

1982 S.C. Op. Atty. Gen. 39 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-35, 1982 WL 155005

Office of the Attorney General

State of South Carolina

Opinion No. 82-35

May 19, 1982

***1 SUBJECT: Taxation—Gifts—Applicability of Criminal Penalties**

The provisions of § 12–17–230 are not so definite and certain as to impose criminal liabilities relating to gift tax by means of adoption of the enforcement provisions of Chapter 15 of Title 12.

To: Mr. W. R. Geddings, Jr.
Director
Estate and Gift Tax Division

QUESTION:

Does [§ 12–17–230 of the South Carolina Code](#) of Laws, 1976, as amended, impose criminal liabilities relating to gift taxes?

STATUTES:

[§§ 12–17–230](#) and [12–15–1340](#), [Code of Laws of South Carolina](#), 1976, as amended.

DISCUSSION:

The language of [§ 12–17–230](#) reads as follows:

‘The provisions of Chapter 15, Title 12, that provide for the administration, assessment, enforcement, and collection of the South Carolina estate tax shall whenever applicable be adopted for the purpose of the administration, assessment, enforcement, and collection of the tax provided for herein.’

[Section 12–15–1340](#) which is a statute in Chapter 15, Title 12 dealing with estate tax reads as follows:

‘Any person required under this chapter to pay any tax or required by this chapter or by regulations made under authority thereof to make a return, keep any records, or supply any information who willfully fails to pay such tax, make such return, keep such records or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than ten thousand dollars or imprisoned not more than three years, or both.’

The law is settled that an existing statute may by reference thereto be incorporated into another statute. [University of South Carolina v. Mehlman](#), 245 S. C. 180, 139 S. E. 2d 771. Among other things, [§ 12–17–230](#) incorporates by reference the enforcement provisions of Chapter 15 of Title 12. The word enforcement is not defined by the gift tax provisions of the Code and thus must be construed to determine if the General Assembly intended such to included the adoption of criminal statutes from Chapter 15 of Title 12.

Enforce, which is the root word of enforcement, may have various meanings:

'It does not necessarily imply actual force or coercion. It may mean to exact, to obtain authoritatively; to cause to have force or effect or to be executed; to put in execution; to cause to take effect.' Widener v. Sharp, 192 N. W. 727.

Thus, enforcement could give at least two reasonable meanings; first, to cause to arrest and to coerce by force and punishment such as a penal statute or, second, to give effect to or cause to be executed such as the execution of a lien. See Meridian v. Sippy, 123 P. 2d 884, 888.

In determining whether the General Assembly intended to adopt for gift tax purposes the criminal statute of § 12-15-1340, significant weight must be given to the rules of construction. Statutes which are criminal or penal in nature are strictly construed against the state and any uncertainty or ambiguity must be resolved in favor of the defendant. See South Carolina Digest, Statutes, Key 241(1).

*2 Section 12-17-230 creates some uncertainty as to whether criminal liabilities are adopted since enforcement can have various meanings. Definiteness and certainty are crucial in imposing criminal penalties in that no one is to be held criminally responsible for conduct which he could not reasonably understand to be proscribed. Guzzardo v. Bengston, 643 F. 2d 1300. Likewise, crimes are not to be created by inference. United States v. Laub, 385 U. S. 475, 87 S. Ct. 574. Since the language of § 12-17-230 lacks the certainty required to impose criminal liabilities, it is presumed that the General Assembly did not intend to adopt by reference § 12-15-1340.

CONCLUSION:

The provisions of § 12-17-230 are not so definite and certain as to impose criminal liabilities relating to gift tax by means of adoption of the enforcements of Chapter 15 of Title 12.

Ray N. Stevens
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