

1975 WL 29369 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 6, 1975

*1 Deeds or other instrument to or from the United States or its governmental instrumentalities do not require documentary stamped taxes.

Honorable R. G. Horton
Clerk of Court
Horry County Court House
Conway, South Carolina 29526

Dear Mr. Horton:

This letter is written in response to your letter of January 3, 1975, concerning the requirements for documentary stamps upon mortgages and deeds to which the United States Government or an instrumentality of the United States is a party.

The United States Supreme Court in [McCulloch v. Maryland](#), 4 Wheat 316, 4 L. Ed. 2d 579, said that a State has no authority to tax the United States or an instrumentality of the United States. The rule governing instrumentalities was stated in [Metcalf & Eddy v. Mitchell](#), 269 U. S. 514, 46 S.Ct. 172, 70 L. Ed. 384. There the Court said:

‘Just what instrumentalities of either a state or the federal government are exempt from taxation by the other cannot be stated in terms of universal application. But this court has repeatedly held that those agencies through which either government immediately and directly exercises its sovereign powers, are immune from the taxing power of the other.’

Following these decisions we reached a conclusion in the letter to the Treasurer of Cherokee County that the State could not impose a tax upon a deed from the United States to an individual as the same is a tax upon a transaction in which the Federal Government is a party. The Court in the case of [Federal Land Bank of New Orleans v. Crossland](#), 43 S.Ct. 385, 29 A.L.R. 1, held that a State tax upon the privilege of recording a mortgage executed to a Federal Land Bank is a tax upon an instrumentality of the Federal Government and is precluded by the Federal Farm Loan Act of July 17, 1916. Commenting upon the liability for the tax, Justice Holmes, delivering the opinion of the Court, said:

‘It is said that the lender may collect the money in advance from the borrower. We do not perceive that this makes any difference. The statute says that the lender must pay the tax; but, whoever pays it, it is a tax upon the mortgage, and that is what is forbidden by the law of the United States.’

In the case of [Investors Premium Corporation v. South Carolina Tax Commission](#), 260 S. C. 13, 193 S. E. 2d 642, the Court held that the maker of an instrument is primarily responsible for the documentary stamp tax and further held that the person for whose benefit the instrument is made is secondarily liable and accountable for the tax. An instrument accordingly may be taxable to any party. In cases where the United States is a party to the instrument the tax would be upon the United States and in our opinion is precluded. We conclude then that deeds or other instruments to or from the United States or governmental instrumentalities thereof do not require documentary stamp taxes.

Yours very truly,

G. Lewis Argoe, Jr.
*2 Assistant Attorney General

1975 WL 29369 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.