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Office of the Attorney General

State of South Carolina

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*1 A deed to a private individual who purchases at a foreclosure sale is subject to documentary stamp taxes when the mortgagee is the Federal Government.

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QUESTION

Is a deed to a private individual who purchases at a foreclosure sale subject to documentary stamp taxes when the mortgagee is the Federal government?

STATUTE

Section 65-681 of the South Carolina Code.

DISCUSSION

There is no specific South Carolina statutory exemption relating to the Federal government in this area. There is a specific exemption for certain governmental obligations such as notes and bonds. See Section 65-691. (Also, Section 65-689 of the Code as amended at page 94 of the current supplement provides an exemption for deeds to the State of South Carolina or its subdivisions.) However, this office has issued numerous opinions to the effect that if the liability for the tax falls on the Federal government, the tax is not imposed. See opinions of this office dated March 17, 1966; January 3, 1968 and October 7, 1968. These opinions are based on the doctrine of federal immunity from state taxation. See [Federal Land Bank of New Orleans v. Crosland](#), 261 U. S. 374, 43 S. Ct. 285.

In the situation you describe, we assume that the Federal government foreclosed its mortgage against property owned by a private individual to whom it had made a loan and that another private individual purchased the property at the foreclosure sale. The deed to the purchaser is being executed by a federal marshall. Under the circumstances, the documentary stamp tax is not imposed on the Federal government and the doctrine of intergovernmental immunity does not apply. See [Blackmon v. Nichols, Trustee](#), 494 F. 2d 1194, cited in a recent opinion of this office dated October 10, 1975. That opinion states that a deed from a trustee in bankruptcy is required to have state and county documentary stamps. A copy is enclosed.

CONCLUSION

There being no specific statutory exemption or prohibition to taxation, the tax imposed by Section 65-681 of the Code is applicable to a deed to a purchaser at a foreclosure sale at which the Federal government is the holder of the mortgage.

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