

1979 S.C. Op. Atty. Gen. 40 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-27, 1979 WL 29033

Office of the Attorney General

State of South Carolina

Opinion No. 79-27

February 13, 1979

SUBJECT: Unemployment Compensation.

*1 Under South Carolina Code of Laws, 1976, Section 12-7-510, unemployment compensation received would be includible in a recipient's gross income for the tax year in which such benefits were received.

To: Mr. Carroll H. Brooks, Director
Income Tax Division

QUESTION:

Would unemployment compensation benefits received be includible in the gross income of a recipient?

APPLICABLE LAW:

[Section 12-7-510 of the 1976 South Carolina Code](#) of Laws.

DISCUSSION:

No authority has been found which would exclude unemployment compensation benefit payments from the gross income of a recipient for South Carolina income tax purposes. [Section 12-7-510](#) defines 'gross income' to mean, among other things, '* * * income derived from any source whatsoever'. (Emphasis added.) The South Carolina Employment Security Act is found in Title 41, Chapters 27 through 41 of the 1976 South Carolina Code of Laws. The Act calls for the compulsory setting aside of unemployment reserves to accumulate a fund from which to provide benefits to persons during periods of unemployment. Section 41-27-20. Employers are required to contribute to this fund at the rate equal to two and seven-tenths percent (2.7%) of wages paid by him during each year. Section 41-31-10. Under Chapter 33 this fund is established and designated the unemployment compensation fund which receives employer contributions and certain federal funds to be used to pay unemployment compensation benefits.

For federal income tax purposes, although the Internal Revenue Code (I.R.C.) of 1954 did not expressly exclude unemployment benefit payments, the Internal Revenue Service (I.R.S.) issued a series of revenue rulings in the past to the effect that amounts paid under various state and federal programs were excludible from gross income. The 1978 Revenue Act changes these rulings and includes all or part of such benefits in gross income in tax years beginning after 1978 by adding [§ 85 to the I. R. C.](#) (78 Revenue Act, § 112(a)). Not all unemployment compensation will be taxable. Only one-half of the excess of the sum of the taxpayer's adjusted gross income, government-paid unemployment benefits and excludible disability income over the taxpayer's base amount will be includible. Base amount for married filing jointly is \$25,000; for others \$20,000. The new law under [I.R.C., § 6050](#), will also require the payor of government unemployment compensation to report such payments and the name and address of the recipient to the I.R.S.

There have been no rulings or regulations issued in the past by the South Carolina Tax Commission similar to the I.R.S. revenue rulings which have excluded unemployment compensation from gross income. Also, there are no provisions contained

by Title 12, Taxation, of the 1976 South Carolina Code of Laws, which would exclude from gross income all or any part of unemployment compensation benefits received. Therefore, the South Carolina General Assembly has evidenced no intent to excluded unemployment compensation from gross income as it has certain other forms of income by granting exemptions to these forms of income. In § 12-7-560 it exempts from gross income certain portions of endowment or annuity contracts, the rental value of a dwelling house to a minister of the gospel as part of his compensation and amounts received under accident or health insurance or under workmen's compensation acts. There are also exemptions for certain amounts of retirement income in § 12-7-310, and exemptions for certain amounts of pay received by members of the South Carolina National Guard and South Carolina members of federal military reserve components in § 12-7-570.

CONCLUSION:

*2 Under South Carolina Code of Laws, 1976, [Section 12-7-510](#), unemployment compensation received would be includible in a recipient's gross income for the tax year in which such benefits were received.

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