

License Tax Division
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March 31, 1975

Section 65-688 of the Code imposes a tax on "mortgages executed within the State or recorded within the State". The Section provides that the amount of tax shall be based on consideration. A recent opinion of this office (copy attached) written on June 6, 1974, considered the question of the proper amount of tax to be imposed when a large loan, closed out of state, was secured by a master mortgage on property located in numerous states, including South Carolina. The opinion concluded that the consideration expressed on the face of the mortgage advanced with respect to property in South Carolina was the proper base on which to impose the tax. This is in accord with the case of Textron, Inc. v. Livingston, 244 S. C. 380, 137 S. E. 2d 267, which held that the liability for stamp taxes is to be determined from the face of the instrument.

In the instant case, the amount of consideration advanced in respect to the South Carolina property is not expressed on the face of the mortgages, however, the mortgages are only partial security for the loans and an attached affidavit gives the value of the property in South Carolina. Both mortgages encumber the entire property and create separate liens on it. The documentary stamp tax has been held by the United States Supreme Court to be on the creation of the instruments within this State. See Graniteville Mfg. Co. v. Quory, 283 U. S. 376. Two separate instruments have been created.

In the absence of an expression of the consideration advanced for each mortgage written on the face of the mortgages themselves, it is our opinion that the proper base of the stamp tax on each separate mortgage is the value of the property encumbered and that each mortgage should bear stamps in the full amount of the value of the property encumbered (i. e. \$665,433 on the first mortgage and \$665,433 on the second mortgage).

Yours very truly,

John C. von Lehe
Assistant Attorney General

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Enclosure