

1972 S.C. Op. Att. Gen. 154 (S.C.A.G.), 1972 S.C. Op. Att. Gen. No. 3326, 1972 WL 20466

Office of the Attorney General

State of South Carolina

Opinion No. 3326

June 8, 1972

The deduction or exemption for income tax purposes granted by Section 65–225.1 to military personnel are those deductions and exemptions existing on the date of the enactment of the section, May 1945.

*1 Director

Individual Income Tax Division

South Carolina Tax Division

Reference is made to your request for the opinion of this office concerning Section 65–225.1 of the South Carolina Code and [Section 692 of the United States Internal Revenue Code](#), 26 U. S. C. A. 692. Section 65–225.1 grants to persons in the military service of the United States the same exemptions for South Carolina income tax purposes that are granted by the United States government in computing the United States income taxes, and [Section 692 of the United States Internal Revenue Code](#) precludes the taxation of income of persons in military service that are killed while on active service in a combat zone.

The inquiry is therefore, whether the exemption there granted by the United States Code is applicable to the South Carolina income tax.

The answer thereto necessarily depends upon the date of the enactment of the South Carolina statute and the United States Internal Revenue Code provision.

Article 3, Section 1, of the South Carolina Constitution confers upon the General Assembly legislative powers that cannot be delegated, and because of such the South Carolina Section refers to those exemptions that were in existence when the Section was adopted.

‘In the absence of a clear indication of a different intention, it will be presumed that it was the intent of the lawmakers * * * that the rules and regulations thus adopted by reference were those in force at the time of the approved of the Act.’ [Santee Mills v. Query](#), 122 S. C. 158, 115 S. E. 202.

‘The Court here impliedly recognized that the statute would have been unconstitutional if it had been construed to refer to the incorporation of future amendments by Congress of regulations by the Department of Internal Revenue.’ 133 A. L. R. 401.

‘It is generally held that the adoption by or under authority of a state statute of prospective Federal legislation, or Federal administrative rules thereafter to be passed, constitutes an unconstitutional delegation of legislative powers.’ [Hutchinson v. Mayo](#) 143 Fla. 707, 197 So. 495 [State v. Intoxicating Liquors](#), 121 Me. 438, 117 A. 588; [State v. Gauthier](#), 121 Me. 522, 118 A. 389, 26 A. L. R. 652; [Holgate Bros. Co. v. Bashore](#), 331 Pa. 225, 200 A. 672, 117 A. L. R. 639 [Darweger v. Staat](#), 267 N. Y. 290, 196 N. E. 61.

The South Carolina Section 65–225.1, was a part of Act 224 that was enacted in May of 1945, while [Section 692 of the Internal Revenue Code](#), or the provisions thereof, were first enacted as Section 334 of the Revenue Act of 1951 that amended Section 154 of the 1939 Internal Revenue Code and was adopted October 20, 1951.

It is therefore the opinion of this office that the exemption afforded by [Section 692 of the Internal Revenue Code](#), 26 U. S. C. A. 692, is not included within the provisions of Section 65–225.1 of the South Carolina Code of Laws.

*2 Joe L. Allen, Jr.
Assistant Attorney General

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