

1973 S.C. Op. Atty. Gen. 311 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3634, 1973 WL 21086

Office of the Attorney General

State of South Carolina

Opinion No. 3634

October 1, 1973

**\*1 1. A certain agreement whereby a borrower agrees not to encumber property is not an agreement conveying real property subject to documentary stamp tax.**

**2. There is no authority to require documentary stamps be affixed to original stock certificates.**

Registrar of Mesne Conveyances

Charleston, South Carolina

Reference is made to your letter of September 10, 1973, to the South Carolina Tax Commission wherein you request advice on two questions; first, whether or not South Carolina documentary stamps should be affixed to a Real Property Agreement (copy enclosed) which in substance provides that in consideration of a loan the borrower agrees not to transfer, assign or create liens or encumbrances upon property described in the Agreement. The Agreement assigns to the lender rents upon said property and given the lender power as attorney in fact to collect said rents. Second, should county documentary stamps be affixed to original stock certificates?

The State documentary stamp tax is a tax upon the creation of a taxable instrument enumerated in the provisions of Article 2, Chapter 11 of Title 65 of the South Carolina Code of Laws (Section 65–68, et seq.). The liability to pay the tax and the amount thereof is to be determined from the form and the face of the instrument in question. *South Carolina Electric & Gas Co. v. Pinckney*, 217 S. C. 407, 60 S. E. 2d 851; *Graniteville Mfg. Co. v. Query, et al.*, 44 F. 2d 64; *Textron, Inc. v. Livingston*, 244 S. C. 380, 137 S. E. 2d 267; *Willcuts v. Investors' Syndicate*, 8 Cir., 57 F. 2d 811; *United States v. Isham*, 17 Wall. 486, 21 L. Ed. 728.

The subject Agreement in the opinion of this office conveys no interest in real property and is therefore not taxable as a conveyance by the provisions of Section 65–689 of the Code. We are further of opinion that such agreement is not clearly an instrument taxed by Section 65–688. The courts have held that tax statutes cannot be extended by implication beyond the clear import of the language used and any substantial doubt as to whether or not the tax is imposed must be resolved against the government and in favor of the taxpayer. *South Carolina Electric & Gas Co.*, supra.

Subject Agreement here appoints the lender as attorney in fact with power to collect rents due the borrower. Section 65–690, with Section 65–691, provides that an instrument creating a power of attorney is taxable. In the case of *Investors Premium Corporation v. South Carolina Tax Commission*, — S. C. 642, 193 S. E. 2d 642, the Court sustained a tax upon a power of attorney although the same was incorporated as a part of a security agreement entered into between borrower and lender. We conclude that the subject Agreement should bear documentary stamp taxes of 50c as provided for in Section 65–690 of the Code.

Regarding your second question, whether or not documentary stamps should be affixed to original stock certificates, we advise that there is no legislation providing for such and there would therefore be no authority to require such.

**\*2** I am also enclosing a copy of Senate Bill 31 which amends Section 65–688 of the South Carolina Code of Laws.

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