

DEPARTMENT OF TAXATION

2009 Fiscal Impact Statement

1. **Patron** Richard L. Saslaw

3. **Committee** Senate Finance

4. **Title** Recordation Tax: Based Solely on Actual Consideration

2. **Bill Number** SB 1157

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would require the recordation tax on deeds to be based solely upon actual consideration, even when it is less than the actual value of the real estate conveyed by the deed.

The effective date of this bill is not specified.

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

7. **Budget amendment necessary:** Yes.
Page 1, Revenue Estimates

8. **Fiscal implications:**

Administrative Costs

There would be no administrative cost to TAX to implement this bill. Local clerks of the Circuit Court may incur implementation costs.

Revenue Impact

Consideration may differ from fair market value in some situations. Because under current law the Clerk of the Circuit Court is required to base the recordation tax on the greater of the consideration or the actual value, there would be an unknown reduction in General Fund revenue for FY 2010 and thereafter. Moreover, because 3 cents per \$100 of value of recordation tax collected are deposited into the Transportation Trust Fund, there would be a similar reduction in TTF nongeneral fund revenue. Finally, local recordation taxes are equal to one-third of the state tax. As a result, there would be a decrease in local recordation tax revenue.

The amount of the revenue reduction is unknown, however. The data available does not distinguish the amount of the tax based on consideration from the amount based on

actual value. It is not feasible for most clerks to routinely determine the actual value. As a result, it is likely that relatively few deeds are taxed on actual value.

9. Specific agency or political subdivisions affected:

Department of Taxation
Clerks of the Circuit Courts
All Cities and Counties

10. Technical amendment necessary: Yes.

Many deeds are drafted without stating the full consideration (e.g., “for \$10 and other consideration”). Instead, the person offering the deed for recordation informs the clerk of the true consideration on a cover sheet or by other means. To clarify that the new term “actual consideration” does not refer merely to what is recited in the deed, the following technical amendment is suggested:

Page 2, Line 64, after consideration for the
Insert: property or

11. Other comments:

Background

Under current law, the Clerk of the Circuit Court will base recordation tax on the greater of the consideration or the actual value of the property conveyed by a deed. Because the deed recording system allows purchasers and lenders to identify almost everyone with an interest in real estate, Virginia and other states have historically taxed the value of the property that benefits from recordation of a deed. In most cases the consideration will be the most accurate figure for the value of property conveyed by a deed. There are several situations, however, where the consideration is less than the actual value of the property and clerks will investigate the actual value of the property conveyed. For example:

- In a forced sale, such as a foreclosure sale, the actual value of the property is rarely obtained for a number of reasons. The definition of fair market value (which is synonymous with actual value) assumes that the seller is not under any compulsion to sell.
- In a bulk sale the price may not have been negotiated for each asset and the total purchase price must be allocated among the assets. This situation occurs when the purchase price for a business must be allocated between the real estate and other assets such as inventory, machinery and good will, or when many parcels of real estate (sometimes in several jurisdictions) are purchased with a bulk discount.
- When a sales price is negotiated but the deed delivery and recordation are delayed, there may be substantial appreciation or improvements that occur between the time of sale and recordation. Subdivision developers sometimes allow builders to begin construction on a lot but delay delivering the deed for recordation

until the first construction loan disbursement. See Va. Att'y Gen. Ann. Rep.: 1987-1988 at 572.

- For financing and other reasons, a purchase may be structured as a long-term lease followed by conveyance of the title for \$1 or other nominal consideration. See, for example, See Va. Att'y Gen. Ann. Rep.: 1992 at 185. However, the recordation of the long-term lease would be subject to tax on the lesser of the total lease payments or the actual value of the property.

The determination of actual value is often difficult and sometimes controversial. One such example can be found in Va. Tax Public Document 91-146 (8/2/91). In that case, the clerk based the tax on the assessed value for real estate tax purposes, ignoring an appraisal that reflected a much lower value. The taxpayer protested because, among other reasons, the appraised value was being litigated. The Tax Commissioner's ruling describes several other situations in which the value assessed for real estate tax purposes may not reflect the actual value of property conveyed by a deed.

Proposal

This bill would require the recordation tax on deeds to be based solely upon actual consideration, even when it is less than the actual value of the real estate conveyed by the deed. In addition, this bill would specify that any person who knowingly misrepresented the actual consideration on a deed or other instrument or any of the other information requested by the clerk of court would be guilty of a Class 2 misdemeanor.

This bill would be effective for taxable years beginning on or after July 1, 2010.

Similar Legislation

House Bill 1823 would require the recordation tax on deeds to be based upon stated consideration, even when it is less than the actual value of the real estate conveyed by the deed. This bill would also require that if the consideration is nominal or when the sale is through foreclosure or other similar sale, the recordation tax would be based upon the appraised value of the property.

House Bill 2135 would require the recordation tax on deeds to be based upon stated consideration, even when it is less than the actual value of the real estate conveyed by the deed.

cc : Secretary of Finance

Date: 1/19/2009 TLG
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