



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #92-2

TO: Redevelopment Commission of ABC

SUBJECT: Redevelopment Commission - Corporate Annual Report and License Fee
(Corporate License Fee)

TAX MANAGER: John P. McCormack

REFERENCE: S.C. Code Ann. Section 31-10-10 et. seq. (1976)
S.C. Code Ann. Section 12-19-10 et. seq. (1976 & Supp. 1990)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Enacted June 1990)
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Is the Redevelopment Commission of ABC required to file an annual report pursuant to Code Section 12-19-20, and remit an annual corporate license fee pursuant to Code Section 12-19-70?

Facts:

On April 25, 1988 the City of ABC enacted an ordinance creating the Redevelopment Commission of ABC ("Redevelopment Commission"). The City Council of ABC determined that "blighted areas" existed within the city and that the redevelopment of these areas was "necessary and in the interest of the public health, safety, morals, and welfare of the residents of the City of ABC." In accordance with the ordinance, the membership of the Redevelopment Commission consists of the Mayor and members of the City Council of ABC (serving ex officio).

On the same day, the Secretary of State issued, pursuant to Code Section 31-10-30, a corporate certificate to the Redevelopment Commission and declared it to be "a body corporate and politic". The Secretary of State did not require the Redevelopment Commission to file a corporate annual report or remit a corporate license fee. On May 16, 1988, the Redevelopment Commission approved and ratified its by-laws.

Discussion:

Code Section 12-19-20 requires the filing of an annual report by corporations, and reads in part:

(a) Every corporation organized under the laws of this State and every corporation organized to do business under the laws of any other state, territory, or country and qualified to do business in South Carolina and any other corporation required by Section 12-7-230 to file income tax returns, in addition to any other requirements of law, must make a report annually to the Tax Commission on or before the fifteenth day of the third month next after the preceding income tax year in a form prescribed by the Tax Commission and the Secretary of State

* * * * *

(e) In order to file the initial articles of incorporation or application for certificate of authority by a foreign corporation, the articles or application for certificate of authority must be accompanied by an initial annual report ... together with a remittance for the minimum license fee required by Sections 12-19-70 and 12-19-120 made payable to the South Carolina Tax Commission. The report and remittance must be submitted to the Tax Commission by the Secretary of State.

Code Section 12-19-70 reads, in part:

In addition to all other license taxes or fees or taxes of whatever kind, every corporation required to file the report by Section 12-19-20, except the corporations enumerated in Section 12-19-100, shall pay to the Commission at the time of filing the report as required by Section 12-19-20 an annual license fee of fifteen dollars plus one mill on each dollar paid to the capital stock and paid in as surplus of the corporation as shown by the records of the corporation on the first day of the income year next preceding the date of filing the report. In no case may the license fee provided by this section be less than twenty-five dollars. The license fee provided for by this section must be paid at the time of filing the report pursuant to the provisions of Section 12-19-20. ...

Code Section 12-19-150 reads:

The provisions of this chapter [19] shall not apply to any nonprofit corporation organized under Article 1 of Chapter 31 of Title 33 for religious purposes, any volunteer fire departments and rescue squads, any cooperative organized under Chapter 45 or 47 of Title 33, any building and loan association or any credit union doing a strictly mutual business or to any insurance, fraternal, beneficial or mutual protection companies or associations or to any foreign corporation whose entire income is not included in gross income for federal income tax purposes due to any treaty obligation of the United States.

In summary, all corporations (1) organized under the laws of South Carolina, (2) organized to do business under the laws of any other state, territory, or country and qualified to do business in South Carolina or (3) required to file South Carolina income tax returns must file an annual report and pay an annual license fee. The statute, however, exempts certain organizations from these requirements.

The Redevelopment Commission of ABC does not qualify as an organization exempt from the filing and license fee requirements of Chapter 19 of Title 12.

However, the Tax Commission, in the administration of the provisions of Chapter 19 of Title 12, has not required the annual report of, or assessed the corporate license fee with respect to, public corporations.

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. *Marchant v. Hamilton* 309 S.E. 2d 781(1983). When as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. *Ryder Truck Lines, Inc. v. South Carolina Tax Commission*, 248 S.C. 148 S.E. 2d 435; *Etiwan Fertilizer Company v. South Carolina Tax Commission*, 217 S.C. 354, 60 SE2d, 682.

