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SC REVENUE RULING #92-14

SUBJECT: Deeds and Other Conveyances of Realty Liability
Master in Equity Deeds
State Government
Federal Government
Certain Federal Instrumentalities and Federally Chartered Institutions
(Documentary Tax)

TAX MANAGER: John P. McCormack

SUPERSEDES: SC Revenue Ruling #92-7
SC Technical Advice Memorandum #88-7

EFFECTIVE DATE: April 27, 1992

REFERENCE: S.C. Code Ann. Section 12-21-310 (1976)
S.C. Code Ann. Section 12-21-380 (Supp. 1991)
S.C. Code Ann. Section 12-25-10 (1976)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Questions:

1. Is the grantor or grantee liable for the documentary taxes imposed under Code Sections 12-21-310 and 12-21-380 and 12-25-10?
2. Are deeds executed by a Master in Equity, which convey property to an individual or business, subject to documentary taxes?
3. Are deeds conveying realty to and from the State of South Carolina to documentary taxes?

4. Are deeds conveying realty to and from the Federal Government subject to documentary taxes?
5. Are deeds conveying realty to and from the Government National Mortgage Association (GNMA), Federal National Mortgage Association (FHMA), Farm Credit Bank, Production Credit Association, Bank for Cooperatives, Federal Land Bank Association, and the Federal Home Loan Mortgage Corporation (Freddie Mac) subject to documentary taxes?

Discussion:

LIABILITY FOR THE TAX ON DEEDS:

Code Section 12-21-310 of the 1976 Code, as amended, imposes the documentary tax upon the creation of several documents, or instruments, including deeds. This section provides, in part:

There shall be levied collected and paid for and in respect of [documents described in Section 12-21-380] by any person who makes, signs, issues, sells, removes, consigns or ships them or for whose benefit or use they are made....the several taxes specified in said sections. (emphasis added)

Code Section 12-21-380 imposes the documentary tax upon deeds and 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 thirty cents and for each additional five hundred dollars, or fractional part thereof, must be taxed one dollar and thirty cents. ...

Code Section 12-25-10 assesses a county documentary tax on deeds, which is in addition to the State tax and subject to the same exemptions as the State tax. That section reads:

Whenever a deed, instrument or writing whereby any land, tenement or other realty sold shall be granted, assigned, transferred or otherwise conveyed to or vested in and recorded in any county, 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 shall be taxed fifty-five cents and for each additional five hundred dollars, or fractional part thereof, fifty-five cents.

In Loyola Federal Savings and Loan Association v. South Carolina Tax Commission, et al., Opinion Number 23646, April 27, 1992, the State Supreme Court held:

In construing statutory language, the statute must be read as a whole, and sections which are a part of the same general statutory law of the State must be construed together and

each one given effect, if it can be done by any reasonable construction. Small v. Weed, 293 S.C. 364, 360 S.E. 2d. 531 (Ct. App. 1987). A complete reading of section 12-21-310 indicates that the legislature contemplated that persons "for whose benefit or use [an instrument] is made" could be liable for payment of documentary stamp taxes. We find that sections 12-21-380 and 12-25-10 place primary liability for payment of documentary stamp taxes on the purchaser of real property, who is the person for whose benefit or use a deed is made....(Emphasis added.)

The South Carolina Supreme Court, in the case of Investors Premium Corp. v. South Carolina Tax Commission 260 S.C. 13, 193 S.E.2d 642 (1973), with respect to Code Section 12-21-310 stated:

We are of the opinion that in this statute the "or"; while marking an alternative, must also be construed as introducing a substitute. That is, it does not set up an alternative of choice available to the Tax Commission but allows an alternative of necessity. We can find no logic in a purely equal alternative, and yet we must give some significance to the "or" and the alternative it provides. We find that the legislature meant "or" as introducing a substitute taxpayer in the event holding the primary taxpayer liable is impractical. (emphasis added)

Therefore, documentary taxes on deeds are imposed upon the purchaser or grantee. In addition, if it is impractical to seek payment of the tax from the purchaser or grantee, the Commission may assess the seller or grantor for the tax.

