

1976 S.C. Op. Atty. Gen. 174 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4347, 1976 WL 22966

Office of the Attorney General

State of South Carolina

Opinion No. 4347

May 13, 1976

***1 House Bill 3857, bearing Ratification No. 660, is not to be given a retrospective effect and is therefore not in effect for the calendar year 1976.**

Director

Property Tax Division

You have asked whether House Bill 3857 is effective for the tax year 1976.

House Bill 3857, signed by the Governor on May 5, 1976, provides for the ad valorem taxation of airline companies operating within the State. Section 10 of the Act provides that the Act shall be effective upon approval by the Governor.

Ad valorem taxation is generally conceded to be a tax collected for a calendar year. The tax provided for in this Act must be paid on or before December 31 of the tax year, which is an expression that the tax is a calendar year tax. The date accepted as the date for determining property subject to taxation is December 31 preceding the tax year, however, taxpayers regularly maintaining books and records on a fiscal year basis must report the property which they own as of the close of the accounting period. See Section 65–1647.1; also *Atkinson Dredging Co. v. Thomas*, Opinion No. 20182, filed March 9, 1976. Returns which are required to be filed with the Tax Commission must be filed on or before the fourth month after the close of the accounting period. This means that a taxpayer maintaining books and records on a calendar year basis must return all property owned on December 31 preceding the tax year on or before April 15th of the tax year.

Section 2 of the Act relating specifically to the taxation of airline companies, provides that all airline companies shall make a return on or before April 15th in each year.

‘All airline companies operating in the State shall make an annual property tax return on or before the 15th day of April in each year for the preceding calendar or fiscal year of their flight equipment to the Commission. Each type and model of flight equipment shall be separately returned, valued and apportioned as herein provided.’

This return is the basis for the determination of tax liability. It thus is an essential part of the administration of the tax.

The Act became law on May 5th, which is subsequent to the return date clearly expressed. As a general rule, statutes are not to be given a retrospective effect in the absence of a clear provision that a retrospective effect is intended. *New York Life Ins. Co. v. Truesdale*, 79 F. 2d 481; *Independence Ins. Co. v. Independent Life & Acc. Ins. Co.*, 218 S. C. 22, 61 S. E. 2d 399. Any doubt as to whether or not a tax law is retrospective will be resolved against the tax and in favor of the taxpayer. *Jefferson Standard Life Ins. Co. v. King*, 165 S. C. 219, 163 S. E. 653.

In conclusion, there is nothing in the Act providing for taxation of airline companies expressly stating an intention that it shall apply for the year 1976, therefore, in accord with the general rule that taxing statutes shall not be given a retrospective effect, we must advise that the tax shall not apply for the calendar year 1976.

***2** G. Lewis Argoe, Jr.

Assistant Attorney General

1976 S.C. Op. Atty. Gen. 174 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4347, 1976 WL 22966

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.