



# COMMONWEALTH of VIRGINIA

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The Honorable Terry H. Whittle  
Clerk of Court, Winchester Circuit Court  
Frederick-Winchester Judicial Center  
5 North Kent Street  
Winchester, Virginia 22601

Dear Mr. Whittle:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether Federal Credit Unions are exempted from paying the recordation tax imposed on grantors by § 58.1-802 of the *Code of Virginia* pursuant to the exemption provided by 12 U.S.C. § 1768.

## Response

It is my opinion that, pursuant to the exemption provided by 12 U.S.C. § 1768, Federal Credit Unions are exempted from paying the recordation tax imposed on grantors by § 58.1-802 of the *Code of Virginia*.

## Applicable Law and Discussion

Virginia law applies a tax 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.”<sup>1</sup> As previous Opinions of this Office have noted, however, “Congress may create exemptions from taxation for specific entities even if such exceptions are not memorialized in the states’ laws. Implicit in [this] opinion is the authority of the federal government to exempt specific real estate transactions from state taxation.”<sup>2</sup>

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<sup>1</sup> VA. CODE ANN. § 58.1-802(A) (2009).

<sup>2</sup> 2012 Op. Va. Att’y Gen. No. 12-038 at 1, available at <http://www.ag.virginia.gov/Opinions%20and%20Legal%20Resources/Opinions/2012opns/Nov12opndx.html> (quoting 2003 Op. Va. Att’y Gen. 177, 179). See also 2002 Op. Va. Att’y Gen. 328, 329.

Applicable to your inquiry is the statutory exemption from taxation granted to Federal Credit Unions. The United States Code provides that

The Federal credit unions organized [under 12 U.S.C. Chapter 14], their property, their franchises, capital, reserves, surpluses, and other funds, and their income *shall be exempt from all taxation* now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such Federal credit unions shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed.<sup>[3]</sup>

Thus, Congress has exempted Federal Credit Unions from “all taxation” by state and local governments, while explicitly allowing taxation of any real or tangible personal property of the Credit Unions as other similar property is taxed.

The recordation tax imposed on grantors by § 58.1-802 is “not a tax upon property...but a tax upon a civil privilege ...of availing...of the benefits and advantages of the registration laws of the State.”<sup>4</sup> Opinions of this Office consistently have held that a federal exemption of a federally created entity from “all taxation” exempts the entity from recordation taxes, even when such exemption explicitly allows for the taxation of the entity’s property.<sup>5</sup> There is no substantive difference in the language of 12 U.S.C. § 1768 and the statutes interpreted in these prior Opinions. I therefore conclude that 12 U.S.C. § 1768 must be read to exempt Federal Credit Unions from state and local recordation taxes.

#### Conclusion

Accordingly, it is my opinion that, pursuant to the exemption provided by 12 U.S.C. § 1768, Federal Credit Unions are exempted from paying the recordation tax imposed on grantors by § 58.1-802 of the *Code of Virginia*.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II  
Attorney General

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<sup>3</sup> 12 U.S.C. § 1768 (emphasis added).

<sup>4</sup> *Pocahontas Consol. Collieries Co. Inc. v. Commonwealth*, 113 Va. 108, 112, 73 S.E. 446, 448 (1912).

<sup>5</sup> See 1992 Op. Va. Att’y Gen. 183, 185; 1993 Op. Va. Att’y Gen. 260, 262; 2012 Op. Va. Att’y Gen. No. 12-038 at 5. I note that this is not the case when the federal entity is not a principal to the transaction, but rather a guarantor or a beneficiary. See 2002 Op. Va. Att’y Gen. 328, 329.