



COMMONWEALTH of VIRGINIA

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March 14, 2014

The Honorable Michèle B. McQuigg
Clerk of the Circuit Court of Prince William County
9311 Lee Avenue
Manassas, Virginia 20110

Dear Ms. McQuigg:

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 the exemption provided by § 58.1-811(A)(14) to the recordation taxes imposed by §§ 58.1-801 and 58.1-807 is available to the grantor, to the grantee, or to both, when the grantor of the deed or contract filed for recording is an organization that meets the criteria set forth in § 58.1-811(A)(14).

Response

It is my opinion that, so long as the grantor is an organization that meets the criteria set forth in § 58.1-811(A)(14), a deed or contract offered for recording is exempt from the taxes enumerated in §§ 58.1-801 and 58.1-807, and neither the grantee nor the grantor is required to pay those taxes.

Background

You advise that your office routinely receives filings for deeds on properties where the grantor is Habitat for Humanity, a nonprofit organization, the stated mission of which is to build and repair houses using volunteer labor and donations, and then to sell those houses without profit to families in need of shelter, using innovative financing mechanisms. You also relate that, based on § 58.1-811(A)(14), various parties maintain the following divergent views regarding these filings:

- 1) Both the grantor and grantee are exempt from the taxes enumerated in §§ 58.1-801 and 58.1-807.
- 2) The grantor is exempt, but the grantee is not exempt from the taxes enumerated in §§ 58.1-801 and 58.1-807.
- 3) The grantor is not exempt, but the grantee is exempt from the taxes enumerated in §§ 58.1-801 and 58.1-807.
- 4) Neither party is exempt from the taxes enumerated in §§ 58.1-801 and 58.1-807.

Applicable Law and Discussion

The Virginia Recordation Tax Act (the “Act”) requires Circuit Court Clerks in Virginia to collect certain recordation taxes.¹ These taxes are based on the privilege of having access to the benefits of state recording and registration laws.² Your inquiry specifically concerns the recordation tax imposed on deeds. The Act in § 58.1-801 provides:

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 the property conveyed, whichever is greater.³

This recordation tax is sometimes referred to as a “grantee’s tax,” as it is generally paid by the grantee of a deed at the time of recordation.⁴

You also request guidance on the tax on the recordation of contracts and leases relating to real or personal property. The Act in § 58.1-807 provides:

Except as hereinafter provided, on every contract or memorandum thereof relating to real or personal property admitted to record, a recordation tax is hereby levied at the rate of 25 cents on every \$100 or fraction thereof of the consideration or value contracted for.⁵

There are numerous exemptions to these taxes. Pertinent to your inquiry, the General Assembly has provided in § 58.1-811(A)(14) that:

[t]he taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate or lease of real estate . . . [w]hen the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means.⁶

“When the language of a statute is unambiguous, we are bound by the plain meaning of that language.”⁷ The clear and unambiguous language of § 58.1-811(A)(14) evidences that, so long as the grantor is an entity described therein,⁸ the taxes imposed by §§ 58.1-801 and 58.1-807 do not apply to the

¹ See VA. CODE ANN. §§ 58.1-800 through 58.1-817 (2013).

² See Va. Tax Comm’r Priv. Ltr. Rul., Pub. Doc. 92-234 (Nov. 9, 1992), available at <http://www.policylibrary.tax.virginia.gov/OTP/policy.nsf>. See also *Pocahontas Consol. Collieries Co., Inc. v. Commonwealth*, 113 Va. 108, 112, 73 S.E. 446, 448 (1912); *Fed. Land Bank v. Hubard*, 163 Va. 860, 864, 178 S.E. 16, 17 (1935).

³ Section 58.1-801(A) (2013).

⁴ See, e.g., *Fed. Land Bank v. Hubard*, 163 Va. 860, 864, 178 S.E. 16, 17 (1935); 1992 Op. Va. Att’y Gen. 185, 186-87; Va. Tax Comm’r Priv. Ltr. Rul., Pub. Doc. 95-146 (June 9, 1995), available at <http://www.policylibrary.tax.virginia.gov/OTP/policy.nsf>.

⁵ Section 58.1-807(A) (2013).

⁶ Section 58.1-811(A)(14) (2013).

⁷ *Kozmina v. Commonwealth*, 281 Va. 347, 349, 706 S.E.2d 860, 862 (2011) (quoting *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007)).

⁸ Whether Habitat for Humanity is an organization meeting the eligibility criteria set forth in § 58.1-811(A)(14) is a factual determination that must be made by the Clerk of Court. See, e.g., 1990 Op. Va. Att’y Gen. 255, 257

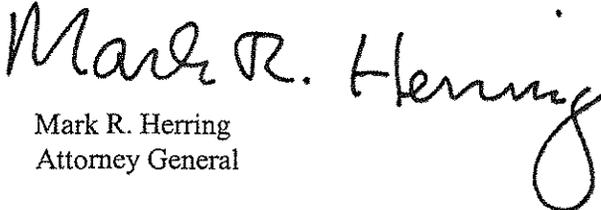
recordation of any deed or lease conveying real estate. In that circumstance, neither the grantee nor the grantor is required to pay these two particular taxes.⁹ Conversely, I conclude that if the grantor is not such an entity, then the statutory tax exemption is inapplicable to the recordation.

Conclusion

Accordingly, it is my opinion that, so long as the grantor is an organization that meets the criteria set forth in § 58.1-811(A)(14), a deed or contract offered for recording is exempt from the taxes enumerated in §§ 58.1-801 and 58.1-807, and neither the grantee nor the grantor is required to pay those taxes.

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General

(whether a university's land acquisition is "for educational purposes" and thus meets a recordation tax exemption under § 58.1-811(A)(1) is a question of fact that must be resolved by the Clerk as the local taxing official); 1984-85 Op. Va. Att'y Gen. 391, 392 (Clerk may require such documentation believed necessary to allow the Clerk to determine a partner's percentage participation in "profits and surplus" for purposes of verifying eligibility for the exemptions provided in § 58.1-811(A)(10) and (11)).

⁹ It should be noted that recordation taxes are imposed on the act of recording an instrument, not on a particular party to the instrument. This is so even when the legal incidence of the tax is statutorily prescribed, as is the case with the grantor's tax imposed by § 58.1-802. *See* 23 VA. ADMIN. CODE § 10-320-30(C) (2013). When the grantor of the instrument is a qualifying organization meeting the eligibility criteria set forth in § 58.1-811(A)(14), the act of recording is exempt from taxation, regardless of who bears the economic burden of the tax.