

1973 S.C. Op. Atty. Gen. 199 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3558, 1973 WL 21015

Office of the Attorney General

State of South Carolina

Opinion No. 3558

July 2, 1973

**\*1 The deduction provided in Section 65–259(12) to a taxpayer that ‘established a new business or industry in this State’ requires more than just doing business in the State, it requires the establishment of a fixed, definite and permanent new business or industry and would not include a taxpayer whose presence in this State is contingent upon being the successful bidder on a contract.**

Commissioner

South Carolina Tax Commission

Reference is made to your request for the opinion of this office concerning the applicability of Section 65–259(12) of the Code to a non-resident contractor that is engaged in business in the State in the completion of construction contracts. The foreign contractor is a corporation chartered under the laws of another state that maintains no permanent office or headquarters in this State, but is in the State when it is the successful bidder on a contract. The contracts have generally been with the United States of America or the State of South Carolina and the in-state operations of the contractor are carried on from a temporary or portable office located on the construction site.

It should be noted that this statutory provision has been reviewed by our Supreme Court and is subject to strict construction, with any doubt resolved against the deduction and in favor of the tax. *Chronicle Publishers, Inc. v. South Carolina Tax Commission*, 244 S. C. 192, 136 S. E. 2d 261; *Southern Soya Corp. v. Wasson*, 252 S. C. 484, 167 S. E. 2d 311.

The General Assembly has used the language ‘with respect only to taxpayers who have established a new business or industry in this State \* \* \*’ and hence it is the meaning of the term ‘established a new business or industry’ that is involved. As a general rule, the term ‘established’ means something of a permanent or fixed nature and would not include a foreign corporation doing business in this State in the above-referred to manner.

Where the issue was whether a residence was ‘established’ for purposes of taxation, the United States Court of Appeals, in the case of *District of Columbia v. Fleming*, 217 F. 2d 18, held as follows:

‘That word conveys the idea of fixing firmly, of making stable and permanent. One who comes into the district, lives in the home of another and returns at frequent intervals to his long-established home in a distant state where his family have remained, can hardly be said to have ‘established’ a residence here.’

The taxpayer involved in the above action had been a government employee for about eighteen months and resided at his mother's home in the District of Columbia. It has also been held that an established business is one that is permanent, fixed, stable and lasting. *Vermont Securities v. Vermont Unemployment Compensation Commission*, 118 Vt. 196, 104 A.2d 915; *Unemployment Compensation Commission v. Collins*, 182 Va. 426, 29 S. E. 2d 388.

It is therefore the opinion of this office that the term ‘established a new business or industry in this State’ means more than a foreign corporation doing business in the State. It requires the establishment of a fixed, definite and permanent new business or industry and does not include one whose presence and stay in the State is contingent upon being the successful bidder on a contract.

\*2 Joe L. Allen, Jr.  
Assistant Attorney General  
South Carolina Tax Commission

1973 S.C. Op. Atty. Gen. 199 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3558, 1973 WL 21015

---

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.