

1974 S.C. Op. Atty. Gen. 301 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3875, 1974 WL 21374

Office of the Attorney General

State of South Carolina

Opinion No. 3875

October 28, 1974

***1 Interest on underestimates of tax is to be computed on a time basis from the quarter when the payment is due, but when no estimate is filed, the entire tax is due at the time the declaration was to be filed and interest is to be computed from that date.**

Director

Income Tax Division

South Carolina Tax Commission

This is in reply to your request for an opinion of this office on the application of Section 65–320 of the Code which imposes penalty and interest for underestimating income taxes. Specifically you have asked whether interest on the underestimate should be computed for the entire year or from the date the quarterly estimated payment is due. For example, if a calendar-year taxpayer estimates his tax for the year to be \$20,000, but actually owes \$44,000, should interest be computed for the entire year (i.e., 6% of \$24,000 or \$1,440), or should interest be computed from the date of quarterly underpayment as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Section 65–320 provides in pertinent part as follows:

‘A taxpayer who makes a declaration of estimated tax for the taxable year shall estimate an amount not less than seventy per cent of the amount actually due. Should a taxpayer fail to make an estimate on any quarterly due date equivalent to at least seventy per cent of the final tax due, a penalty of five per cent of the tax and interest at the rate of one half of one per cent per month, or fraction thereof, shall be added and paid on the full amount of the underestimate of the final tax due. * * *.’

‘Interest’ is universally defined as compensation for the use or forbearance of money. See 22 *Words and Phrases at 148*, citing numerous cases, among them, *Hercules Gasoline Co. v. Commissioner of Internal Revenue*, 147 F. 2d 972, a decision of the Fifth Circuit which stated:

‘Interest is the fixed percentage premium paid *on a time basis* for use or detention of money * * *.’ (Emphasis added)

The statute provides that the interest is to be computed at a monthly rate. There can be little doubt that the term ‘interest’ was used in its ordinary sense as a charge for the use of money. The ambiguity exists from the use of the phrase ‘paid on the full amount of the underestimate of the final tax due’. In both cases considered in the example above, the interest is being computed on the ‘full amount of the underestimate of the final tax due.’ (i.e., on \$24,000 of principal), however, in the second illustration, it is being computed on a time basis from the due date of the quarterly estimate. Section 65–317 provides for the time of payment of estimated taxes. The Section reads as follows:

***2** ‘The estimated tax shown to be due by the declaration shall be paid at the time the declaration is filed or may be paid in four equal installments, the first installment to be paid at the time of filing the declaration, the second installment on the fifteenth day of the sixth month after the beginning of the taxable year, the third installment on the fifteenth day of the ninth month after the beginning of the taxable year, and the fourth installment on the fifteenth day of the

thirteenth month after the beginning of the taxable year. No interest shall be charged for the payment of installments of estimated tax herein provided for.'

When a taxpayer elects to pay his estimated tax liability in four equal installments, the installments are not due until the dates provided in this section and it is our opinion that interest on the underestimate should be computed from the date the installment is due. However, when no estimate is made, the taxpayer has failed to elect to pay his estimated tax in installments. In such a case, the statute is clear that payment of the estimated tax is due at the time the estimate was to be filed and interest should be computed from that date.

John C. von Lehe
Assistant Attorney General

1974 S.C. Op. Atty. Gen. 301 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3875, 1974 WL 21374

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.