

8259 Library



HENRY MCMASTER
ATTORNEY GENERAL

October 4, 2006

The Honorable Larry K. Grooms
Senator, District No. 37
131 Indian Field Drive
Bonneau, South Carolina 29431

Dear Senator Grooms:

In a letter to this office you requested an opinion regarding the Drycleaning Facility Restoration Trust Fund which is established pursuant to the provisions of S.C. Code Ann. §§ 44-56-410 et seq. Pursuant to Section 44-56-485,

(A) Notwithstanding any other provision of this article, this article does not apply to a drycleaning facility that was in existence on July 1, 1995, that drycleans with nonhalogenated cleaners only, nor to dry drop-off facilities whose clothing and other fabrics are cleaned only by such a drycleaning facility. However, an owner or operator of a facility or person may elect to place the facility under the provisions of this article by paying the required annual fee for the facility before October 1, 1995. If an owner or operator of a facility or person does not elect to place a facility under this article before October 1, 1995, the current or a future owner or operator of the site or person is prohibited from receiving any funds or assistance under this article. Failure to pay the required annual fee by October 1, 1995, constitutes electing not to place a facility under this article. Additionally, an owner, operator, or person who does not elect to place a facility under this article is prohibited from receiving any funds or assistance under this article for any site the owner, operator, or person currently or previously operated or abandoned.

(B) A drycleaning facility in existence on July 1, 1995, that uses halogenated fluids and nonhalogenated cleaners may elect to remove the facility from the requirements of this article if the election is made before October 1, 1995. Failure to pay the required annual fee by October 1, 1995, constitutes electing to remove a facility from the requirements of this article. An owner, operator, or person of a facility using halogenated and nonhalogenated cleaners may not elect to remove a facility from the requirements of this article for one solvent and not the other.

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(C) Notwithstanding subsections (A) and (B) of this section, if a person or an owner or operator of a drycleaning facility in existence on July 1, 1995, has made an election not to place a facility under the provisions of this article as allowed in subsection (A) or (B) above, then the person, owner, or operator may affirmatively and irrevocably elect to place the drycleaning facility under the provisions of this article. This election must be made by registering with the Department of Revenue on or before July 1, 2005, and paying the fees and taxes provided under this article. An electing drycleaning facility is liable for payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating, but is not liable for any penalties or interest. An electing drycleaning facility may pay the back taxes and fees that the facility is required to pay under this subsection by making monthly installments toward full payment of all back taxes and fees. The monthly installments must commence no later than July 1, 2004, and all back taxes and fees must be fully paid on or before July 1, 2006.

(D) Notwithstanding any other provision of this article, any person or owner or operator of a drycleaning facility that has not registered with the Department of Revenue and complied with the provisions of this article may voluntarily register with the Department of Revenue on or before July 1, 2005, without incurring any penalties or interest. Payment of all taxes and fees due pursuant to this article is required to be made from the later of July 1, 1995, or the date the drycleaning facility began operating. Any person or owner or operator of a drycleaning facility that does not voluntarily register under this provision is subject to interest, penalties, and payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating. No fees will be prorated or refunded for a business in operation for less than twelve months.

(E) Notwithstanding any other provisions in this article, the department may direct the Department of Revenue to allow a person or owner or operator of a drycleaning facility, who elected not to place the facility under this article pursuant to subsection (A) or (B) of this section to register, provided the department finds that the person or owner or operator of the drycleaning facility requesting to register did not have notice of this article for more than ninety days prior to requesting registration. The person or owner or operator of a drycleaning facility registering pursuant to this subsection is liable for payment of all taxes or fees, including interest, from the later of July 1, 1995, or the date the drycleaning facility began operating; however, the registering person, owner, or operator is not liable for penalties. No fees will be prorated or refunded for a business in operation for less than twelve months. (emphasis added).

Participation in the Drycleaning Facility Restoration Trust Fund is a determining factor in the requirement to pay certain fees established by other provisions of the legislation establishing the Fund. See: Sections 44-56-430(A); 44-56-480(A).

You have referenced a situation involving a dry cleaning establishment that was in existence as of July 1, 1995 that did not use halogenated solvents and decided not to participate in the Fund as authorized by Section 44-56-485. However, the operator has moved his facility since that date and continues to use non-halogenated solvents. The previous location was closed. Referencing such, you have questioned whether the operator is required to register and pay into the Trust Fund based on his having moved the business. The operator contends that he did not open a new (additional) dry cleaners but, instead, relocated his old, non-participating business. As a result, he contends that he should remain exempt from participation unless he changed the solvents in his business.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

As set forth by Section 44-56-485, its provisions do “not apply to a dry cleaning facility that was in existence on July 1, 1995 that drycleans with nonhalogenated cleaners only.” (emphasis added). Of course, pursuant to those same provisions, the owner of such a facility “...may elect to place the facility under the provisions of this article by paying the required annual fee for the facility before October 1, 1995.” Such provision further states that

If an owner or operator of a facility or person does not elect to place a facility under this article before October 1, 1995, the current or future owner or operator of the site or person is prohibited from receiving any funds or assistance under this article. Failure to pay the required annual fee by October 1, 1995, constitutes electing not to place a facility under this article.

(emphasis added). Also, pursuant to S.C. Code Ann. § 44-56-470, certain registration and renewal of registration fees must be paid regularly as prescribed by the statute based upon the number of employees in a drycleaning facility. The revenue from these fees is also credited to the Drycleaning Facility Restoration Fund. Such provision states that

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(A) [f]or each drycleaning facility owned and in operation, the owner or operator of the facility or person shall register with and pay initial registration fees to the Department of Revenue by October 1, 1995, and pay annual or quarterly renewal registration fees as established by the Department of Revenue. (emphasis added).

Construing such provisions, it is the opinion of this office that the allowance for exemption from the Trust Fund is applicable only to particular facilities that were "in existence" at a particular location on the specified dates. Such interpretation is strengthened by the references emphasized above which refers to a particular "site" and to facilities "in operation". As a result, in the opinion of this office, as to a nonhalogenated facility that was relocated and therefore moved from an old location that was exempt from payments to the Trust Fund, as a result of the move to a new and different location, payments to the Trust Fund would be required.

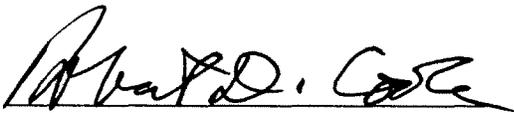
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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