



SC REVENUE PROCEDURE #87-3

SUBJECT: Administration of the Tax Policy and Procedures Department

EXPIRATION DATE: N/A

SUPERCEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: SC Revenue Procedure #87-1
S.C. Code Sections 12-3-130, 12-3-140, and 12-3-170

AUTHORITY: S.C. Code Section 12-3-130

SCOPE: "A Revenue Procedure is a statement describing agency procedures and is applicable only to employees of the South Carolina Tax Commission."

PURPOSE: This Revenue Procedure is for the purpose of explaining the procedures whereby policy is to be formulated, promulgated and disseminated by the South Carolina Tax Commission.

Background Information:

1. Development of the Tax Policy and Procedures Department. In recent years, the Tax Commission has evolved from a decentralized organizational structure to that of one functionally centralized. In keeping with this concept and to further ensure consistent and uniform application of the tax laws, the Commission has recognized the need for a single source of tax policy.
2. Duties of the Tax Policy and Procedures Department. The Tax Policy and Procedures Department (Tax Policy) has a wide range of duties and responsibilities. However, it's primary responsibility is to develop, disseminate and control tax policy.
3. Structure of the Tax Policy and Procedures Department. Tax Policy is under the direction of two Tax Managers who report to the Division Director. The policy responsibilities of the managers are delineated by tax type. Specifically, one is responsible for policy as relates to income (corporate and individual), estate and gift, and property tax. The other manager is responsible for sales and use and the miscellaneous taxes.

4. Documents Issued:. Pursuant to SC Revenue Procedure #87-1, the Tax Policy Department shall, upon approval of the Commission, issue the following policy documents: Revenue Rulings, Revenue Procedures, Private Letter Rulings and Technical Advice Memoranda. The Tax Policy Department has primary responsibility for determining which document(s) will be issued. The Tax Policy Department will also promulgate Regulations and recommend new laws and modifications to existing laws. Any actions pertaining to Regulations and/or code sections will be coordinated with the Administrative Division. Tax Policy shall also draft and/or approve Information Letters.

A. REGULATIONS:

1. General Statement. Pursuant to S.C. Code Section 1-23-160, all Regulations promulgated according to state law and filed with the Secretary of State as of January 1, 1977 have full force and effect of law. Therefore, great care must be taken to ensure the necessity for, and technical accuracy of, all Regulations promulgated by the Commission.

2. Definition of a Regulation: A Regulation is public information and is promulgated for the purpose of facilitating the Commission's responsibilities relating to the implementation and/or enforcement of the tax laws within its scope of authority. A Regulation remains a permanent document until superseded by law or rescinded by a subsequent Regulation.

3. Source(s) of Requests for Regulations. Requests for Regulations may originate in the Offices of the Commissioners, the Executive Director, or from the Administrative and Operating Divisions. Requests may also originate from within the Tax Policy Department. Furthermore, pursuant to S.C. Code Section 1-23-126, any interested person may petition the Commission, in writing to request promulgation, amendment or repeal of a Regulation.

4. When to Request a Regulation. Regulations should be requested when:

- (a) The law and/or existing Regulations are not considered adequate for the effective implementation and/or administration of the tax laws and related statutes of South Carolina.
- (b) Issuance of a Revenue Procedure would not be appropriate due to the effect(s) on persons outside the Commission.
- (c) When deemed to be in the best interest of the Commission and the public.

5. When a Regulation Will Not Be Promulgated. A Regulation will not be promulgated by the Commission when:

- (a) Existing law and/or regulation(s) are considered adequate; or
- (b) When considered not in the best interest of the Commission to do so.

6. Form of Request(s) for Promulgation of a Regulation. It is preferred that all requests for Regulations be in memorandum form. However, it is anticipated that there may be times when Regulations may be promulgated based upon oral instruction from the Commissioners or Executive Director; or based upon a decision mandating from within the Tax Policy Department. Pursuant to Code Section 1-23-126, all requests for the promulgation, amendment or repeal of Regulations from other interested persons shall be in written form.
7. Routing of Requests for Regulations. All requests for Regulations should flow from the Commissioners, Executive Director or Division Directors to the Director of the Policy and Special Procedures Division.
8. Content of Written Requests for Regulations. All written requests for Regulations should contain the following:
 - (a) Complete statement as to the need and purpose of the Regulation;
 - (b) Relevant code section(s) and/or Regulation(s); and,
 - (c) Any other data or information deemed relevant.
9. Response to Requests for Regulations. Requests for promulgation of Regulations shall be acted upon as expeditiously as possible. However, due to the level of authority they enjoy, great care must be taken in their formulation and promulgation. Also, as outlined at Section 10 of this document, certain statutory provisions mandate specific time periods concerning various stages in the approval process.
10. Procedures for Promulgation and Legislative Approval of Regulations.

General Statement. The process to create a Regulation consists of two primary steps - promulgation and legislative action. "Promulgation" is defined at Code Section 1-23-10(5) as "final agency action to enact a regulation--." It refers to those steps necessary to get the proposed Regulation to the General Assembly. Sections 10(a) through 10(j) encompass the "promulgation" stage. Sections 10(k) through 10(p) outline the steps to be taken by the General Assembly.

- (a) Tax Policy will gather all necessary information and data.
- (b) A draft of the proposed Regulation will be circulated to interested parties within the Commission for comments and/or suggestions. The draft shall have affixed, in all caps, "DRAFT". Such shall appear on the face of the draft and on each succeeding page.
- (c) After being circulated, the draft will be modified as deemed necessary by Tax Policy.

