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SC TECHNICAL ADVICE MEMORANDUM #88-19

TO: Mr. Gary L. Turner, Director
Administrative Division

FROM: Jerry B. Knight, Manager
Tax Policy and Procedures Department

DATE: September 21, 1988

SUBJECT: Divorce - Distribution of Property
(Documentary Tax)

REFERENCE: S.C. Code Ann. Section 12-21-380 (Supp. 1987)

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

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

Are deeds, which transfer realty pursuant to a divorce decree, subject to the documentary tax under at Code Section 12-21-380?

Facts:

Under the instructions of a family court, deeds are executed to accomplish the equitable distribution of both real and personal property under a divorce decree.

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.

Discussion:

The issue is whether or not deeds conveying realty, pursuant to a divorce decree, constitute "realty sold".

Code Section 12-21-380 is similar to the now rescinded federal documentary statute which imposed a stamp tax on any "[d]eeds, instruments or writing * * * whereby any lands, tenements or other realty sold shall be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 purchasers * * *." Internal Revenue Regulation 47.4361-1(a)(4) (ii) defined the term "sold" as used in the above-cited statute as a "transfer of an interest for valuable consideration, which may involve money or anything of value."

In 1970 Ops. Atty. Gen. No. 2982, p. 253, the conveyance by a man of a lot and house to his ex-wife in lieu of future alimony payments constituted realty sold subject to the documentary tax.

Furthermore, in 1969 Ops. Atty. Gen. No 2617, p.13, the question concerned "whether or not documentary stamps are required when property is conveyed pursuant to or as a result of a divorce decree." The opinion concluded that:

Documentary stamps must be affixed to conveyances wherein the consideration for such exceeds \$100.00. In an opinion of this office on October 11, 1966, this office concluded that documentary stamps are not required on deeds for the partition of property. We therefore conclude that when property is partitioned and deeded as a result of a divorce decree it has not been "sold" and stamps are not required.

In addition, it has been the Commission's long-standing administrative policy that "a deed given in exchange for property pursuant to a divorce settlement is subject to the tax if it is not a partition." (See the Commission's Documentary Stamp booklet prepared for the Clerks of Court and Registers of Mesne Conveyanc, March 1978; updated October 1983)

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 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 SE 2d 682 (1950).

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission, 273 SC 269, 255 SE 2d 837 (1979); Fennell v. South Carolina Tax Commission, 233S.C. 43, 103 SE2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 SE2d 682 (1950).

Black's Law Dictionary, Fifth Edition, defines "partition" as:

The dividing of lands held by joint tenants, coparceners, or tenants in common, into distinct portions, so that they may hold them in severalty. And, in a less technical sense, any division of real or personal property between co-owners, resulting in individual ownership of the interest of each. Division between several persons of property which belongs to the co-owners; it may be compulsory (judicial) or voluntary.

In addition, both the now rescinded Internal Revenue Regulation, 47.4361-2(b)(7), and the Commission's Documentary Tax booklet list as not subject to the documentary tax:

Partition deeds, unless, for consideration, some parties take shares greater in value than their undivided interests, in which event a tax attaches to each deed conveying such greater share computed upon the consideration for the excess.

Conclusion:

When real property is partitioned and deeded as a result of a divorce decree, it has not been sold within the provisions of Code Section 12-21-380 and documentary stamps are not required to be affixed to the deeds. Otherwise, deeds transferring realty pursuant to a divorce decree constitute "realty sold", subject to the documentary tax.