

Recordation Tax on Refinances of Security Interest Instruments Clarification Act of 2011

Before the Committee on Finance and Revenue

The Honorable Jack Evans, Chairman

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Room 412, John A. Wilson Building**



**Testimony of
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Good morning Chairman Evans and members of the Committee on Finance and Revenue. I am Natwar M. Gandhi, Chief Financial Officer of the District of Columbia. I am pleased to present testimony on Bill 19-371, the “Recordation Tax on Refinances of Security Interest Instruments Clarification Act of 2011.”

First of all, I wish to thank the Chairman for introducing this bill, which is needed in order to clarify ambiguities in the current law that have given rise to some controversy as to the proper application of the recordation tax to refinances of security interest instruments. Current law includes amendments made by the Tax Clarity Act of 2000 (D.C. Law 13-305). In general, these amendments (1) removed an express reference to the exemption for refinances of purchase money debt and (2) limited the exemption for refinances of instruments that had been previously subject to tax to cases where any tax due on the prior refinancing had been timely and properly paid. The legislative history of the Tax Clarity Act does not provide clear guidance as to the intended effect of these amendments, but only notes that these amendments were of a conforming nature. The fiscal impact statement prepared with respect to the Tax Clarity Act reflected no revenue effect attributable to these amendments.

Based on an initial reading of the amendments, staff at the Recorder of Deeds in 2001 taxed refinancings of purchase money instruments on the entire amount of

the new loan. Subsequently, during 2007, lawyers for the Office of Tax and Revenue reviewed the tax treatment of refinancings and concluded that the tax should be imposed only on the amount of any new debt that exceeded the amount of existing debt that had been subject to tax. This conclusion was implemented by the Recorder of Deeds and remains the basis for the current tax treatment of refinancings. In light of recent questions that have been raised, we carefully reviewed this interpretation of the law and have concluded that it is correct. Separately, we also understand that the Office of the Inspector General is reviewing mortgage refinances recorded at the Recorder of Deeds, and will provide their own independent analysis of these transactions. We are cooperating fully with this review.

In the interests of sound tax administration, the ambiguities introduced by the Tax Clarity Act should be clarified so that taxpayers can be assured that the appropriate amount of tax is being collected on the recordation of refinancings. The Office of the Chief Financial Officer believes that Bill 19-371 will accomplish this needed clarification.

In general, the Bill provides that, if an existing debt is refinanced, the recordation tax will apply only to the excess of the principal balance of the new debt over the principal balance of the existing debt, provided that the existing debt, or any prior

debt refinanced by the existing debt, was either (1) previously taxable, and the tax due was timely and properly paid, or (2) was exempt from recordation tax or not otherwise taxable. Under this language, it would be clear that a refinance would be taxable only to the extent of any new money advanced, provided that tax if owed on prior instruments has been paid.

The Bill also provides that any amendment, modification, or restatement of a security interest instrument shall be deemed a refinance of the entire amount owed, unless the amendment constitutes a supplemental deed. The recordation tax statute generally defines a supplemental deed as amending a prior deed without consideration, so the Bill would also provide clear rules as to which transactions constitute taxable refinances or exempt supplemental deeds within the scope of the tax statute.

The Bill provides that it will apply to instruments submitted for recordation on or after October 1, 2011. The Council may wish to extend the applicability of this statute to January 1, 2012, provided that an emergency is adopted before the new calendar year.

Since the Bill's introduction, both stakeholders in the land title industry and the Office of Tax and Revenue have suggested improvements to the Bill that would facilitate administration of the recordation tax. Briefly, the suggested changes

include inserting in existing law cross-references to the recordation surtax to facilitate awareness that the total tax rate imposed under the statute is 1.45%. Express reference to purchase money instruments has also been added to the provision dealing with exempt instruments so that there will be no doubt that the exemption of debt owed in a refinance of purchase money carries forward. Additionally, a one-year look-back provision has been added to the portion of the Bill dealing with recordation tax treatment of modifications to prevent avoidance of the tax and to close loopholes related to these transactions. We are recommending these changes so taxpayers will have clear guidance as to the tax treatment of these transactions.

Thank you, Chairman Evans, for the opportunity to comment on this Bill. I would be happy to answer any questions at this time.