- (d) The amended draft will be forwarded to interested parties within the Commission for further comments and/or suggestions.
- (e) The final draft will be presented to the Commissioners for their approval, disapproval or recommended changes.
- (f) If approved, the proposed Regulation will be forwarded to the Administrative Division for appropriate handling.
- (g) Pursuant to S.C. Code Sections 1-23-30 and 1-23-110, an original and two copies of the required "drafting notice" shall be forwarded to the Legislative Council for publication in the State Register. This notice shall include the time when, the place where, and the manner in which interested persons may present their views on the proposed regulation to be drafted. This step may actually be executed earlier in the process. Such shall be coordinated by Tax Policy with the Administrative Division.
- (h) After the requirements contained in Code Section 1-23-110(b)(1) have been satisfied [step 10(g)], the Administrative Division shall give at least thirty (30) days notice of intended action by publishing either the text, or synopsis of, the proposed Regulation in the State Register. This notice shall also include the time, place and manner in which interested persons may present their views. Such notice must be mailed to all persons who have requested to be notified. This step is required pursuant to Code Section 1-23-110(b)(2).
- (i) Pursuant to Code Section 1-23-110(b)(3), all interested persons shall be allowed reasonable opportunity to submit data, views, or arguments, orally or in writing, to the Commission. Opportunity for oral hearing must be granted if requested by twenty-five persons, by a governmental subdivision or agency or by an association having not less than twenty-five members.
- (j) Upon satisfying the requirements of Code Section 1-23-110, the Administrative Division shall amend the proposed Regulation as necessary based upon the recommendation(s) of the Commissioners.
- (k) Pursuant to the provisions of S.C. Code Section 1-23-120, the final draft shall be forwarded to the President of the Senate and the Speaker of the House, by the Administrative Division. With this draft, there must be forwarded a brief synopsis or analysis of the proposed Regulation.
- (l) The President of the Senate and Speaker of the House shall assign the promulgated Regulation to the appropriate standing committees.
- (m) The committees shall have one hundred and twenty (120) days to take action.

- (1) If no action is taken within one hundred and twenty (120) days, then the Regulation shall take effect upon being published in the State Register.
 - (2) If a joint resolution is introduced to disapprove a Regulation, then additional days shall be added to the days remaining, in accordance with Code Section 1-23-120.
 - (3) Sine die adjournment of the General Assembly suspends running of the one-hundred-twenty-day period. The balance shall run beginning with the next session.
 - (4) Any member of the General Assembly may introduce a joint resolution approving or disapproving a Regulation, or group of Regulations, thirty (30) days after being assigned to committee. This is assuming no committee resolution has been introduced to approve or disapprove the Regulation(s) and the proposed Regulation(s) has not been withdrawn by the Commission.
- (n) Pursuant to code Section 1-23-125, a committee may not amend a particular Regulation and then introduce a joint resolution to approve the amended Regulation. However, a committee may introduce a resolution to approve some Regulations and not others. Also, they may delete a clearly separable portion of a Regulation.
 - (o) If a committee determines it cannot approve a Regulation in its submitted form, then it may notify the Commission of such, along with recommended changes. The Commission may then:
 - (1) Withdraw the Regulation and resubmit it, with the recommended changes, to the Speaker and Lieutenant Governor.
 - (2) Withdraw the Regulation permanently.
 - (3) Take no action. In such case, the Regulation will probably be disapproved. The Commission has ten calendar days, or one-half of the time remaining on the one-hundred-twenty-day period, which ever is less, to withdraw a Regulation. If not, then the committee assumes that the Commission has refused to withdraw the Regulation. If withdrawn, the one-hundred-twenty day period ceases to run and continues running upon being resubmitted.
 - (p) Substantive changes to proposed Regulations require the entire process to be repeated as if a new Regulation were being promulgated.
11. Adoption of Internal Revenue Regulations. Pursuant to Code Section 1-23-120, legislative review is not required for Regulations promulgated by the Commission to adopt IRS Regulations so as to maintain conformity with the Internal Revenue Code of 1954. The "process of review" begins with the filing of copies of the proposed Regulation

with the President of the Senate and the Speaker of the House; therefore, only those provisions found at Code Sections 1-23-30 and 1-23-110 are required. For purposes of this document, steps 10(a) through 10(j) shall be followed. Upon completion of step 10(j), the final draft shall be forwarded to Legislative Council for publication in the State Register.

12. Amendment or Repeal of Regulations. To amend or repeal a Regulation, it is necessary to follow all steps as outlined in creating a new Regulation.
13. Disclosure of Regulations. Pursuant to Code Section 1-23-60, publication of a Regulation in the State Register is considered sufficient notice of the contents of the Regulation to any persons subject to or affected by the Regulation. Furthermore, it shall be presumed that the Regulation was duly issued, prescribed or promulgated and that the Regulation was filed and made available for public inspection as stated in the notation required under Code Section 1-23-60. In addition to the disclosure requirements within the statute, the Commission shall provide copies of all approved Regulations to whomever, and by whatever means, deemed necessary to ensure effective administration of our tax laws. Distribution shall include, but not be limited to:
 - (a) All persons who have participated or expressed an interest in the development of the Regulations;
 - (b) Publishers of tax services (i.e. CCH, Prentice Hall, etc.)
 - (c) The Attorney General's Office;
 - (d) The Commissioners, Division Directors and Executive Director;
 - (e) The South Carolina Bar Association and the South Carolina Association of CPA's; and,
 - (f) Other persons or organizations deemed to have an interest in a particular Regulation. Disclosure of approved Regulations shall be coordinated with the Office of the Public Information Director.

