

1974 S.C. Op. Atty. Gen. 193 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3807, 1974 WL 21314

Office of the Attorney General

State of South Carolina

Opinion No. 3807

June 24, 1974

**\*1 An overpayment of income taxes may be applied to any taxes that are payable but unpaid to the State for any period.**

Director  
Income Tax Division  
South Carolina Tax Commission

Reference is made to your request for the opinion of this office concerning the application of an overpayment of income taxes to unpaid taxes. Section 65–342.2 provides as follows:

‘Where there has been an overpayment of any tax imposed under the provisions of this chapter, or Sections 65–379 to 65–385 the amount of such overpayment shall be credited against any tax, penalty, or interest, or installment thereof, due by the taxpayer to this State for any period and the excess, if any, shall be refunded or credited as otherwise provided by chapter 6 of this Title.’

Your inquiry is whether the overpayment can be applied to ‘any tax, penalty or interest, or installment thereof, due by the taxpayer to this State for any period’.

The words of the section must be given their ordinary and popular meaning.

‘In construing a statute, the language should be given its ordinary and popular significance without resort to subtle and forced construction for the purpose of limiting its operation. The court can neither legislate nor construe a statute which is clear.’ *Investors Premium Corp. v. South Carolina Tax Commission*, 193 S. E. 2d 642.

The word ‘any’ is broadly inclusive and means ‘all’ (see Volume 3A Words and Phrases, pages 54, et seq.). The word ‘tax’ is not limited in this section to any specific kind of tax except to a tax levied by the State. ‘Due’ is defined in Webster’s New Collegiate Dictionary to mean, ‘1. owed or owing as a debt; 5. having reached the date at which payment is required; payable \* \* \*.’ It is often used by businessmen in the sense of owing irrespective of the time of payment. *Ex Parte American Fertilizing Co.*, 122 S. C. 171, 115 S. E. 236.

There can be little doubt that an unpaid tax is owed, therefore, it is the opinion of this office that the overpayment is to be applied to any taxes that are payable to the State and as to which payment has not been made. This conclusion is fortified by the term within the statute ‘for any period’, which term further reflects legislative intent that the overpayment be applied to any unpaid tax, whether or not the same is collectible by legal process.

Joe L. Allen, Jr.  
Assistant Attorney General

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