

1980 WL 120879 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 16, 1980

**\*1 SUBJECT: Income Tax—Requirement of a Regulation Under the Administrative Procedures Act As A Condition Precedent to Determining the Net Income of Savings and Loan Associations.**

A regulation is not a condition precedent to enforcement of the statutes that impose the tax on savings and loan associations.

**APPLICABLE LAW: §§ 12-13-20 and 12-13-70 of the 1976 Code of Laws.**

Honorable James M. Waddell, Jr.  
Chairman  
Tax Study Commission

QUESTION:

Is it necessary for the Tax Commission to promulgate a regulation to enforce a statutory provision that defines the net income of a savings and loan association?

DISCUSSION:

A tax is imposed upon the 'net income' of a savings or building and loan association by Chapter 13 of Title 12 of the 1976 Code. The tax is upon net income as the term is defined by § 12-13-20. The definition is income less certain deductions, including: ' \* \* \*any additions to reserves which are required by law, regulation, or direction of appropriate supervisory agencies. No deductions from income shall be allowed for any additions to undivided profits or surplus accounts other than herein required, 2 .

There is a required addition, however, other additions at the discretion of the association may be made to the reserve. The Tax Commission allows a deduction for the required additions, however, denies the same for the other additions.

A regulation is not necessary for the enforcement of this provision. Section 12-13-70 gives the Commission authority to adopt regulations 'not inconsistent with law as may be required for the proper administration and enforcement of this chapter'. A regulation could not enlarge or extend the deductions beyond the additions 'required'. Our court in the case of [Heyward v. South Carolina Tax Commission](#), 240 S. C. 347, 126 S.E.2d 15, held:

'The respondent (Tax Commission) was invested with rule-making power for the purpose of carrying out the legislative will expressed in statutory form; but it had no legal authority to enact new laws in the nature of regulations to satisfy its own theory as to the enforcement of the income tax laws of this State.'

A regulation could thus not restrict or enlarge the deduction beyond the required additions.

The Supreme Court of the United States in the case of [Securities and Exchange Commission v. Chenery Corp.](#), 332 U.S. 194, 91 L.Ed. 1995, 67 S.Ct. 1575, reh. den. 332 U.S. 783, 92 L.Ed. 367, 68 S.Ct. 26, held as follows:

'The function of filling in the interstices of the Act should be performed, as much as possible, through this quasi-legislative promulgation of rules to be applied in the future. But any rigid requirement to that effect would make the administrative process inflexible and incapable of dealing with many of the specialized problems which arise. See Report of the Attorney General's Committee on Administrative Procedure in Government Agencies, S.Doc.No. 8, 77th Cong., 1st Sess. p. 29. Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity.'

CONCLUSION:

\*2 A regulation is thus not a condition precedent to enforcement of the statutes that impose the tax on savings and loan associations.

Joe L. Allen, Jr.  
Deputy Attorney General

1980 WL 120879 (S.C.A.G.)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.