



SC TECHNICAL ADVICE MEMORANDUM #89-4

TO: Mr. William F. Bray, Director
Office Services Division

FROM: Jerry B. Knight, Manager
Tax Policy and Procedures Department

DATE: January 18, 1989

SUBJECT: Refund of Gasoline and Motor Fuel Taxes

REFERENCE: S.C. Code Ann. Section 12-27-1510

AUTHORITY: S.C. Code Ann. Section 12-3-170(1976)
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Questions:

1. Are the terms "trucking equipment" and "auxiliary equipment", as used in Code Section 12-27-1510, referring to the same type of equipment?
2. If the gasoline or fuel has been used or consumed prior to the application for refund pursuant to Code Section 12-27-1510, can a refund be issued?
3. If the refund must be made before the gasoline or fuel is used or consumed, can a refund be issued without knowing the end use of the gasoline or fuel?
4. Since the gasoline tax (Chapter 27, Title 12) is a license tax and the motor fuel tax (Chapter 29, Title 12) is a road tax, can a refund of two distinct taxes be authorized pursuant to a single code section with the gasoline tax chapter?

Facts:

Code Section 12-27-1510, enacted by Act 496 of 1988, (effective May 9, 1988) reads:

A person who purchases and uses gasoline and other motor fuels taxed by this chapter and Chapter 29 of this title on trucking equipment for nonhighway purposes, other than propelling a motor vehicle, may apply for a refund of or credit on the fuel tax paid. Fuel refunds or credits for nonhighway use must be in accordance with regulations set forth by the Tax Commission, and procedures used in filing for refunds or credits must be uniform with procedures required by the Internal Revenue Service. A person claiming a fuel tax refund or credit on truck equipment for nonhighway purposes shall make application to the commission on proper forms within one year from the date of purchase of motor fuel which has not been used or consumed by the purchaser before the filing of the application provided for in this section. The commission may allow quarterly refunds for large users. If auxiliary equipment and the motor vehicle are powered off the same fuel tank, the Tax Commission shall determine what percentage of fuel is allowed for nonhighway purposes and subject to refund.

Discussion:

The issues in question are: Who is entitled to a refund under the provisions of this act and when may such a refund be applied for?

The statute creates an interesting dilemma with respect to the issues at hand, in that, three different terms are used: "truck equipment", "trucking equipment" and "auxiliary equipment". In addition, the title provides "...for refunds...when fuel is used on truck equipment," while the statute appears to prohibit a refund if the fuel has been used prior to the filing of the refund application.

The title to the act allows for a refund of gasoline and other motor fuels; however, the statute, for the most part, provides for a refund of fuel tax paid, not gasoline tax paid. This appears to create a discrepancy because "fuel" is defined in Code Section 12-29-10(1), in part, s "all combustible gases and liquids...except such fuels as are subject to the tax imposed by Chapter 27...". Chapter 27 imposes the tax on gasoline.

The ambiguities outlined above appear to make the statute a nullity. However, "a construction adopted should not be such as to nullify, destroy, or defeat the intention of the legislature." (73 Am.Jur. 2d., Statutes, Section 145)

First, it should be noted that the statute provides for a refund and therefore must be strictly construed. "A refund of taxes is solely a matter of governmental or legislative grace and any person seeking such relief must bring himself clearly within the terms of the statute authorizing the same." Guaranty Bank and Trust v. South Carolina Tax

Commission, 254 S.C. 82, 173 SE 2d 367 (1970). However, there are limitations upon the strictness of construction. The following is quoted from 73 Am.Jur. 2d., Statutes, Section 275:

Although a strict construction is a narrow construction and the statute may not be extended by implication or inference, the construction should not be unduly technical, arbitrary, severe, artificial, or narrow. The words used need not be given any meaning other than their full meaning, where such construction is in harmony with the context. A strict construction permits the words to be read naturally. A statute which is subject to the rule of strict construction is nevertheless entitled to a reasonable, sensible, and fair construction. The courts should take a common sense view of the statute as a whole and should not render a statute nugatory, inoperative, or ineffectual, but should interpret it as to give it an efficient operation. (emphasis added).

In summary, the statute in question should not be interpreted so as to make it ineffectual. The statute is entitled to a reasonable construction, harmonious with the intent of the legislature.

