

1978 S.C. Op. Atty. Gen. 211 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-183, 1978 WL 22651

Office of the Attorney General

State of South Carolina

Opinion No. 78-183

November 1, 1978

***1 SUBJECT: Income Taxes—Inclusion of ‘Surcharges’ Authorized By the Public Service Commission and Imposed On Customers of Piedmont Natural Gas Company, Inc. As Gross Income.**

The amounts authorized by the Public Service Commission and paid to Piedmont Natural Gas Company, Inc. by its customers as a ‘surcharge’ constitute gross income.

TO: Mr. C. H. Brooks

Director

Income Tax Division

QUESTION:

The Public Service Commission has authorized by its Order Number 18, 346, dated May 15, 1975, Piedmont Natural Gas Company, Inc. to collect a ‘surcharge’ from its customers. The amount received is to be used for exploration and drilling for natural gas and the question is whether the amounts so received constitute gross income to Piedmont.

DISCUSSION:

A similar issue was before the United States Circuit Court in the case of [Teleservice Co. of Wyoming Valley v. Commissioner of Internal Revenue](#), 254 F. 2d 105. While there are some factual differences the same are not, in our opinion, sufficient to alter the conclusion. In [Teleservice](#) the citizens of an area wanted television reception, however, could not because of location receive the same. Private business would not invest sufficient funds to furnish such service because of the technical problems, et cetera. The citizens therefore agreed to ‘contribute’ sufficient funds to a company to construct the facility. A monthly service charge was paid for the service and from this charge the company realized a profit. The Court there held:

‘Taxation is an intensely practical matter, and, it deals with realities not semblances; with substance and not form.’

The Court for its conclusion largely relied upon the decision of the United States Supreme Court rendered in the case of [Detroit Edison Co. v. Commissioner](#), 319 U. S. 98, 63 S. Ct. 902, 87 L. Ed. 1286. The Court quoted from that decision as follows:

‘The Company, however, seeks to avoid this result by the contention that what it has obtained are gifts to it or contributions to its capital of the property paid for by the customer, and that therefore by the provisions of § 113(a)(2) and (8)(B) it takes the basis of the donor or transferor. It is enough to say that it overtaxes imagination to regard the farmers and other customers who furnished these funds as makers either of donations or contributions to the Company. The transactions neither in form nor in substance bore such a semblance.

‘The payments were to the customer the price of the service * * *’. (emphasis supplied).’

The amounts paid by Piedmont's customers therefore do not constitute donations or contributions. The relationship of creditor and debtor is likewise not here created. While the Order of the Public Service Commission provides that the surcharge shall not be considered as payments for gas by Piedmont's customers, it is the substance of the matter that is here considered. We have no evidence that a customer ever receives the gas without the payment of the surcharge. The Order does not provide for such an election, however, does by express language direct that the billing reflect the surcharge.

*2 The Order further provides that profits from the activities funded by the surcharge be returned to the customers. Such, however, does not enhance the existence of a creditor-debtor relationship between the customer and Piedmont. If the customer is to receive the gas, he must pay the charge. He may at some future time receive some benefit, however, such is speculative.

CONCLUSION:

The amounts authorized by the Public Service Commission and paid to Piedmont Natural Gas Company, Inc. by its customers as a 'surcharge' constitute gross income.

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