

1973 S.C. Op. Atty. Gen. 360 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3671, 1973 WL 21122

Office of the Attorney General

State of South Carolina

Opinion No. 3671

December 14, 1973

***1 The measure for documentary stamp taxes is the actual obligation created when a taxable instrument is executed and the measure would not include interest accruing after the creation of the instrument.**

President

Jasper County Bar Association

Opinion is requested upon the following:

‘When mortgages call for a set amount and then set out the method of payment, the method of payment including interest, please advise which amount the documentary stamps would apply to. For instance, if a mortgage called for \$24,850.00, payable \$191.10 commencing February 1, 1974, with the final payment due January 1, 2004, would you pay stamps on \$24,850.00 or \$68,796.00?’

The tax upon mortgages is now imposed by the provisions of Act No. 388, Acts of 1973, which amended Section 65–688 of the 1962 Code of Laws. I am enclosing a copy of the Act.

In *South Carolina Electric & Gas Company v. Pinckney*, 217 S. C. 407, 60 S.E. (2d) 851, and *Graniteville Mfg. Co. v. Query et al.*, 44 F. (2d) 64, the Court held that the documentary stamp tax imposed by South Carolina is a tax upon the creation of a taxable instrument and is laid upon the taxable document.

In the case of *Textron, Inc. v. Livingston*, 244 S. C. 380, 137 S. E. (2d) 267, which dealt with the liability for documentary stamp taxes, it was stated:

‘Liability to pay stamp tax, and the amount thereof, is as a general rule determinable from the form and face of the instrument in question. *Willcuts v. Investors' Syndicate*, 8 Cir., 57 F. (2d) 811; *United States v. Isham*, 17 Wall. 486, 21 L. Ed. 728.’

More recently the Court of Common Pleas for Richland County, in the case of *Dutch Square Associates v. South Carolina Tax Commission*, applied the rule that where there is a doubt as to the taxability of an instrument the doubt must be resolved against the tax and for the taxpayer. There was involved the question whether or not a lease must bear documentary stamp tax. The Court held the obligation to be contingent upon the occupancy of the property and that such was not a basis at the time of the creation of the instrument supporting the tax.

We believe the obligation to make interest payments is analogous to rental payments as the obligation is contingent upon the continuation of the mortgage debt. We therefore conclude that the measure for documentary stamp taxes is the actual obligation created when the instrument is executed and that the same would not include interest accruing after the creation of the mortgage.

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