

SC REVENUE RULING #06-10

SUBJECT: Easements and Right of Ways
(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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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 an easement or a right of way to another person subject to the deed recording fee?

Conclusion:

The recording of a deed that conveys an easement or a right of way to another person is subject to the deed recording fee, unless otherwise exempt under the law, based on the value of the easement or right of way as determined by Code Section 12-24-30.

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.

(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.

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

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 an easement or right of way is a deed that conveys realty. In other words, is an easement or right of way real property?

In *South Carolina Pipeline Corporation v. Lone Star Steel Company*, 345 S.C. 151, 345 S.E. 2d 654 (2001), the South Carolina Supreme Court stated:

We recently stated that “[a]n easement gives no title to land on which [the] servitude is imposed, but it is a property or an interest in land.” *Main v. Thomason*, 342 S.C. 79, 92, 535 S.E.2d 918, 924 (2000). American Jurisprudence describes an easement as “neither an estate in land nor the ‘land’ itself. It is, however, property or an interest in land. Thus, an easement is real property.” 25 AM. JUR. 2D *Easements and Licenses* § 2 (1996). We hold that this easement is real property within the ambit of §15-3-640, and that it is capable of being improved.

Furthermore, under the similar, now-repealed documentary stamp tax on deeds, the State Attorney General stated in 1966-67 *Opinions of the Attorney General*, No. 2310, p. 131:

You request the opinion of this office as to whether an instrument that conveys a right of way to a power company is the subject of the documentary tax. The tax is imposed is provided in Section 65-689 and is imposed upon:

“A deed, instrument or writing whereby any lands, tenements or other realty sold shall be granted, assigned, transferred or otherwise conveyed to or vested in the purchaser or any other person * * *.”

The instrument referred to in your letter would, as a general rule, be within the provisions of the statute and therefore subject to taxation thereunder.

Your attention is however called to Section 23, Part 2 of House Bill No. 1547, Appropriations Bill of 1967-68, wherein such an instrument is exempt from the tax when it conveys the easement to the State of South Carolina or its political subdivisions for highway or other public purposes.

² For example, deeds that convey an easement or right of way “in which the value of the realty, *as defined in Code Section 12-24-30*, is equal to or less than one hundred dollars” are exempt from the deed recording fee under Code Section 12-24-40(1) (Emphasis added.).

In addition, it has been the longstanding position of the Department of Revenue that an easement or right of way is realty for purposes of the deed recording fee as well as for purposes of the former documentary stamp tax on deeds under Code Section 65-689 and later Code Section 12-21-380.

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. *Marchant v. Hamilton*, 279 S.C. 497, 309 S.E.2d 781(1983). When as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. *Ryder Truck Lines, Inc. v. South Carolina Tax Commission*, 248 S.C. 148, 149 S.E.2d 435 (1966); *Etiwan Fertilizer Company v. South Carolina Tax Commission*, 217 S.C. 354, 60 S.E.2d 682 (1950).

Based on the above, the recording of a deed that conveys an easement or a right of way to another person is subject to the deed recording fee, unless otherwise exempt under the law, based on the value of the easement or right of way as determined by Code Section 12-24-30.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

November 16, 2006
Columbia, South Carolina