

1977 S.C. Op. Atty. Gen. 96 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-108, 1977 WL 24450

Office of the Attorney General

State of South Carolina

Opinion No. 77-108

April 15, 1977

*1 Section 65–325 which authorized the Tax Commission to subpoena records pertaining to an individual's tax liability from third parties, such as banks, without first giving notice to the individual is constitutional.

TO: Joseph F. Runey, Esq.
Staff Counsel
Labor, Commerce and Industry Committee
South Carolina House of Representatives

QUESTION

Is Section 65–325 of the Code, which empowers the South Carolina Tax Commission to examine bank records pertaining to a taxpayer's income tax liability without first notifying the taxpayer, unconstitutional?

STATUTES AND CASES

Section 65–325 of the Code; [United States v. Miller, 96 S. Ct. 1619 \(1976\)](#).

DISCUSSION

Section 65–325 provides authority for the Tax Commission to summon ‘persons having possession, care or custody of books of account containing entries relating to the business of a taxpayer. This section is broad enough to encompass bank records. There is no requirement that the Tax Commission notify the taxpayer of its summons to the bank personnel. In the recent United States Supreme Court case of [United States v. Miller, 96 S. Ct. 1619 \(1976\)](#), the Court considered the constitutionality of a similar federal procedure. Federal agents, without notice to the taxpayer, subpoenaed bank records pertaining to his savings and checking accounts. ‘The banks did not advise (the taxpayer) that the subpoenas had been served but ordered their employees to make the records available and to provide copies of any documents the agents desired.’ The Court held that the evidence was properly acquired and that obtaining information from a third party did not amount to an illegal search and seizure. The Court, in distinguishing [Boyd v. United States, 116 U. S. 622, 6 S. Ct. 528](#), stated, ‘On their face, the documents subpoenaed here are not (taxpayer's) ‘private papers’. It concluded that it was ‘firmly settled’ that an Internal Revenue Service summons directed to a third-party bank does not violate the constitutional rights of a depositor under investigation.

CONCLUSION

Section 65–325 which authorizes the Tax Commission to subpoena records pertaining to an individual's tax liability from third parties, such as banks, without first giving notice to the individual is constitutional. It should be noted however that as an administrative practice the Tax Commission generally informs taxpayers when their bank records are examined. Please see the attached letter of February 28, 1977, from the Chairman of the South Carolina Tax Commission, which so states.

John C. von Lehe

Assistant Attorney General

1977 S.C. Op. Atty. Gen. 96 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-108, 1977 WL 24450

End of Document

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