



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Kenneth T. Cuccinelli, II  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

The Honorable Faye W. Mitchell  
Clerk of Court, Chesapeake Circuit Court  
307 Albemarle Drive, Suite 300A  
Chesapeake, Virginia 23322

Dear Ms. Mitchell:

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 upon grantees by § 58.1-801 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 grantees by § 58.1-801 of the *Code of Virginia*.

## Applicable Law and Discussion

The Virginia Recordation Tax Act<sup>1</sup> levies a tax on “every deed admitted to record, except a deed exempt from taxation by law.”<sup>2</sup> Previous opinions of this Office have noted, however, that “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>3</sup>

The United States Code provides Federal credit unions with a statutory exemption from taxation. Specifically, the United States Code states:

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,

<sup>1</sup> VA. CODE ANN. §§ 58.1-800 through 58.1-817 (2013).

<sup>2</sup> Section 58.1-801(A). See also § 58.1-802(A) (regarding tax to be paid by grantors).

<sup>3</sup> 2013 Op. Va. Att’y Gen. No. 13-010 at 1 (quoting 2012 Op. Va. Att’y Gen. 137 at 138), available at <http://www.oag.state.va.us/Opinions%20and%20Legal%20Resources/Opinions/2013opns/13-010%20Whittle.pdf>. See also 2003 Op. Va. Att’y Gen. 177, 179; 2002 Op. Va. Att’y Gen. 328, 329.

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>[4]</sup>

Congress therefore permits the taxation of real or tangible personal property held by Federal credit unions to the extent similar property is taxed, but otherwise exempts the Federal credit unions from "all taxation" by state and local governments.

The Virginia Administrative Code indicates that "[t]he recordation tax is not a tax on property but on civil privilege."<sup>5</sup> The Supreme Court of Virginia also has concluded that the recordation tax is "a tax upon a civil privilege, that is, for the privilege of availing . . . of the benefits and advantages of the registration laws of the State."<sup>6</sup> As such, the recordation tax does not fall within the bounds of the exception stated in 12 U.S.C. § 1768 that applies to state and local taxation of Federal credit unions' real and personal property.

Previous opinions of this Office have concluded that "when a federal statute prohibits all state or local taxation on an entity created by the federal government, except for taxation on that entity's real estate, the entity enjoys an exemption from the recordation tax wherever it is a principal to the transaction."<sup>7</sup> When acting as either a grantee or a grantor, Federal credit unions serve as principals to a transaction, and accordingly are exempt from Virginia's recordation tax.<sup>8</sup> Most recently, as noted in your request, an opinion of this Office determined that Federal credit unions are exempt from the recordation tax imposed on grantors by § 58.1-802.<sup>9</sup>

In conformity with this Office's prior opinions, 12 U.S.C. § 1768 must be interpreted as exempting Federal credit unions from the recordation tax imposed by § 58.1-801 when such entity is the grantee in the transaction.

### 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 grantees by § 58.1-801 of the *Code of Virginia*.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II  
Attorney General

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<sup>4</sup> 12 U.S.C. § 1768.

<sup>5</sup> 23 VA. ADMIN. CODE § 10-320-10.

<sup>6</sup> See *Pocahontas Consol. Collieries Co., Inc. v. Commonwealth*, 113 Va. 108, 112, 73 S.E. 446, 448 (1912). See also *Fed. Land Bank v. Hubbard*, 163 Va. 860, 864, 178 S.E. 16, 17 (1935).

<sup>7</sup> 2012 Op. Va. Att'y Gen. 137, 141. See also 1993 Op. Va. Att'y Gen. 260, 262.

<sup>8</sup> 2012 Op. Va. Att'y Gen. at 141.

<sup>9</sup> 2013 Op. Va. Att'y Gen. No. 13-010 at 1.