

1972 WL 26147 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 31, 1972

*1 No tax is imposed on a deed conveying real estate, without consideration, from a partnership to a partner in complete liquidation of the partnership.

Mr. J. W. Lawson
Director
License Tax Division
South Carolina Tax Commission
Columbia, South Carolina

Dear Mr. Lawson:

You have requested the opinion of this office on whether the South Carolina Documentary Stamp Tax is imposed under the following fact situation:

Two corporations, 'A' and 'B', have formed a partnership known as 'C'. Legal title to real estate is held in the name of the partnership. The partnership is dissolved by the express will of partner 'B' which withdraws its capital. In winding up its affairs, the partnership executes a general warranty deed conveying the real estate to 'A'.

The question posed is whether or not documentary stamps should be affixed to the deed.

Although not completely free from doubt, it appears that two corporations can form a partnership under the laws of South Carolina. The definition of the word 'person' contained in the Uniform Partnership Act, adopted in South Carolina as Act No. 742, Acts and Joint Resolutions of 1950 at page 1841 was omitted when this Act was codified as Sections 52-1, et seq. of the 1952 Code. However, it appears that the result is attainable under the South Carolina Business Corporation Act. See Section 12-12.2(14)(A) and (16) of the 1962 Code. Also, there is no question that real estate can be held in the name of and conveyed to or by a partnership. See Section 53-22 of the Code.

The South Carolina Documentary Stamp Tax is imposed by Section 65-681 of the Code. Section 65-689 of the Act applies to conveyances (including deeds) whereby any realty sold is transferred. There are no South Carolina cases in point. However, the South Carolina Act is similar to the now repealed Federal Documentary Stamp Act. The Federal Act also applied to 'realty sold'. See Section 3482 of the 1939 Internal Revenue Code. The federal cases decided under that Act make it clear that for realty to be sold there must be consideration given by the purchaser. See the following cases involving the conveyance of realty to a parent corporation by a liquidating subsidiary: [Socony-Vacuum Oil Co. v. Sheehan](#), 50 F. Supp. 1010; [Tide Water Associated Oil Co. v. Jones](#), 57 F. Supp. 482; [R. H. Macy & Co., Inc. v. United States](#), 107 F. Supp. 883; [Greyhound Corp. v. United States](#), 208 F. 2d 858. There is also an opinion of this office which holds that the transfer of real estate by a liquidating corporation to its stockholders with no other consideration than the cancellation of the stock is not subject to the Documentary Stamp Tax. See 1966-67 OAG NO. 2215, page 9.

It is assumed under the facts that the partnership 'C' which conveys the real estate to the corporate partner 'A' does so free from any consideration. In this regard, it is also assumed that the partnership debts have been paid and that they are not assumed by 'A'. Under these facts there is no consideration, and therefore Section 65-689 of the Documentary Stamp Act would not apply to this transfer.

Yours very truly,

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

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