

1976 WL 30745 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*1 A foreign corporation doing no business in this State is a nonresident for purposes of Section 65-1404(24), however, is a resident if it operates business establishments in the State or otherwise does business in this State. The extent and nature of the in-state business must however be considered. A domestic corporation is a resident within the meaning of the section.

Mr. James A. Walton
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QUESTION

Section 65-1404(24) provides in part as follows:

‘There are exempted from the provisions of this article, and from the computation of the amount of the tax levied, assessed or payable under this article, the following:

‘(24) The gross proceeds of sales of motor vehicles, trailers, semi-trailers and pole trailers of a type required to be registered and licensed sold to nonresidents for immediate transportation to and use in another state * * *.’

You request the opinion of this office concerning three questions relative thereto.

(1) Can a corporation organized and existing under the laws of another state with no nexus in this State qualify for exemption as a nonresident?

(2) Can a corporation organized and existing under the laws of another state and domesticated in this State qualify for exemption as a nonresident if all other requirements of the exemption section are met? The corporation has business locations in South Carolina.

(3) Can a corporation organized and existing under the laws of South Carolina and domesticated in another state qualify for exemption as a nonresident when purchases are made by its branches located in other states for use in those states?

STATUTES INVOLVED

Section 65-1404(24) and other sales tax provisions found in Chapter 17 of Title 65.

DISCUSSION

While the term ‘nonresident’ is not defined to include or exclude corporations, evidence of the inclusion is found in other sections of Chapter 17 of Title 65. Section 65-1356, for example, defines a ‘person’ to include corporations and a person and a corporation are for purposes of the tax treated the same.

Such also conforms with the general inclusion of corporation by the term 'persons'. (See cases collected in Vol. 32, Words & Phrases).

Having concluded therefore that the term 'nonresident' includes corporations, we now treat the questions.

Question 1. The corporation does no business in this State and it is thus a nonresident for purposes of the exemption. The general rule is that a corporation is a resident of the state of incorporation.

'Every corporation is prima facie locally situated in the territory of the sovereign power from which it derives its origin; a part from that a corporation has physically no place or attributes of locality, although it may for the purpose of its business occupy a place outside the state or country of its origin.' 36 Am. Jur. 2d, Foreign Corp., Sec. 32, p. 47.

Question 2. The foreign corporation under the question stated has business locations in this State and would for purposes of the exemption be a resident. For purposes of venue it has been held that:

*2 * * * a foreign corporation, owning and operating a line of railroad in this state, is a resident of a county in which such railroad is situated, and in which it maintains offices and agents for the transaction of its business; * * *.' [Campbell v. Mutual Benefit H. & Acc. Ass'n. of Omaha, Neb.](#), 161 S. C. 49, 159 S. E. 490.

A like conclusion was stated by the United States Supreme Court in the case of [International Milling Co. v. Columbia Transp. Co.](#), 292 U.S. 511, 78

'At the outset, we mark the fact that the petitioner, though a Delaware corporation, is suing in the state of its business activities. For many purposes, its domicile in law is in the state of its creation ([Shaw v. Quincy Mining Co.](#), 145 U.S. 444, 12 S. Ct. 935, 36 L. Ed. 768; [Seaboard Rice Milling Co. v. Chicago, R. I. & P. R. Co.](#), 270 U.S. 363, 46 S. Ct. 247, 70 L. Ed. 633), but it is living its life elsewhere. In a very real and practical sense, it is a resident of the forum, like the plaintiff in the [Taylor Case](#), 266 U.S. 200, 207, 45 S. Ct. 47, 69 L. Ed. 247, 42 A.L.R. 1232, who was domiciled in one state and resided in another. Certainly its relation to the locality was so permanent and intimate as to relieve it of the opprobrium of an impertinent intruder when it went into local courts. In saying this we do not hold that the residence of the suitor will fix the proper forum without reference to other considerations, such as the nature of the business of the corporation to be sued. * * *.'

An exemption similar to that found in Section 65-1404(24) was provided for aircraft sold to nonresidents for use out of the State of California and the identical question was treated in the case of [Garrett Corp. v. State Board of Equalization](#), 11 Calif. Reporter 421, 189 CA 2d 504. The holding is best stated by the following language of the syllabus.

'Exemption from sales and use tax law of gross receipts of aircraft sold to 'persons' who were not 'residents' and would not use aircraft in state otherwise than in removal did not exempt sales to foreign corporations which maintained places of business within state.'

Question 3. The general rule would apply to this question and the corporation would be a resident of this State for purposes of the exemption. The corporation would probably be estopped to deny its residency as it exists by operation of South Carolina law.

CONCLUSION

A foreign corporation doing no business in this State is a nonresident for purposes of Section 65-1404(24), however, is a resident if it operates business establishments in the State or otherwise does business in this State. The extent and

nature of the in-state business must however be considered. A domestic corporation is a resident within the meaning of the section.

The opinion stated herein is not in conflict with that stated February 28, 1966, relating to the income withholding requirements of nonresidents.

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