

1975 S.C. Op. Atty. Gen. 103 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4031, 1975 WL 22328

Office of the Attorney General

State of South Carolina

Opinion No. 4031

May 26, 1975

***1 Section 65–588 does not impose a tax upon the assignment of a tenant's interest in property.**

Clerk of Court
York, South Carolina

Reference is made to your letter of May 20, 1975, requesting an opinion whether or not documentary stamp taxes are required upon a document executed by a tenant assigning the tenant's interest in leased property as security for the repayment of a loan.

Section 65–688 of the Code of Laws provided for documentary stamp tax upon instruments evidencing a debt. Section 65–688.1 provides for documentary stamp tax upon leases. The Court has said that this tax is upon the creation or execution of instruments. Any doubt as to the taxability of documents is to be resolved against the tax. *Graniteville Mfg. Co. v. Query, et al.*, 44 F. 2d 64; *South Carolina Electric & Gas Company v. Pinckney*, 217 S. C. 407, 60 S. E. 2d 851; *Investors Premium Corp. v. South Carolina Tax Commission*, 260 S. C. 13, 193 S. E. 2d 642.

Section 65–688.1 imposes the documentary stamp tax upon a lease. A lease is defined in Black's Law Dictionary as 'any instrument that gives rise to a relationship between landlord and tenant.' In our opinion the assignment of the tenant's interest under an existing lease is not an instrument subject to the tax. The assignment creates no new obligation of landlord or tenant. In addition, where the assignment is executed solely as security for a debt evidenced by another instrument subject to tax, no new obligation is created.

Further, Section 65–688 does not specifically tax leases. Insofar as this section imposes a tax upon assignments the tax is limited to assignments of wages, salaries and other similar forms or sources in compensation. Therefore, it is the opinion of this office that Section 65–688 does not impose a tax upon an assignment of a tenant's interest in property.

It is therefore our conclusion that an instrument assigning a tenant's interest in property held under a lease is not subject to the documentary stamp tax imposed by either Section 65–688 or Section 65–688.1.

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