

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. ~~86-110~~ 9330

October 27, 1986

SUBJECT: Taxation and Revenue - Interest on payments of sales tax and estimated sales tax paid during an extension period.

SYLLABUS: The Tax Commission is authorized by §§ 12-54-20 and 12-54-70 to charge interest on sales tax payments and estimated sales tax payments where such payments are paid after the due date even if such are paid within an extension period granted by § 12-54-70.

TO: Mr. Otis Rawl, Jr.
Tax Research Supervisor

FROM: Ray N. Stevens *RNS*
Deputy Attorney General

QUESTION: Is the Tax Commission authorized to charge interest on sales tax payments or estimated sales tax payments made after the due date of such payments but prior to the expiration of an extension granted for making such payments?

APPLICABLE LAW: §§ 12-54-20, 12-54-70, 12-35-570 and 12-35-580, South Carolina Code of Laws, 1976, as amended.

DISCUSSION:

An interest charge is authorized by § 12-54-20. This section authorizes interest when "any person . . . fails to remit the tax due . . . as provided by law" with interest calculated "from the time the tax . . . was due until paid in its entirety". Before interest is imposed under this statute, there must be a tax imposed, a due date established for the tax and a failure to remit the tax as provided by law. Each element must be satisfied before interest may be imposed upon a sales tax payment or an estimated sales tax payment.

A. Sales Tax

The exaction of funds by the government from a person for exercising the privilege of engaging or continuing in the

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business of selling at retail tangible personal property is a tax in the nature of an excise tax and commonly referred to as a sales tax. State v. Byrnes, 219 S.C. 485, 66 S.E.2d 33 (1951), 1968-69 Opinions of the Attorney General No. 2681, p. 106 and § 12-35-510, South Carolina Code of Laws, 1976, as amended. Thus, the first element of a tax being imposed is satisfied.

The due date for the payment of the sales tax liability is the 20th day of the month next succeeding the month in which the tax accrues. See § 12-35-570. In a similar manner, § 12-35-600 establishes a due date of the 20th of the month following the end of a quarter if the sales tax liability for any month does not exceed \$100. The time period from the date of the sale which creates the tax liability to the date for payment is a "grace period for payment". Stephens v. Hendricks, 228 S.C. 458, 90 S.E.2d 632, 633 (1955). Thus, the second element of a due date for the tax is established.

Finally, there must be a failure to remit the tax as provided by law. Sections 12-35-570 and 12-35-600 provide the sales tax is to be remitted with the return. The third element is satisfied where there is a failure to remit the tax when required by these statutes. The granting of an extension as authorized by § 12-54-70 does not avoid the interest charge. That section specifically provides that interest at the rate provided by § 12-54-20 must be charged on any funds for which an extension is granted until such funds are paid in full. Thus, the third element is satisfied even where an extension is granted.

B. Estimated Sales Tax

The three elements for imposing interest on estimated payments are also satisfied. Estimated sales tax payments are required by § 12-35-580. Such payments are credits applied to the sales tax shown due on the taxpayer's sales tax return filed under § 12-35-570. The tax upon which the interest is to be imposed is thus the sales tax. Therefore, the first element of a tax imposed is satisfied. The due date for paying the sales tax for taxpayers with specified estimated liabilities (currently \$22,500) is set as "the twentieth day of such taxable period". The due date imposed by § 12-35-570 for the sales tax is not accelerated to the 20th day of the tax period but instead a new due date is established for a portion of the sales tax, i.e., 50% of the estimated sales tax liability. See Opinions of the Attorney General, March 31, 1986. Therefore, the second element of a

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due date is also established. Finally, the failure to remit the tax occurs when the payment is not made by the 20th of the taxable period. Thus, interest on such late prepayments is authorized.

Interest is authorized on such prepayments even when an extension of time is given. Extensions are authorized under § 12-54-70 but such statute provides for interest on the funds for which an extension is granted until such funds are paid in full.

CONCLUSION:

The Tax Commission is authorized by §§ 12-54-20 and 12-54-70 to charge interest on sales tax payments and estimated sales tax payments where such payments are paid after the due date even if such are paid within an extension period granted by § 12-54-70.

RNS:wcg