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Office of the Attorney General

State of South Carolina

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*1 Fuel placed into or onto a motor vehicle to operate a refrigeration unit that is a part or attachment to the motor vehicle is subject to the motor fuel tax under the Provisions of Sections 65-1211.1 and 65-1211.2 of the Code, as amended.

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QUESTION

Is the fuel tax imposed upon fuel placed onto a motor vehicle to be used to operate a refrigeration unit which is a part of the motor vehicle?

STATUTES INVOLVED

Section 14, Act No. 1555, codified as Section 65-1211.2, South Carolina Code of Laws; Section 14, Act No. 1575, codified as Section 65-1211.1 and Section 65-1201(1) of the South Carolina Code of Laws.

DISCUSSION

In 1972 the General Assembly enacted Sections 65-1211.1 and 65-1211.2 which relate to the fuel tax. Section 65-1211.1 states:

‘All motor fuels placed onto a motor vehicle for use in the operation of such motor vehicle or for the operation of any part or attachment thereto shall be subject to the motor fuel tax.’

The first sentence of Section 65-1211.2 is the same as Section 65-1211.1 with the exception that the word ‘into’ is used rather than ‘onto’ as used in Section 65-1211.1. Prior to the enactment of these two laws, the tax on fuel was solely upon fuel used to propel motor vehicles on the highways.

On inquiry, this office was informed by the Research Division of the South Carolina Tax Commission as follows: ‘Section 14 amends the South Carolina Motor Fuel Tax so as to tax all fuel placed onto a motor vehicle. This section was added by the House Ways and Means Committee in order to try to correct several complaints that members of the legislature had received from the public. It is my understanding by being present when this matter was discussed that complaints had been received that fuel placed into tanks to operate refrigeration equipment was being bypassed to the regular tank of the vehicle and used to propel the vehicle instead of operating refrigeration equipment.

From their discussion, it is my opinion that this section was added for the purpose of taxing all fuels placed onto a motor vehicle in order to correct this situation and collect tax on such fuels.’

It has been held that it is proper to consider the purpose sought to be accomplished by legislation. [Arkwright Mills v. Murph](#), 219 S. C. 438, 65 S. E. 2d 665. See other cases cited South Carolina Digest, Statutes, Section 184.

Section 65-1201 states in part:

'The following words, terms, and phrases when used in this chapter shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

(1) 'Fuel' or 'fuels' shall mean and include all combustible gases and liquids used, purchased, or sold for use, in an internal combustion engine or motor for the generation of power to propel licensed motor vehicles on the highways except such fuels as are subject to the tax imposed by chapter 13 of this Title.'

*2 In our opinion this definition does not preclude the imposition of tax upon fuel used in refrigeration units in motor vehicles. The preamble of this section states that the definitions contained in the section shall not be limited but shall be open for consideration according to the context in which used. In accord are those cases found in the South Carolina Digest under Statutes in Sections 184 and 208. Further, if such were held to be a limitation, particularly with respect to the subsequent enactment of both Sections 65-1211.1 and 65-1211.2, the sections would be meaningless. The courts have held that the presumption is that the General Assembly did not intend to do a futile thing. [Gaffney v. Mallory](#), 186 S. C. 337, 195 S. E. 840; [Fulghum v. Bleakley](#), 177 S. C. 286, 181 S. E. 30. Also other cases cited South Carolina Digest, States, Section 212.4.

We therefore conclude that fuel used in refrigeration units is taxable.

CONCLUSION

Fuel placed into or onto a motor vehicle to operate a refrigeration unit that is a part or attachment to the motor vehicle is subject to the motor fuel tax under the provisions of Sections 65-1211.1 and 65-1211.2 of the Code, as amended.

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