
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 12265, Columbia, South Carolina 29211
Website Address: <http://www.sctax.org>

SC PRIVATE LETTER RULING #12-4

SUBJECT: Corporations Permitted to File a Consolidated Return
(Income Tax)

REFERENCES: S.C. Code Ann. Section 12-6-5020 (Supp. 2010)
S.C. Code Ann. Section 12-2-25(B)(1) (Supp. 2010)
S.C. Code Ann. Section 12-6-2320 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2008)
SC Revenue Procedure #09-3

SCOPE: A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question:

May a group of subsidiary corporations of parent PARENT, as described in the facts, file a South Carolina consolidated return when they are included in separate federal consolidated groups and/or file as single entities for federal income taxes?

Conclusion:

A group of subsidiary corporations of parent PARENT, as described in the facts, may file a South Carolina consolidated return even though they are included in separate federal consolidated groups and/or file as single entities for federal income taxes. Since SUB1 and SUB2 are under substantially the entire control of PARENT as required by Code Section 12-6-5020(A)(2) and have nexus with South Carolina, the SUB1 group and the SUB2 group may file a South Carolina consolidated return. The consolidated return can also include SUB2-A, which is 100% owned by SUB2 and has nexus with South Carolina. Other corporate subsidiaries of SUB1 and SUB2 may be included in the South Carolina consolidated return based on whether the subsidiaries have nexus with South Carolina and meet the 80% control test of Code Section 12-6-5020(A)(2).

Facts:

PARENT is the parent of a controlled group of entities engaged in the manufacture and sale of automotive components. PARENT is organized outside of the United States and is not subject to federal or South Carolina corporate income tax.

PARENT owns 100% of the foreign disregarded entity DISREGARDED 1. PARENT also owns a 49% interest in the foreign disregarded entity DISREGARDED 2, DISREGARDED 1 owns a 51% interest in DISREGARDED 2. DISREGARDED 2 then owns a 100% interest in the foreign disregarded entity DISREGARDED 3. DISREGARDED 3 owns 100% of the foreign disregarded entity DISREGARDED 4. DISREGARDED 4 owns 100% of two foreign disregarded entities, DISREGARDED 5 and DISREGARDED 6. Each of these disregarded entities is disregarded for federal income tax purposes.

DISREGARDED 5 owns 100% of the stock of SUB1. SUB1 serves as a holding company for various subsidiaries, including SUB1-A, SUB1-B, SUB1-C, and other corporations and partnerships. These subsidiaries are engaged in the manufacture and sale of automotive components.

DISREGARDED 6 owns 100% of the interest in SUB2. SUB2 has elected under Treasury Regulations §301.7701-3 to be taxed as a corporation for federal income tax purposes. SUB2 owns 100% of the stock of SUB2-A. SUB2-A is engaged in the manufacture of tires. SUB2-A holds varying interest in other corporations and partnerships, both domestic and foreign.¹

For federal income tax purposes, SUB1 files a consolidated Form 1120 that includes SUB1, SUB1-B, SUB1-C, and other subsidiary corporations for which the federal consolidated return ownership and control requirements are met SUB1 Group. SUB2 files a consolidated Form 1120 that includes SUB2, SUB2-A, and other subsidiary corporations for which the federal consolidated return ownership and control requirements are met SUB2 Group.

Because PARENT is a foreign corporation, it is not an includible corporation as defined in § 1504(b) of the Internal Revenue Code. As such, PARENT is ineligible to file a consolidated federal income tax return with the SUB1 and SUB2 Groups. Additionally, the SUB1 Group and SUB2 Group cannot file a single federal consolidated return because the common parent corporation must be included in the federal consolidated return.

SUB1 and SUB2 engage in a multistate business, conduct business within South Carolina, and have an income tax filing requirement with the State. Additionally, several of their subsidiaries engage in activities within South Carolina which subject them to the South Carolina corporate income tax and license fee; however, not every company in the SUB1 Group and SUB2 Group has nexus with South Carolina.

¹ SUB1-B, SUB1-C, and SUB2-A all have nexus with South Carolina. SUB1-A does not have nexus with South Carolina. See Charts A and B for nexus information.

All companies in the SUB1 and SUB2 Groups use the same accounting year.

Attached are two organization charts: Chart A includes disregarded entities and Chart B eliminates the disregarded entities.

Note: The partnerships mentioned in the facts are not included in the charts since partnerships cannot file returns as members of the consolidated group.

Discussion:

Code Section 12-6-5020 authorizes the filing of a consolidated corporate income tax return in South Carolina and provides the criteria for filing a consolidated return. In connection with what corporations can file a consolidated return, the section provides:

(A) A consolidated return may be filed for the following corporations:

- (1) a parent and substantially controlled subsidiary or subsidiaries;
- (2) two or more corporations under substantially the entire control of the same interest.

However, a corporation that has elected to be taxed under Subchapter S of the Internal Revenue Code may not join in the filing of a consolidated income tax return under this section.

The terms “substantially controlled” and “substantially the entire control” mean the ownership of at least eighty percent of the total combined voting power of all classes of stock of all corporations that are a party to a consolidated return.

