

1972 S.C. Op. Atty. Gen. 27 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3244, 1972 WL 20391

Office of the Attorney General

State of South Carolina

Opinion No. 3244

January 12, 1972

***1 (1) Certificates of stock representing stock dividends are subject to the South Carolina documentary stamp tax.**

(2) Documentary stamp tax is imposed on certificates of stock of a foreign corporation having a South Carolina transfer agent.

Senior Vice President & General Trust Officer

South Carolina National Bank

Your letter of January 4, 1972, to Attorney General McLeod has been referred to this writer for a reply. You have requested an opinion of this office on two questions. First, whether certificates of stock representing stock dividends of a South Carolina corporation are subject to the documentary stamp tax imposed by Sections 65–681 and 65–683 of the Code.

Section 65–683 provides that the tax is on the original issue of certificates of stock. There are no South Carolina cases on point, however, the South Carolina documentary stamp tax law is similar to the federal documentary stamp tax law which has been repealed. See 26 U. S. C. A., Section 1802 (IRC 1939). The decisions interpreting the federal act consistently hold that a stock dividend is an original issue. The criteria used was that to be ‘original’ an issue must represent newly dedicated capital. See *Crown Zellerbach Corp. v. Anglim*, 109 F. Supp. 514 (1952); *U. S. Steel Corporation v. United States*, 142 F. Supp. 948 (Ct. Cl. 1956) cert. denied 352 U. S. 1015.

It is, therefore, the opinion of this office that certificates of stock representing stock dividends are subject to the South Carolina documentary stamp tax.

The second question presented is whether a corporation organized in another state but employing a transfer agent in South Carolina should pay a documentary stamp tax on certificates of stock representing stock dividends issued to South Carolina shareholders.

Again, there is no South Carolina case directly on point, however, the case of *South Carolina Electric and Gas Co. v. Pinckney*, 217 S. C. 407, 60 S. E. 2d 851 (1950) which involved the imposition of the documentary stamp tax on notes is very relevant. There the Court held that the tax was levied upon the documents themselves. This leads to the conclusion that the tax in question is not levied on the shares of stock, but on the stock certificates which evidence the ownership of the shares. This was also the result reached under the federal act. See *American Gas and Electric Co. v. U. S.*, 69 F. Supp. 614 (1946).

The mechanics of the transaction in the instant case are that the foreign corporation, after authorizing the stock dividend, sends the printed certificates to the South Carolina transfer agent. The transfer agent then prepares the certificates for the individual shareholders, countersigns the certificates and mails them out.

Section 65–681 of the Code states that the documentary stamp tax is to be imposed on the person issuing the certificates or on the person for whose benefit the certificates are issued. In the case of *Graniteville Mfg. Co. v. Query*, 283 U. S. 376 (1931), the United States Supreme Court held that the South Carolina documentary stamp tax was an excise tax levied with respect to the creation of instruments within South Carolina. The word ‘issue’ is defined in Black's Law Dictionary to mean ‘to put

into circulation'. The certificates in question are countersigned and mailed out by the transfer agent. They are, therefore, both executed and issued in South Carolina.

*2 It is the opinion of this office that the South Carolina documentary stamp tax is imposed on certificates of stock of a foreign corporation having a South Carolina transfer agent.

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