B. REVENUE RULING (SC REV RUL):

1. General Statement. Revenue Rulings carry a high level of reliability; therefore, great care must be taken to insure their necessity and technical accuracy. Revenue Rulings may be issued as a result of requests for rulings from taxpayers or from within the Commission due to law changes, new laws, or new Regulations. They may also be issued due to official position changes brought about by court decisions or to formalize existing policy.
2. Definition of a Revenue Ruling. A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue

Ruling is public information and remains a permanent document until superceded by a Regulation or rescinded by a subsequent Revenue Ruling.

3. Source(s) of Requests for Revenue Rulings. Requests for Revenue Rulings may originate in the Offices of the Commissioners, the Executive Director, or from the Administrative and Operating Divisions. Requests may also originate from within the Tax Policy Department.
4. When to Request a Revenue Ruling. Revenue Rulings should be requested when:
 - (a) The law and Regulations are not clear on an issue, which is deemed to have broad implications to a large class of taxpayers and/or many taxpayers within different classes.
 - (b) A request for a Private Letter Ruling or Technical Advice Memorandum requires a document with a higher level of reliability and broader applicability.
 - (c) There is reason to believe that inconsistency in the treatment of an issue exists between districts and/or divisions.
 - (d) The issue is so unusual or complex as to warrant consideration by the Commission.
 - (e) It is believed that issuance of a Revenue Ruling would be in the best interest of the Commission.
5. When a Revenue Ruling Will Not Be Issued. A Revenue Ruling will not be issued if doing so would not be in the best interest of the Commission. It shall be the practice of Tax Policy to confer with the Commissioners in making such a determination. Also, a Revenue Ruling will not be issued if it is determined that the law and/or Regulation(s) is sufficiently clear on an issue.
6. Form of Requests for Revenue Rulings. It is preferred that requests for Revenue Rulings be in memorandum form. However, it is anticipated that there may be times when Revenue Rulings will be issued based upon oral instruction from the Commissioners or Executive Director; or based upon a decision emanating from within the Tax Policy Department.
7. Routing of Requests for Revenue Rulings. All requests for Revenue Rulings should flow from the Commissioners, Executive Director or Division Directors to the Director of the Policy and Special Procedures Division.
8. Content of Written Requests for Revenue Rulings. All written requests for Revenue Rulings should contain the following:
 - (a) Complete statement of all facts;

- (b) Reason(s) for issuance of the Revenue Ruling;
 - (c) Relevant code section(s), Regulation(s), court decision(s) etc., and;
 - (d) Copies of relevant documents (i.e. contracts, wills, deeds, etc.) Do not forward original documents.
9. Response to Request for Revenue Rulings. Requests for Revenue Rulings shall be acted upon as soon as possible; however, great care must be exercised in their formulation due to the high level of reliability placed upon them. In most cases, requests for Revenue Rulings will be given a higher priority than requests for Technical Advice Memoranda, Private Letter Rulings and Information Letters.
10. Procedures for Issuance of a Revenue Ruling. The following steps will be taken for issuance of a Revenue Ruling:
- (a) Tax Policy will gather all necessary information and data.
 - (b) A draft of the proposed Revenue Ruling will be circulated to interested parties within the Commission for comments and/or suggestions. The word "DRAFT" shall be shown on the face and on each succeeding page.
 - (c) After being circulated, the draft will be modified as deemed necessary by Tax Policy.
 - (d) The amended draft will be forwarded to interested parties within the Commission for further comments and/or suggestions.
 - (e) The final draft will be presented to the Commissioners for their approval, disapproval or recommended changes.
 - (f) If approved, the Revenue Ruling will be disseminated pursuant to Section 14, page #16.
 - (g) If the draft is not approved by the Commission, then Tax Policy will either make the recommended changes and circulate the amended draft or communicate to whomever necessary the reason(s) for not issuing a Revenue Ruling. The Commission may request that one of the actions shown at Section 11 (below) be taken.
11. Refusal to Issue a Revenue Ruling. The Tax Policy Department and/or Commissioners may feel that an issue does not warrant a Revenue Ruling. In such cases, a reason(s) will be given and, as a result, it may be decided to:
- (a) Issue a Technical Advice Memorandum;

- (b) Promulgate, modify or rescind a Regulation;
 - (c) Request a new law, amend an existing law or request repeal of an existing law; or,
 - (d) Take no action on the issue.
12. Revocation or Modification of a Revenue Ruling. Revenue Rulings are permanent documents unless superceded by a Regulation or subsequent Revenue Ruling. Such action could occur as the result of a law change, a court decision, or a change in the facts upon which the Revenue Ruling was issued. The new Revenue Ruling shall state on its face that it is being issued to supercede an existing Revenue Ruling, and the Revenue Ruling being revoked or modified shall also be identified. Revocation or modification shall apply to all periods open under the statute unless the Commissioners elect to limit the retroactive effect of such action.
13. Format of Revenue Rulings. Revenue Rulings shall be in the following format and numbered sequentially, starting with #87-1. The numbering sequence shall begin anew at the beginning of each calendar year; with the first two digits denoting year of issuance. There shall also be a place designated for the signatures of the Commissioners and the date of approval.

