

1980 S.C. Op. Atty. Gen. 99 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-50, 1980 WL 81933

Office of the Attorney General

State of South Carolina

Opinion No. 80-50

May 12, 1980

**\*1 SUBJECT: Documentary Stamp Tax—Taxability of Contracts to Sell Realty or Bonds for Deed or Title.**

A contract whereby a person agrees to pay a certain amount over a period of time for the purchase of realty and the owner is upon the completion of such payments to execute a deed is not subject to the documentary stamp tax imposed by § 12-21-380.

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

**QUESTION:**

Is a contract whereby a person agrees to pay a certain amount over a time period as the purchase price of realty and the owner thereof is to then execute a deed subject to the documentary stamp tax imposed by § 12-21-380?

**APPLICABLE LAW:**

§ 12-21-380, 1976 Code of Laws.

**DISCUSSION:**

The statute subjects to taxation:

‘A deed, instrument or writing whereby any lands, tenements or other realty sold shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or any other person by his direction \* \* \*.’

The question is thus whether the realty has been ‘sold’ by the terms of the contract, bond for deed or bond for title. Our court in the case of [Wahl v. Hutto](#), 249 S.C. 500, 155 S.E.2d 1, held:

‘It has been soundly held that a bond for title is but an agreement to make title in the future upon the performance of certain conditions, such being an executory or incomplete sale. \* \* \*. A bond for title is not distinguishable in its ordinary operation and effect from a simple agreement for the same purpose.’ (See also Words and Phrases, [Contract for Sale of Real Estate](#), [Bond for Deed](#) and [Bond for Title](#).)

Doubt in whether the agreement is subject to taxation is resolved against such taxation. [Clark v. South Carolina Tax Commission](#), 259 S.C. 161, 191 S.E. 223, [Ryder Truck Lines, Inc. v. South Carolina Tax Commission](#), 248 S.C. 148, 149 S.E.2d 435.

Here there is no realty sold and hence no instrument that would be taxable under § 12-21-380.

**CONCLUSION:**

A contract whereby a person agrees to pay a certain amount over a period of time for the purchase of realty and the owner is upon the completion of such payments to execute a deed is not subject to the documentary stamp tax imposed by § 12-21-380.

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