This is supported by 1971-72 Op. Atty. Gen. No. 3400 (See also Commission Manual - Regulations and Opinions, No. I-OAG-20.), which held:

It is doubtful that the General Assembly intended the activities of [public] corporations to be examined by the Tax Commission or that [a public] corporation pay a license fee

In addition, to require public corporations to file an annual report and remit the corporate license fee would result in an absurd conclusion, in that, municipalities and counties are considered to be public corporations. See *York County Fair Association v. South Carolina Tax Commission*, 249 S.C. 337, 154 SE 2d 361 (1967). "A statute subject to interpretation is presumed not to have been intended to produce absurd consequences, but to have the most reasonable operation that its language permits. ... " 73 Am. Jur. 2d Statutes Section 265.

In summary, public corporations are not required to file an annual report or remit an annual corporate license fee. Therefore, in reviewing this matter we must consider whether the Redevelopment Commission is a public corporation.

The Redevelopment Commission was formed, under the Community Development Law of Chapter 10 of Title 31, to redevelop certain "blighted areas" within the City of ABC and in the interest of the public health, safety, morals and welfare of the residents of the city.

In *York County Fair Association v. South Carolina Tax Commission*, supra, the Supreme Court of South Carolina held:

A "public corporation" is an instrumentality of the state, founded and owned in the public interest, supported by public funds, and governed by those deriving their authority from the state, while a "private corporation" may be one organized by permission of the legislature, supported largely by voluntary contributions, and managed by officers and directors who are not representatives of the state or any political subdivision, although the corporation is engaged in charitable work or performs duties similar to those of public corporations.

* * * * *

The division of corporations into public and private will be more simply and easily understood as political and private. Whatever belongs to the public, or people composing a government, is a public or political corporation. Private corporations are such as are instituted for the benefit of certain persons as individuals, or for the purposes of applying private funds or enterprise or skill to the public good. "Public corporations are such as exist for public political purposes only, such as counties, cities, towns and villages. They are founded by the government for public purposes, and the whole interest in them belongs to the public. ..." (Citing 2 Kent Comm 222-3).

The classification of the Redevelopment Commission as a public corporation under the above case law is supported by the Community Development Law (Code Section 31-10-10 et, seq.), which authorizes the existence of municipal redevelopment commissions.

Code Section 31-10-20 defines "Commission" (redevelopment commission) as "a public body and a body corporate and politic created and organized in accordance with the provisions of this chapter."

Code Section 31-10-30 authorizes municipalities to create redevelopment commissions, and reads in part:

(a) Every municipality is authorized to create one or more separate and distinct bodies corporate and politic to be known as a redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance creating a commission ...

* * * *

(c) The governing body shall cause a certified copy of such ordinance to be filed in the office of the Secretary of State; upon receipt of the certified copy of such ordinance, the Secretary of State shall issue a certificate of incorporation.

Code Section 31-10-40 stipulates how the redevelopment commission will be governed, and reads:

Upon adoption of an ordinance establishing a commission, the governing body of such municipality shall provide for the governance of such commission by either of the following methods. A commission may be governed by the members of the governing body of its parent municipality serving ex officio or by not less than five nor more than nine commissioners selected by the governing body of the municipality. In the event the governing body initially elects to appoint commissioners to operate the commission, it may at any time in its discretion abolish the office of commissioners and assume direct responsibility for the operation of the commission.

Code Section 31-10-50 also permits the governing body of the municipality remove any commissioner at will. A commissioner may also receive any compensation that the governing body of the municipality may provide.

Code Section 31-10-90 sets forth the general powers of the commission, and describes the redevelopment commission as "a public body, corporate and politic, exercising public and essential governmental powers ..."

Also, the redevelopment commission must submit its redevelopment plan to the governing body of the municipality for approval (31-10-100), must hold a public hearing before the final adoption of its plan (31-10-100), and must have its books and records open and subject to inspection by the public at all times (31-10-160). The redevelopment commission may also issue bonds which are "declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes except inheritance estate, or transfer taxes." (31-1-120)

Based on the above, the Redevelopment Commission of the City of ABC, as with all such redevelopment commissions incorporated under the Community Development Law, is determined to be a public corporation.

Conclusion:

The Redevelopment Commission of the City of ABC is not required to file an annual report pursuant to Code Section 12-19-20 or remit an annual corporate license fee pursuant to Code Section 12-19-70.