

1980 S.C. Op. Atty. Gen. 126 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-76, 1980 WL 81958

Office of the Attorney General

State of South Carolina

Opinion No. 80-76

July 2, 1980

**\*1 SUBJECT: Allocation of income received in the form of dividends.**

The issue of apportionment of dividend income which was decided in *Mobil* is resolved in South Carolina by § 12-7-1120(2) which requires dividends to be allocated to the state in which the principal place of business of a corporation is located.

TO: Mr. C. H. Brooks

Director

Income Tax Division

South Carolina Tax Commission

**QUESTION:**

What effect does the decision in [Mobil Oil Corp. v. Commissioner of Taxes of Vermont, 100 S. Ct. 1223 \(1980\)](#), have on the allocation provisions of the South Carolina Income Tax Act?

**STATUTES:**

[Sections 12-7-1120\(2\)](#) and [12-7-1130](#), 1976 South Carolina Code of Laws.

**DISCUSSION:**

Article 9 of the Income Tax Act of 1926 pertains to allocation or apportionment of income. Within Article 9, two sections provide specific allocations of income rather than apportionment.

[Section 12-7-1120\(2\)](#) provides specifically as follows:

‘Dividends received from corporate stocks owned, less all related expenses, shall be allocated to the state in which the principal place of business of a corporation is located or in which the domicile of an individual taxpayer is located.’

However, [§ 12-7-1130](#) provides that income from ‘any other investments, including investments in subsidiaries, \* \* \* shall be allocated to the state in which the business situs of the investment is located; \* \* \*.’ Thus, if a South Carolina corporation with its principal place of business in South Carolina has a subsidiary corporation doing business in another state and dividends are paid to the South Carolina parent, a possible conflict can arise as to whether [§ 12-7-1130](#) or [§ 12-7-1120\(2\)](#) is to apply. This conflict was addressed in OAG No. 1943, p. 247, November 16, 1965. The opinion of this office is that income from investments enumerated and described in [§ 12-7-1120](#) (which includes dividends) is excluded from further apportionment and allocation under [§ 12-7-1130](#).

[Sections 12-7-1130](#) and [12-7-1120](#) as interpreted by OAG No. 1943, form the framework for applying the holding of *Mobil*. The issue in *Mobil* was whether ‘foreign source’ dividend income from *Mobil*’s subsidiaries and affiliates should be part of apportionable income or should it be excluded from Vermont income under Due Process limitations. The Court held that there

was sufficient nexus to Vermont, and the mere fact that income is foreign source income will not prevent the income from being apportioned.

The issue in Mobil would not arise in South Carolina since § 12-7-1120(2) specifically allocates dividend income to 'the state in which the principal place of business of a corporation is located'. Since the Mobil case found that Mobil Oil Corporation has its domicile and principal place of business in New York, the dividend income would be allocated to New York, and under OAG No. 1943, the dividends are excluded from further allocation or apportionment provided in § 12-7-1130.

CONCLUSION:

\*2 The opinion of this office is that the issue of apportionment of dividend income which was decided in Mobil is resolved in South Carolina by § 12-7-1120(2) which requires dividends to be allocated to the state in which the principal place of business of a corporation is located.

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