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Office of the Attorney General

State of South Carolina

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*1 A mortgage given in consideration of the satisfaction of a mortgage on other property is subject to documentary stamp tax under Sections 65-681 and 65-688.

Mr. J. W. Lawson
Director
License Tax Division

QUESTION

Are documentary stamps required upon a mortgage that is given in consideration of the satisfaction of an existing mortgage on other property?

STATUTES

Sections 65-681 and 65-688, Code of Laws of South Carolina, 1962.

DISCUSSION

The documentary stamp tax on mortgage is provided for in Article 2 of Chapter 11 of Title 65 of the South Carolina Code of Laws. Section 65-681 is the general imposition section under which all documentary stamp taxes are imposed and Section 65-688 relates specifically to the taxation of mortgages. The particular provisions of Section 65-688, relating to mortgages, are as follows:

'The tax shall be four cents for a sum not exceeding one hundred dollars consideration, and for each one hundred dollars, or fractional part thereof, four cents on the following:

(c) Mortgages executed within the State or recorded within the State.

Provided, however, that the tax upon a mortgage that secures future advances shall be upon the stated amount of the note executed contemporaneously with such mortgage and secured thereby, rather than upon the maximum principal amount as stated in such mortgage. Notes or other written obligations of indebtedness executed in this State, or secured by a mortgage previously executed or recorded in this State, shall be taxed upon the execution; and documentary stamps shall be affixed evidencing the additional advance.'

The liability to pay stamp taxes and the amounts thereof have been held as a general rule to be determinable from the form and the face of the instrument in question. [Textron, Inc. v. Livingston](#), 244 S. C. 380, 137 S. E. 2d 267. In arriving at this rule the Supreme Court quoted from cases of [Willcuts v. Investors' Syndicate](#), 8 Cir., 57 F. 2d 811; [United States v. Isham](#), 17 Wall. 496, 21 L. Ed. 728. In the [Isham](#) case the Court stated the following:

'It is not permissible to the courts, nor is it required of individuals who use the instrument in their business, to inquire beyond the face of the paper. Whatever upon its face it purports to be, that it is for the purpose of ascertaining the stamp duty.'

The most recent case in South Carolina dealing with documentary stamp taxes was the case of [Investors Premium Corporation v. South Carolina Tax Commission](#), 260 S. C. 13, 193 S. E. 2d 642. The Court stated the following rule of statutory construction in its decision:

‘In construing a statute, the language should be given its ordinary and popular significance without resort to subtle and forced construction for the purpose of limiting its operation. [Martin v. Nationwide Mut. Ins. Co.](#), 256 S. C. 577, 183 S. E. 2d 451 (1971); *Textron*, *supra*.’

It is our understanding in regard to the question that the terms of the secured indebtedness are not changed in any respect. In an opinion dated August 5, 1974, this office concluded that a mortgage given in exchange for the release of pledged stock must be stamped. The rationale given for this conclusion is applicable in this question. It is our opinion therefore, that a mortgage given in exchange for the satisfaction of a mortgage on other property must be stamped.

*2 This may be analogous to a deed conveying property in exchange for other property which has always been held to be a transaction subject to documentary stamp taxes under provisions of Section 65-689, a related documentary stamp taxing section. Support for this conclusion, as for the question herein, is found, in addition to the above cases, in the cases of [S. C. Electric and Gas Co. v. Pinckney](#), 217 S. C. 407, 60 S. E. 2d 851, and [Graniteville Mfg. Co. v. Query, et al.](#), 44 F. 2d 64, wherein the Court has held the documentary stamp tax to be on the creation of a taxable instrument and laid upon such instrument.

CONCLUSION

It is our conclusion therefore, that a mortgage given in exchange for the satisfaction of a mortgage on other property is a taxable mortgage.

G. Lewis Argoe, Jr.
Assistant Attorney General

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