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HOUSE BILL NO. 1908

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 58.1-801, 58.1-802, 58.1-803, and 58.1-812 of the Code of Virginia, relating to recordation taxes.

Patrons—Miller, J.H., Keam and Rust

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-801, 58.1-802, 58.1-803, and 58.1-812 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-801. Deeds generally; charter amendments.

A. On every deed admitted to record, except a deed exempt from taxation by law, there is hereby levied a state recordation tax. The rate of the tax shall be 25 cents on every \$100 or fraction thereof of the consideration of the deed or the actual value of for the property being conveyed, whichever is greater. *The clerk may require documentation as to the consideration pursuant to § 58.1-812.*

Upon deeds conveying property lying partly within the Commonwealth and partly without the Commonwealth, the tax herein imposed shall apply only to the value of so much of the property conveyed as is situated within the Commonwealth.

B. When the charter of a corporation is amended, and the only effect of such amendment is to change the corporate name of such corporation, the tax upon the recordation of a deed conveying to, or vesting in, such corporation under its changed name, the title to any or all of the real or personal property of such corporation held in its name as it existed immediately prior to such amendment, shall be 50 cents.

§ 58.1-802. Additional tax paid by grantor; collection. A. In addition to any other tax imposed under the provisions of this chapter, a tax is hereby imposed on each deed, instrument, or writing by which lands, tenements or other realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser, or any other person, by such purchaser's direction. The rate of the tax, when the consideration of value of the interest, whichever is greater, for the property being conveyed exceeds \$100, shall be 50 cents for each \$500 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance. No increase in the city or county recordation tax authorized by § 58.1-814 shall be deemed authorized by this section. *The clerk may require documentation as to the consideration for the property being conveyed pursuant to § 58.1-812.*

The tax imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument or writing subject to the tax imposed by this section.

No such deed, instrument or other writing shall be admitted to record without certification of the clerk of the court wherein first recorded having been affixed thereto that the tax imposed by this section has been paid. The clerk shall include within the certificate the amount of such tax collected thereon.

B. Taxes imposed by this section shall be collected as provided in § 58.1-812 and the clerk shall return taxes collected hereunder one-half into the state treasury and one-half into the treasury of the locality.

The local portion of the tax imposed by this section on property which is located in more than one jurisdiction shall be collected by the clerk in proportion to the value of the property located in each such locality when recorded therein.

Every clerk of court collecting taxes under this section for the county or city which he serves shall be entitled to compensation for such service at five percent of the amount so collected and paid.

§ 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

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59 Commonwealth and partly without the Commonwealth, the tax shall be only upon such proportion of
60 the amount of bonds, or other obligations secured thereby, as the number of miles of the line of such
61 company in the Commonwealth bears to the whole number of miles of the line of such company
62 conveyed by such deed of trust or mortgage.

63 Upon deeds of trust or mortgages conveying other property lying partly within the Commonwealth
64 and partly without the Commonwealth the tax herein imposed shall be only upon such proportion of the
65 debt secured as the value of the property located within the Commonwealth, or which may be brought
66 into the Commonwealth, bears to the entire amount of property conveyed by such deed of trust or
67 mortgage.

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

75 On deeds of trust or mortgages which are supplemental to or wrap around existing deeds of trust on
76 which the tax imposed hereunder has already been paid, the tax shall be paid only on that portion of the
77 face amount of the bond or obligation secured thereby which is in addition to the amount of the existing
78 debt secured by a deed of trust or mortgage on which tax has been paid. The instrument shall certify the
79 amount of the existing debt.

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

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

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

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

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

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

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

98 § 58.1-812. Payment prerequisite to recordation; exceptions; assessment and collection of tax; penalty
99 for misrepresentation.

100 A. Except as otherwise provided in this chapter, no deed, deed of trust, contract or other instrument
101 shall be admitted to record without the payment of the tax imposed thereon by law and the fee pursuant
102 to § 58.1-817, as applicable. However, after payment of the tax imposed by this chapter, when an
103 instrument is first offered for recordation, such instrument may thereafter be recorded in the office of
104 any other clerk without the payment of any tax except any local recordation tax as provided in Article 1
105 (§ 58.1-3800 et seq.) of Chapter 38 of this title. Any instrument may also be recorded free of tax and
106 fee in the office of the clerk where such instrument was originally recorded when the record containing
107 such instrument has been destroyed.

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

115 C. Any person who knowingly misrepresents the consideration for the interest in property conveyed
116 by a deed or other instrument or any of the other information requested by the clerk of court pursuant to
117 this section shall be guilty of a Class 1 misdemeanor. If an understatement of the consideration is false
118 or fraudulent with intent to evade a tax, a penalty equal to ~~100~~ 200 percent of the tax due on the
119 understatement shall be added to the amount of the tax due, plus interest on the tax at a rate determined
120 in accordance with § 58.1-15 from the time the tax was required by law to be filed until paid.

- 121 2. That the provisions of this act amending §§ 58.1-801 and 58.1-802 of the Code of Virginia shall
122 become effective on July 1, 2013.
123 3. That the provisions of this act amending § 58.1-803 of the Code of Virginia shall expire on
124 June 30, 2014.

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