

**Government of the District of Columbia**

Office of the Chief Financial Officer

Office of Tax and Revenue

July 6, 2012

**OTR TAX NOTICE 2012-06**

*This Notice Replaces and Supersedes OTR Tax Notice 2012-01  
(dated January 6, 2012)*

**NOTICE REGARDING THE TAXATION OF  
INSTRUMENTS RELATING TO REFINANCES AND MODIFICATIONS**

This notice will summarize the District of Columbia recordation tax treatment of refinances and modifications of security interest instruments (*i.e.*, any document evidencing a security interest in real property).

Emergency legislation enacted June 19, 2012 made certain amendments to the District of Columbia Deed Recordation Tax Act concerning the treatment of refinances and modifications of security interest instruments. Fiscal Year 2013 Budget Support Emergency Act of 2012, subtitle L, title VII, D.C. Act 19-383. The provisions of this emergency legislation apply to documents presented for recordation beginning June 19, 2012. Although the emergency act will eventually expire, the treatment of refinances and modifications described in this notice will be continued pursuant to the corresponding provisions of the Fiscal Year 2013 Budget Support Act of 2012, subtitle L, title VII, D.C. Act 19-385.

**Refinances**

Under the applicable legislation, when any security interest instrument that reflects a refinance transaction is presented to the Recorder of Deeds (ROD) for recordation, such instrument shall be taxed on the excess of the principal (face) amount of the refinance instrument over the principal balance due on the existing debt under the prior security interest instrument. The principal balance of the existing debt is exempt from tax only to the extent that any tax due on the existing debt (including any prior debt that was previously refinanced by the existing debt) was paid or the existing debt (including prior debts) was exempt from taxation. If tax was due but not paid on the existing balance or any portion thereof, such balance or portion will be taxed when the refinance instrument is presented for recordation.

The foregoing tax shall not apply to transactions concerning certain residential property containing 5 dwelling units or less, and for which a Security Affidavit - Class 1, ROD Form 21, is on file; a security interest instrument concerning such property is fully exempt (*See* D.C. Official Code § 42-1102(21)).

A refinance generally consists of a new loan which is used to pay off and extinguish an existing loan (whether with the original or a new lender) that is secured by the same property (and additional property) as in the original loan. The sale or assignment of a security interest instrument from one lender to another on the secondary market, where there are no changes in the terms or conditions provided in the instrument and the borrower has taken no steps to refinance, shall not be considered a refinance.

### Modifications

The legislation further provides that, when a security interest instrument that reflects a modification, amendment or restatement of an instrument is presented for recordation, it shall be taxed on the excess of the principal (face) amount of the modified instrument (including amounts paid to the borrower on the existing security interest instrument during the preceding 12 months) over the principal balance due on the existing debt (without including any such payments). The principal balance of the existing debt is exempt from tax only to the extent that any tax due on the existing debt (including any prior debt that was previously refinanced by the existing debt) was paid or the existing debt (including prior debts) was exempt from taxation. If tax was due but not paid on the existing balance or any portion thereof, such balance or portion will be taxed when the modified instrument is presented for recordation.

A modification generally occurs when the terms of a pre-existing security interest instrument are changed in some manner, but the obligation imposed by the preexisting instrument is preserved and the loan secured by that instrument it is not paid off, extinguished or retired. A supplemental instrument which modifies a prior recorded instrument without additional consideration is not taxed. (*See* D.C. Official Code § 42-1102(6)).

### Substantiation of Taxable Amount and Entitlement to Exemption

To assist ROD in computing the taxable amount, a statement must be provided as an attachment to the Form FP 7/C, Real Property Recordation and Transfer Tax Form, showing the outstanding principal balance of the existing debt, as well as the principal (face) amount of the debt as refinanced or modified. In the case of modifications, the statement must show the amount of any funds paid to the borrower during the 12 months preceding the date that the modification is submitted for recordation and the outstanding principal amount of the existing debt without including those amounts. If no such payments were made, a statement to that effect is to be included in the attachment. All supporting Forms HUD-1, or, if unavailable, loan payoff statements, must accompany the statement.

In addition, to substantiate and claim credits for any previously paid taxes or exemptions on prior security interest instruments with respect to refinances or modifications of debts that were secured by such instruments, the statement shall also list the instrument number, date of recordation, the prior exemption claimed (if applicable), and (if not exempted) the amount of recordation tax previously paid as indicated by the stamp on the prior instrument. In addition, the security instrument shall recite on its face that it is a refinance or modification deed of trust (as applicable), and make reference to the instrument or document number of the prior instrument being refinanced or modified.

Tax will be imposed on the outstanding balance of the existing debt to the extent that a claim of credit or exemption is not properly substantiated.

Due to the enactment of legislation specifically addressing the tax treatment of refinances and modifications, any guidance previously issued by the Office of Tax and Revenue on these subjects (including OTR Tax Notice 2012-01) is hereby superseded.

Please direct all questions or comments related to this Notice to Ida Williams, Recorder of Deeds, at 1101 4th Street, SW, 5th Floor, Washington, DC 20024, or call (202) 442-8610.