

exchange taxable and measured by the only reasonable consideration, in that transaction, of par value.

As to the second question, the "consideration" by which the amount of documentary stamp tax is measured under §201.02, F. S., includes the total consideration paid in the transfer, including outstanding mortgages whether they are "assumed" or the transfer is made "subject to" such obligations. *Kendall House Apartments, Inc. v. Department of Revenue*, 245 So.2d 221 (Fla. 1971); *Raspberry v. Dickinson*, 243 So.2d 236 (1 D.C.A. Fla., 1971). Section 201.021(1), F. S., however, specifically excludes "amounts of existing mortgages on the real estate sold," except for those situations when the original mortgagor (grantor) is released from liability. *United Bonding Ins. Co. v. Southeast Reg. Bldrs., Inc.*, 236 So.2d 460 (1 D.C.A. Fla., 1970); *Mills v. McMillan*, 82 So. 812 (Fla. 1919); AGO 073-67.

073-69—March 22, 1973

TAXATION

ATTACHMENT OF SEVERANCE TAX LIABILITY TO SULPHUR PRODUCTION

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee
Prepared by: Winifred L. Wentworth, Assistant Attorney General and James D. Whisenand, Legal Intern

QUESTION:

Is the Department of Revenue authorized to tax the severance of sulphur under part II, Ch. 211, F. S.?

SUMMARY:

Pursuant to part II, Ch. 211, F. S., the Department of Revenue is required to tax the severance of the solid mineral of sulphur when it is removed from the soil or water of this state in a molten form for commercial use.

Your question should in my opinion be answered in the affirmative under the provisions of part II, Ch. 211, F. S. You indicate that the sulphur in question is extracted from the soil or water as sour crude oil in a molten state and kept in this state for ease of transportation. A separation process produces a sweet crude oil, gas, and sulphur. The sulphur production is a by-product of the first stage of refining.

Part II of Ch. 211, F. S., imposes a tax on the severance of solid minerals as levied by §211.31(1):

There is hereby levied, to be collected as provided herein, an excise tax upon every person engaging in the business of severing solid minerals from the soils and waters of this state for commercial use. Such tax shall be 5 percent of the value at the *point of severance* of the identifiable solid minerals severed. . . . (Emphasis supplied.)

A mineral is severed when it is extracted from the soil or water, whether upon or below the surface, and the point of severance is that point at which the solid mineral being severed is identifiable as to its kind and quality; §211.30(2) and (6), F. S. The term "solid mineral" is defined in §211.30(1), F. S.:

The words "solid mineral" mean *all* solid minerals, including, *but not limited to*, clay, gravel, phosphate rock, lime, shells (excluding live shellfish), stone, sand, and *any rare earths* which have heretofore been discovered or may be discovered in the future, which are contained in the soils or waters of this state. (Emphasis supplied.)

The legislature, by imposing the tax on the value at the point of severance, §§211.30(5) and 211.31(1), F. S., recognized that minerals are not generally separated from the earth in pure form and that processing is usually needed to identify the mineral or minerals extracted. In *Haynes v. Eagle-Picher Co.*, 295 F.2d 761 (10th Cir. 1961), the court concluded that sulphur was indisputably a solid mineral and that its value was generally measurable at the point it was commercially identified. *Cf.* 26 U.S.C. §613.

The fact that the solid mineral sulphur is extracted from the earth in a molten state is not determinative of tax liability, since the tax is an excise tax on the privilege of severing the mineral from the soils or waters of this state. The taxpayer's economic conclusion to retain the sulphur in a molten form for further processing or refinement cannot alter the substance of his acts in severing an identifiable solid mineral upon which the legislature has chosen to make the levy in question. *Kendall House Apartments, Inc. v. Department of Revenue*, 245 So.2d 221 (Fla. 1971).

073-70—March 22, 1973

COURTS

SEAL FOR COUNTY COURT AND COUNTY COURT CLERK; DESIGN THEREFOR

To; Monroe W. Treiman, County Court Judge, Hernando County, Brooksville

Prepared by: Steven F. Dean, Assistant Attorney General

QUESTIONS:

1. Is a county court authorized to have a seal and if not, what seal, if any, should be used by such court?
2. What should be the design of the seal used by the clerk of the county court?

SUMMARY:

Neither the county court nor the clerk thereof is authorized a seal by existing statute.

Until legislatively or judicially clarified or determined otherwise, it would appear appropriate for those persons who are performing the duties of, or who are serving as, clerk of the county court and who are the custodians of the records, proceedings, and documents of the county court to adopt a private seal for the purpose of authenticating, exemplifying, attesting, or certifying official orders, records, proceedings, and documents of the county court and to utilize such seal for said purposes.

The form and design of such private seal may be similar in form and design to that of the seal of the clerk of circuit court as prescribed by §28.071, F. S., except for the designation of the court inscribed thereon.

Pursuant to §30 of Ch. 72-404, Laws of Florida, §§34.09 and 36.05, F. S., providing for a seal of the county court and a seal of the county judge, respectively, were repealed effective at 11:59 p.m., January 1, 1973.

Pursuant to §11 of Ch. 72-404, Laws of Florida [§34.031, F. S.], the clerk of circuit court is to be the clerk of county court unless otherwise provided by law. Several special acts were passed by the legislature during the 1972 Session creating the separate office of clerk of the county court in several of the counties, but only one such law has made provision for a seal for said clerk or for the court. *See* Ch. 72-435, Laws of Florida. Therefore, with the one exception noted, there exists no