

1981 S.C. Op. Atty. Gen. 47 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-28, 1981 WL 96554

Office of the Attorney General

State of South Carolina

Opinion No. 81-28

March 25, 1981

***1 SUBJECT: Documentary Stamp Tax—Taxability of Contracts for Sale, Agreement for Deeds, and Other Similar Documents.**

Contracts for sale, agreements for deeds, and other similar documents are subject to documentary stamp taxation as written obligations to pay money if such documents create a personal liability in the purchaser for the purchase price.

TO: Mr. J. W. Lawson
Director
License Tax Division
South Carolina Tax Commission

QUESTION:

Does § 12–21–360 of the Code of Laws of South Carolina 1976, as amended, relating to the documentary stamp tax on written obligations to pay money, apply to instruments buying and selling realty over a designated term with periodic payments of the sales price being made prior to actual transfer of title?

APPLICABLE LAW:

§ 12–21–360(b), Code of Laws of South Carolina, 1976, as amended.

DISCUSSION:

Section 12–21–360(b) provides as follows:

‘The tax shall be four cents for a sum not exceeding one hundred dollars consideration, and for each one hundred dollars, or fractional part thereof, four cents on the following:

(b) written obligations to pay money, except as may otherwise be provided for in this chapter.’

The courts of South Carolina have had little opportunity to consider § 12–21–360(b) and its application to contracts for sales, agreements for deeds and other similar documents. Florida, however, has a statute similar to § 12–21–360(b) and its courts have been confronted with this issue on several occasions. In discussing one particular agreement for deed, the Florida Supreme Court in [State v. Green](#), 132 So.2d 761 (1961), noted the general rule by stating:

‘* * *. Under no circumstances could the agreement for deed be construed as an ‘obligation to pay money’, because Section 7 thereof, among other things, provides that it impose no personal liability ‘as against the buyer or any subsequent purchases from the buyer, or any beneficiary from whom they may be acting, it being the understanding of the parties that the seller will look only to the land itself for payment of the balance of the purchase price.’

The general rule appears to be that a document creating a personal liability in the purchaser for the purchase price, establishes a written obligation to pay money and thus subjects the document to taxation. Conversely, if the document limits the seller solely to the land for payment upon the purchaser's default, a written obligation to pay money is not established and the document is not taxable.

CONCLUSION:

Section 12-21-360(b) applies to contracts for sale, agreements for deeds and other similar documents when such documents create a personal liability in the purchaser for the purchase price.

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