

The State of South Carolina



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February 11, 1986

George W. Chiles, Deputy Executive Director
South Carolina Department of Parole
and Community Corrections
2221 Devine Street
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Dear Mr. Chiles:

You have asked whether Probation and Parole Agents are eligible to exclude \$5.00 per duty day from their South Carolina Personal Income Tax return for subsistence allowance, pursuant to § 23-1-30 and 23-1-40 of the Code of Laws of South Carolina (1976 as amended). It is our opinion that they are.

Sections 23-1-30 provides as follows:

Of the amounts appropriated by acts of the General Assembly for police officials and all commissioned law-enforcement officers, the sum of five dollars a day for each regular work day shall be designated as a statutory subsistence allowance.

Section 23-1-40 further provides:

Of the amount appropriated as salaries for municipal law-enforcement officers and county law-enforcement officers the sum of five dollars per day for each such officer is hereby designated as subsistence for each day of active duty.

To our knowledge, no decision of our Supreme Court has reviewed the statutes in question. However, recently in Johnson v. S. C. Tax Commission, Case No. 84-CP-18-435, the Honorable William T. Howell, Judge First Judicial Circuit, ruled that § 23-1-30 and 23-1-40 excluded the subsistence allowance designated therein from the gross income of law enforcement officers for State income tax purposes.

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Following the issuance of the Circuit Court's order and upon review of the entire matter, the attorneys involved with the case were instructed not to appeal the order to a higher court, thereby establishing a precedent for the interpretation of Sections 23-1-30 and 23-1-40. Moreover, the Tax Commission has, on the basis of the Johnson decision, also determined administratively that the subsistence allowance is excludable. As information, a copy of the Commission's action on the issue is appended for your review and consideration.

In my opinion, this administrative interpretation by the Tax Commission, as well as the ruling by the Circuit Court, is correct and settles the issue. The \$5.00 per day is excluded from the taxable income of the law enforcement officers.

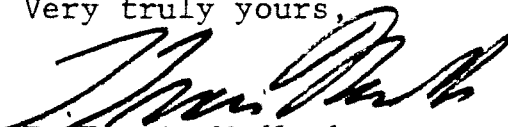
Finally, I would advise that a probation officer is a "law enforcement officer" within the meaning of Section 23-1-30. Section 24-21-280 provides as follows:

... A probation officer shall have, in the execution of his duties, the powers of arrest and to the extent necessary for the performance of his duties the same right to execute process as is given by law to the sheriffs of the State. In the performance of his duties of probation and parole investigation and supervision he shall be regarded as the official representative of the court and the Board.

Clearly, a probation officer, having arrest powers with respect to the performance of his duties, is a law enforcement officer. See also Op. Atty. Gen., May 11, 1966. [A probation officer is a "law officer".] Accordingly, it is our conclusion that the \$5.00 subsistence allowance for law enforcement officers mandated by Sections 23-1-30 and 23-1-40 is also excluded from the gross income of probation officers.

If I can be of further assistance, please let me know.
With kindest personal regards, I remain

Very truly yours,


T. Travis Medlock
Attorney General

TTM/an
Enclosure