

1973 S.C. Op. Atty. Gen. 65 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3481, 1973 WL 20945

Office of the Attorney General

State of South Carolina

Opinion No. 3481

February 28, 1973

Section 65–745 of the Code does not apply to domestic wines and the only tax imposed upon domestic wines is provided for by Section 65–733.1.

*1 Director
License Tax Division

By letter of February 7, 1973, this writer advised J. Robert Benton, Southeastern Counsel for the Wine Institute, and J. W. Lawson of the South Carolina Tax Commission that the tax imposed by Subsection (E) of Section 4 of Act No. 1263 of the 1968 Acts, p. 3006, codified as Section 65–745 of the Code of Laws of South Carolina, 1962, as amended, must be collected upon domestic wines. Domestic wines are now defined by Section 19 of Act No. 944, 1966 Acts, p. 2564, which section is codified as subsection (1) of Section 65–733.1 of the 1962 Code of Laws, as amended. Further study of the legislative history of Section 65–745 has been made and the opinion rendered in the February 7th letter is now revised to conform to the findings herein disclosed.

Prior to 1960, all wines were taxed by the provisions of Act No. 234 of the 1955 Acts, p. 442, which is codified as Section 65–732 of the 1952 Code of Laws, as amended. In 1960 an additional tax was imposed upon wines by Subsection A of Section 5 of Act No. 802, p. 1892, which Act was codified as Section 65–745 of the 1952 Code of Laws, as amended. This Act provides: 'In addition to any and all other taxes or licenses, there shall be levied and collected on all beer offered for sale in this State an additional tax of seven and one-half (7 ½¢) cents per gallon or fractional quantity thereof, and on all wines offered for sale in this State an additional tax of eighteen (18¢) cents per gallon or fraction thereof.

If beer be offered for sale in bottles or cans, there shall be levied and collected an additional tax at the rate of one-half (½) cent for each seven (7) ounces or fraction thereof, and on wines offered for sale in quantities less than one (1) gallon, there shall be levied and collected a tax of one and two-tenths (1.2¢) cents for each eight (8) ounces or fraction thereof.'

The General Assembly in 1962 enacted legislation, Act No. 748, Acts of 1962, p. 1740, codified as Section 65–733.1 of the 1962 Code of Laws, as amended, providing for a special rate of tax upon domestic wines. Section 2 of the Act imposing the tax provides:

'Notwithstanding any other provision of law the tax on domestic wines shall be forty-five cents per gallon if the alcoholic strength of the wine is not more than twenty-one per cent. On domestic wine offered for sale in quantities of less than one gallon there shall be levied and collected a tax of three and six-tenths cents for each eight ounces or fractional quantity thereof. The tax provided for in this act shall be paid in the same manner as tax on beer and wine as provided in Article 4, Chapter 10, Title 65, Code of Laws of South Carolina, 1952.'

Since the enactment of this section, the only taxes upon domestic wines are imposed pursuant to this section.

*2 The opinion expressed earlier was that Subsection E of Section 4 of Act No. 1263, 1968 Acts, p. 3006, codified as Section 65–745 of the Code, imposed additional taxes upon wines as this section was enacted after Section 65–733.1 and the later legislative Act would be controlling. Such conclusion, however, now appears to be erroneous as this subsection, with respect to additional taxes upon wines, is an almost verbatim re-enactment of Section 65–745 originally enacted in 1960 imposing an

additional tax upon wines, and which after 1962 did not tax domestic wines. The re-enactment of this language in 1968 should be generally considered a continuation of the law as it existed prior to its re-enactment in 1968. In the case of *State v. Patterson*, 220 S. C. 269, 66 S. E. 2d 875 (1951), it was stated:

'It is a general rule of law that where a statute is repealed and all, or some, of its provisions are at the same time re-enacted, the re-enactment is considered a reaffirmance of the old law, and a neutralization of the repeal, so that the provisions of the repealed act which are thus re-enacted continue in force without interruption, and all rights and liabilities incurred thereunder are preserved and may be enforced.' 50 Am. Jur., Statutes, Sec. 555. See also 50 Am. Jur. Statutes, Sec. 533; 25 R. C. L. 934; *Brown v. Brown*, 213 N. C. 347, 196 S. E. 333.'

It is thus the opinion of this office that Subsection E of Section 4 of Act No. 1263 of the 1968 Acts, which is codified as Section 65-745, does not apply to domestic wines and the only tax imposed upon domestic wines is provided for by Section 65-733.1.

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