

1975 S.C. Op. Atty. Gen. 35 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3964, 1975 WL 22262

Office of the Attorney General

State of South Carolina

Opinion No. 3964

February 6, 1975

***1 The allowance or any portion thereof provided in Section 53–2.1 and 53–2.2 of the Code for subsistence to certain police officers may be excluded or deducted from income provided the same is in fact expended for expenses that are otherwise deductible or excluded from gross income by Chapter 5 of Title 65.**

Director
Income Tax Division
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Reference is made to the request for the opinion of this office concerning the provisions of Sections 53–2.1 and 53–2.2 of the Code as the same relate to South Carolina income taxation. Section 53–2.1 provides as follows:

‘Of the amounts appropriated by acts of the General Assembly for police officials and all commissioned law-enforcement officers, the sum of five dollars a day for each regular work day shall be designated as a statutory subsistence allowance.’

Section 53–2.2 extends similar provisions to municipal and county law enforcement officers. You inquire of the treatment of the declaration of the five dollars as a ‘statutory subsistence allowance’ for South Carolina State income tax purposes.

Section 65–251 of the South Carolina Code defines gross income to include:

‘* * * income * * * derived from salaries, wages or compensation for personal services, of whatever kind and in whatever form paid * * * and income derived from any source whatsoever. * * *.’

The language of the section is intended to cover all income received by any taxpayer and thus by its language any part of the above allowance that constitutes income to the law enforcement officer is to be included and reported on the tax return.

Section 65–258 of our Code defines adjusted gross income and in subparagraph (2) provides:

‘For purposes of this chapter, the term ‘adjusted gross income’ means in the case of an individual, gross income minus:

(2) Travel expenses incurred by the taxpayer in performing services as an employee if the amount reimbursed is included in gross income;’

The term ‘subsistence’ is likewise broad and may cover expenses that are not deductible or excludable from gross income. The term is defined in *Webster's New Collegiate Dictionary* to include:

‘(2) Means of support; provisions; supplies; also, maintenance; livelihood.’

It is thus the opinion of this office that before the allowance or any portion thereof provided for subsistence can be excluded or deducted from gross income, the same must in fact be expended for expenses that are otherwise deductible or excluded from gross income by the provisions of Chapter 5 of Title 65.

It would be necessary to have the facts surrounding the actual expenditures before any determinative opinion could be issued; however, the declaration in the statute for the allowance is not sufficient authority to exclude or deduct the allowance from taxable income.

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