SC REVENUE RULING #

SUBJECT:

EFFECTIVE DATE:

SUPERCEDES: (Specify which Rev. Rul., TAM or, if not superceding a particular document, insert the phrase, "All previous documents and any oral directives in conflict herewith.").

REFERENCE: (Code Section(s), Regulation(s), etc.)

AUTHORITY: ("S.C. Code Section 12-3-170" and other pertinent references.)

SCOPE: "A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superceded by a Regulation or is rescinded by a subsequent Revenue Ruling."

PURPOSE: (This section is to be used only when issuing a Rev. Rul. to revoke a previously issued Rev. Rul.)

Question:

Facts:

Discussion:

Conclusion:

14. Disclosure of Revenue Rulings. Pursuant to Code Section 30-4-50(4), the Freedom of Information Act, Revenue Rulings are public information. The Commission will publish a summary of all Revenue Rulings in the Tax Commission newsletter and provide copies of the full text, as requested. The Commission may take other steps to accomplish disclosure, as deemed appropriate and necessary. Disclosure of Revenue Rulings shall be coordinated with the Office of the Public Information Director.

C. REVENUE PROCEDURES (SC REV PROC):

1. Definition of a Revenue Procedure. A Revenue Procedure is for the purpose of disseminating information of a procedural nature. Revenue Procedures detail the acceptable way for Commission employees to deal with the administrative aspects of our tax laws.
2. Sources of Requests for Revenue Procedures. Requests for Revenue Procedures may originate in the Offices of the Commissioners, the Executive Director, or from the Administrative and Operating Divisions. Requests may also originate from within the Tax Policy Department.
3. When to Request a Revenue Procedure. Revenue Procedures may be requested when it is felt that it is in the best interest of the Commission to formalize an administrative procedure. Such a need may arise if:
 - (a) There appears to be an inconsistency in the handling of an administrative matter, or
 - (b) The law and/or regulations concerning an administrative matter is not clear.
4. When a Revenue Procedure Will Not Be Issued. A Revenue Procedure will not be issued if so doing would not be in the best interest of the Commission. Also, a Revenue Procedure will not be issued if it is determined that the law and/or regulations is sufficiently clear.
5. Form of Requests for Revenue Procedures. It is preferred that requests for Revenue Procedures be in memorandum form. However, it is anticipated that there may be times when Revenue Procedures will be issued based upon oral instruction from the Commissioners or Executive Director; or based upon a decision from within the Tax Policy Department.

6. Routing of Requests for Revenue Procedures. All requests for Revenue Procedures should flow from the Commissioners, Executive Director or Division Directors to the Director of the Policy and Special Procedures Division.
7. Content of Written Requests for Revenue Procedures. All written requests for Revenue Procedures should contain the following:
 - (a) Complete statement giving reason(s) for requesting the Revenue Procedure, and
 - (b) Relevant code sections and/or Regulations.
8. Response to Requests for Revenue Procedures. Requests for Revenue Procedures will be acted upon as quickly as possible; however, great care must be exercised in their formulation due to the inherent nature of their importance. Those making such requests will be kept informed as to their status.
9. Procedures for Issuance of Revenue Procedures. The following steps will be taken for issuance of a Revenue Procedure:
 - (a) Tax Policy will gather all necessary information and data.
 - (b) A draft of the proposed Revenue Procedure will be circulated to interested parties within the Commission for comments and/or suggestions. The word "DRAFT" shall be shown on the face and on all succeeding pages.
 - (c) After being circulated, the draft will be modified as deemed necessary by Tax Policy.
 - (d) The amended draft will be forwarded to interested parties within the Commission for further comments and/or suggestions.
 - (e) The final draft will be presented to the Commissioners for their approval, disapproval or recommended changes.
 - (f) If approved, the Revenue Procedure will be distributed, as deemed warranted, by Tax Policy.
 - (g) If not approved, Tax Policy will either make the recommended changes and circulate the amended draft or communicate to whomever necessary the reason(s) for not issuing the Revenue Procedure.
10. Revocation or Modification of a Revenue Procedure. Revenue Procedures are permanent documents until superseded by a Regulation or subsequent Revenue Procedure. Such action could occur as the result of a law change, a court decision, or a misunderstanding of the facts upon which the Revenue Procedure was issued. Revocation or modification

shall be facilitated via issuance of another Revenue Procedure which shall state on its face that it is being issued to supercede a Revenue Procedure. The new Revenue Procedure shall also identify the Revenue Procedure being revoked or modified.

11. Format of Revenue Procedures. Revenue Procedures shall be in the following format and numbered sequentially, starting with #87-1. The numbering sequence shall begin anew at the beginning of each calendar year; with the first two digits denoting the year of issuance.

The first page of the document should be in the following format:

SC REVENUE PROCEDURE #

SUBJECT:

EFFECTIVE DATE: (Date approved by Commission)

EXPIRATION DATE:

SUPERCEDES: (Specify which Rev. Proc. or the phrase "All previous documents and any oral directives in conflict herewith.")

REFERENCE: (Code Section(s), Regulations, etc.)

