

1974 S.C. Op. Atty. Gen. 189 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3804, 1974 WL 21311

Office of the Attorney General

State of South Carolina

Opinion No. 3804

June 21, 1974

***1 Puerto Rico is a territory and not a 'state' within the meaning of Section 65–340 of the Code and South Carolina residents cannot claim a credit for income taxes paid there.**

Members

S. C. Tax Commission

This is in reply to your request for an opinion of this office on the question of whether residents of this State are entitled to a credit against their South Carolina income tax for income tax paid to the Commonwealth of Puerto Rico. It is our opinion that Puerto Rico is not 'another state' as that term is used in Section 65–340 of the Code, and therefore no credit is available under this section for South Carolina residents who become liable for income tax in Puerto Rico.

Section 65–340 of the Code provides that the credit is available 'whenever an individual who is a resident of South Carolina has income liable to income tax in another state * * *.'

By a July 1967 referendum the people of Puerto Rico voted to continue as a commonwealth rather than to become a state. Although the subsequent compact between the United States and Puerto Rico which granted that island commonwealth status did give to Puerto Rico some additional benefits, the Federal courts have generally concluded that its basic legal relationship with the United States remained that of a territory. As is stated at 86 *C.J.S., Territories*, 510, the word 'territory' is often used in contradistinction to 'state' and it is only in exceptional cases that the word applies to territories.

The general rule in applying deduction and credit provisions of tax laws is that they must be strictly construed. See 71 *Am. Jur. 2d, Section 549 at 823*. The language of the act granting the credit is 'another state'. The use of the word 'another' expresses the intention that the credit was meant to apply in the usual sense of a state within the Federal union. This opinion is bolstered by the case of *Sancho v. Bacardi Confederation of America*, 109 F. 2d 57, in which the court of appeals of the First Circuit held that the Commerce Clause does not apply to Puerto Rico because 'Puerto Rico is not a state.' See also *Alcoa Steamship Co. v. Perez*, 295 F. Supp. 187.

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