

1975 WL 29134 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 10, 1975

*1 Section 65-689 and Section 65-699 of the Code of Laws of South Carolina, 1962, require documentary stamps upon deeds executed by a Trustee in Bankruptcy pursuant to authority providing for the liquidation of a bankrupt estate.

TO: O. Douglas Smith, Esq.

QUESTION

Is a deed from a trustee in bankruptcy required to have state and county documentary stamps?

STATUTES

Sections 65-689 and 65-699 of the Code of Laws of South Carolina, 1962.

DISCUSSION

Documentary stamps are required by the provisions of Section 65-689 and Section 65-699 of the Code of Laws of South Carolina upon deed conveying real estate. It has been said, however, that the tax attaches only when the property deeded is 'sold' and that such usually means a transfer for a consideration. [Berry v. Kavanaugh](#), 137 F. 2d 574. See also opinion of this office dated September 17, 1968.

The Supreme Court in the case of [Investors Premium v. Tax Commission](#) held that the documentary stamp tax is upon the creation of an instrument and that it may be collected from either party on the instrument, 260 S. C. 13, 193 S. E. 2d 642 (1973). In the recent case of [Blackmon v. Nichols, Trustee](#), 494 F. 2d 1194 (1974), the United States Court of Appeals for the Fifth Circuit upheld the Georgia sales tax imposed upon the liquidation sale of a bankrupt's tangible personal property. In reaching this conclusion it was stated that although the tax has an indirect economic effect upon the bankrupt's estate, it is not an impermissible burden upon the trustee.

'It may be true that although, in its legal incidence, the sales tax is on the purchaser, it has an indirect economic effect upon the bankrupt estate in that the purchaser, assumedly, would have been willing to pay more had he not been obliged to satisfy the tax. Such an indirect economic detriment is not an impermissible burden even were the estate a government instrumentality. Cf. [Graves v. New York ex rel. O'Keefe](#), 1939, 306 U. S. 466, 59 S. Ct. 595, 83 L. Ed. 927. Here, however, those ultimately affected are but creditors of the bankrupt. The only burden on the trustee is the collection and remission of the tax, which we could not consider consequential.'

The Bankruptcy Act itself is devoid of any provisions concerning the liability of the assets or the business of an estate in bankruptcy for taxes imposed after the commencement of the proceedings. In the case of [Swarts v. Hammer](#), 194 U. S. 441, 48 L. Ed. 1060, 24 S. Ct. 695, cited by the Court in the Blackmon decision, it was stated that the Bankruptcy Act does not, by vesting in the trustee the property of the bankrupt, place the property beyond the power of the state to subject it to taxation. It was stated that the vesting of the title gives no peculiar quality to the property.

CONCLUSION

It is the conclusion of this office therefore, that documentary stamps are required upon deeds executed by a trustee in bankruptcy pursuant to authority providing for the liquidation of a bankrupt estate.

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

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