

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. 86-25

February 20, 1986

SUBJECT: Taxation and Revenue - Accommodations Tax -  
Expenditure Of Minimum Allocations

- SYLLABI:
1. A county area (the county and all municipalities therein) that receives the minimum amount of revenue from the accommodations tax is excluded from complying with the requirements of § 12-35-720.
  2. Revenue and funds from the accommodations tax should be accounted for in the fiscal year in which the same are received.

TO: Gary T. Pope, Esquire  
Newberry County Attorney

FROM: Joe L. Allen, Jr. *JLA*  
Chief Deputy Attorney General

QUESTIONS:

1. Is a county area that receives the minimum allocation from the accommodations tax subject to the requirements of § 12-35-720 in the disbursement of such funds?
2. Are the funds from the accommodations tax received between July one and August one to be considered revenue for the preceding fiscal year of the county area?

APPLICABLE LAW: Act 316 and Part II, § 45, of Act 512, Acts of 1984, § 4-9-140, South Carolina Code of Laws, 1976, and Article X, § 7 of the South Carolina Constitution.

DISCUSSION:

Question 1

Attention should be first directed to the definition of a county area as the term is used in § 12-35-730. It is there defined to mean:

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" \* \* \* a county and all municipalities within the geographical boundaries of that county."

We are here concerned with Newberry County and all the municipalities therein.

Section 12-35-730 provides for the withholding of a portion of the tax collected in county areas when the same exceeds Four Hundred Thousand (\$400,000) Dollars. The tax so withheld is to be expended, inter alia, to insure that each county area receives a minimum of Fifty Thousand (\$50,000) Dollars collectively from tax collections and the fund.

Section 12-35-720 directs how the revenue from the tax is to be expended and sets forth the requirements, conditions and allocations therefor. Section 12-35-730, however, provides in part that:

"(d) Any county area receiving fifty thousand dollars under the provisions of this section or from the provisions of § 12-35-710 are excluded from the requirements of § 12-35-720 \* \* \*."

Your inquiry is whether this provision exempts all county areas from the requirements of § 12-35-720 because all county areas will receive at least Fifty Thousand (\$50,000) Dollars from the South Carolina sources. We advise that a county area is excluded from the requirements of § 12-35-720 only when the area receives the minimum amount of revenue (the Fifty Thousand (\$50,000) Dollar minimum could be increased upon certain contingencies). Two settled rules of construction are here applicable. The intention of the legislature is controlling and where possible, all parts of an Act are to be harmonized and effect given to all. (For cases so holding, see 17 S.C.D., Statutes, Keys 180, 205, 206.) Here, the General Assembly has by specific language stated that those county areas that receive the Fifty Thousand (\$50,000) Dollars are excluded from the requirements of § 12-35-720.

Effect, however, must and should be given to the other provisions of the Act. To conclude that all areas are excluded would make § 12-35-720 ineffective to all. A more logical interpretation therefore is that the exclusion

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applies to those county areas that only receive the minimum amount of the revenue.

Question 2

The funds received by a county area from the accommodations tax should be accounted for in the year in which the same are received. A county has a fiscal year that begins on July first and ends the following June thirtieth. Section 4-9-140. Municipalities, however, may in fact have different fiscal years as there is no statute that provides for a uniform year. Under the requirements of Article X, § 7, each, however, is required to prepare and maintain annual budgets that provide sufficient income to meet estimated expenses for the budget year.

The State Treasurer is directed to distribute this minimum amount of revenue between July one and August first of each year. It is thus logical to conclude that the tax receipts should be accounted for in the year in which the same are received.

CONCLUSIONS:

Question 1

A county area (the county and all municipalities therein) that receives the minimum amount of revenue from the accommodations tax is excluded from complying with the requirements of § 12-35-720.

Question 2

Revenue and funds from the accommodations tax should be accounted for in the fiscal year in which the same are received.

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