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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 6, 1998

The Honorable Glenn G. Reese
Senator, District No. 11
117 Sun Valley Drive
Boiling Spring, South Carolina 29316

Dear Senator Reese:

Your opinion request has been forwarded to me for reply. You have enclosed information from one of your constituents concerning the payment of sales tax on an automobile. You have asked this Office to review the enclosed information and determine whether sales tax should be paid when leasing a car and again when buying the same car at the end of the lease period. Your constituent has also raised a question concerning whether such taxation is double taxation.

In general, the sales tax is an imposition upon the privilege of the business of selling at retail and measured by the amount of business done, which is a clear case of an excise tax to which the constitutional provisions relating to property taxes are irrelevant. State v. Byrnes, 219 S.C. 485, 66 S.E.2d 33 (1951). Thus, the court has recognized that the sales tax is not a property tax. Op. Atty. Gen. dated December 22, 1967.

The South Carolina Sales and Use Tax Act is found in Section 12-36-5 et seq. of the South Carolina Code of Laws. Section 12-36-100 of the Code defines sale and purchase as any transfer, exchange, or barter, unconditional or otherwise, of tangible personal property for consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;

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- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

Under the Act, a sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. S.C. Code Ann. § 12-36-910. However, the maximum tax imposed by the chapter is three hundred dollars for each sale of a motor vehicle made after June 30, 1984, or lease of such executed after August 31, 1985. § 12-36-2110(A)(2) (emphasis added).

As you can see, not only does the statutory definition of "sale" include the leasing of tangible personal property, but the statute specifically addressing motor vehicles also sets out that the leasing of a motor vehicle is subject to taxation. Thus, if an individual leases a motor vehicle, that transaction is subject to taxation. The tax is imposed on the privilege of engaging in such transaction not on the property subject to the sale. Further, if an individual buys a motor vehicle, that transaction is also subject to taxation for the same reason. The fact that sales tax may have been paid on the lease of a motor vehicle does not remove the requirement that the sale of the same motor vehicle is also subject to taxation. The law does not relax this requirement if the individual is the same in both transactions. This is no different from a situation in which an individual leases a motor vehicle and pays the requisite sales tax on the lease and the motor vehicle is then sold to another individual. In that case, there would be no question as to whether such sale would be subject to the sales tax.

Your constituent has also questioned whether this taxation constitutes impermissible double taxation. There is no per se prohibition on double taxation. Greystone Catering Co., Inc. v. South Carolina Department of Revenue and Taxation, ___ S.C. ___, 486 S.E.2d 7 (1997). Double taxation in the prohibited sense can exist only if the subject of both taxes is the same, if both taxes are imposed upon the same property, for the same purpose, by the same state or government, during the same tax period. Atkinson Dredging Company v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976).

As previously stated, a sales tax is not a tax on property, but on the privilege of the business of selling at retail. In this case, the fact that the property and parties are the same in both transactions is not determinative. The focus must be paid to the reality under the law that these are two entirely distinct transactions and it is the privilege to sell at retail which is the subject of taxation. The situation raised by your constituent would not constitute double taxation any more than the imposition of sales tax on the sale of any other used vehicle where the sales tax has been paid on a prior sale.

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With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General

REVIEWED AND APPROVED BY:


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