

1975 WL 29501 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 11, 1975

*1 Section 65-764 exempts from soft drinks tax all milk drinks produced by farmers or dairies.

Mr. J. W. Lawson
Director
License Tax Division
South Carolina Tax Commission
Columbia, South Carolina 29214

Dear Mr. Lawson:

This is in reply to your request for an opinion of this office on the tax effect of the possible repeal of Section 32-1603 of the Code which prohibits the sale of chocolate flavored milk unless it contains not less than two per cent of milk fat and eight per cent milk solids which are not fats.

The question arises because the Dairy Industry is considering producing very low fat milk—below two per cent—and has expressed concern that such milk would not be exempt from the soft drinks tax contained in Article 6, Chapter 11 of Title 65.

Section 65-764 provides as follows:

‘All milk drinks produced by farmers or dairies and sold in milk bottles shall be exempt from the payment of soft drinks tax. The classification created by this section is made for the purpose of fostering and encouraging the dairy industry but should this classification be held discriminatory by either the courts of this State or of the United States and for that reason this section be held unconstitutional, then the classification created under this section shall not operate so as to render unconstitutional the remainder of this article but the exemption granted by this section shall thereupon cease.’

The milk drinks produced by farmers or dairies will, therefore, be exempt regardless of butterfat content.

Very truly yours,

John C. von Lehe
Assistant Attorney General

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