

84-00211
OFFICE OF THE ATTORNEY GENERAL



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MAR 23 1984

Honorable Barry L. Mullins
Lee, Barrett & Mullins
2600 6th Street, P. O. Box 2654
Tuscaloosa, AL 35403

Probate Judge - Mortgages - Financing Statements - Filing Tax

In order for an instrument to be exempt from filing tax under Code of Alabama 1975, §40-22-2(4), there must not only be identity of amount and time of maturity of the debt in both instruments, but also the creditor and debtor must be the same in both instruments.

Dear Mr. Mullins:

Reference is made to your request for an Attorney General's Opinion on behalf of W. Hardy McCollum, Judge of Probate for Tuscaloosa County, as to this question:

[W]here a mortgage is recorded evidencing an indebtedness for which the mortgage tax is paid, and a financing statement, Form UCC-1, is offered for recording upon the same indebtedness, but showing a different Debtor, should the mortgage tax be collected upon such financing statement.

Your question relates to Code of Alabama 1975, Section 40-22-2(4) which states that:

The privilege taxes herein imposed shall not be required on or for the filing of any such instrument, providing additional or substitute security for any indebtedness secured

by, or the securing of which is evidenced by, an instrument previously filed, upon the filing of which taxes provided by law have been paid or which was filed at a time when no such privilege taxes were required by law; provided, that the secured indebtedness remains unchanged in amount and in time of maturity.

This office has long interpreted that section to mean that not only must there be identity of amount and time of maturity of the debt in both instruments, but also the parties -- creditor and debtor -- must be the same in both instruments. See Quarterly Report of Attorney General, Vol. XXIV, page 234 (Opinion to Honorable Jno. B. Sockwell, Judge of Probate, Colbert County, dated September 22, 1941) and Quarterly Report of Attorney General, Vol. XIX, page 181 (Opinion to Honorable J. Lee Smith, Judge of Probate, Chilton County, dated May 24, 1940).

If as you stated in your letter, the financing statement and the mortgage show different debtors, the documents do not fall within the exemption set up in Section 40-22-2(4), and filing tax would be due upon the filing of each instrument.

I trust the above is sufficient to answer your question.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-



MELISSA C. BOWEN
Assistant Attorney General

MCB:ccc