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Office of the Attorney General

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*1 An 'association' taxable as a corporation for income tax purposes is not subject to the license fee imposed on corporations.

Mr. C. H. Brooks
Director
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QUESTION

Is an 'association', taxable as a corporation for income tax purposes, subject to the license fee imposed on corporations?

STATUTES

Sections 65-602 and 65-606 of Chapter 10, Volume 13 and Sections 65-202 and 65-222.2 of Chapter 5, Volume 13 of the 1962 South Carolina Code of Laws.

DISCUSSION

In order to be liable for a corporate income tax, it is clear that an entity need not be formally incorporated. For income tax purposes, the definition of a corporation as stated in Section 65-202(4) of the Code includes an 'association'. Although not defined in our law, the concept of an association was taken from the early Internal Revenue Codes. The term is now encompassed in [Section 7701\(a\)\(3\) of the Internal Revenue Code of 1954](#). It includes organizations which have characteristics of a corporation although not actually incorporated. See [Morressey v. Commissioner, 296 U. S. 344](#).

The South Carolina corporate license fee is imposed by Chapter 10 of the Code. Historically, the tax has been imposed only on incorporated entities and has been defined as follows:

'The franchise tax is a privilege tax imposed upon the privilege of doing business as a corporation within the state.' [United States Rubber Co. v. Query, 19 F. Supp. 191, 194](#). (Emphasis added)

Section 65-602, prior to 1962, imposed the license fee as follows:

'Every corporation organized under the laws of this State to do business for profit and every corporation organized to do business under the laws of any other state * * * and qualified to do business in this State * * *.'

In 1962, by Act No. 874, Acts and Joint Resolutions at 2172, the section was amended to impose the license fee on an additional class of 'any other corporation required (by Section 65-222) to file income tax returns'. Because Section 65-222 is an income tax statute, it applies to both corporations and 'associations'. We, however, do not believe that the purpose of the 1962 amendment was to subject 'associations' to corporate license fees. The wording of the Act refers to 'other corporations' required to file income tax returns, not to other 'taxpayers' required to file. The obvious purpose of the 1962 Act was to subject nondomesticated corporations who did business in this State to corporate license fees. The title of the Act states its purpose to make the corporate

license fee filing requirements uniform with the income tax filing requirements, and the wording of the Act clearly retains the historical character of the Act as applying only to corporations for the privilege of conducting business in corporate form.

CONCLUSION

The corporation license fee is imposed only on corporations, and 'associations', although taxable as corporations for income tax purposes, are not liable for the license fee.

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