AUTHORITY: ("S.C. Code Section 12-3-13 and other pertinent references)

SCOPE: "A Revenue Procedure is a statement describing agency procedures and is applicable only to employees of the South Carolina Tax Commission."

PURPOSE: (Give reason(s) for issuance of the Rev. Proc.)

There is no set format for the balance of the document; however, the format should be consistent from one to the next and shall be numbered at the bottom center of each page, starting with page #1.

12. Disclosure of Revenue Procedures. Pursuant to the Freedom of Information Act, Code Section 30-4-50, Revenue Procedures are public information and will be made available upon written request. Disclosure of Revenue Procedures shall be coordinated with the Office of the Public Information Director.

D. PRIVATE LETTER RULINGS (SC PLR):

1. General Statement. It is anticipated that Private Letter Rulings (PLRs) will be the primary vehicle for responding to ruling requests from outside the Commission and, even though they have no precedential value, Private Letter Rulings do provide insight as to the feeling of the Commission on particular tax matters. A ruling issued to a taxpayer with

respect to a particular transaction(s) represents a holding of the Commission on that transaction(s) only. Furthermore, a Private Letter Ruling issued to a taxpayer may not be relied upon by another taxpayer. If a ruling is later found to be in error, or no longer in accord with Commission policy, it will afford a taxpayer no protection with respect to a like transaction in the same or subsequent periods.

2. Definition of Private Letter Ruling. A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.
3. When Rulings Will Not Be Issued. A Private Letter Ruling will not be issued:
 - (a) In response to inquiries concerning alternative tax treatments or hypothetical situations;
 - (b) On matters under audit, scheduled for audit, being appealed, or litigated;
 - (c) Nor will PLR's be issued on inquiries concerning individual income or estate and gift tax matters unless such inquiries concern differences in treatment(s) for federal and state purposes. Other such inquiries should be directed to the Internal Revenue Service. The Commission shall abide by rulings of the Internal Revenue Service, when deemed to be in the best interest of conformity and to facilitate effective tax administration.
 - (d) From time to time it may become necessary to deny issuance of rulings for reasons other than those presented. In such cases, the taxpayer will be notified and the reason(s) given. Form of Request. Requests for Private Letter Rulings from taxpayers should be in letter form. PLR's will not be issued in response to oral inquiries.
5. Mailing of Requests for Private Letter Rulings. Requests for Private Letter Rulings should be forwarded to:

Director
Policy and Special Procedures Division
S. C. Tax Commission
301 Gervais Street
P.O. Box 125
Columbia, South Carolina 29214

"Ruling Request" should be denoted on the outside of the envelope.
Such notation will facilitate consideration of the request(s).

6. Content of Request. Each request should contain the following:
- (a) Complete statement of all facts;
 - (b) Specific question(s) to be answered;
 - (c) Name of taxpayer;
 - (d) Address of taxpayer;
 - (e) Taxpayer identification numbers (i.e. social security number, federal identification number, etc.); and,
 - (f) Copies of relevant documents (i.e. contracts, wills, deeds, etc.) Do not forward original documents.
 - (g) The Commission encourages applicants to refer to any legislation, court decisions, regulations, rulings or procedures which appear to support their position.
 - (h) The taxpayer, or his representative, must state in the request if:
 - (1) The same issue is under audit by the Tax Commission or any other taxing authority;
 - (2) The taxpayer has been notified concerning a pending examination;
 - (3) The same issue(s) is under appeal with the Tax Commission or any other taxing authority;
 - (4) The Tax Commission, or any other taxing authority, has previously issued a ruling on the same issue(s). (Please cite or attach a copy of the ruling(s).);
 - (5) The same issue(s) is being litigated; or,
 - (6) The Attorney General's Office has been requested to issue an opinion concerning the issue(s).
7. Penalties of Perjury Declaration. Pursuant to Code Section 12-3-230, request for a Private Letter Ruling must be accompanied by a declaration that contains the following language:

"Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct and complete. Furthermore, I have read and understand the provisions of S.C. Code Section 12-54-40(f)." This declaration must be signed by the person(s) making the request, or if the request is being made by a corporation, by an officer of the corporation who has

personal knowledge of the relevant facts. A trustee or partner may sign for a trust or partnership if he/she has personal knowledge of the facts.

8. Additional Information. Tax Policy may telephone, or meet with, whom-ever necessary to obtain additional information or to clarify facts.
9. Withdrawal(s) of Requests. The taxpayer's request for a PLR may be withdrawn at any time prior to approval by the Commissioners. However, in such a case, Tax Policy may furnish its views to appropriate Commission personnel who may consider it in a subsequent examination of the taxpayer's return(s). Even though a request is withdrawn, all correspondence and/or documents will be retained for future reference.
10. Examinations Prior to Ruling Being Issued. If, prior to the issuance of a ruling, a taxpayer is notified of a pending examination by the Commission, or other taxing authority, he/she is required to notify the Tax Policy Department. It is also requested that the examining agent/auditor be notified of the ruling request.
11. Response to Requests for Private Letter Rulings. Requests for Private Letter Rulings will be responded to in the order received, unless compelling reason(s) is given to do otherwise. It is the requesting party's responsibility to provide written reason(s) for extending preferential treatment. Tax Policy shall have the authority to grant or deny preferential treatment. It shall be the practice of Tax Policy to strive to respond to all requests as expeditiously as possible. The taxpayer and/or representative will be notified if it is anticipated that an inordinate amount of time will be necessary in order to reach a final determination.
12. Procedures for Issuance of Private Letter Rulings. The following steps will be taken for issuance of a Private Letter Ruling:
 - (a) Tax Policy will gather all necessary information or data.
 - (b) A draft of the proposed PLR will be circulated to interested parties within the Commission for comments and/or suggestions. The word "DRAFT" in capital letters, shall be shown on the face of the draft and on all succeeding pages.
 - (c) After being circulated, the draft will be modified as deemed necessary by Tax Policy.
 - (d) The amended draft will then be forwarded to interested parties within the Commission for further comments and/or suggestions.
 - (e) The final draft will be presented to the Commissioners for their approval, disapproval or recommended changes.

