1983 S.C. Op. Atty. Gen. 51 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-33, 1983 WL 142704

Office of the Attorney General

State of South Carolina
Opinion No. 83-33
July 8, 1983

***1 SUBJECT: Taxation and Revenue—Casual excise tax upon vessels registered and documented by the United States Commissioner of Customs.**
The casual excise tax is not applicable to the documentation and registry issued by the United States Customs office.

TO: Mr. Cyril C. McCrary
Director
Sales and Use Tax Division

QUESTION:

Does the casual excise tax apply to marine vessels documented by the United States Coast Guard?

APPLICABLE LAW:

Sections 12–35–1710, 50–23–30, 1976 South Carolina Code of Laws, and 46 U.S.C.A. § 2 and 46 U.S.C.A. § 65p.

DISCUSSION:

The tax imposed by § 12–35–1710 is upon:
'* * * the issuance of every certificate of title or other proof of ownership for every motor vehicle, moto[r]cycle, boat, motor, or airplane which is required to be registered, titled and licensed by law upon which no sales or use tax has been paid on the transaction necessitating the transfer. * * *.'

Under the laws of this State, Chapter 23 of Title 50, boats and motors are required to be registered and titled. Section 50–23–30, however, exempts from such requirements:
'* * * watercraft which has a valid marine document issued by the Bureau of Customs of the United States Government or any Federal agency successor thereto.'

Section 46 U.S.C.A., § 2 provides that the Commissioner of Customs:
'* * * shall be specially charged with the decision of all questions relating to the issue of registers, enrollments, and licenses of vessels, and to the filing and preserving of those documents; * * *.'

For purposes of this opinion, it is thus assumed that the vessel involved was 'documented' by the Commissioner of Customs. Under such, the question is whether the State can impose a tax on the certificate of title or other proof of ownership issued by the Commissioner.

In United States v. Livingston, 179 F. Supp. 9, affirmed 364 U. S. 855, 80 S. Ct. 1611, 4 L. Ed. 2d 1719, it was stated that: ‘The doctrine of mutual immunity of state and of nation from taxation by the other, enunciated by Chief Justice Marshall in M'Culloch v. State of Maryland, 4 Wheat. 316, 4 L. Ed. 579, has not lost vitality with age. If, at times, it has seemed that ‘the line between the taxable and the immune has been drawn by an unsteady hand,’ the basic principle that the United States, its property, its essential functions and activities are not subjects of taxation by the states has not been questioned in modern times.'

Under such, the State cannot impose a tax upon the issuance by the United States of the certificate of documentation and registry.

CONCLUSION:

The casual excise tax is not applicable to the documentation and registry issued by the United States Customs office.

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