(B) All corporations included in a consolidated return must be subject to tax under Section 12-6-530.

(C) A corporation doing business entirely within this State may consolidate with a corporation doing a multistate business. Two or more corporations doing a multistate business may file a consolidated return.

(E) All corporations included in a consolidated return or a combined return must use the same accounting year.

South Carolina follows the federal income tax regulations concerning entity classifications. SC Information Letter #96-25. Each of the entities in the facts is a disregarded entity for federal income tax purposes. As a result, they are also disregarded entities for South Carolina income tax purposes.

Under the facts presented, qualifying members of the SUB1 group and qualifying members of the SUB2 group may file as part of the same South Carolina consolidated return. At least eighty percent of the total combined voting power of all classes of stock of all corporations that are a party to a consolidated return must be under the control of the same entity, but that control entity does not have to be part of the consolidated group.

In this case, DISREGARDED 5 and DISREGARDED 6 are disregarded entities which are owned by a series of disregarded entities until final ownership by corporation PARENT. Code Section 12-2-25(B)(1). As a result, PARENT is the 100% owner of SUB1 and SUB2 with total control over the voting power of all classes of stock of SUB1 and SUB2. Since PARENT is a common owner with total control of at least 80% of the total combined voting power of all classes of stock, SUB1 and SUB2 can be part of the same South Carolina consolidated return. Whether other corporate subsidiaries of SUB1 and SUB2 are part of the consolidated group will be based on whether they have nexus with South Carolina and whether they meet the 80% control test.

Note: If the filing of a consolidated return in the manner described above does not fairly represent the extent of the taxpayers' business in this State, under Code Section 12-6-2320, the taxpayer may petition or the department may require another method of reporting, including combined unitary reporting.

