

1980 S.C. Op. Atty. Gen. 108 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-62, 1980 WL 81945

Office of the Attorney General

State of South Carolina

Opinion No. 80-62

May 29, 1980

**SUBJECT: Income Tax-Exempt Status of a Corporation Which is Wholly-Owned by a Qualified Employee Trust.**

\*1 There is no provision of South Carolina law which would grant exempt status for income tax purposes to a corporation that is wholly-owned by a qualified trust which forms part of an employee profit sharing plan.

TO: Mr. Carroll H. Brooks  
Director  
Income Tax Division

QUESTION:

A trust which forms part of a qualified employee profit sharing plan is the sole shareholder of a corporation which exists solely to further the purposes of the qualified trust by acquiring and holding title to property to collect the income therefrom and pay over the entire amount thereof, less expenses, as dividends to the trustee of the qualified trust. Is such corporation exempt for South Carolina income tax purposes?

APPLICABLE LAW:

[Sections 12-7-90](#) and [12-7-330\(9\)](#), [Code of Laws of South Carolina, 1976](#), as amended.

DISCUSSION:

Under federal tax law the trust which forms part of the employee profit sharing plan is qualified for exempt status for income tax purposes by reason of [Sections 401\(a\)](#) and [501\(a\)](#), [Internal Revenue Code](#) (I.R.C.).

The trust itself would likewise be qualified and exempt for state income tax purposes by reason of [§§ 12-7-330\(9\)](#) and [12-7-90](#), [South Carolina Code](#), 1976, as amended, which sections contain the following language respectively:

‘\* \* \*. (9) Pension, profit-sharing, stock-bonus, and annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, and so constituted that no part of the corpus or income may be used for, or diverted to any purpose other than for the exclusive benefit of the employees or their beneficiaries, if there is no discrimination as to eligibility requirements, contributions or benefits in favor of officers, shareholders, supervisors or highly paid employees. The interest of individual employees participating therein shall be irrevocable and nonforfeitable to the extent of any contributions made thereto by such employees. The Tax Commission shall be empowered to promulgate rules and regulations regarding the qualification of such trusts for exemption under this subsection. The exemption of any trust under the provisions of the Federal Income Tax Law shall be a prima facie basis for exemption of such trust under this paragraph; \* \* \*.’

‘The provisions of the Employee Retirement Income Security Act of 1974 ([Public Law 93-406](#)); [Public Law 94-267](#) of 1976, the Tax Reform Act of 1976 and the Revenue Act of 1978 as related to income tax treatment of Defined Contribution Plan

and Defined Benefit Plan contributions of and benefits to individuals, partnerships, corporations, trusts and associations shall apply for all South Carolina income tax purposes.’

For federal tax purposes, the corporation in this case would also be exempt by reason of § 501(c)(2) I.R.C. which states:

\*2 ‘Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to any organization which itself is exempt under this section.’ However, there is no comparable language found in Title 12, Taxation, Code of Laws of South Carolina, 1976, as amended, which would also exempt the corporation for South Carolina income tax purposes although the trust is the sole shareholder of the corporation and the corporation exists exclusively to further the purposes of the exempt trust. The corporation is a separate entity and is to be regarded as such for tax purposes. [Edisto Fleets, Inc. v. South Carolina Tax Commission](#), 256 S.C. 350, 182 S.E. 2d 713 (1971).

[Section 12-7-330\(9\)](#), supra, exempts only trusts or combinations of trusts which otherwise meet the requirements for exemption. Neither [§ 12-7-330\(9\)](#) nor [§ 12-7-90](#) says anything about corporations which are wholly-owned by qualified trusts, and there are no other provisions in the South Carolina Code which would exempt such corporations.

‘Constitutional and statutory language creating exemption from taxation will not be strained or liberally construed in favor of taxpayer claiming an exemption, and he must clearly bring himself within the language on which he relies.’ [Textile Hall Corp. v. Hill](#), 215 S.C. 262, 54 S.E. 2d 809. For other cases see [17 S.C.D., Taxation](#), Section 204(2), et seq.

#### CONCLUSION:

There is no provision of South Carolina law which would grant exempt status for income tax purposes to a corporation that is wholly-owned by a qualified trust which forms part of an employee profit sharing plan.

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