

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** W. Roscoe Reynolds

3. **Committee** Senate Finance

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

2. **Bill Number** SB 780

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

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

This bill would be effective for deeds of trust or mortgages recorded between July 1, 2011 and June 30, 2014.

6. Budget amendment necessary: No.

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

8. Fiscal implications:

Administrative Costs

There would be no administrative costs to TAX to implement this bill, as the recordation tax is collected by the clerks of the local Circuit Courts. The cost for the local courts to implement this bill is unknown.

Revenue Impact

This bill would have an unknown negative impact on General Fund revenue because expanding the current recordation tax exemption to include all refinancing would decrease the amount of recordation tax collected. 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 loss is unknown because the data available does not specify the amount of recordation tax that is collected on deeds of trust or mortgages, nor the portion that is due to refinancing. However, to the extent there are significant numbers of

refinancings with lenders other than the original lender, the negative revenue impact could be significant.

9. Specific agency or political subdivisions affected:

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

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Under current law, a recordation tax exemption is allowed for any deed of trust or mortgage that is refinanced with the same lender for the principal amount of the original debt. A 1992 Virginia Attorney General opinion established that the phrase "existing debt with the same lender" means that the lender who holds the existing debt must be the same lender who is providing the refinancing. See 1992 Op. Va. Att'y Gen, at 181.

In discussions with several clerks while conducting a study of other recordation tax issues (see 2009 RD 379), the clerks explained that this provisions is difficult to administer. The clerks often are unable to determine who is the current noteholder because Virginia law does not require that an assignment of the note be recorded. Often the homeowner does not know who the noteholder is; he only knows who is servicing the loan. Reviewing the payoff statement for the loan being refinanced often shows only the servicer, not the noteholder. Recent financial upheaval in the banking industry has led to consolidations and mergers. This has further complicated identifying the noteholder.

Proposal

This bill would expand the current recordation tax exemption for refinancing an existing debt to include refinancing with any lender. The expansion would be effective for deeds of trust or mortgages recorded between July 1, 2011 and June 30, 2014.

Similar Legislation

House Bill 1431 would reduce the recordation tax rate by 1.25 cents per \$100 for every deed of trust or mortgage, and eliminate the reduced recordation tax based on deeds of trust or mortgages securing a refinanced mortgage with the same lender.

House Bill 1908 would change the basis on which recordation and grantor taxes are calculated to consideration, expand the refinancing exemption to any lender for three years, and increase the penalty for fraudulent understatement to 200%.

cc : Secretary of Finance

Date: 1/16/2011 TG
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