Marshall, R.G.

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-803 of the Code of Virginia is amended and reenacted as follows:**

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

A. 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 or revolving deed of trust, the amount of the obligation for purposes of this section shall be the maximum amount which may be outstanding at any one time. In any case in which the amount which may be secured under a deed of trust or mortgage is not ascertainable, 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 deeds of trust or mortgages conveying other property lying partly within the Commonwealth and partly without the Commonwealth the tax herein imposed shall be only upon such proportion of the debt secured as the value of the property located within the Commonwealth, or which may be brought into the Commonwealth, bears to the entire amount of property conveyed by such deed of trust or mortgage.

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.

On deeds of trust or mortgages which are supplemental to or wrap around existing deeds of trust 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 debt secured by a deed of trust or mortgage on which tax has been paid. The instrument shall certify the amount of the existing debt.

D. On deeds of trust or mortgages, the purpose of which is to refinance or modify the terms of an existing debt with the same or a different lender, which debt is secured by a deed of trust or mortgage on which the tax imposed hereunder has been paid, the tax shall be paid only on that portion of the amount of the bond or other obligation secured thereby which is in addition to the amount of the original debt secured by a deed of trust or mortgage on which the tax has been paid. The instrument shall certify the amount of original debt.

E. The maximum tax on the recordation of any deed of trust or mortgage or on any indenture supplemental thereto shall be determined in accordance with the following schedule:

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

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

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

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

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

61 **2. That any person who paid a state recordation tax imposed under Chapter 8 (§ 58.1-800 et seq.)**
62 **of Title 58.1 of the Code of Virginia between January 1, 2007, and June 30, 2008, inclusive, on a**
63 **refinancing or modification of the terms of an existing debt completed with a lender other than**
64 **the lender of the original debt, may apply to the Department of Taxation for a refund of that**
65 **portion of such state recordation tax paid on such refinancing or modification that relates to the**
66 **amount of the original debt that was secured by a deed of trust or mortgage on which the state**
67 **recordation tax had previously been paid. However, in no case shall any refund be issued for that**
68 **portion of such state recordation tax paid on such refinancing or modification that relates to any**
69 **amount of obligation that is in addition to the original debt. Upon the person providing**
70 **satisfactory proof of payment of the state recordation tax on (i) the deed of trust or mortgage of**
71 **the original debt and (ii) the refinancing or modification of the terms of such debt, the Tax**
72 **Commissioner shall make a written certificate of the same to the Comptroller as soon as**
73 **practicable, which certificate shall include the amount of the state recordation tax that was paid**
74 **on such refinancing or modification that relates to the deed of trust or mortgage of the original**
75 **debt. Upon receipt of the certificate and as soon as practicable, the Comptroller shall draw a**
76 **warrant for payment by the State Treasurer of the amount certified by the Tax Commissioner,**
77 **plus interest computed at the rate provided under § 58.1-15 of the Code of Virginia.**

78 **3. That the Department of Taxation shall by May 31, 2008, develop and publish guidelines for**
79 **purposes of implementing the provisions of this act. The guidelines shall include, but shall not be**
80 **limited to, guidelines that establish the documentation that may be required by the Tax**
81 **Commissioner to document the refinancing or modification of an existing debt described under**
82 **subsection D of § 58.1-803 of the Code of Virginia.**