

1977 S.C. Op. Atty. Gen. 177 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-237, 1977 WL 24579

Office of the Attorney General

State of South Carolina

Opinion No. 77-237

August 1, 1977

**\*1** A contract entered into as a part of an employment agreement between the employer and employee that states that the employer shall sell the employee's house and pay to the employee X number of dollars upon execution of the contract, such being the difference between the appraisal value of the house and the balance owed on the mortgage, does not require documentary stamps.

TO: Honorable O.V. Player, Jr.

Clerk of Court  
Sumter County

#### QUESTION

You have required

Is a contract entered into as a part of an employment agreement between the employer and employee that states that the employer shall sell the employee's house and pay to the employee X number of dollars upon execution of the contract, such being the difference between the appraisal value of the house and the balance owed on the mortgage, required to have documentary stamps?

#### STATUTES

Section 12-21-360, 1976 Code of Laws.

#### DISCUSSION

We have reviewed the contract at the request of the License Tax Division of the South Carolina Tax Commission and have found the primary issue to be as stated above. The contract in question clearly creates no new obligation that is taxable within the meaning of the above section. It is an obligation to sell a house and apply the proceeds. It is well settled that the substance of a transaction must govern and take precedence over form. [Beard v. South Carolina Tax Commission, 230 S. C. 357, 95 S. E. 2d 628 \(1956\)](#). The form of the instrument here however does not create a new obligation of the kind that is rendered taxable is Section 12-21-360.

#### CONCLUSION

The contract here in issue does not require documentary stamps.

G. Lawis Argoe, Jr.  
Assistant Attorney General

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