1982 S.C. Op. Atty. Gen. 26 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-24, 1982 WL 154994

Office of the Attorney General

State of South Carolina
Opinion No. 82-24
April 14, 1982

***1 SUBJECT: Taxation—Documentary Stamp Tax On Revolving Lines Of Credit.**
The execution of a line of credit agreement and a Master Note does not create a taxable document since such does not include an unconditional promise to pay a sum certain; however, each advance of funds to the customer creates a taxable note since such advance, provides an unconditional promise to pay a sum certain.

TO: Mr. J. W. Lawson
Director
License Tax Division

QUESTION:

Is a Master Note subject to documentary stamp tax at the time of execution of the document or at the time funds are advanced pursuant to the terms of the document?

STATUTE:

Sections 12–21–310 and 12–21–360, South Carolina Code of Laws, 1976, as amended.

DISCUSSION:

Section 12–21–310 levies, in respect to the instruments mentioned and described in § 12–21–360, the tax imposed by § 12–21–360. Section 12–21–360 imposes a tax of four cents per one hundred dollars consideration on notes and written obligations to pay money. When lending institutions execute agreements which extend lines of credit to their customers, many require the execution of a 'Master Note'. The contract entered into by the parties thus consists of two documents, the Master Note the line of credit agreement. The documents must be construed together to determine the intent of the parties.

Commercial Credit Co. v. Hofferbert, 93 F. Supp. 562, 564 and Belden Mfg. Co. v. Jarecki, 192 F. 2d 211, 213. From the reading of the documents, it is clear that the institutions have agreed to make loans whenever demanded by the customer with the interest rate being prime plus a specified percentage. There is normally no advance at the time of executing the line of credit agreement and Master Note and such documents establish a maximum loan balance that may be outstanding at any time under the agreement. The questions are whether these documents are taxable and whether any tax is due at the time advances are made.

These documents are not taxable at the time they are executed but are taxable when funds are advanced. The established law is that the documentary stamp tax is characterized as being a tax levied in relation to an act done within the State in making an instrument identified as taxable under § 12–21–360. South Carolina Electric and Gas Co. v. Pickney, 217 S. C. 407, 60 S. E. 2d 851; Investors Premium Corp. v. South Carolina Tax Commission, 260 S. C. 13, 193 S. E. 2d 642; Graniteville Mfg. Co. v. Query, 44 F. 2d 64, affirmed 283 U. S. 376.

A note is a taxable instrument under § 12–21–360. In the documents herein considered, the parties, at the time of execution, do not create a note since a note requires an unconditional promise to pay a certain sum of money at a future time. See Words and Phrases, Notes, Volume 28A. The customer does not obligate himself, i. e., does not incur any debt, since he does not give an unconditional promise to pay. The promise to pay is conditioned upon the customer demanding and receiving funds pursuant to the agreement. Additionally, there is no sum certain at the time the agreement is executed, but rather only a maximum amount which may be outstanding. As such, the documents as executed do not specify an amount for which a debt is incurred. Thus, no notice is created and, therefore, no tax is imposed at the time of execution of the documents.

***2** However, taxable notes are created when funds are advanced to the customer. The advance of funds gives life and completion to the Master Note by providing an unconditional promise to pay and by establishing a sum certain for which the borrower becomes obligated to pay. After the initial advance, it is not uncommon for the borrower to receive additional advances. Each such advance generates a documentary stamp tax since it creates a note by supplying the required elements of an unconditional promise to pay and a sum certain. The parties manifest their intent to a series of loans under the line of credit agreement and the Master Note is in effect by agreement re-executed when each advance is made. This is the intent of the parties and such is the form with which they have chosen to operate. The tax is not defeated merely because a new piece of paper is not generated where the parties have agreed that previously executed documents shall serve as the 'note' for numerous loans. The advance of funds creates a taxable document by reliance of the parties upon the Master Note as being a note evidencing each advance.

Further support for the conclusion that each advance gives rise to the documentary stamp tax is found in the language of § 12–21–360. Such section imposes the tax upon notes and written obligations to pay money with the measure of the tax being the consideration under the taxable document. Each advance creates a note and each advance supplies the consideration flowing from that note. The Master Note plus the advance gives a taxable instrument with the measure of the tax being the consideration passing under the note. Thus, each advance gives rise to taxable consideration.

CONCLUSION:

The execution of a line of credit agreement and a Master Note does not create a taxable document since such does not include an unconditional promise to pay a sum certain; however, each advance of funds to the customer creates a taxable note since such advance provides an unconditional promise to pay a sum certain.

Ray N. Stevens
Assistant Attorney General

1982 S.C. Op. Atty. Gen. 26 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-24, 1982 WL 154994