

1973 S.C. Op. Atty. Gen. 84 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3492, 1973 WL 20955

Office of the Attorney General

State of South Carolina

Opinion No. 3492

March 13, 1973

***1 Soil conservation districts acting within the confines of the Soil Conservation Districts Law are not engaged in activities for profit and need not file an income tax return.**

Executive Director

Land Resources Conservation Commission

This is in reply to your letter of February 27, 1973, in which you have requested the opinion of this office on whether or not a soil conservation district created under the ‘Soil Conservation Districts Law’ appearing in Chapter 2 of Title 63 of the 1962 Code of Laws should file a South Carolina or a Federal income tax return. The district constitutes a ‘governmental subdivision of this State and a public body corporate and politic exercising public powers.’ See Section 63–93 of the Code, as amended.

Pursuant to Section 63–127 of the Code, the district leases certain conservation equipment. Customarily, the rentals are only sufficient to cover the equipment costs and, in all cases, any revenue derived from the leases is expended as required by law. Section (5) of the aforementioned section prohibits use of any funds except in furtherance of conservation efforts.

Section 65–222 of the South Carolina Code of Laws imposes an income tax on corporations transacting or conducting business in this State. The terms transacting or conducting business are further defined in the section to mean engaging in or transacting any activity for the purpose of financial profit or gain. If the district acts within the confines of the Soil Conservation Districts Law, which in the absence of facts to the contrary will be assumed, it is doubtful that the district can engage in activities for profit.

A broad basis exists for exempting the income of governmental units from State income taxes, the alternative being that if no exemption existed, the State government would be paying itself a tax. See *Hellerstein, State and Local Taxation*, Second Edition, p. 563.

It is the opinion of this office that no income tax is imposed on soil and water conservation districts by the State of South Carolina, therefore, no State income tax return need be filed.

It is also the opinion of this office that the district need not file a Federal income tax return. The Federal government is prohibited by the United States Constitution from taxing a state or its subdivisions so long as the state or subdivision is engaged in a governmental activity as distinguished from a private activity. See *South Carolina v. United States*, 199 U. S. 437 (1905) and *Ohio v. Helvering*, 292 U. S. 360 (1934). The activities engaged in by the soil conservation districts are governmental in nature and therefore income derived therefrom is exempt from Federal taxation.

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South Carolina Tax Commission

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