



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #88-14

TO: XYZ Trust Company

SUBJECT: Documentary Tax - Real Estate Transfer

REFERENCE: S.C. Code Ann. Section 12-21-380 (1976)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)  
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Pursuant to Code Section 12-21-380, are documentary stamps required on deeds which transfer real estate without consideration from a division of a bank to a separate corporation?

Facts:

Until January 1, 1987, XYZ Trust Company (S.C.) N.A. was the Trust Division of XYZ Bank of South Carolina. On January 1, 1987, in accordance with South Carolina Code Section 34-3-850, the Trust Company became a separate company owned by a trust holding company, which is owned by the XYZ Corporation, a bank holding company.

XYZ Bank of South Carolina will be transferring assets of its trust division to the new corporation. Among the assets to be transferred are trust accounts, many of which hold real estate. The legal ownership of the real estate lies in the trustee, but the beneficial ownership lies with the individual, or individuals named under the trust agreement. No consideration is being given for the transfer of these accounts.

Discussion:

Code Section 12-21-380 reads, in part:

A deed, instrument, or writing whereby any lands, tenements, or other realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any

other person by his direction when the consideration or value of the interest or property conveyed exclusive of the value of any lien or encumbrance remaining thereon at the time of sale exceeds one hundred dollars and does not exceed five hundred dollars must be taxed one dollar and ten cents and for each additional five hundred dollars, or fractional part thereof, one dollar and ten cents. (emphasis added)

In Opinion of the Attorney General Number 2018, 1965-66, p.81, it was held that the deed transferring real property from one corporation to another required documentary stamps, since stock received by the grantor corporation represented consideration for the property. The tax was upheld in a similar instance, outlined in Opinion of the Attorney General Number 2413, 1967-68, p.62. In that case, real property was transferred from a parent corporation to a wholly-owned subsidiary in exchange for stock of the subsidiary.

However, the U.S. District Court of New York stated in United States v. Niagara Hudson Power Corporation, 53 F. Supp. 796 (1944), a case concerning a federal documentary tax statute similar to South Carolina Code Section 12-21-380:

Whether a transfer of realty should be taxable as well as property consisting of securities is not for the court to say. However, a mere transfer or change of legal title is not a taxable transaction under Schedule A-8 which, as it now stands, expressly confines taxable transfers to "realty sold". (emphasis added)

The court further stated:

In Cortland Special Co. v Commissioner of Internal Revenue, 2 Cir., 60 F2d 937 it is said - "Reorganization, merger, and consolidation are words indicating corporate readjustments of existing interests. They all differ fundamentally from a sale where the vendor corporation parts with its interest for cash and receives nothing more." Page 939.

In New York Central R. Co. v. Commissioner of Internal Revenue, 2 Cir., 79 F2d 247 certiorari denied Helvering v. New York Central R. Co. 296 U.S. 653, 56 S.Ct 370, 80 L.Ed 465, the court said- "The consolidated corporation does not succeed to the rights and liabilities \*\*\* as a purchaser but as a successor by operation of law." Page 249 of 79 F.2d

The court concluded that the change of title of real estate effected solely by a certificate of consolidation was not a "realty sold" and therefore not subject to the tax.

Furthermore, a now rescinded Internal Revenue Regulation, 47.4361-2(b)(12), stated that a "[t]ransfer of real estate in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation" is a conveyance not subject to the tax. The regulation concerned the federal documentary tax on conveyances.

Conclusion:

As the transfers in question do not constitute a sale, but rather a corporate realignment, they are not subject to taxation under Code Section 12-21-380.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.  
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S. Hunter Howard, Jr., Chairman

s/John M. Rucker  
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John M. Rucker, Commissioner

s/A. Crawford Clarkson, Jr.  
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A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina  
June 23 \_\_\_\_\_, 1988