

# DEPARTMENT OF TAXATION

## 2008 Fiscal Impact Statement

1. **Patron** Robert G. Marshall

2. **Bill Number** HB 197

3. **Committee** House Appropriations

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

4. **Title** Recordation Tax; Refinancing or Modification of Terms of Debt.

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would expand the current recordation tax exemption for refinancing done with the same lender to include refinancing or modification of an existing debt with a lender different than the original lender of the debt.

This bill would also provide that any person who refinanced a debt with a lender different from the lender of the original debt between January 1, 2007, and June 30, 2008, and paid a state recordation tax on the total principal amount of the new debt could apply to the Department of Taxation for a refund on the portion of the recordation tax that relates to the amount of the original debt. The bill also provides that no portion of the state recordation tax paid on refinancing or modification for any debt that is in addition to the original debt would be eligible for the refund.

Upon satisfactory proof of payment, the Tax Commissioner would be required to issue a written certificate containing the amount of the applicable state recordation tax that was paid to the Comptroller. The Comptroller would be charged with issuing a refund to the taxpayer in the amount certified by the Tax Commissioner, plus interest.

The effective date of this bill is not specified.

### 6. **Fiscal Impact Estimates are:** Preliminary (See Line 8.)

#### 6a. **Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Positions</b></i>	<i><b>Fund</b></i>
2007-08	\$22,500	0	GF
2008-09	\$428,028	6	GF
2009-10	\$135,000	6	GF
2010-11	\$0	0	GF
2011-12	\$0	0	GF
2012-13	\$0	0	GF
2013-14	\$0	0	GF

**7. Budget amendment necessary: Yes.**

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**8. Fiscal implications:**

Administrative Costs

TAX would incur estimated administrative expenses of \$22,500 in FY 2008, \$428,028 in FY 2009, and \$135,000 in FY 2010. These costs are related to systems modifications, forms development, and the need for six full time P14 employees to assist with the processing of refund claim forms and customer service. It is estimated that forms would be available by June 15 and that refunds would begin to be issued by November 1.

The Department of Judicial Services ("DJS") was contacted about this bill, but was unable to provide an estimate of the administrative costs. Because DJS has informed TAX that carrying out the provisions of this bill would require substantial amounts of time and resources to research and verify documents, however, it is possible that TAX would not receive properly verified applications for refunds until late in 2008. The current system that a majority of circuit courts use for receiving and recording deeds of trusts does not distinguish between same and different lenders. Therefore, courts would have to manually review files to determine if refinancing or modification of an existing debt was performed by the same or different lender.

Revenue Impact

There would be an unknown, but potentially substantial, negative impact on General Fund revenue. Moreover, because three cents per \$100 of value or recordation tax collected will be deposited into the Transportation Trust Fund ("TTF") and the highway operating fund beginning in FY 2009, there would also be an unknown negative impact on nongeneral fund and TTF revenues. Although a local recordation tax, which is equal to one third of the state recordation tax, would also have been paid, this bill does not explicitly require localities to refund it.

**9. Specific agency or political subdivisions affected:**

Department of Taxation  
Department of Judicial Services  
Department of Accounts  
Clerks of the Circuit Courts  
All Cities and Counties

**10. Technical amendment necessary: No.**

## 11. Other comments:

### Current Law

Under current law, there is a recordation tax exemption for those who refinance debt with the same lender for the principal amount of the original debt.

### Proposal

This bill would expand the current recordation tax exemption for refinancing done with the same lender to include refinancing or modification of an existing debt with a lender different than the original lender of the debt.

This bill would also provide that any person who refinanced a debt with a lender different from the lender of the original debt between January 1, 2007, and June 30, 2008, and paid a state recordation tax on the total principal amount of the new debt could apply to the Department of Taxation for a refund on the portion of the recordation tax that relates to the amount of the original debt. The bill also provides that no portion of the state recordation tax paid on refinancing or modification for any debt that is in addition to the original debt would be eligible for the refund.

This bill would require the applicant to provide proof of payment of the state recordation tax on (i) the deed of trust or mortgage of the original debt and (ii) the refinancing or modification of the terms of such debt. The guidelines would specify the documents required with the refund application as acceptable proof. Upon receiving proof of payment of state recordation tax, the Tax Commissioner would be required to issue a written certificate to the Comptroller containing the amount of the state recordation tax that was paid on the refinancing or modification that relates to the deed of trust or mortgage of the original debt.

The Comptroller would be charged with issuing a refund to the taxpayer for state recordation tax paid on the refinancing or modification of an existing debt for the amount certified by the Tax Commissioner plus interest computed at the rate provided under § 58.1-15 of the *Code of Virginia*.

The bill would explicitly require the refund of state recordation tax. Localities also impose local recordation taxes equal to one-third of the state tax. While the prospective reduction in state recordation tax required by this bill would similarly reduce local recordation tax, it is not clear if the retroactive refund of the state recordation tax would require a similar refund of local recordation tax that was validly imposed.

Although TAX is charged with the administration of the state and local recordation taxes, the taxes are collected by the clerks of the local Circuit Courts and the funds remitted directly to the State Treasurer and local Treasurers. TAX does not have any transactional records relating to recordation taxes and would have to rely on the local clerks for any necessary verification of who paid how much tax on which transactions. Evidence that proceeds from the new loan were used to pay off the original loan will require documents that were not recorded, such as a settlement statement.

This bill would require the Department of Taxation to develop and publish guidelines by May 31, 2008.

Similar Legislation

**House Bill 76, House Bill 1394, and Senate Bill 551** would require the recordation tax on deeds to be based solely upon stated consideration even when it is less than the actual value of the real estate conveyed by the deed.

**House Bill 77** would expand the existing recordation tax exemption for conveyances of affordable housing to all localities in the state. Currently the exemption applies only in Amherst County and the City of Lynchburg.

cc : Secretary of Finance

Date: 1/24/2008 TG  
HB197F161