- (f) If approved, the PLR will be forwarded to the taxpayer and/or representative by certified mail. A copy of the "sanitized" version shall also be enclosed (See Section 17, page #28). All PLR's will be addressed to the taxpayer. If forwarded to the taxpayer's representative, then a cover letter will be used and shall be addressed to the representative.
- (g) If the draft is not approved by the Commission, then Tax Policy will either make the recommended changes and circulate the amended draft or communicate to the requesting party the reason(s) for not issuing a Private Letter Ruling.

13. Format of Private Letter Rulings. Private Letter Rulings shall be typed on Commission letterhead and numbered sequentially, starting with #87-1. The numbering sequence shall begin anew at the beginning of each calendar year; with the first two digits denoting the year of issuance. Furthermore, each page shall be numbered beginning with page one. Such number(s) shall be located at the bottom center of each page. The following format shall be used:

SC PRIVATE LETTER RULING #87-

TO: (Name and address of taxpayer)

SUBJECT:

REFERENCE:

AUTHORITY: S.C. Code Section 12-3-170

SCOPE: "A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution."

Question:

Facts:

Discussion:

Conclusion:

Space shall be provided, and indicated, for the Commissioners to affix their signatures. Such space shall be provided at the bottom-right of the last page. Space shall also be provided for the date of Commission approval. Such date shall be at the bottom-left of the last page.

- 14. How Private Letter Rulings Are To Be Utilized. If a PLR applies to only one return, then a copy should be attached to the return when filed. If a PLR applies to a repetitive transaction, then the taxpayer is not required to file a copy with each return. However, a copy should be readily available in the event of an examination.
- 15. Adverse Rulings. There are no provisions for appealing an adverse ruling. However, prior

to issuance of an adverse ruling, the taxpayer and/or representative will be notified and opportunity will be given for further information and/or arguments to be presented. Notification of an adverse ruling shall be accomplished by letter and shall have the phrase "Notice of Adverse Ruling" typed on the first page. The last two (2) paragraphs of the notice shall read as follows:

"This letter in no way is to be construed as the Commission's official position or ruling on this matter. It is merely a preliminary finding based upon the information available at this writing.

Please contact the writer by letter or telephone within ten (10) days, if you wish to present further arguments or information."

The taxpayer, or representative, should also be contacted by telephone to advise of the pending adverse ruling. However, telephone contact should not be used as a substitute for written notification. In the event the taxpayer, or representative decides to withdraw the request, Section 9, page #23 Withdrawal(s) of Request shall apply. This in no way is to be construed as meaning a taxpayer does not have the right to avail himself/herself of those provisions of the law which relate to the appeals process or a claim for refund.

16. Revocation or Modification. It shall be the authority of the Divisions to ascertain whether any ruling previously issued to a taxpayer has been properly applied. They may, upon examination, determine whether the representations upon which a ruling was based reflected an accurate statement of the material facts and whether the transaction(s) were carried out substantially as proposed. If, in the course of an examination, it is determined that a ruling previously issued should be modified or revoked, the Division's findings and recommendations should be forwarded to the Tax Policy Department, via the Division Director, for consideration. Appropriate coordination with Tax Policy should be undertaken in the event that a position contrary to a ruling previously issued is anticipated. Revocation or modification will be accomplished through issuance of a Technical Advice Memorandum and shall apply to all periods open under the statute(s), unless the Commissioners decide to limit the retroactive effect of such action.
17. Public Disclosure of Private Letter Rulings. Private Letter Rulings are subject to disclosure pursuant to the Freedom of Information Act under Code Section 30-4-50(4). However, pursuant to S.C. Code Sections 30-4-40(2) and (8)(b), the Commission will "sanitize" Private Letter Rulings prior to disclosure to protect the privacy of taxpayers. Upon issuance of a PLR, a copy of the "sanitized" version will also be forwarded. The taxpayer will have ten (10) days from date of receipt to request any further "sanitizing" (See Section 12(f). page #24) Lack of response within the ten (10) day period will be considered as acceptance of the "sanitized" version. Disclosure shall consist of publishing a synopsis in the Tax Commission newsletter with an address for obtaining a copy of the full text of the "sanitized" version. The Commission may take other steps to accomplish disclosure, as deemed appropriate and necessary. Disclosure of PLR's shall be coordinated with the Office of the Public Information Director.

