

1974 S.C. Op. Atty. Gen. 229 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3826, 1974 WL 21331

Office of the Attorney General

State of South Carolina

Opinion No. 3826

July 29, 1974

***1** Taxes imposed by the U. S. Government on the retailer or consumer are excluded from the base of sales and use taxation while those imposed on the manufacturer or importer are included in the tax base.

Ms. Linda J. Ladd
The Independent/Mail Publishing Co.
Post Office Box 2507
Anderson, South Carolina 29621

Dear Ms. Ladd:

Your letter of July 25, 1974, has been handed this writer for the purpose of responding to the inquiry set forth in your letter of July 25, 1974, relating to the South Carolina sales and use tax. You inquire:

'Is it illegal for stores to charge state sales tax on already taxed items, such as tobacco products and alcoholic beverages? It seems to me that this constitutes a surtax and is plainly unfair even if legal under state law. To whom should I complain about such practices? Is this within the province of the S. C. Tax Commission, Tobacco and Alcohol Tax Division?'

Section 65-1401 of the South Carolina Code of Laws levies the sales tax and provides in part as follows:

'In addition to all other licenses, taxes and charges imposed, there is levied * * *.'

The sales tax is therefore in addition to the tax on alcoholic beverages and tobacco products and there is no exclusion of those taxes from the sales tax basis. Section 65-1353 defines gross proceeds of sales and Section 65-1362 defines sales price for purposes of the tax and provides the only exclusion from the tax base and provides that the term:

'* * * shall not include the amount of any tax imposed by the United States upon the retailer or consumer, except that any manufacturer's or importer's excise tax shall be included in the term.'

Taxes, therefore, imposed by the Federal government upon the retailer or consumer are excluded from the tax base, while taxes imposed on the manufacturer or importer are specifically included.

The inclusion of these taxes in the sales price and gross proceeds for sales tax purposes is provided for by law and no administrative agency of the State has the power to exclude the same.

Responses to the other questions in your letter will be made by other members of the staff and in separate correspondence.

Yours very truly,

Joe L. Allen, Jr.
Assistant Attorney General

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