1974 S.C. Op. Atty. Gen. 319 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3888, 1974 WL 21386

Office of the Attorney General

State of South Carolina
Opinion No. 3888
November 15, 1974

***1 Deeds from the United States to individuals do not require documentary stamp taxes.**

Treasurer of Cherokee County

Reference is made to your request for an opinion of this office concerning the question whether or not documentary stamps must be affixed to deeds from the United States or an instrumentality of the United States to individuals.

The documentary stamp tax on deeds is imposed by Sections 65–681 and 65–686 of the Code of Laws of South Carolina, 1962. It has been held to be a tax upon the creation of instruments. See *Graniteville Mfg. Co. v. Query*, 283 U. S. 376, 51 S. Ct. 515, 75 L. Ed. 1126, (1931), 44 F. 2d 64; *South Carolina Electric & Gas Company v. Pinckney* (1950), 217 S. C. 407, 60 S. E. 2d 851; *Textron, Inc. v. Lovingston*, 244 S. C. 380, 137 S. E. 2d 267 (1964); and *Laurens Federal Savings and Loan Association v. South Carolina Tax Commission* (1960), 236 S. C. 2, 112 S. E. 2d 749 (1961). Although these statutes do not specifically exempt conveyances by the United States to an individual, the same are not subject to tax in that the State has no power to tax an instrumentality of the Federal Government. This conclusion was reached in the case of *Federal Land Bank of New Orleans v. Crosland*, 43 S. Ct. 385, 29 A.L.R. 1, which involved the issue whether or not a state could require documentary stamps for the privilege of registering an instrument between the Federal Land Bank and an individual. The Court said that this tax could not apply in such cases as the same may preclude or hinder a transaction in which the Federal Government was involved. We therefore advise that documentary stamps cannot be required on a deed from the United States to an individual.

I am enclosing several other opinions relating to documentary stamp taxes which may be helpful to you concerning similar questions.

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