E. TECHNICAL ADVICE MEMORANDA (SC TAM):

1. General Statement. It is anticipated that Technical Advice Memoranda (TAM's) will be

the primary vehicle for responding to ruling requests from within the Commission and, even though they have no precedential value, TAM's do provide insight as to the feeling of the Commission on particular tax matters. TAM's represent the Commission's position as to the interpretation and application of our tax laws, related statutes, and regulations, to a specific set of facts. Generally, such requests shall be in connection with an examination of a taxpayer's return or claim for refund or credit; however, such requests may also be initiated to solicit technical information of a general nature, not connected with an examination, which is based upon a specific set of facts (See Section F, page #36, concerning Information Letters). TAM's issued with respect to a particular transaction(s), concerning a specific taxpayer, represent a holding of the Commission on that transaction(s) only. If a TAM is later found to be in error, or no longer in accord with Commission policy, it will afford a taxpayer no protection with respect to a like transaction in the same or subsequent period.

2. Definition of a Technical Advice Memorandum. A Technical Advice Memorandum is a temporary document issued to an individual within the Commission to provide interpretation and application of tax laws only with respect to a specific set of facts. TAM's have no precedential value and are not intended for general distribution outside the Commission.
3. Source(s) of Requests for Technical Advice. In general, Division Directors may request technical advice or guidance on any technical matter which develops during consideration of the tax liability of any taxpayer. Such requests may be initiated either by a taxpayer whose return(s) is under examination or by Tax Commission personnel. However, in all cases, requests should be routed to Tax Policy via the Division Director. Requests for TAM's should not be routed directly to Tax Policy by a taxpayer under examination.
4. When to Request Technical Advice. Technical advice should be requested when:
 - (a) The law and Regulations are not clear on an issue and there is no published precedent for determining the proper treatment of an issue which affects a taxpayer.
 - (b) There is reason to believe that inconsistency in the treatment of an issue exists between districts and/or divisions.
 - (c) The issue is so unusual or complex as to warrant consideration by the Commission.
 - (d) It is believed that securing technical advice on an issue would be in the best interest of the Commission.

When there is doubt as to whether or not technical advice should be requested, such doubt should be resolved in favor of requesting the advice. Concern that requesting technical advice may unduly delay completion of an examination should not influence one's judgement concerning whether or not to request the advice.

5. When Technical Advice Will Not Be Issued.
 - (a) Technical advice will not be issued if the law and/or Regulation are clear or a

published precedent is available.

- (b) Technical advice will not be issued if doing so would not be in the best interest of the Commission. It shall be the practice of the Tax Policy Department to confer with the Commissioners in making such a determination.
 - (c) From time to time it may become necessary to deny issuance of technical advice for other reasons. In such cases, the Division Director will be notified and the reason(s) given.
6. Form of Request. Requests for TAM's should be in memorandum form. TAM's will not be issued in response to oral inquiries.
7. Routing of Requests for Technical Advice. All requests for technical advice, whether initiated by a taxpayer or by persons within the Commission, should follow the proper channels ("chain of command"). All such requests should flow from the Division Directors Office and all responses to such requests shall be directed to the Division Directors. A copy of the request should also be forwarded to the taxpayer, if applicable (See Section 8(h), Page #31.)
8. Content of Request(s) for Technical Advice. Each request for technical advice should contain the following:
- (a) Complete statement of all facts;
 - (b) Specific question(s) to be answered;
 - (c) Name of taxpayer, if applicable;
 - (d) Address of taxpayer, if applicable;
 - (e) Taxpayer identification number(s), if applicable; and,
 - (f) Copies of relevant documents (i.e. contracts, wills, deeds, etc.) Do not forward original documents.
 - (g) It is strongly suggested that reference be made to any legislation, court decisions, regulations, rulings or procedures which are relevant to the issue(s).
 - (h) The taxpayer, if the request is resultant of an examination or other contact, should be allowed to submit any information, document(s), etc. he/she desires. If the taxpayer does not wish to submit any material, then the request should contain a statement as to the position of the taxpayer.
9. Additional Information. Tax Policy may telephone, or meet with, whomever necessary to obtain additional information or to clarify facts. However, if a request is resultant of an examination, or other contact, Tax Policy will direct all questions to the relevant Commission personnel for disposition. Generally, Tax Policy is not to contact a taxpayer whose return(s) is under examination.

10. Response to Requests for Technical Advice. It is the practice of Tax Policy to respond to requests for TAM's in the order received, unless compelling reasons dictate that preferential treatment be afforded the request. Depending upon the complexity of the issue(s) involved, Tax Policy will strive to respond to all requests as expeditiously as possible. However, informal advice may be given prior to issuance of a TAM, if solicited or deemed in the best interest of effective enforcement of our tax laws. Such informal advice is not binding upon the Commission.
11. Procedures for Issuance of Technical Advice Memoranda. The following steps will be taken for issuance of a Technical Advice Memorandum:
 - (a) Tax Policy will gather all necessary information or data.
 - (b) A draft of the proposed TAM will be circulated to interested parties within the Commission for comments and/or suggestions.
 - (c) After being circulated, the draft will be modified as deemed necessary by Tax Policy.
 - (d) The amended draft will then be forwarded to interested parties within the Commission for further comments and/or suggestions.
 - (e) The final draft will be presented to the Commissioners for their approval, disapproval or recommended changes.
 - (f) If approved, the TAM will be forwarded to the Division Director for channeling to the appropriate office(s). It is the Division's responsibility to communicate the Commission's position to the taxpayer. When deemed necessary, a "sanitized" version of the TAM will also be provided. The Division is to notify Tax Policy, within ten (10) days of receipt, whether or not the taxpayer requests additional "sanitizing". (See Section 16, page #36)
 - (g) If the draft is not approved by the Commission, then Tax Policy will either make the recommended amendments and circulate the amended draft or communicate to the requesting party the reason(s) for not issuing a TAM.
12. Adverse Rulings. There are no provisions for appealing an adverse ruling. The taxpayer and/or representative will be notified, via the relevant Division, and opportunity will be given for further information and/or arguments to be presented. This in no way is to be construed as meaning a taxpayer does not have the right to avail himself/herself of those provisions of the law which relate to the appeals process or a claim for refund.
13. Revocation or Modification. It shall be the authority of the Divisions to ascertain whether any TAM previously issued has been properly applied. If later determined that the representations upon which a TAM was based are inaccurate or that a transaction was not carried out substantially as presented, then such information shall be forwarded to Tax Policy, via the Division Director, for consideration. If determined that a TAM should be revoked or modified, notification shall be in the form of a TAM. In such cases, the steps

