

1974 S.C. Op. Atty. Gen. 94 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3731, 1974 WL 21249

Office of the Attorney General

State of South Carolina

Opinion No. 3731

March 8, 1974

**\*1** The tax status of the property of manufacturers is to be determined on the date of the closing of the manufacturer's accounting period for income taxes.

Mr. Cuy A. Pitts, Jr.

Director

Property Tax Division

South Carolina Tax Commission

Columbia, South Carolina

Dear Mr. Pitts:

Reference is made to your Memorandum of March 6, 1974, requesting the opinion of this office as to the tax status of certain property owned by manufacturers. You set out four questions that relate to the ownership of property by a manufacturer or different manufacturers on the date prescribed by Section 65-1647.1 for the listing of such property.

The tax status, that is to say, value, ownership, taxability, etc., of the property of persons required to file tax returns with the Commission by Section 65-1647.1 is determined on the date that such persons close their accounting period for income tax purposes. While other persons are required to return property on different dates and the tax status of such property is determined on such different dates, the provisions of Section 65-1647.1 require that the date of the closing of the accounting period be the date for determining the tax status of the property of the owners therein enumerated. The section begins with the declaration that 'notwithstanding any other provision of law \* \* \* and this term expresses legislative intent that the requirement be exclusive and controlling.

'Words 'notwithstanding any other provision of law' with statute authorizing Judicial Counsel to provide by rule for practice and procedure in proceedings under Family Law Act make family law rules adopted by the Counsel 'sui generis' and controlling over both statutory and decisional law.' [Dover v. Dover](#), 93 Cal. Rptr. 384, 385, 15 C.A. 3d 675.'

The above is consistent and in conformity with earlier opinions of this office on the same subject. Attached are copies of opinions of this office of September 12 and November 12, 1968, and you must look to the closing date of the accounting period to determine the tax status of the property of manufacturers.

Section 65-1647.1, by its provisions, makes possible the fact that property may escape taxation in any one tax year or be subject to taxation to two or more different owners in any one tax year and such cannot be avoided. In example, a manufacturer closes his books on June 30 and returns the property subject to taxation as of that date; however, after that date sells the property to another manufacturer. That manufacturer has a closing period after the date of purchase, however, is likewise required to list and return this property for tax purposes. Under such circumstances, the value of his property is the basis for taxation to two different owners and, while double taxation is to be avoided, it is not necessarily invalid. [Alderman v. Wells](#), 85 S. C. 507, 67 S. E. 781.

It should be noted that a person is liable for the taxes on property owned by such person, (Sections 65-1611, 65-1624), and the tax is a debt owed the State by such persons (Section 65-2701). Additionally, our Court has stated that a tax execution is against the defaulting taxpayer and not the property.

\*2 'It is a common assumption that a tax execution is issued against the property; such is not the case; it is issued against the defaulting taxpayer, for the assessed taxes are a debt due the State by the owner of the property.' [Valentine v. Robinson](#), 188 S. C. 194, 198 S. E. 197.

The property value is thus the basis for the debt of the owner and under this theory there is no double taxation.

The statute requires that the property be returned and the Commission is likewise required to assess the same. The opinion herein expressed is applicable to each of the four questions stated in the Memorandum; the tax status of the property of any one manufacturer must be determined on the date of the closing of such manufacturer's accounting period.

Yours very truly,

Joe L. Allen, Jr.  
Assistant Attorney General

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