

1983 S.C. Op. Atty. Gen. 121 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-76, 1983 WL 142745

Office of the Attorney General

State of South Carolina

Opinion No. 83-76

September 26, 1983

***1 SUBJECT: Taxation, Municipal Ordinance, Business License Tax**

Municipalities have been granted the specific authority to levy business license tax on gross income pursuant to § 5-7-30. Gross income is interpreted as total receipts from a business before deductions, but excluding those funds which are collected and held for remittance to another governmental entity.

TO: Honorable J. Ira Ruff
Mayor
Town of Leesville

QUESTION:

When interpreting the Business License Ordinance of the Town of Leesville, does the term 'gross income' for license tax purposes exclude the cost of goods sold?

APPLICABLE LAW:

[Sections 5-7-30, 12-7-510, 12-7-660, 12-21-2420, and 12-27-10 of the South Carolina Code of Laws \(1976\).](#)

DISCUSSION:

Municipalities have only powers expressly granted by the Legislature or necessarily implied from those so granted, [Blake v. Walker](#), 23 S.C. 515. [Section 5-7-30](#) gives municipal corporations specific powers. The exercise of these powers is subject, however, to limitations, [McCoy v. York](#), 193 S.C. 390, 8 S.E. 2d 905.

[Section 5-7-30](#) reads in pertinent part:

'All municipalities of the State shall, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including * * * levy a business license tax on gross income, provided, however, that a wholesaler delivering goods to retailers in any municipality shall not be subject to the business license tax unless he maintains within the corporate limits of the municipality a mercantile establishment for the distribution of wholesale goods or a warehouse; * * *.'

Gross income means the total receipts from a business before deducting expenditures for any purpose. [Columbia Ry. Etc. Co. v. Tax Commission](#), 119 S.C. 480, 112 S.E. 267 (1921). Net income is that portion of the receipts which remains after paying wages and paying for materials * * *. [First Trust Co. of St. Paul v. Commonwealth Co.](#), 98 F. 2d 27, 31 (1938). [See Attorney General's Opinion dated February 2, 1977]. Gross income becomes 'net' by deductions. [Hamilton National Bank v. District of Columbia](#), 156 F. 2d 843 (1946).

[Section 12-27-10, Code](#), levies a gasoline tax against the consumer, to be collected by the dealer as an agent for the State.

Section 12-21-2420, Code, imposes an admissions tax on the person paying the admission price. The person collecting the admission price is also required to collect the admissions tax as an agent of the State Tax Commission.

Because the gasoline tax and the admissions tax are levied on the consumer, but collected by the business owner for remittance to the State, those funds are not to be included in gross income when computing the business license tax. (See Attorney General's Opinion No. 3356 dated August 2, 1972).

*2 Code § 12-35-510 imposes a four (4) percent tax on the gross proceeds of sales of a business. This tax is levied on the seller of goods but is collected from the purchaser. Because this tax is levied on the seller, those funds collected as sales taxes are to be included in gross income when computing the business license tax.

Section 4 of the ordinance of the Town of Leesville reads, in part, 'a license fee based on gross income for the preceding calendar or fiscal year * * *.' Section 6 reads, in part:

'No deductions from gross income shall be made except income from interstate commerce only, income from business done wholly outside of the Town on which a license tax is paid to some other municipality, or income which cannot be taxed pursuant to state law.'

Based on precedent, giving the term 'gross income' its common meaning, and strictly construing the ordinance as written, the Town of Leesville is permitted to compute the license fees on the total receipts of a business, before any deductions are taken. Those funds which are a tax upon the retail purchaser but collected and held by the owner/operator of the business for distribution to other governmental agencies are not to be included as receipts of the business.

CONCLUSION:

Gross income is interpreted as total receipts from a business before deductions, but excluding those funds which are collected and held for remittance to another governmental entity.

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