

TAXATION: STATE RECORDATION TAX — MISCELLANEOUS TAXES – RECORDATION TAX.

Subject credit line leasehold deed of trust presented for recordation in accordance with bankruptcy court's order confirming debtor's plan of reorganization is not subject to state and local recordation taxes.

The Honorable Sharron S. Mitchell
Clerk, Circuit Court of the City of Fredericksburg
December 21, 2001

You ask whether the recording of a "credit line leasehold deed of trust" in accordance with a debtor's plan of reorganization confirmed by the bankruptcy court is subject to state and local recordation taxes.¹

It is well-settled that a federal law supplants a conflicting state law, by virtue of the Supremacy Clause of the Constitution of the United States.² Under the federal Bankruptcy Code, "[t]he issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed³ ... , may not be taxed under any law imposing a stamp tax or similar tax."⁴ Thus, assuming that the deed of trust in question falls within these parameters and is presented for recording in accordance with a bankruptcy court's order of confirmation of a debtor's plan of reorganization, such deed of trust is not subject to a stamp tax or similar tax.

In determining whether recordation taxes fall within the Bankruptcy Code exemption, the Department of Taxation has repeatedly concluded that transfers of property pursuant to a properly confirmed plan of reorganization may not be taxed under any law imposing a stamp or similar tax, which includes a recordation tax.⁵ Although administrative interpretations are not necessarily controlling, great weight is to be given to the construction of a statute by a state official charged with its administration.⁶ In my opinion, therefore, the Bankruptcy Code exemption is applicable to the instrument in issue.⁷

¹See Va. Code Ann. tit. 58.1, ch. 8, §§ 58.1-800 to 58.1-816.1 (Michie Repl. Vol. 2000 & Supp. 2001) (governing state recordation tax); § 58.1-3800 (Michie Repl. Vol. 2000) (authorizing local recordation tax).

²U.S. Const. art. VI, cl. 2.; *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210-11 (1824).

³See 11 U.S.C.A. § 1129 (West 1993 & Supp. 2000) (outlining requirements for Chapter 11 bankruptcy plan of reorganization).

⁴11 U.S.C.A. § 1146(c) (West 1993).

⁵See 1986-1994 Va. Tax Rep. (CCH): Comm'r Rul. 92-174, ¶ 202-203 (Sept. 10, 1992); Comm'r Rul. 89-352, ¶ 201-854 (Dec. 20, 1989); Comm'r Rul. 88-271, ¶ 201-695 (Oct. 14, 1988); *accord* 1975-1976 Op. Va. Att'y Gen. 383, 384 (noting

that state recordation tax was designed to continue former federal documentary stamp tax).

⁶See *Forst v. Rockingham*, 222 Va. 270, 276, 279 S.E.2d 400, 403 (1981); 1993 Op. Va. Att'y Gen. 258, 259.

⁷*Accord In re NVR, LP*, 189 F.3d 442, 458 (4th Cir. 1999), *cert. denied*, 528 U.S. 1117 (2000) (holding that § 1146(c) grants recordation tax exemptions to property transfers occurring under confirmed plan after date of plan confirmation).

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