

1973 S.C. Op. Att. Gen. 231 (S.C.A.G.), 1973 S.C. Op. Att. Gen. No. 3576, 1973 WL 21033

Office of the Attorney General

State of South Carolina

Opinion No. 3576

July 17, 1973

**\*1 1. Documentary stamps are to be affixed to a mortgage and not a note except where the mortgage secures a note for future advances, and in these cases the stamps are to be affixed to the note.**

**2. A lease of realty situate in the State is subject to the documentary tax regardless of where the lease is executed.**

Attorney for Greenville County

Bill S31, ratification number R632 amends Section 65–688 and also adds Section 65–688.1

Section 65–688 provides for a documentary stamp tax on certain instruments and subparagraph (4) of Section 1 of the Bill provides that the tax apply:

‘On mortgages and each renewal of any thereof; *provided*, however, that the tax upon a mortgage that secures future advances shall be upon the consideration advanced on the mortgage at the time of its execution. Notes or other written obligations or indebtedness secured by a mortgage previously executed shall be taxed upon their execution, and documentary stamps shall be affixed to the instrument evidencing the additional advance. Failure to pay the tax shall not affect the lien for any such future advance, but the mortgage or other instrument securing the advance shall not be enforceable in any court in this State as to such advance unless and until the tax due thereon has been paid.’

Questions have been presented you of whether the stamps are to be affixed to the mortgage or to the note that is secured by the mortgage.

The Bill, in Section 1, subparagraph (2) provides for a tax on nonnegotiable notes and written obligations to pay money, however, excludes such instruments when secured by a mortgage that is taxable under subparagraph (4). By reason of this exclusion, a note secured by a mortgage, except for future advances, is not subject to the tax, the mortgage being the instrument that is taxed. The stamps should therefore be affixed to the mortgage and the mortgage cannot be recorded without such stamps being attached thereto (Section 65–694).

You also request advice on whether a lease of realty situate in this State is subject to the tax when the lease is executed outside the State. The tax on such instrument is provided for by Section 2 of the Bill and the last paragraph thereof provides:

‘The tax imposed herein shall be charged to and paid for by any person making or signing the lease or for whose benefit such lease shall be made, notwithstanding that the signing and execution of such lease or renewal thereof may occur outside this State. No such lease shall be recorded without having proper documentary stamps affixed thereto.’

This paragraph reflects legislative intent to tax such a lease and the same should not be recorded without having the stamps attached thereto.

Joe L. Allen, Jr.  
Assistant Attorney General

South Carolina Tax Commission

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