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THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

October 29, 1992

SUBJECT: Taxation and Revenue - Allocation of Funds  
Raised By Gasoline Tax

SYLLABUS: Under S. C. Code Ann. § 12-27-390 (Supp. 1991)  
the allocation of gasoline tax funds raised by  
S.C. Code Ann. § 12-27-230 (Supp. 1991) is as  
follows:

First, § 12-27-230 imposes a gasoline tax of  
10.34 cents per gallon. Second, § 12-27-390  
allocates to the Wildlife Department one-half  
of 1% of the gross proceeds of the tax generat-  
ed by § 12-27-230. Third, the remainder,  
i.e. the net proceeds after allocation to the  
Department of Wildlife and Marine Resources,  
is distributed in two parts. One part of the  
remainder is allocated to the General Fund at  
the rate of one cent per gallon. This one  
cent per gallon may not be reduced by the allo-  
cation to the Department of Wildlife and Ma-  
rine Resources, but rather is computed on the  
total gallons represented in the gross pro-  
ceeds produced by the 10.34 cents of §  
12-27-230. The second part is the balance of  
the remainder and that part is distributed to  
the Department of Highways and Public  
Transportation.

TO: Honorable Grady L. Patterson, Jr.  
Treasurer, State of South Carolina

FROM: Ray N. Stevens *RNS*  
Chief Deputy Attorney General

QUESTION: How is the allocation of gasoline tax computed  
under § 12-27-390?

APPLICABLE LAW:

S.C. Code Ann. §§ 12-27-230, 12-27-380 and 12-27-390 (Supp.  
1991).

DISCUSSION:

Section 12-27-390 allocates the gasoline tax raised by § 12-27-230. That allocation is to the Department of Wildlife and Marine Resources, to the General Fund, and to the Department of Highways and Public Transportation.

A. Allocation To The Department Of Wildlife  
And Marine Resources

Section 12-27-390 provides in part the following:

. . . one-half of one percent of the proceeds from the gasoline tax imposed pursuant to § 12-27-230 must be transmitted to the Department of Wildlife and Marine Resources to be placed to the credit of a special water recreational resources fund of the state treasury and all balances in the fund must be carried forward each year so that no part of it reverts to the General Fund of the State.

The language specifically requires the calculation be made on the "proceeds from the gasoline tax imposed pursuant to section 12-27-230." The proceeds from the tax imposed pursuant to § 12-27-230 is set out in that statute.

Section 12-27-230 states:

[e]very oil company doing domestic or intrastate business within this State and engaging in the business of selling, . . . any gasoline . . . for the privilege of carrying on such business shall be subject to the payment of a license tax . . . Every such company shall pay to the State an amount of money equal to 10.34 cents per gallon on all gasoline .

Thus, if there is no other controlling language, the 10.34 cents proceeds from gasoline tax imposed pursuant to § 12-27-230 is the basis for calculating the funds allocated to the Department of Wildlife and Marine Resources. A review of §§ 12-27-230, 12-27-380 and 12-27-390 as shown below demonstrates there is no other controlling language.

B. Distribution Of The Remainder Of The Gasoline  
Tax Raised By § 12-27-230 To The General Fund  
And To The Department Of Highways And  
Public Transportation

In concluding that the Wildlife Department is to receive its allocation on 10.34 cents, and in determining how the remainder of the revenue is distributed, it is proper to note that a statute should not be read in isolation, but rather the language of a statute must be examined in the light of other statutes dealing with the same subject matter. Spartanburg County v. Arthur, 180 S.C. 81, 185 S.E. 486, 488 (1936). Additionally, all parts of a statute must be considered so as to give meaning to the statute as a whole. Hartford Accident & Indemnity Co. v. Lindsay, 273 S.C. 79, 254 S.E. 301 (1979).

Here, the use of 10.34 cents as a base is supported by the distribution instructions in § 12-27-380 and § 12-27-390 for funds allocated to the General Fund and to the Department of Highways and Public Transportation. Section 12-27-390 gives two instructions as to the method for calculating the allocation of revenue.

1. One Cent Per Gallon To The General Fund

Section 12-27-390 states the following:

This section [12-27-390] does not reduce the one cent per gallon license tax now being distributed to the counties pursuant to 12-27-380.

This language is clear that the one cent per gallon distributed under § 12-27-380 is not to be reduced by the allocation to the Department of Marine and Wildlife Resources. A review of § 12-27-380, however, shows that there is no distribution under that statute of one cent to the counties but there is a distribution of one cent per gallon to the general fund. The reference to "counties" by § 12-27-390 is apparently a draftman's error which incorrectly relies upon the language of § 12-27-380 before the amendment made by Act 171, Part II, Section 22E, Acts of 1991. The Act substituted "general fund" in the place of "counties."

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The conclusion that the reference to "counties" is a draftman's error is supported by settled rules of construction. A construction of a statute that results in the General Assembly having performed a futile act is not favored. Fulghum v. Bleakley, 177 S.C. 286, 181 S.E. 35 (1935). To find that § 12-27-390 was intended to refer to "counties" as used in § 12-27-380 would result in the General Assembly committing a futile act since there is no mention of "counties" in § 12-27-380. Proper meaning is provided and futility is dismissed by concluding the General Assembly intended to reference the one cent allocated to the General Fund.

Thus the one cent allocation to the General Fund is not reduced by any amount allocated to the Department of Wildlife and Marine Resources. Rather, the amounts allocated to the General Fund are to remain the same and are calculated just as though there were no allocation to the Department of Wildlife and Marine Resources. Accordingly, this one cent per gallon is computed on the total gallons represented in the gross proceeds produced by the 10.34 cents of § 12-27-230 and the distribution to the General Fund is made on the same basis.

## 2. Allocation To The Department of Highways And Public Transportation

After the allocation to the Department of Wildlife and Marine Resources and to the General Fund is accomplished, additional language of § 12-27-390 gives further instruction on determining the allocation to the Department of Highways and Public Transportation. Section 12-27-390 states the following:

The amounts allocated [to the Department of Wildlife and Marine Resources] must be deducted from the gross proceeds of the gasoline tax imposed under Section 12-27-230 before net proceeds to be distributed to the Department of Highways and Public Transportation and counties pursuant to Section 12-27-380 are determined.

Under the language of § 12-27-390, the calculation for distribution of the gasoline tax to the Department of Wildlife and Marine Resources must be made before any distribution under § 12-27-380 to the Department of Highways and Public Transportation. Thus, the Department of Highways and Public Transportation receives the remainder of the fund after the

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allocation to the General Fund and after the allocation to the Department of Wildlife and Marine Resources.

CONCLUSION:

Under § 12-27-390 the allocation of gasoline tax funds raised by § 12-27-230 is as follows:

First, § 12-27-230 imposes a gasoline tax of 10.34 cents per gallon. Second, § 12-27-390 allocates to the Wildlife Department one-half of 1% of the gross proceeds of the tax generated by § 12-27-230. Third, the remainder, i.e. the net proceeds after allocation to the Department of Wildlife and Marine Resources, is distributed in two parts. One part of the remainder is allocated to the General Fund at the rate of one cent per gallon. This one cent per gallon may not be reduced by the allocation to the Department of Wildlife and Marine Resources but rather is computed on the total gallons represented in the gross proceeds produced by the 10.34 cents of § 12-27-230. The second part is the balance of the remainder and that part is distributed to the Department of Highways and Public Transportation.

RNS:acw