MASTER IN EQUITY DEEDS:

The next issue concerns the taxability of Master in Equity deeds.

In Loyola Federal Savings and Loan Association v. South Carolina Tax Commission, et al., supra, the State Supreme Court, after it determined that the purchaser was primarily liable for the documentary tax on deeds, held:

Thus, a master-in-equity who issues a master's deed possesses no liability for payment of documentary stamp taxes. There being no illegal tax imposed upon the judiciary, we hold that the master-in-equity did not err in finding that documentary stamp taxes may be imposed on a master's deed issued pursuant to a foreclosure action.

STATE GOVERNMENT:

The next issue concerns deeds that convey realty to and from the State of South Carolina. Code Section 12-21-380 reads, in part:

Any deed, instrument, or writing whereby any lands, tenements, or other realty is granted, assigned, transferred, or otherwise conveyed to, or vested in, the State of South Carolina, or any of its political subdivisions and departments, for highway or other public purposes is exempted from the documentary tax requirements of this Section, and any clerk of

court or register of mesne conveyances may record these deeds or other instruments without revenue stamps affixed and without penalty.

The statute therefore exempts from the tax deeds which convey realty to the State public purposes. The statute does not provide a similar exemption for deeds which convey realty from the State to an individual or business.

FEDERAL GOVERNMENT:

The next issue concerns deeds that convey realty to and from the federal government.

With respect to deeds which convey realty to the federal government, the liability for the tax would fall upon the government, as the purchaser. Such deeds would therefore be exempt from the tax as the State is constitutionally prohibited from imposing a tax upon the federal government. In addition, the seller (grantor) cannot be held liable for the tax. Code Section 12-21-310 provides for a substitute taxpayer as an alternative of necessity when it is impractical to hold the primary taxpayer liable. It is not impractical to tax the Federal Government - it is constitutionally prohibited. To tax the seller when the purchaser is exempt from the tax by law would also create the absurd result of negating almost all exemptions granted to various entities by the State and Federal governments.

With respect to deeds which convey realty from the federal government to an individual or business, the liability for the tax would fall upon the purchaser, and not the federal government.

The following quote from Paul J. Hartman's book, "Federal Limitations on State and Local Taxation", Section 6:19, provides some guidance in this area:

Under the contemporary view of federal tax immunity, the line drawn between permissible and non-permissible taxes on the Federal Government or its instrumentalities is, by and large, formal and mechanical. If the Court concludes that the "legal incidence" of the challenged tax falls directly on the Government or its instrumentalities, it is an improper intrusion upon the affairs of the Nation. On the other hand, if the Court concludes that the "legal incidence" of a tax does not rest upon the government nor its instrumentalities, the tax is impeccable, for anything that constitutional governmental tax immunity doctrine has to say, absent discrimination.

Therefore, deeds which convey realty from the Federal Government to an individual or a business are subject to the documentary tax since the legal incidence for the tax does not fall upon the

Federal Government. In addition, this tax is not discriminatory since deeds which convey realty from the State to an individual or a business are also taxable.

CERTAIN FEDERAL INSTRUMENTALITIES AND FEDERALLY CHARTERED INSTITUTIONS:

The Federal Government has established various associations, banks, and corporations. The following is a list of federal code sections which established these organizations and established certain tax exemptions for such organizations.

