

Stamp Taxes—Sheriff's Deeds—Internal Revenue Stamps.

United States stamps are required to be affixed to sheriffs' deeds where the extent or value of the property conveyed exclusive of liens and encumbrances remaining thereon exceeds one hundred dollars.

Mr. Fred L. Fahrion,
County Clerk and Recorder,
Columbus, Montana.

August 4, 1932.

My dear Mr. Fahrion:

I have your request for an opinion. You inquire whether internal revenue stamps must be affixed to sheriffs' deeds, and, if so, who must pay for the stamps.

By the Revenue Act of 1932 Schedule A-8 of the Revenue Act of 1926 was amended by adding the following:

"8. Conveyances: Deed, instrument, or writing, delivered on or after the 15th day after the date of the enactment of the Revenue Act of 1932, and before July 1, 1934 (unless deposited in escrow before April 1, 1932), whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction,

when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500, 50 cents; and for each additional \$500 or fractional part thereof, 50 cents. This subdivision shall not apply to any instrument or writing given to secure a debt."

The above provision is the same as was found in the Revenue Act of 1914 and it was held by the federal courts that sheriffs' deeds were required to have revenue stamps affixed. It was contended that the federal government could not require these stamps to be affixed to sheriffs' deeds for the reason that it would amount to a tax upon the state governmental functions but for the reasons appearing in the following cases that contention was held unsound.

Boise Title & Trust Company vs. Evans, 295 Fed. 223;
Home Title Ins. Co. vs. Keith, 230 Fed. 905, and authorities
cited in the opinions.

The above decisions involve the Act of 1914 but inasmuch as the amendment to the Act of 1926 by the Act of 1932 is in the same language it is apparent that these decisions would apply.

The United States Government has also taken the position that sheriffs' deeds are subject to the Revenue Act of 1926 as amended by the Revenue Act of 1932 for in Regulations 71 of the Treasury Department, Bureau of Internal Revenue, Article 82 provides that deeds executed by sheriffs to cover transfers of property sold under a foreclosure or execution are subject to the tax. It is also held that the grantee in the deed may be required to pay the tax, and, in my opinion, the person demanding a sheriff's deed cannot require the sheriff to execute it unless he procures the stamps to be affixed to the deed or pays to the sheriff the money with which to procure them.

Very truly yours,

L. A. FOOT,
Attorney General.