
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 #06-11

SUBJECT: Conveyance of Mineral Rights
(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)
Act No. 323 of 2006 (Effective June 2, 2006)
S. C. Code Ann. Section 12-24-30 (2000)
S. C. Code Ann. Section 12-24-40 (2000; Supp. 2005)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2005)
SC Revenue Procedure #05-2

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

Is the recording of a deed that conveys mineral rights (oil, gas, sand, etc.) to another person subject to the deed recording fee?

Conclusion:

A deed that conveys mineral rights (oil, gas, sand, etc.) to another person where the minerals are to be severed by the grantee (buyer) is a deed that conveys realty. The recording of this deed is subject to the deed recording fee, unless otherwise exempt under the law, based on the value of the mineral rights as determined by Code Section 12-24-30.

If the minerals are to be severed by the grantor (seller), the transaction is for the sale of goods and is not subject to the deed recording fee.

Note: In addition to the discussion portion of this document, see Questions #1 through #4 of SC Revenue Ruling #04-6 for a discussion of “value” as determined by Code Section 12-24-30.

Discussion:

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

(A) 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.

(B) An instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of a decedent's estate pursuant to Section 62-3-907 as evidence of the distributee's title to the property is not a deed subject to this chapter¹.

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

(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. However, in the case of realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, “value” means the realty’s fair market value.

(B) A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer.

¹ The provisions of subsection (B) became effective June 2, 2006. See Act No. 323 of 2006

(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.

Code Section 12-24-40 provides several exemptions from the fee².

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, unless the deed is exempt under the provisions of Code Section 12-24-40. For a more detailed discussion of the deed recording fee, see SC Revenue Ruling #04-6.

It must now be determined if a deed that conveys mineral rights is a deed that conveys realty. In other words, are mineral rights real property?

While the provisions of the deed recording fee do not refer to the Uniform Commercial Code³, it is proper to do so under the following rule of statutory construction from 73 Am. Jur. 2d *Statutes*, Section 103:

Under the rule of statutory construction of statutes in pari materia, statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great, connected, homogenous system. Such statutes are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act, as far as this can reasonably be done. Indeed, as a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, unless a different purpose is shown plainly.

Code Section 36-2-107(1) of the Uniform Commercial Code provides that the sale of minerals and the like (including oil and gas) when severed by the seller from the realty is a contract for the sale of goods.

² Code Section 12-24-40(7) exempts from the deed recording fee deeds “that constitute a contract for the sale of timber to be cut.” See also footnote #3.

³ In *1994 Opinions of the Attorney General*, 94-52 (September 13, 1994), the provisions of Code Section 36-2-107(2) in the Uniform Commercial Code were cited as instructive in determining if a document which conveys timber to be cut was a contract for the sale of goods or the sale of realty. Since Code Section 36-2-107(2) states that a contract for the sale of timber to be cut, whether to be cut by the seller or the buyer, is a contract for the sale of goods and not realty, the opinion held that a contract for the sale of timber to be cut was not subject to the former State documentary tax under Code Section 12-21-380.

With respect to the same code section, the *Official Comment* reads, in part:

Subsection (1). Notice that the subsection applies only if the minerals or structures “are to be severed by the seller.” If the buyer is to sever, such transactions are considered contracts affecting land and all problems of the Statute of Frauds and of the recording of land rights apply to them.

The *South Carolina Reporter's Comments* states, in part, with respect to Code Section 36-2-107(1), that “[i]f the severance is to be made by the buyer, the contract is for the sale of land ...”

Based on the above, a deed that conveys mineral rights (oil, gas, sand, etc.) to another person where the minerals are to be severed by the grantee (buyer) is a deed that conveys realty. The recording of this deed is subject to the deed recording fee, unless otherwise exempt under the law, based on the value of the mineral rights as determined by Code Section 12-24-30. If the minerals are to be severed by the grantor (seller), the transaction is a sale of goods and is not subject to the deed recording fee.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

December 6 _____, 2006
Columbia, South Carolina