

1973 S.C. Op. Atty. Gen. 68 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3482, 1973 WL 20946

Office of the Attorney General

State of South Carolina

Opinion No. 3482

February 28, 1973

***1 (1) Documentary stamps are not required upon deeds or upon promissory notes between individuals and the Farmers Home Administration.**

(2) Affidavits are not required upon presentation for recording.

Director

License Tax Division

This letter is written responding to the letter of Eugene R. Stewart, Chief, Rural Housing, of the Farmers Home Administration, which was sent to this office. Opinion is requested whether or not documentary stamps are required upon deeds between an individual and the United States of America, Farmers Home Administration, and promissory notes taken by the Farmers Home Administration from individuals.

Subchapter 4 of Chapter 50 of Title 7 of the United States Code Annotated relates to the Farmers Home Administration. In such Chapter there is found Section 1984 relating to State taxation of property of the Farmers Home Administration and instruments entered into by the Farmers Home Administration. Such section provides:

‘All property subject to a lien held by the United States or the title to which is acquired or held by the Secretary under this chapter other than property used for administrative purposes shall be subject to taxation by State, territory, district, and local political subdivisions in the same manner and to the same extent as other property is taxed: Provided, however, That no tax shall be imposed or collected on or with respect to any instrument if the tax is based on—

(1) the value of any notes or mortgages or other lien instruments held by or transferred to the Secretary;

(2) any notes or lien instruments administered under this chapter which are made, assigned, or held by a person otherwise liable for such tax; or

(3) the value of any property conveyed or transferred to the Secretary,

whether as a tax on the instrument, the privilege of conveying or transferring or the recordation thereof; nor shall the failure to pay or collect any such tax be a ground for refusal to record or file such instruments, or for failure to impart notice, or prevent the enforcement of its provisions in any State or Federal court.’

Relying on the authority of this statute, which is unquestionably within the power of the United States, we must advise that documentary stamps cannot be required upon deeds between individuals and the Farmers Home Administration or upon promissory notes securing loans between the Farmers Home Administration and the borrower.

Section 65–694 states that the Clerks of Court and Registers of Mesne Conveyance shall not record a conveyance or other instrument which may be taxable unless such conveyance has revenue stamps affixed thereto and the section further provides that if such instruments do not state the true, full and complete consideration thereof, then an affidavit is to be presented showing the consideration. License Tax Regulation 22 of the Tax Commission provides that a mortgage shall not be recorded until

satisfactory proof is provided to the Clerk of Court or Register of Mesne Conveyance showing that the certificate of indebtedness secured by said mortgage is properly stamped.

*2 An affidavit is not required unless an instrument subject to taxation is presented for recording. As deeds and notes between the Farmers Home Administration and individuals are not taxable instruments as herein expressed, it is the conclusion of this office that there is no requirement that affidavits be presented to or filed with the Clerk of Court or Register of Mesne Conveyance.

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