shown at 11(a) through (g) shall be followed.(Section 12, Page 33, Adverse Rulings), shall also apply in cases where revocation or modification of a TAM is proposed. A revocation or modification applies to all years open under the statutes, unless the Commissioners elect to limit the retroactive effect of such action.

14. Format of Technical Advice Memoranda. Technical Advice Memoranda shall be in the following format and numbered sequentially, starting with #87-1. The numbering sequence shall begin anew at the beginning of each calendar year; with the first two digits denoting the year of issuance.

SC TECHNICAL ADVICE MEMORANDUM #

TO: (Division Director)

FROM: (Tax Policy Manager)

DATE: (Date Approved by Commissioners)

SUBJECT:

REFERENCE: (Code Section(s), Regulation(s), etc.)

AUTHORITY: Code Section 12-3-170

SCOPE: "A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

Facts:

Discussion:

Conclusion:

15. How Technical Advice Memoranda Are To Be Utilized. If a TAM is issued as a result of an examination, then a copy should be included with the audit work papers.
16. Disclosure of Technical Advice Memoranda. Pursuant to Code Section 30-4-50(4), Freedom of Information Act, Technical Advice Memoranda are public information. The Commission will publish a summary of all Technical Advice Memoranda in the Tax Commission newsletter and provide copies of the full text, as requested. The Commission may take other steps to accomplish disclosure, as deemed appropriate and necessary. Disclosure shall be coordinated with the Office of the Public Information Director.

F. INFORMATION LETTERS:

1. General Statement. Information Letters are to be issued in response to technical

questions, which do not meet the criteria for issuance of a higher level document. For example - a question does not relate to a specific set of facts. Information Letters are also utilized to disseminate information of a general nature. For example - to advise of a change in a tax rate or the addition or deletion of an exemption.

2. Definition of an Information Letter. An Information Letter is a temporary document issued to disseminate general tax information and to respond to technical questions which are not related to a specific set of facts or taxpayer. Information Letters have no precedential value and do not represent the official position of the Tax Commission.
3. Sources of Requests for Information Letters. Information Letters may be issued based upon a request of the Commissioners, the Executive Director or Division Directors. They may also emanate from within the Tax Policy Department.
4. When to Request an Information Letter. An Information Letter should be requested when:
 - (a) A code section or Regulation is added, amended or rescinded and general notice of such action should be disseminated.
 - (b) Technical advice is requested, but the request does not relate to a specific set of facts.
 - (c) It is deemed to be in the best interest of the Commission to issue an Information Letter.
5. Form of Request. Requests for Information Letters should be in memorandum form. However, there may be times when Information Letters will be issued based upon oral instructions from the Commissioners or the Executive Director. Also, Information Letters may be drafted based upon oral instructions within a division. (See Section 7, Who May Draft Information Letters.)
6. Routing of Requests for Information Letters. All requests for Information Letters shall be routed from the Office of the Executive Director or the Division Directors to Tax Policy.
7. Who May Draft Information Letters. Information Letters may be drafted by the Tax Policy Department or by personnel designated by the Executive Director or Division Directors.
8. Routing of Drafts. All drafts of Information Letters shall be routed to Tax Policy for review and approval.
9. Responsibility for Content of Information Letters. Tax Policy shall be responsible for the content of all Information Letters. However, prior to dissemination, Tax Policy may confer with whomever necessary to ensure technical accuracy and the necessity for their issuance.

10. Format of Information Letters. Information Letters shall be in the following format and numbered sequentially, starting with #87-1. The numbering sequence shall begin anew at the beginning of each calendar year; with the first two digits denoting the year of issuance.

SC INFORMATION LETTER #

TO:

FROM: (Tax Policy Manager)

DATE: (Date of Issue)

SUBJECT:

REFERENCE:

AUTHORITY: S.C. Code Section 12-3-140

SCOPE: "An Information Letter is a temporary document issued for the purpose of disseminating general tax information and to respond to technical questions from within the Commission which are not related to a specific set of facts."

The balance of this document does not require a standard format. However, it is strongly recommended that the body be as brief and concise as possible. It is anticipated that Information Letters will be no more than one (1) page in length.

NOTE: Drafts prepared by other than Tax Policy personnel shall be prepared in memorandum form. Tax Policy will organize the final version in the proper format. The drafting party shall be indicated at the section entitled "REFERENCE."

11. Dissemination of Information Letters. Information Letters will be disseminated by the Tax Policy Department to all relevant parties. Such is to be coordinated with the Office of the Public Information Director.