

1975 S.C. Op. Atty. Gen. 16 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3935, 1975 WL 22233

Office of the Attorney General

State of South Carolina

Opinion No. 3935

January 16, 1975

\*1 The documentary stamp tax is imposed on an original issue of stock when the corporate action authorizing the issuance takes place in this state.

Mr. J. W. Lawson

Director

License Tax Division

South Carolina Tax Commission

Columbia, South Carolina 29214

Dear Mr. Lawson:

This is in reply to your request for an opinion of this office on whether an original issue of stock, under the following circumstances, is subject to the documentary stamp tax imposed by Sections 65-681 and 65-683 of the Code. The corporation was organized under the laws of Minnesota, however, the corporate headquarters is located in South Carolina where the director and/or shareholder meetings authorizing the issuance are held. The stock was issued to South Carolina residents. The question has arisen because the corporation employs a Minnesota transfer agent and registrar which handles all administrative and mechanical matters relating to the issuance of the stock, including mailing of the certificates.

In the case of [South Carolina Electric & Gas Co. v. Pinckney](#), 217 S. C. 407, 60 S. E. 2d 851 (1950), the question was whether bonds executed in New York and delivered to purchasers located there could be taxed. The Court stated that no act relating to the creation of the obligation took place in South Carolina. Although not entirely free from doubt, the opinion apparently holds that the bonds were beyond the jurisdiction of this State and that the Fourteenth Amendment to the Federal Constitution forbids their taxation. The Court, however, went on to state:

‘We are not advised from the statement of facts in what state corporate action was taken authorizing the issuance of these bonds or where the executive officers of respondent are located.’

In the case of [Graniteville Mfg. Co. v. Query](#), 283 U. S. 376, 51 S. Ct. 515, the United States Supreme Court affirmed the holding of a three-judge panel which had found that the instruments in question ‘were created, if not wholly, certainly partly within South Carolina’.

In the instant case, the activity in South Carolina, i.e. the corporate resolution, was an indispensable part of the creation of the issue. See Section 12-15.1:1 of the Code. In the [Graniteville](#) case, the Supreme Court described the levy as ‘simply a tax levied in relation to an act done within the state in making an instrument’.

In view of the interpretation of the act as one imposed on the creation of an instrument within this State, it is the opinion of this office that the original issue in question is subject to the documentary stamp tax.

Very truly yours,

John C. von Lehe

Assistant Attorney General

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