

1976 WL 30681 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 23, 1976

*1 Deeds of real estate to the United States Postal Service do not require documentary stamps under Sections 65-681 and 65-689.

Except in counties where proration statutes are provided, property transferred to the United States after December 31 preceding the tax year and before September 30 of the tax year is not subject to ad valorem taxes.

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QUESTIONS

1. Are documentary stamps required upon a deed of real estate to the United States Postal Service?
2. Are ad valorem taxes for 1976 chargeable upon property which the United States Postal Service has acquired since January 1?

STATUTES

Sections 65-681 and 65-689 of the Code of Laws of South Carolina, 1962, as amended; Section 63-1522(17), Code of Laws of South Carolina, 1962.

DISCUSSION

The United States Postal Service is an independent establishment of the Executive Branch of the Government of the United States. [39 U.S.C.A. 201](#). All property of the Postal Service is to be taken by the Postmaster General on behalf of the United States. [39 U.S.C.A., Section 2111](#). Post Office of the United States have been recognized as needful buildings within the [United States Constitution, Article 1, Section 8, Clause 17](#). [Battie v. United States](#), 28 S. Ct. 422.

QUESTION 1. The tax upon conveyances is provided for in Sections 65-681 and 65-689 of the Code of Laws. Exempted from the tax are deeds to the State of South Carolina and to its lesser political subdivisions when such deeds transfer property for highway or other public purposes.

In the case of [United States v. Department of Revenue of the State of Illinois](#), 191 F. Supp. 723, vacated at 368 U. S. 33, 82 S. Ct. 146, on remand [202 F. Supp. 757](#), affirmed [371 U. S. 21](#), 83 S. Ct. 117, the Court found unconstitutional as discriminatory a State statute that exempted from tax sales made to the State and other lesser political subdivisions, but which did not provide a similar exemption for sales made to the United States. This was the conclusion of the Supreme Court of Illinois in an unreported decision, [Holland Coal Co. v. Isaacs](#). See also [United States, et al. v. City of Detroit](#), 355 U. S. 466, 78 S. Ct. 474, 2 L. Ed. 2d 424 and [Moses Lake Homes, Inc., et al. v. Grant County](#), 365 U. S. 744, 81 S. Ct. 870, 6 L. Ed. 2d 66, holding that a state may not discriminate against the Federal Government. This principle must be considered together with the well-accepted principle that a state has no authority to impose a direct tax upon the United States.

In the Illinois case, the courts enjoined the collection of all taxes during the period when the State of Illinois did not assess or collect any taxes with respect to sales to the State of Illinois, its agencies or political subdivisions. It is the opinion of this office that a construction of Sections 65-681 and 65-689 that would impose a documentary stamp tax upon a deed of property to the United States Postal Service would constitute a discriminatory tax which is invalid and unconstitutional.

*2 Further support for this conclusion can be found in the case of [Federal Land Bank of New Orleans v. Crosland](#), 261 U. S. 374, 43 S. Ct. 385, which stated that a mortgage given to a Federal Land Bank was an instrument of the Government of the United States. As such the Land Bank could not be required to affix revenue stamps to the mortgage as the same would constitute a tax against the United States. The Court followed this decision in [Pittman v. Homeowners Loan Corporation](#), 308 U. S. 21, 60 S. Ct. 15, and held that a mortgage given to secure a home loan constitutes an integral part of the lending operation authorized under the Home Owners Loan Act of 1933, 12 U.S.C.A., Section 1461. The tax thereon was prohibited.

QUESTION 2. Property owned exclusively by the United States is exempt from ad valorem taxes under the provisions of Section 65-1522(17), which states:

'The following property shall be exempt from taxation, to wit:
(17) * * * All property owned exclusively by the United States * * *.'

This office has consistently advised that the liability for ad valorem taxes on taxable property generally is upon the owner of the property as of December 31 preceding the tax year. We have stated further that without specific authority providing for the proration of taxes the entire tax liability is that of the owner as of this date. See 1973 OAG No. 3654, page 348.

Proration of taxes has been provided for in Orangeburg, Chesterfield, Kershaw, Charleston and Richland Counties where property is transferred to the United States. In all other counties it has been stated that taxes cannot be charged against property transferred to the United States after December 31 and before September 30 of the tax year, the date generally considered to be the date when property taxes by law become a charge specifically against property. See [Myrtle Beach v. Holliday](#), 203 S. C. 25, 26 S. E. 2d 12.

CONCLUSIONS

Sections 65-681 and 65-689 do not authorize the taxation of deeds to the United States Postal Service, therefore, documentary stamps are not required upon deeds to the Postal Service.

Except in counties where proration statutes are provided, property transferred to the United States after December 31 preceding the tax year and before September 30 of the tax year is not subject to ad valorem taxes as the same comes within the exemption of Section 65-1522(17) of the South Carolina Code.

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