
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC REVENUE RULING #05-8

SUBJECT: Deeds to Obtain Construction Loans
(Deed Recording Fee)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-24-10 (2000)
S. C. Code Ann. Section 12-24-30 (2000)
S. C. Code Ann. Section 12-24-40 (2000; Supp. 2003)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Section 1-23-10(4) (Supp. 2003)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Ruling does not have the force or effect of law, and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Questions:

1. Is the deed that transfers realty from Mr. X to ABC Construction Company as discussed in the facts, so that ABC may obtain a construction loan to build a home for the Mr. X, subject to the deed recording fee?

2. Is the deed that transfers the same realty, as discussed in the facts, from ABC Construction Company back to Mr. X upon completion of the building subject to the deed recording fee?

Conclusions:

1. The deed that transfers realty from Mr. X to ABC Home Contractors as discussed in the facts, so that ABC may obtain a construction loan to build a home for Mr. X, is subject to the deed recording fee based on \$22,000.00 - the fair market value of the realty.

Note: If the fair market value of the realty for property tax purposes is less than \$22,000.00, the statute, under Code Section 12-24-30(C), allows the taxpayer to use that figure in computing the deed recording fee due.

2. The deed that transfers the same realty, as discussed in the facts, from ABC Home Contractors back to Mr. X upon completion of the home is subject to the deed recording fee based on \$250,000.00 - the money paid or to be paid pursuant to the contract for constructing the home.

Facts:

Mr. X owns realty with a fair market value of \$22,000.00 and wants to construct a home on that realty. Mr. X hires ABC Home Contractors ("ABC") to build a home on the realty for \$250,000.00.

In order to obtain the construction loan to build the home, the financial institution is requiring that title to the realty on which the home is to be constructed be in the name of ABC. Mr. X transfers the realty to ABC under an agreement that ABC will construct the home (per specifications agreed upon by both parties) and then transfer the realty back to Mr. X upon payment of the \$250,000.00.

Note: For purposes of this example, neither transfer involves a lien or encumbrance that existed on the realty before the transfer and remained on the realty after the transfer. In addition, neither transfer in this example involves (1) a transaction between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or (2) a transaction involving a transfer of realty to a trust or as a transfer of realty as a distribution to a trust beneficiary.

Discussion:

Code Section 12-24-10 imposes the deed recording fee and reads:

In addition to all other recording fees, a recording fee will be imposed for the privilege of recording a deed in which any lands and all improvements on the land, tenements, or other realty is transferred to another person. The fee is one dollar and eighty-five cents for each five hundred dollars, or fractional part of five hundred dollars, of the realty's value as determined by Section 12-24-30.

Code Section 12-24-30 defines the term “value” as used in the imposition and reads in part:

(A) For purposes of this chapter, the term “value” means the consideration paid or to be paid in money or money’s worth for the realty including other realty, personal property, stocks, bonds, partnership interest, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. The fair market value of the consideration must be used in calculating the consideration paid in money’s worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration under the provisions of this section. ...

* * * *

(C) Taxpayers may elect to use the fair market value as determined for property tax purposes in determining fair market value under the provisions of this section.

Based on the above, the deed recording fee is imposed for the privilege of recording a deed based on the transaction of transferring realty from one person to another person. When the consideration paid for realty is money, then the deed recording fee is based on the money paid¹. When the consideration paid for realty is “money’s worth” (e.g. other realty, stocks, forgiveness of debt), then the taxpayer must base the deed recording fee upon one of the following:

- (a) the fair market value of the consideration paid,
- (b) the fair market value of the realty being transferred, or
- (c) the fair market value for property tax purposes of the realty being transferred.

Based on the above, both deeds, as discussed in the facts, involve a consideration that is paid either in money or “money’s worth” and are, therefore, subject to the deed recording fee.

¹ It is important to note that Code Section 12-24-30, in subsection (A), states that the fair market value of the realty may be used “in determining fair market value of the consideration under the provisions of this section.” The only mention to fair market value in subsection (A) concerns when the consideration is in money’s worth, or when the transaction involves a business entity and its owners or a trust. Subsection (C) allows the fair market value for property taxes to be used again only “in determining fair market value under the provisions of this section.” Therefore, if realty is transferred for money, and not money’s worth, the basis for the deed recording fee is the money paid or to be paid if the transaction does not involve realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary. The realty’s fair market value cannot be used in this case. See Question #2 in SC Revenue Ruling #04-6.

The deed that transfers realty from Mr. X to ABC, so that ABC may obtain a construction loan to build a home for Mr. X, is subject to the deed recording fee because the consideration paid or to be paid is in “money’s worth” since that consideration is the promise to re-convey the realty back to Mr. X upon completion of the home. As such, the deed recording fee due on this transfer is based on \$22,000.00 - the fair market value of the realty. However, if the fair market value of the realty for property tax purposes is less than \$22,000.00, the statute under Code Section 12-24-30(C) allows the taxpayer to use that figure in computing the deed recording fee due since the consideration to be paid is in “money’s worth.”

The deed that transfers the same realty from ABC back to Mr. X upon completion of the home is subject to the deed recording fee based on \$250,000.00 - the money paid or to be paid pursuant to the contract for constructing the home. Since this consideration is paid in money, and not “money’s worth,” the deed recording fee can not be based on the fair market value of the realty or the fair market value of the realty for property tax purposes.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank III, Director

June 16, 2005
Columbia, South Carolina