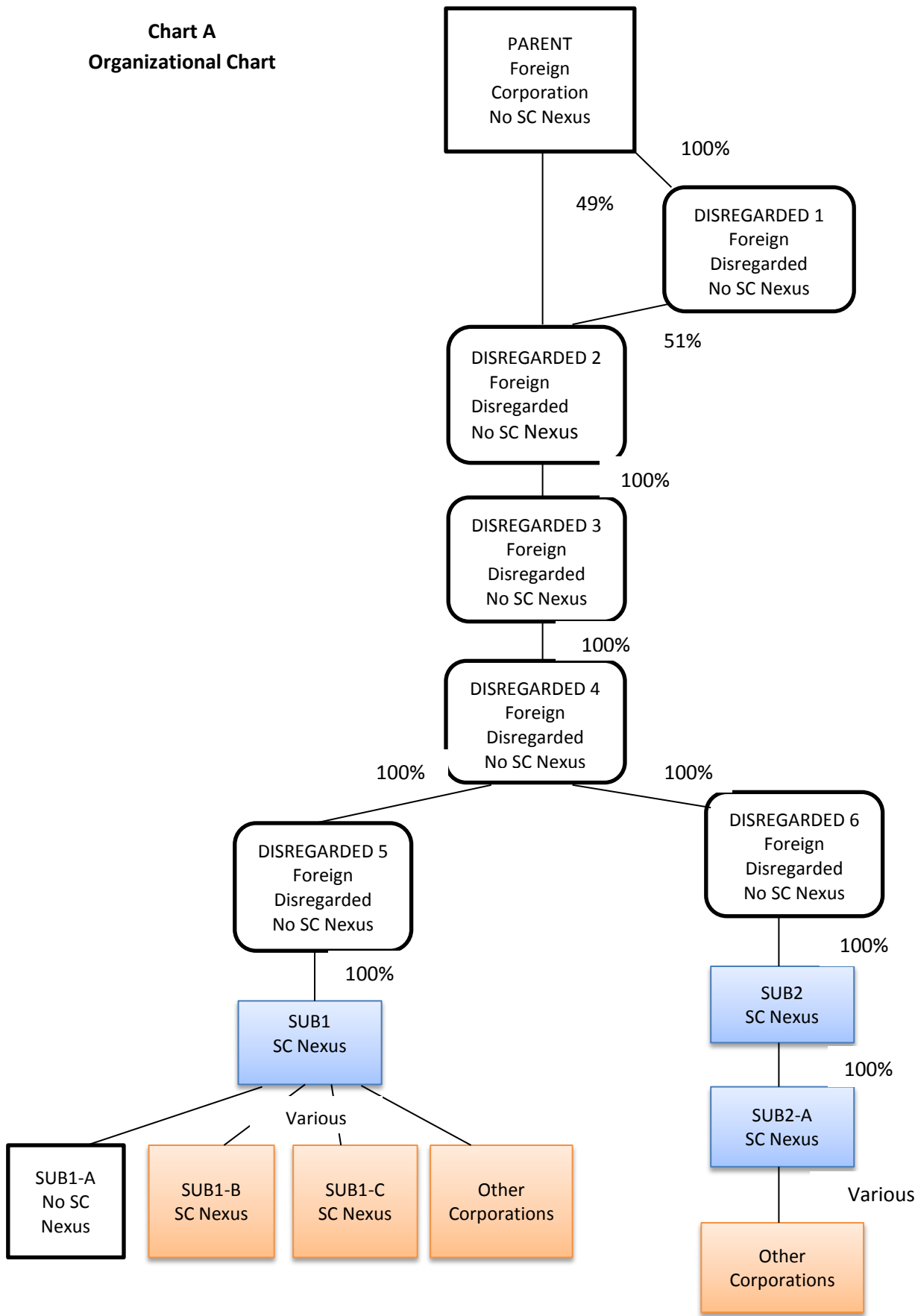
SOUTH CAROLINA DEPARTMENT OF REVENUE

s/James F. Etter
James F. Etter, Director

August 27 _____, 2012
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

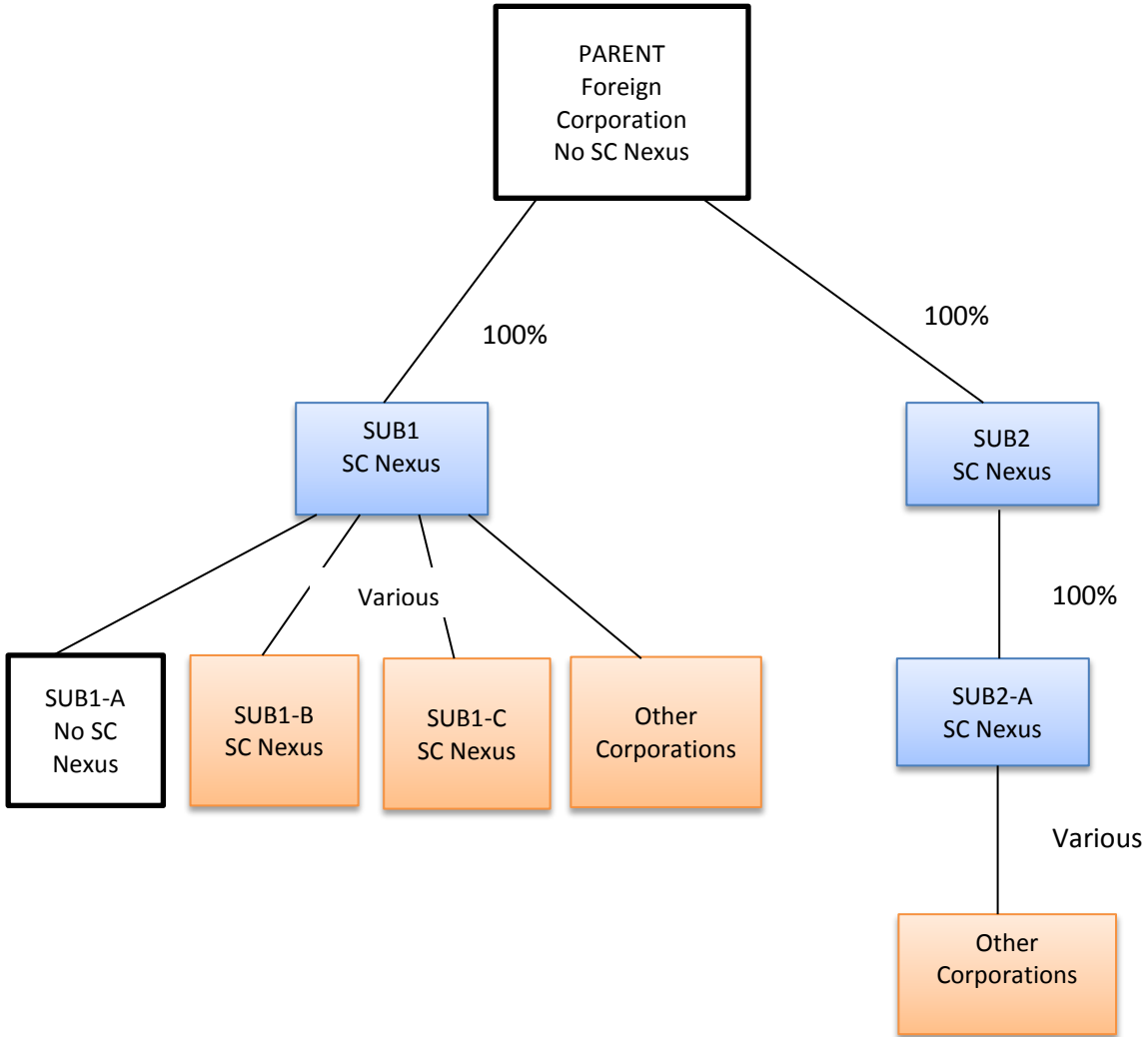
Chart A
Organizational Chart



Included in the Consolidated Group
 Not included in the Consolidated Group

Included in the Consolidated Group if the corporation has SC nexus and the ownership requirements are met

Chart B - Organizational Chart without Disregarded Entities



Included in the Consolidated Group



Included in the Consolidated Group if the corporation has SC nexus and the ownership requirements are met



Not included in the Consolidated Group