



SC REVENUE PROCEDURE #91-3

SUBJECT: Administration of Private Letter Rulings

TAX ANALYST: Deana West

EFFECTIVE DATE: June 4, 1991

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

REFERENCE: SC Revenue Procedure #87-3

AUTHORITY: S.C. Code Section 12-3-130 (1976)

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

PURPOSE: To revise existing guidelines concerning the issuance of Private Letter Rulings.

South Carolina Revenue Procedure #87-3 describes the procedures whereby tax policy is formulated, promulgated and disseminated by the South Carolina Tax Commission. Section D describes the issuance of Private Letter Rulings. This section is no longer effective and is replaced by the procedure described below.

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 the position 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) 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.
4. 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 29214-0702

"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) Name of taxpayer;
  - (b) Address of taxpayer;
  - (c) Taxpayer identification numbers (i.e. social security number, federal identification number, etc.);

- (d) Complete statement of all facts;
- (e) Specific question(s) to be answered; 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, a 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 taxpayer(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 issuance. 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) If significant changes are made, the amended draft will then be forwarded to interested parties within the Commission for further comments and/or suggestions.
  - (e) The final draft will then be circulated to the Commissioners and the Executive Director of the Commission. If within two weeks of the date of circulation any of them requests that the ruling be discussed at a Tax Commission Business Meeting, it will be put on the agenda for the next meeting. If none of them requests that the ruling be considered at a business meeting, the ruling will be issued.

- (f) 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 D.17.). 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 Tax Policy determines that a ruling should not be issued for a reason other than those in items (a) through (c) of paragraph D.3., "When Rulings Will Not Be Issued," a summary of the reasons for not issuing the ruling will be circulated to the Commissioners and the Executive Director of the Commission. If within two weeks of the date of circulation any of them requests that the refusal to issue the ruling be discussed at a Tax Commission Business Meeting, it will be put on the agenda for the next meeting. If none of them requests that it be considered at a business meeting, the ruling will not be issued.

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 will generally 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 may not be relied upon by anyone other than the taxpayer to whom it is issued.

Question:

Facts:

Discussion:

Conclusion:

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 tax payer 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 draft in no way is to be construed as the Commission's official position or ruling on this matter. It is merely Tax Policy's preliminary finding based upon the information available at this writing.

Please contact me within 14 days of the date of this letter if you would like to discuss this draft or present further arguments or information, otherwise we will recommend our draft to the Commission.

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 D.9., "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) was 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.
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 D.12.(f)). 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.