

1974 S.C. Op. Atty. Gen. 347 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3910, 1974 WL 21406

Office of the Attorney General

State of South Carolina

Opinion No. 3910

December 11, 1974

***1 Federal credit unions are exempt from documentary stamp taxes by 12 U.S.C., Section 1768. A note executed by a person and given to federal credit unions, however, is not exempt and the tax imposed by Section 65–688 may be charged upon said note and collected from said person.**

Chairman

South Carolina Tax Commission

This is written in response to the request of the Tax Commission for an opinion whether or not State documentary stamp taxes can be assessed and collected upon notes given to credit unions which are chartered under the Federal Credit Union Act found in Chapter 14 of Title 12 of the United States Code.

The tax here in issue is imposed by Sections 65–681 and 65–688 of the Code of Laws of South Carolina. The tax is a tax with respect to the creation of instruments and is a tax upon the instrument. *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. Livingston*, 244 S. C. 380, 137 S. E. 2d 267 (1964); *Laurens Federal Savings and Loan Association v. South Carolina Tax Commission* (1960); 236 S. C. 2, 112 S. E. 2d 716, rev. in 365 U. S. 517, 81 S. Ct. 719, 5 L. Ed. 2d 749 (1961). The liability for the tax upon a note is primarily upon the borrower or the maker of the note. The tax, however, may of necessity be collected from the person for whose benefit the note is made or the lender. *Investors Premium Corp. v. South Carolina Tax Commission*, 206 S. C. 13, 193 S. E. 2d 642.

We call attention to 12 U.S.C.A., Section 1768, relating to the taxation of Federal Credit Unions:

‘The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such Federal credit unions shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. Nothing herein contained shall prevent holdings in any Federal credit union organized hereunder from being included in the valuation of the personal property of the owners or holders thereof in assessing taxes imposed by authority of the State or political subdivision thereof in which the Federal credit union is located; but the duty or burden of collecting or enforcing the payment of such a tax shall not be imposed upon any such Federal credit union and the tax shall not exceed the rate of taxes imposed upon holdings in domestic credit unions.’

It is the opinion of this office that the language of this statute clearly exempts the Federal credit unions from the tax here in issue. This opinion is supported by the language found in Board of Directors Manual for Federal credit unions, page 43, where it is stated that Federal credit unions are instrumentalities of the Federal Government and as such can be taxed only by a state to the extent permitted by Congress.

***2** The tax here in issue is with respect to the notes given by individuals to Federal credit unions as security for loans. Such notes are not exempt by the provisions of the aforesaid statute. In *Metcalf and Eddy v. Mitchell*, 269 U. S. 514, 46 S. Ct. 172, 70 L. Ed. 384, 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. * * *.

‘As cases arise, lying between the two extremes, it becomes necessary to draw the line which separates those activities having some relation to government, which are nevertheless subject to taxation, from those which are immune. Experience has shown that there is no formula by which that line may be plotted with precision in advance. But recourse may be had to the reason upon which the rule rests, and which must be the guiding principle to control its operation. Its origin was due to the essential requirements of our constitutional system that the federal government must exercise its authority within the territorial limits of the states; and it rests on the conviction that each government in order that it may administer its affairs within its own sphere, must be left free from undue interference by the other.’

This office is advised that the Tax Commission has required documentary stamps to be affixed to notes given to Federal credit unions and until the request for this opinion no real issue of this requirement has been made. We know of no legal objection to taxing subject notes.

The documentary stamp taxes here in issue may therefore, in our opinion, be collected from the maker of the notes in question. *Investors Premium Corporation v. South Carolina Tax Commission*, supra. They impose no direct burden upon the government or upon a governmental function.

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