<u>Organization</u>	<u>Federal Code Sections</u>
Government National Mortgage Assoc. (GNMA)	12 USCA 1717 12 USCA 1723a c)(1)
Federal National Mortgage Assoc. (FNMA)	12 USCA 1717 12 USCA 1723a c)(2)
Production Credit Association	12 USCA 2071 12 USCA 2077
Farm Credit Banks	12 USCA 2011 12 USCA 2023
Federal Home Loan Mortgage Corp (Freddie Mac)	12 USCA 1452(a) 12 USCA 1452(e)
Bank for Cooperatives	12 USCA 2121 12 USCA 2134
Federal Land Bank Association	12 USCA 2091 12 USCA 2098

In all cases, with the exception of the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (Freddie Mac), these organizations are deemed to be, by statute, instrumentalities of the Federal Government.

Effective September 1, 1968, the Federal National Mortgage Association (FNMA), which operated within the Department of Housing and Urban Development (HUD), was partitioned into two separate corporations. One corporation, the Governmental National Mortgage Association, remained an instrumentality of the Federal Government as part of HUD. The second corporation, the Federal National Mortgage Association, was federally chartered but is a private corporation subject to substantial federal regulations. For example, FNMA requires HUD approval for issuance of debt obligations and stock. HUD also has authority to audit FNMA's financial transactions.

Federal statute, 12 USCA 1723a (c)(2), established various tax exemptions for FNMA and reads:

The corporation, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income, shall be exempt from all taxation now or hereafter imposed by any State, territory, possession, Commonwealth, or dependency of the United States, or by the District of Columbia, or by any county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent as other real property is taxed.

The Federal Home Loan Mortgage Corporation (Freddie Mac) is not an instrumentality of the United States and in fact pays federal income taxes. However, it has been granted certain other tax exemptions under 12 USCA 1452(e) which reads:

The Corporation, including its franchise, activities, capital, reserves, surplus, and income, shall be exempt from all taxation now or hereafter imposed by any territory, dependency, or possession of the United States or by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

Therefore, deeds which convey realty to an instrumentality of the Federal Government, or to an entity that has been exempted from state and local taxation by Congress, are not subject to the documentary tax. Deeds which convey realty from these instrumentalities and entities are subject to the tax, as the legal incidence for the tax falls upon the purchaser.

Conclusions:

1. The purchaser or grantee is liable for the documentary taxes imposed under Code Sections 12-21-310, 12-21-380 and 12-25-10. In addition, if it is impractical to seek payment of the tax from the purchaser or grantee, the Commission may assess the seller or grantor for the tax.
2. Deeds executed by a Master in Equity, which convey property to an individual or business, are subject to documentary taxes.
3. Deeds which convey realty to the State of South Carolina are not subject to documentary taxes provided the realty will be used for public purposes. (See the exemption provisions of Code Section 12-21-380.)

Deeds which convey realty from the State of South Carolina to an individual or business are subject to documentary taxes.

4. Deeds which convey realty to the Federal Government are not subject to documentary taxes.

Deeds which convey realty from the Federal Government to an individual or business are subject to documentary taxes.

5. Deeds which convey realty to the Government National Mortgage Association (GNMA), Farm Credit Bank, Production Credit Association, Federal Land Bank Association, and the Bank for Cooperatives are not subject to documentary taxes. These organizations, as instrumentalities of the Federal Government and as grantees, cannot be held liable for the tax.

Deeds conveying realty from these instrumentalities of the Federal Government, as described above (i.e. GNMA), to an individual or business are subject to documentary taxes.

FNMA and Freddie Mac are not instrumentalities of the Federal Government; however, they do enjoy certain tax exemptions. As such, FNMA and Freddie Mac are exempt from documentary taxes on deeds which convey realty to them. When realty is conveyed from FNMA or Freddie Mac to an individual or business, the documentary taxes are due.

Note: References to the State of South Carolina in this ruling also include political subdivisions of the State. In addition, references to the Federal Government also include instrumentalities of the Federal Government.

SOUTH CAROLINA TAX COMMISSION

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell

T.R. McConnell, Commissioner

s/James M. Waddell Jr

James M. Waddell, Jr., Commissioner

Columbia, South Carolina
September 30, 1992