



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Jesse James
State Treasurer
Austin, Texas

Dear Sir:

Opinion No. 0-4163

Re: Whether or not stamps under Art. 7047e, V.A.C.S., are required on a mortgage instrument securing notes given for interest that has accrued on a note secured by a mortgage previously recorded with stamps.

This is in reply to the request from your department for an opinion, in which the facts and the question were stated as follows:

"A Loan Company files a deed of trust creating a first lien on some property, and the State Note Tax is paid on the consideration named in the deed of trust. At a short interval a second deed of trust for a second lien on the same property is presented for filing. This latter instrument covers notes taken by the loan company for interest or part of the interest on the original loan. In other words, they take a second lien to secure interest notes, which are used to foreclose upon in case foreclosure comes around. Should the second Deed of Trust have the note stamp tax paid on the amount named?"

The statute that applies to this question is Article 7047e, Vernon's Annotated Revised Civil Statutes of Texas, which reads in part as follows:

"(a) Except as herein otherwise provided, there is hereby levied and assessed a tax of ten (10¢) cents on each One Hundred (\$100.00) Dollars or fraction thereof, over the first Two Hundred (\$200.00) Dollars, on all notes and obligations secured by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional

sales contract and all instruments of a similar nature which are filed or recorded in the office of the County Clerk under the Registration Laws of this State; provided that no tax shall be levied on instruments securing an amount of Two Hundred (\$200.00) Dollars, or less. After the effective date of this Act, except as hereinafter provided, no such instrument shall be filed or recorded by any County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this section; providing further that should the instrument filed in the office of the County Clerk be security of an obligation that has property pledged as security in a State or States other than Texas, the tax shall be based upon the reasonable cash value of all property pledged in Texas in the proportion that said property in Texas bears to the total value of the property securing the obligation; and providing further, that except as to renewals or extensions of accrued interest, the provisions of this section shall not apply to instruments given in renewal or extensions of instruments therefore stamped under the provisions of this Act or the one amended hereby, and shall not apply to instruments given in the refunding of existing bonds or obligations where the preceding instrument of security was stamped in accordance with this Act, or the one amended hereby; provided further that the tax levied in this Act shall apply to only one instrument, the one of the greatest denomination, where several instruments are contemporaneously executed to secure one obligation; and provided further that when once stamped as provided herein, an instrument may be recorded in any number of Counties in this State without again being so stamped. This section shall not apply to instruments, notes, or other obligations taken by or on behalf of the United States or of the State of Texas, or any corporate agency or instrumentality of the United States, or of the State of Texas, in carrying out a governmental purpose as expressed in any Act of the Congress of the United States or of the Legislature of the State of Texas, nor shall this section apply to instruments, notes or other obligations taken by or on behalf of National Banking Associations organized under the laws of

the United States, nor instruments, notes or other obligations taken by or on behalf of State Banking Corporations of the State of Texas created under Title 16 of the Revised Civil Statutes of Texas, nor shall the provisions of this section apply to obligations or instruments secured by liens on crops and farm or agricultural products, or to livestock or farm implements, or on abstract of judgment.

"If the amount secured by an instrument is not expressed therein, or if any part of the security described in any such instrument appears to be located without the State of Texas, the County Clerk shall require proof by written affidavits of such facts as may be necessary to determine the amount of the tax due.

"(b) Payment of the tax as hereby levied shall be evidenced by affixing the stamps herein provided for, to all instruments included within the provisions of the Act; and it shall be the duty of the State Treasurer at all times to keep a supply of such stamps on hand for sale to any person upon demand and payment therefor, and the State Treasurer shall at the request of any County Clerk of the State of Texas consign said stamps to the different County Clerks. . . ."

This is a tax on the privilege of having a lien recorded under the registration law of the state, and it is measured by the principal amount of the obligation secured. *City of Abilene v. Fryar*, 143 S. W. (2d) 654.

When the first deed of trust was recorded in this case the amount of the tax was calculated on the principal amount of the debt secured, without regard to interest that was to accrue, that is, it was calculated on the amount of the debt as it existed at that time. The second deed of trust was to secure a new indebtedness. Although it was an indebtedness that represents the interest that accrued on the first note secured by the first deed of trust, it had not accrued and therefore did not exist when the first deed of trust was recorded.

We have heretofore stated in Attorney General's Opinion No. O-3128, dated February 18, 1941, that in a case in which a lien instrument securing a note has been properly

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stamped and that note is renewed and a new lien instrument is recorded that the amount of the new note that "represents other money advanced or interest accrued on the original indebtedness" should be the amount on which the stamp tax on the second lien instrument should be calculated.

Our answer to your question is that the second deed of trust you ask about is subject to the note stamp tax.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (s) Cecil C. Rotsch
Assistant

APPROVED DEC. 30, 1941

(s) Grover Sellers
First Assistant Attorney General

APPROVED
Opinion Committee
By B. W. B. Chairman

CCR:mp