The title to Act 496 of 1988 reads:

AN ACT TO AMEND CHAPTER 27, TITLE 12, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 15 SO AS TO PROVIDE FOR REFUNDS OF OR CREDITS ON GASOLINE AND OTHER MOTOR FUELS TAXES WHEN THE FUEL IS USED ON TRUCK EQUIPMENT FOR NONHIGHWAY PURPOSES (emphasis added).

"Even though the title to an act is regarded as no part thereof, it is recognized that it is not to be wholly disregarded in its interpretation, and it is a generally accepted view in the United States that resort may be had to the title of an act as an aid in its interpretation." 73 Am. Jur. 2d., Statutes, Section 98.

Furthermore, the act reads, in part:

Be it enacted by the General Assembly of the State of South Carolina:

Credit on gasoline and motor fuel taxes for truck equipment use (emphass added).

It should be noted that a key sentence in the statute, when interpreted as written, makes the statute ineffective. That sentence reads:

A person claiming a fuel tax refund or credit on truck equipment for nonhighway purposes shall make application to the commission on proper forms within one year from the date of purchase of the motor fuel which has not been used or consumed by the purchaser before the filing of the application provided for in this section.

It appears to say that if the fuel has been used prior to applying for the refund, the refund is not allowed. However, a review of Code Section 12-27-760, prior to its amendment in 1984 (Act 379 of 784), offers insight into the construction of Code Section 12-27-1510. Code Section 12-27-760 (1976) reads:

Any person claiming a refund of tax on gasoline purchased for agricultural purposes shall make application therefore to the Commission on proper forms within six months from the date such gasoline was purchased, and no refund shall be allowed on any gasoline which has not been used or consumed by the purchaser thereof before the filing of the application provided for in this section.

The underlined portions of the above cited statutes are nearly identical; however, a key phrase ("and no refund shall be allowed on any gasoline") appears to have been inadvertently deleted. In light of the ineffectiveness of Code Section 12-27-1510 as written and the nearly identical language found in Code Section 12-27-760, it is reasonable to assume that a portion of Code Section 12-27-1510 was modeled after Code Section 12-27-760.

It is a general rule that words or phrases may not be inserted into a statute. The following quote from 73 Am.Jur.2d., Statutes, Section 203 provides an exception to this rule:

Words and phrases may, however, be supplied by the court and inserted in a statute, where that is necessary to prevent an act from being absurd, to obviate repugnancy and inconsistency in the statute, complete the sense thereof, and give effect to the intention of the legislature manifested therein. This rule prevails where words have been omitted from a statute through clerical error, or by accident or inadvertence. The rule is especially applicable where such application is necessary to prevent the law from becoming a nullity.(emphasis added)

In summary, the title to the act provides an aid in interpreting the statute. In addition, words and phrases may be inserted into the statute to prevent it from becoming a nullity.

The final issue concerns the validity of authorizing refunds of two distinct taxes found in two different chapters within the tax laws from a single code section within one of those chapters. The following quote from 73 Am.Jur., Statutes, Section 123 is applicable:

The rule that every legislative act is presumed to be constitutional and every intendment must be indulged by the courts in favor of its validity, is applicable to statutes claimed to be unconstitutional as in violation of the provision prohibiting statutes from containing more than one subject or object. Indeed, the objection should be grave, and the conflict between the statute and the constitution substantial and plain or palpable, before the judiciary should disregard a legislative enactment upon the ground that it embraces more than one subject or object.

Conclusions:

1. The title to the act in question refers only to truck equipment; therefore, the intent of the legislature was that "truck equipment", "trucking equipment" and "auxiliary equipment" are different names for the same type of equipment. Specifically, equipment attached to, or part of, a truck, trailer or semi-trailer qualifies for the refund provisions (for gasoline and fuel taxes) found in Code Section 12-27-1510.

2. & 3.

If the gasoline or fuel cannot be used prior to applying for the refund, the statute becomes ineffectual. Based on the above discussion, the statute must be given a reasonable construction and it must therefore be held that "no refund shall be allowed on any purchase of gasoline [and motor fuels] which [have] not been used or consumed by the purchaser thereof before the filing of the application...."

4. Code Section 12-27-1510 must be presumed to be constitutional and the Commission is required to issue refunds for both gasoline and motor fuel taxes for timely and valid claims.