

1979 S.C. Op. Atty. Gen. 84 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-68, 1979 WL 29073

Office of the Attorney General

State of South Carolina

Opinion No. 79-68

May 18, 1979

***1 SUBJECT: Sales Tax—Taxability of Diesel Fuel**

The gross proceeds of sale of diesel fuel are exempt from the sales tax when sold to propel a motor vehicle on a highway. The same are, however, subject to the tax when otherwise used, except where specifically exempted; in example, to propel a ship or to manufacture tangible personal property.

TO: Honorable G. Bryan Patrick, Jr.
Commissioner of Agriculture

QUESTION:

Are the gross proceeds from the sale of diesel fuel exempt from the South Carolina sales and use tax?

APPLICABLE LAW:

[Sections 12–29–10, 12–27–230](#) and [12–35–550\(16\)](#), [South Carolina Code](#) of Laws.

DISCUSSION:

The exemption provision, [§ 12–35–550\(16\)](#), provides that:

‘There are exempted from the provisions of this article, and from the computation of the amount of the tax levied, assessed or payable under this article the following:

(16) The gross proceeds of the sale of gasoline or other motor vehicle fuels taxed at the same rate as gasoline; provided, however, that gasoline sold or dispensed for use in aircraft shall be subject to the retail sales and use tax.’

The proceeds from the sale of diesel fuel are taxed at the same rate as gasoline only when the diesel fuel is used to propel a vehicle on the highway. Sales for such purposes are, therefore, exempt from the sales tax when sold; however, when sold for other purposes, the sale is generally taxable.

[Section 12–29–10](#) provides in part that:

‘The following words, terms, and phrases when used in this chapter shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

(1) ‘Fuel’ or ‘fuels’ shall mean and include all combustible gases and liquids used, purchased, or sold for use, in an internal combustion engine or motor for the generation of power to propel licensed motor vehicles on the highways except such fuels as are subject to the tax imposed by Chapter 27 of this Title.

(2) ‘Highway’ shall mean and include every way or place of whatever nature whether public or private that is accessible for licensed, vehicular travel in this State, including the streets and alleys in cities and towns.’

Section 12-27-230 imposes the tax on gasoline upon:

'Every oil company doing domestic or intrastate business within this State and engaging in the business of selling, consigning, using, shipping or distributing for the purpose of sale within this State any gasoline or any substitute therefor, or combination thereof, for the privilege of carrying on such business shall be subject to the payment of a license tax, which shall be measured by and graduated in accordance with the volume of sales of such oil company within the State.

* * *.'

It is evident by the above-quoted provisions that diesel fuel is taxed in the same manner as gasoline only when used as above described. It is for that use that the exemption provided by § 12-35-550(16) applies. It is significant to further note that the refund of the tax on gasoline for farm purposes is limited. Section 12-27-710 provides that a tax on gasoline for farm use is one cent per gallon while there is no tax on diesel fuel for farm purposes.

CONCLUSION:

*2 The gross proceeds of sale of diesel fuel are exempt from the sales tax when sold to propel a motor vehicle on a highway. The same are, however, subject to the tax when otherwise used, except where specifically exempted; in example, to propel a ship or to manufacture tangible personal property.

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