

1978 S.C. Op. Atty. Gen. 210 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-182, 1978 WL 22650

Office of the Attorney General

State of South Carolina

Opinion No. 78-182

October 31, 1978

**\*1 SUBJECT: Sales Tax—Exemption For Institutions Of Higher Learning.**

The South Carolina Association Certified Public Accountants Educational Fund is not an institution of higher learning within the meaning of [§ 12–35–550\(2\) of the South Carolina Code](#).

TO: Mr. Reginald U. Smith  
Director  
Sales and Use Tax Division  
South Carolina Tax Commission

QUESTION:

Is the South Carolina Association of Certified Public Accountants Educational Fund an institution of higher learning that is entitled to the exemption provided in [§ 12–35–550\(2\) of the South Carolina Code](#)?

STATUTE:

[Section 12–35–550\(2\) of the 1976 South Carolina Code](#) of Laws.

DISCUSSION:

The South Carolina Association of Certified Public Accountants Educational Fund is chartered under the laws of South Carolina as an eleemosynary and nonprofit corporation. In its charter dated November 8, 1973, the following purpose is stated:

‘The purpose of the said proposed Corporation is to promote educational purposes, and especially to promote high standards of scholarship in the study of accounting, to encourage the study of accounting, and to further accounting education generally, all in the public interest, and to do and engage in all other lawful activities that are in furtherance of one or more of these purposes.’

Article III of the corporate by-laws provides:

‘The purposes of this corporation are exclusively eleemosynary; to promote educational purposes, and especially to promote high standards of scholarship in the study of accounting, to encourage the study of accounting, and to further accounting education generally, all in the public interest, and to do and engage in all lawful activities that are in furtherance of one or more of these purposes.’

The statutory provision in issue provides an exemption from taxation. It is clear that in this State an exemption from taxation will be allowed only to persons or corporations that are clearly within the provisions of the exemption statute. If any doubt exists whether or not one is within the statute or is entitled to an exemption, it will be resolved against the

exemption and in favor of the tax. [York County Fair Assoc. v. South Carolina Tax Commission](#), 249 S. C. 337, 154 S. E. 2d 361; [Marlow v. Spartanburg County Tax Exempt Board](#), 269 S. C. 219, 237 S. E. 2d 57.

We are advised that the Tax Commission has allowed the exemption only for textbooks used in schools, colleges and universities and other such institutions. The word 'institution' has been narrowly construed in this respect. There is no reason to doubt the correctness of this construction under the above rule. Further, we are advised that this has been the longstanding position of the Tax Commission and such is entitled to weight. [Duke Power Co. v. South Carolina Tax Commission](#), 81 F. 2d 513; [Hadden v. South Carolina Tax Commission](#), 183 S. C. 38, 190 S. E. 249.

The rule of ejusdem generis may also be applied. [Kennan v. Bowers](#), 91 F. Supp. 771; [Johnson v. Pratt](#), 200 S. C. 315, 20 S. E. 2d 865. The statute clearly exempts textbooks used in elementary and high schools. The words 'elementary and high schools' need no further construction as their meanings are clear. The word 'institution' however is a broader term. Under the above rules and the rule of ejusdem generis, it should be construed to include only institutions of the class or character commonly recognized as schools. This would include technical schools, colleges and universities.

\*2 In the case of [Commonwealth of Pennsylvania, Penn. Higher Education Assistance Agency v. Abington Memorial Hospital](#), 24 Pa. Cmwlth. 352, 356 A. 2d 837, under a statute providing for grants to 'institutions of higher learning', it was held that the statute provided a class that applied only for institutions which have as their main function higher education. Excluded from the class were institutions with some programs of higher education incidental to their main functions. Although it is said that the corporation in issue has as one of its main purposes education, it is not a school. It is managed and operated by the Association of Certified Public Accountants to promote accounting and to provide instruction for members. It is not a school or institution that is exempt under [§ 12-35-550\(2\) of the Code](#).

#### CONCLUSION:

The South Carolina Association of Certified Public Accountants Educational Fund is not an institution of higher learning within the meaning of [§ 12-35-550\(2\) of the South Carolina Code](#).

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