

1973 S.C. Op. Atty. Gen. 101 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3501, 1973 WL 20962

Office of the Attorney General

State of South Carolina

Opinion No. 3501

March 30, 1973

***1 The consideration received when property is transferred to a partnership in exchange for a partnership interest is the fair market value of the property transferred.**

Director
License Tax Division
South Carolina Tax Commission

This is in reply to your request for the opinion of this office with regard to an inquiry which you received on March 27, 1973, concerning the amount of documentary stamp taxes which should be affixed to certain deeds under the following circumstances:

A owns a tract of land (Blackacre) which has a market value of \$10,000 for which he paid \$1,000. B owns a tract of land (Whiteacre) which also has a market value of \$10,000 for which B paid \$3,000. A and B form a partnership and transfer the properties to the partnership in exchange for a 50% partnership interest for each.

An opinion of this office dated April 7, 1970, held that a transfer of realty by an individual to a partnership is a conveyance subject to the South Carolina documentary stamp tax imposed under Section 65–689 of the Code. That opinion noted that the South Carolina Act is substantially identical to the now repealed Federal Act, 28 U.S.C.A., Section 4361. Section 47.4361–2(a) (12) of the Regulations promulgated under the Federal Act had specifically provided for a tax on such a transfer. The opinion, however, did not deal with the question of the amount of tax to be imposed.

Section 65–689 bases the amount of the tax on ‘the consideration or value of the interest or property conveyed’. The Regulations under the Federal Act provided that the rate of the Federal tax was to be based on the ‘consideration paid for, or the net value of, the realty conveyed’. See Section 47.4361–1(b) of the Federal Excise Tax Regulations.

In the case of *Carpenter v. White*, 80 F. 2d 145, the Court of Appeals held that deeds to a business trust, solely in return for shares issued by the trust, were conveyances subject to the Federal documentary stamp tax. The Commissioner had ‘imposed taxes to the full value of the property conveyed’. The case at hand is analogous in that an interest in the partnership is received in exchange for the properties conveyed.

It is, therefore, the opinion of this office that the amount of the documentary stamp taxes due on the conveyances to the partnership should be based on the fair market value of the properties conveyed.

John C. von Lehe
Assistant Attorney General
South Carolina Tax Commission

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