

OFFICE OF THE ATTORNEY GENERAL

92-00331



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Honorable Cletus N. Youmans
Judge of Probate
P. O. Box 6406
Dothan, Alabama 36302

Probate Judge -- Recordation of
Documents -- Jewelry -- Uniform
Commercial Code -- Financing
Statement

Pursuant to § 40-22-2, Code of
Alabama 1975, mortgage
privilege tax should be
assessed on a Uniform Commer-
cial Code Financing Statement
which states that the collat-
eral is for "display only" or
"only for consignment," since
the secured party still seeks
the protection of the Alabama
recording statute.

Dear Judge Youmans:

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

QUESTION

Should mortgage recordation tax be
assessed on recording a UCC which states
that there is no indebtedness because the
Financing Statement being filed refers to
collateral on jewelry that is designated as
"display only" or "only for consignment?"

FACTS AND ANALYSIS

Lately, you have been receiving UCC's in your office for recording that state "no indebtedness" and the words "display only" or "only for consignment," which refer to collateral on jewelry. Therefore, the secured party states that there is no value to the jewelry and does not expect to pay any tax.

Generally, the Alabama recording statute, § 40-22-2, Code of Alabama 1975, does not mandate that a person record a Uniform Commercial Code Financing Statement. It merely establishes the procedures that are to be followed when mortgage instruments or other instruments evidencing an indebtedness are presented for recording, and the formula for determining the amount of tax, if any. Secured parties who choose to record their security instruments do so to avail themselves of the notice and protection recording provides against potential lienholders and other claimants. Therefore, the imposition of the tax is simply payment for the privilege of enjoying the protection afforded by the State of Alabama which recording bestows. To this end, § 40-22-2, Code of Alabama 1975, states in pertinent part:

"No mortgage, deed of trust, contract of conditional sales or other instrument of like character which is given to secure the payment of any debt which conveys any real or personal property situated within the state . . . shall be received for record or for filing in the office of any probate judge of this state unless the following privilege or license taxes shall have been paid . . ."

In the case of Hawkins v. Pure Oil Co., 232 Ala. 660, 169 So. 307 (1936), the basis for assessing a tax upon the recordation of an instrument was emphasized when the Alabama Supreme Court stated:

". . . The plain purpose of its recordation, therefore, is not for the perfection of the title . . . but the perfection of the record of the transaction. But for that privilege the statute exacts a tax . . ."

Reviewing the facts stated in the above premise: the secured party is seeking the protection of the State's

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recording statutes to assert to the consignees the secured party's right as consignor over the collateral that is the subject of the UCC-1. Therefore, mortgage privilege tax must be collected on the amount of indebtedness that the collateral secures, and such tax would be measured by the value of the property that is the subject of the "display" or "consignment," if there is no underlying indebtedness.

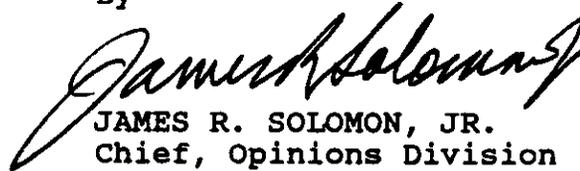
CONCLUSION

It is my opinion that pursuant to § 40-22-2, Code of Alabama 1975, mortgage privilege tax should be assessed on the UCC-1 Financing Statement when presented for recording based on the amount of the underlying indebtedness.

It is hoped that the above information sufficiently answers your question. Should there be any further questions or if this office can be of any further assistance, then please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By-



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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