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STATE OF ALABAMA

APR 27 1990

90-00249

Honorable Michael L. Davis  
Judge of Probate  
Limestone County  
P.O. Box 203  
Athens, AL 35611

Probate Judges - Recordation  
of Documents - Deed Tax -  
Leases

A memorandum of lease can be accepted for recording in lieu of the lease, and when recorded, has the same effect as recording the lease itself, if the memorandum contains the same provisions as those in the lease. However, the type of documentary evidence required to determine the rental amount under the lease is within the discretion of the Judge of Probate.

Dear Judge Davis:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION I

Pursuant to §35-4-51.1 of the Code of Alabama 1975, as amended, should deed tax be collected on memorandum of leases presented for recordation?

FACTS AND ANALYSIS

Section 35-4-51.1, Code of Alabama 1975, provides as follows:

"(a) A memorandum of a lease may be recorded in lieu of the lease itself if the memorandum is executed and acknowledged by the lessor and the lessee and contains:

\* \* \*

- (1) The names of the lessor and lessee;
- (2) The term of the lease;
- (3) Any option of the lessee to renew or extend the term of the lease; and
- (4) The specific legal description of the lease premises, or a survey or a plot plan authorized under subsection (c) showing the location of the lease premises.

\* \* \*

(d) As to the provisions contained in a memorandum recorded under this section, recording the memorandum has the same effect as recording the lease itself."

Therefore, if presented with a memorandum of lease which recites the provisions of the Code section cited above in all respects, you should record the memorandum and collect the appropriate amount of deed privilege tax without requiring the production of a copy of the lease.

QUESTION II

If the answer to Question I is affirmative, what factor should be considered to determine present valuation?

FACTS AND ANALYSIS

A lease conveys an interest in property and is, therefore, subject to deed tax dependent upon the value of the interest conveyed at the time of entering the lease. The determination of the value of the property interest conveyed is a judicial question to be made by the probate judge. Prior opinions of the Attorney General have set forth a practical method of determining the value of the property interest conveyed. See, e.g., Biennial Report of Attorney General, 1928-1930, page 538.

The value may be determined by ascertaining the present cash value of rents to be received over the term of the lease. The present cash value table set out in Reiter-Conley Mfg. Co. v. Hamlin, 144 Ala. 192, 40 So.280 (1906), has been used on

numerous occasions. The case assumes an eight percent discount factor. While an eight percent discount factor may be low in economic times of high interest rates, using the table contained therein is a fair method of determining the value of property interest conveyed and is well within the limits of judicial discretion of a probate judge.

CONCLUSION

A memorandum of lease rendered pursuant to §35-4-51.1, Code of Alabama 1975, has the same effect as recording the lease itself and, as such, deed tax is due to be collected based on the value of the interest conveyed. However, the type of documentary evidence required to be submitted or the method used to determine the value of the interest conveyed under the lease is within the discretion of the judge of probate.

Sincerely,

DON SIEGELMAN  
Attorney General

By-

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