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May 7, 1980

Ms. Cindy Gist
Committee on Finance and Revenue
District of Columbia City Counsel
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Dear Ms. Gist:

I am writing on behalf of the Steering Committee of Division 15 (Real Estate and Housing) of the D.C. Bar, in connection with Titles I and IV of proposed Bill 3-285, the District of Columbia Revenue Act of 1980. Bill 3-285 was sent to us for comment by Mr. James Boyle, Chairman of Division 16 (Taxation) of the D.C. Bar, pursuant to the suggestion of members of the Finance and Revenue Committee when he testified on the bill on April 25.

We have had only a brief opportunity to review the Bill, but we would like to pass on some technical observations as to the language of the Bill.

In his April 22, 1980 cover letter to Chairman Dixon, Mayor Barry indicated his intent to impose a 1% real estate transfer tax on the seller of real property while retaining the current 1% deed recordation tax which is imposed upon the purchaser. Our review of the text of the Bill, however, suggests that an aggregate tax of at least 3%, and possibly 4%, would be imposed in the ordinary transaction.

The Bill would amend the Real Estate Deed Recordation Tax Act to impose a 1% recordation tax on construction loan deeds of trust and on "permanent loan deed(s) of trust or mortgage(s)." If this language is intended to cover all deeds of trust or mortgages on real property, the result of the section would be to impose a 2% recordation tax on the ordinary transaction: 1% on the recordation of the deed and 1% on the recordation of the deed

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of trust obtained in connection with the purchase money loan. However, the term "permanent loan deed of trust or mortgage" is defined to include only those deeds of trust which secure the same property as, and are between the same parties as were parties to, a construction deed of trust. In an ordinary real estate transaction, the purchase money loan obtained by the buyer is not between the same parties as a construction loan. Hence, such a loan would not be within the definition of "permanent loan deed of trust or mortgage" as used in the Bill.

If it is the intention of the Council to impose a 1% recordation tax on deeds of trust as well as on deeds, the language should be amended to clarify the definition of "permanent loan deed of trust or mortgage." However, as suggested below, the result of such a change would be to impose an aggregate of 4% tax on the ordinary real estate transaction. This does not seem to be the intent of either the Mayor or the Council. Accordingly, it would appear desirable to delete all references to construction or permanent loan deeds of trust or mortgages in Title I of the Bill.

Title IV of the Bill imposes a 1% Transfer Tax on each "transfer." "Transfer" is defined as the transfer of "any real property in the District of Columbia or any interest therein...." This definition would appear to include the transfer of an interest in real property to a mortgagee or a trustee under a deed of trust. Accordingly, Section 403 of the Bill would impose a 2% tax on the ordinary real estate transaction: 1% on the transfer of the property to the purchaser and 1% on the transfer of a security interest in the property to the lender or the lender's trustee.

When this transfer tax is added to the recordation tax that would be imposed on the same transaction by Title I of the Bill, at least a 3% tax is imposed upon the transaction: a 1% tax upon recordation of the deed; a 1% tax upon transfer of the property and a 1% tax upon transfer of the security interest. In addition, if a construction deed of trust is involved or if it is the intention of the draftsmen of Title I to cover all permanent deeds of trust or mortgages, an additional 1% tax would be paid upon the recordation of the deed of trust. This would result in an aggregate tax of 4% on the transaction.

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There may be other technical problems with the language of the Bill -- for example, the reference in Section 101(b) [last line] to "section 103(d) of this Act" is unclear since there is no section 103(d) in the Bill or in the Real Estate Deed Recordation Tax Act. However, in the limited time available to us, we have not been able to adequately review the text to identify such other problems as may exist.

We do hope that the language referred to above can be clarified so that the amount of tax imposed on each transaction will not be in doubt or subject to litigation. If we can be of any assistance in this connection, please let us know.

Sincerely yours,



Robert A. Wittie
for

Division 15 Steering Committee

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>cc: Division 15 Steering Committee Members