DEPARTMENT OF TAXATION
2017 Fiscal Impact Statement

1. Patron Jason S. Miyares

2. Bill Number HB 1489

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Recordation Tax; Exemption for Certain Deeds

5. Summary/Purpose:

This bill would provide an exemption from the recordation tax for deeds conveying real estate or the lease of real estate to i) a subsidiary limited liability company or limited liability partnership from its parent limited liability company or limited liability partnership, or ii) a parent limited liability company or limited liability partnership from its subsidiary limited liability company or limited liability partnership, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code. The bill also would provide an exemption from the recordation tax for deeds conveying real estate or the lease of real estate to a limited liability company, limited partnership, or general partnership from a commonly owned limited liability company, limited partnership, or general partnership, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code.

Under current law, deeds conveying real estate or the lease of real estate to a subsidiary corporation from its parent corporation or to a parent corporation from its subsidiary corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code, are exempt from the recordation tax. Additionally, deeds and leases to a partnership or limited liability company when the grantors are entitled to receive not less than 50 percent of the profits or surplus of such partnership or limited liability company are exempt from the recordation tax, The exemption does not apply if the transfer to or from a limited liability company and a precursor to a transfer of control of the assets of the company to avoid recordation taxes.

The effective date of this bill is not specified.

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 the Department of Taxation 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

To the extent that the bill would exempt from the recordation tax deeds conveying real estate or the lease of real estate to and from subsidiary and parent limited liability companies and limited liability partnerships and to a limited liability company or partnership from a commonly owned limited liability company or partnership, this bill would result in an unknown decrease in state recordation tax revenues. In Fiscal Year 2015, the recording of deeds of conveyance, other deeds, and contracts resulted in approximately $332.2 million in state recordation tax revenues.

As the exemption would also apply to the local recordation tax, the bill also would result in loss of local revenues, the magnitude of which is unknown. According to *Virginia Local Tax Rates, 2015*, published by the Weldon Cooper Center for Public Service, 36 cities and 91 counties currently report imposing a local recordation tax.

9. Specific agency or political subdivisions affected:

Department of Taxation
Clerks of the Circuit Courts

10. Technical amendment necessary: Yes.

To ensure that the language in *Va. Code* § 58.1-811 as it may become effective is identical to the language in *Va. Code* § 58.1-811 as it is currently effective, the following technical amendments are suggested:

Page 3, Line 143, after company
Strike: from its parent limited liability company, or from a subsidiary limited liability company to a parent limited liability company
Insert: or limited liability partnership from its parent limited liability company or limited liability partnership, or from a subsidiary limited liability company or limited liability partnership to a parent limited liability company or limited liability partnership

Page 3, Line 172, after or
Strike: partnership from a commonly owned limited liability company or partnership
Insert: limited or general partnership from a commonly owned limited liability company or limited or general partnership

To ensure that the proposed exemptions are not used to avoid recordation taxes, the following technical amendments are suggested:

Page 1, Line 42, after amended
Insert: and provided that the transfer to or from a limited liability company or limited liability partnership is not a precursor or subsequent to a transfer of control of the assets of the company to avoid recordation taxes

Page 2, Line 71, after amended
Insert: and provided that the transfer to a limited liability company or limited or general partnership is not a precursor or subsequent to a transfer of control of the assets of the company to avoid recordation taxes

Page 3, Line 145, after amended
Insert: and provided that the transfer to or from a limited liability company or limited liability partnership is not a precursor or subsequent to a transfer of control of the assets of the company to avoid recordation taxes

Page 3, Line 174, after amended
Insert: and provided that the transfer to a limited liability company or limited or general partnership is not a precursor or subsequent to a transfer of control of the assets of the company to avoid recordation taxes

11. Other comments:

Background

Under Virginia law, a deed is effective between the parties when the grantor delivers it to the grantee. Virginia offers a recordation system in each circuit court to record deeds and has enacted laws providing certain protections for buyers and lenders who rely on the information recorded in the circuit courts. Accordingly, Virginia imposes a tax for the privilege of using the recordation system to record deeds at the rate of $0.25 per $100 of value. An additional recordation tax may be imposed by cities and counties in an amount equal to one-third of the state tax.

In Fiscal Year 2015, the recording of deeds of conveyance, other deeds, and contracts resulted in approximately $332.2 million in state recordation tax revenues. The first $40 million of the state recordation tax is dedicated to the U.S. Route 58 Corridor Development Fund and another $40 million of the state recordation tax is apportioned and distributed back to each county and city, subject to certain transfers. Additionally, out of the total state recordation tax collected, $0.02 per $100 of value are deposited into the Commonwealth Mass Transit Fund and $0.01 per $100 of value is deposited into the Commonwealth Transit Capital Fund. The remaining revenues are dedicated to the General Fund.

Proposal

This bill would provide an exemption from the recordation tax for deeds conveying real estate or the lease of real estate to i) a subsidiary limited liability company or limited liability partnership from its parent limited liability company or limited liability partnership, or ii) a parent limited liability company or limited liability partnership from its subsidiary limited liability company or limited liability partnership, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code. The bill also would provide an exemption from the recordation tax for deeds conveying real estate or the lease of real estate to a limited liability company, limited partnership, or general partnership from a commonly owned limited liability company, limited partnership, or general partnership, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code.

The effective date of this bill is not specified.

Similar Legislation

House Bill 1478 and **Senate Bill 875** would provide an exemption from the recordation tax for deeds of trust or mortgages given by utility consumer services cooperatives or utility aggregation cooperatives organized pursuant to Chapter 9.1 of Title 56.

Senate Bill 806 would create the Interstate 73 Corridor Development Fund and provide that the first $40 million of state recordation taxes would be distributed to the Fund annually effective upon the completion of the construction of and payments for all parts of the U.S. Route 58 Corridor Development Program. The bill also would repeal the U.S. Route 58 Corridor Development Fund and U.S. Route 58 Corridor Development Program effective upon the completion of the construction of and payments for all parts of the Program.

cc : Secretary of Finance

Date: 1/22/2017 AM
DLAS File Name: HB1489F161