

1974 WL 27899 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 5, 1974

\*1 The execution of a mortgage in exchange for the release of pledged stock is subject to the tax imposed by Section 65-688.

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Dear Mr. McLeod:

Your letter dated July 25, 1974, to the South Carolina Tax Commission has been given to this office for attention and reply. You inquire about the necessity of placing documentary stamps on a mortgage of real estate given as security for a series of promissory notes previously executed by a mortgagor. The notes are payable to a local bank, and, previous to the mortgage were secured by stock in other banks. Each of the notes bear appropriate stamps.

Section 65-688 of the 1962 Code of Laws, as last amended in 1974, provides for the tax upon mortgages and reads in part:

'The tax shall be \* \* \* on the following:

(c) Mortgages executed within the State and recorded within the State.'

[Textron, Inc. v. Livingston](#), 244 S. C. 380, 137 S. E. 2d 267, the Court held the liability to pay stamp taxes, and the amount thereof, as a general rule to be determinable from the form and face of the instrument in question, citing the cases of [Willcuts v. Investors' Syndicate](#), 8 Cir., 57 F.2d 811, [United States v. Isham](#), 17 Wall. 496, 21 L.Ed. 728. From the last case the Court quoted the following:

'It is not permissible to the courts, not is it required of individuals who use the instrument in their business, to inquire beyond the face of the paper. Whatever upon its face it purports to be, that it is for the purpose of ascertaining the stamp duty.'

In [Investors Premium Corporation v. South Carolina Tax Commission](#), 260 S. C. 13, 193 S. E. 2d 642, another case dealing with documentary stamp tax liability, the following rule of statutory construction was stated:

'In construing a statute, the language should be given its ordinary and popular significance without resort to subtle and forced construction for the purpose of limiting its operation. [Martin v. Nationwide Mut. Ins. Co.](#), 256 S. C. 577, 183 S. E. 2d 451 (1971); [Textron](#), supra.'

The aforementioned statute taxes mortgages which secure an indebtedness which is evidenced by a promissory note. The note then secured is specifically exempted from the tax if it is executed contemporaneously with the mortgage. Subsection (a) of the 1974 amendment provides both for the tax upon notes and the exemption.

'The tax shall be \* \* \* on the following:

(a) Negotiable and non-negotiable notes, except bank notes issued for circulation and notes secured by mortgages which are taxable hereunder.'

In the situation at hand, we understand that the mortgagor executed the mortgage in consideration of the release of certain stock previously pledged to the repayment of notes. This exchange occurred subsequent to the original transaction. It is our opinion that the mortgage is taxable. In the cases of [S. C. Electric and Gas Co. v. Pinckney](#), 217 S. C. 407, 60 S. E. 2d 851, and [Graniteville Mfg. Co. v. Query, et al.](#), 44 F. 2d 64, the Court held the documentary tax to be a tax upon the creation of a taxable instrument, laid upon the taxable document. Accordingly, we advise that documentary stamps should be affixed to the mortgage.

\*2 If we can be of further assistance, please advise.

Yours very truly,

G. Lewis Argoe, Jr.  
Assistant Attorney General

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