

SC REVENUE PROCEDURAL BULLETIN #01-5

SUBJECT: Filing Requirements Where Nexus Is an Issue

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Procedure #96-1 and all previous documents and any oral directives in conflict herewith.

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
SC Revenue Procedure #99-4

SCOPE: The purpose of a Revenue Procedural Bulletin is to provide procedural guidance to the public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. **A Revenue Procedural Bulletin does not have the force or effect of law, and is not binding on the public.** It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

GENERAL INFORMATION:

A taxpayer must have a minimum connection with a state in order for the taxpayer to be subject to the taxing jurisdiction of the state. This minimal connection is commonly referred to as “nexus.” The Department has issued several advisory opinions that provide guidance to a taxpayer trying to determine if nexus exists with South Carolina. They are available through www.sctax.org/frames.framepol.html.

For purposes of this advisory opinion, nexus for income tax purposes also means a taxpayer is not protected from income taxation under Public Law 86-272. Public Law 86-272 prohibits a state from imposing an income tax on the income derived from within its borders under certain conditions.

PROCEDURE FOR VOLUNTARY FILERS:

The Department has developed a voluntary compliance procedure for taxpayers who have nexus with South Carolina but are not registered with the Department to collect or remit South Carolina taxes. This procedure is designed to: (1) encourage nonfilers to come forward voluntarily and begin paying taxes without incurring penalties; and (2) allow the Department to maximize compliance with its limited audit resources.

The voluntary filing procedure described below is only available when the initial contact is made by the taxpayer and not by the Department. A taxpayer’s receipt of a nexus questionnaire is not

considered initial contact by the Department, however, a taxpayer that has been contacted by the Department for audit or is involved in the appeals process, for example, is considered to have been contacted by the Department.

VOLUNTARY FILER STATUS

For purposes of this advisory opinion, a taxpayer who has nexus with South Carolina but is not registered with the State to collect or remit taxes is deemed a voluntary filer provided:

1. The taxpayer either:
 - (a) registers to collect or remit taxes without having been contacted previously by the Department, or
 - (b) responds to the Department's nexus questionnaire timely and completely upon receipt, and,
 - (1) immediately registers with the Department;
 - (2) requests to be registered upon timely return of the questionnaire to the Department; or
 - (3) agrees to register if upon review of the nexus questionnaire by a Revenue and Regulatory Operations employee, the employee determines that nexus exists; and,
2. The taxpayer does not appeal the determination in 1(b)(3) above or file a claim for refund for the tax periods prior to the time of voluntary filing.¹

VOLUNTARY FILER RELIEF

If a taxpayer qualifies as a voluntary filer the Department will:

1. Accept the filing of tax returns and payment of all required taxes for the three immediately preceding tax years, or the number of preceding tax years that nexus existed, if less than three years (or corresponding period for purposes of the use tax);
2. Apply interest in accordance with the South Carolina Code; and,
3. Waive all penalties, except in the cases of material misrepresentation of facts or fraud.

EXAMPLE OF RELIEF: A calendar year taxpayer discovers that nexus existed with South Carolina for the last 5 years and comes forward as a voluntary filer in February 2001. The Department will require the taxpayer to file South Carolina income tax returns for the tax years ended 2000, 1999, and 1998 - the three immediately preceding tax years. The Department will apply only interest on the tax liability for these years.

¹ The procedures set forth in this advisory opinion will not prevent a voluntary filer from claiming the lack of nexus for periods after voluntary filing.

REGISTRATION PROCEDURE FOR VOLUNTARY FILERS

A corporation that qualifies as a voluntary filer must register to collect or remit South Carolina income taxes by completing and filing Form CL-1, Initial Annual Report of Corporations and, if applicable, register to collect or remit South Carolina sales, use, or withholding taxes by completing Form SCTC-111, Business Tax Application.

All other entities that qualify as a voluntary filer must register to collect or remit South Carolina sales, use, or withholding taxes by completing Form SCTC-111, Business Tax Application.

PROCEDURE FOR NONVOLUNTARY FILERS:

If the Discovery Section in the Department's Revenue and Regulatory Operations Division determines that a taxpayer does not qualify as a voluntary filer or has contacted the taxpayer for audit, or initiated other contact with the taxpayer, then the Department will not allow voluntary filer relief as provided in this procedure. If the Department has to go beyond the response to a nexus questionnaire and conduct an audit or investigation of the facts to determine nexus, then the taxpayer is not entitled to voluntary filer relief as provided in this procedure. A taxpayer who does not qualify as a voluntary filer is **not** subject to any statute of limitation. Accordingly, taxes will be assessed for all years that nexus existed in South Carolina. Also, interest and penalties will be added in accordance with the South Carolina Code.

PROCEDURE WHEN NEXUS IS UNCLEAR:

In accordance with Code Section 12-4-320(3), the Department may compromise any tax, interest, or penalty imposed by Title 12 of the South Carolina Code. If a taxpayer agrees to become a voluntary filer and completes a nexus questionnaire which shows nexus is unclear (it is uncertain whether a court would determine the existence of nexus), the Department and the taxpayer may agree to compromise the three prior years of taxes that would otherwise be due. The determination as to whether to accept a compromise of taxes rests with the Director.

ADDITIONAL INFORMATION:

All questions regarding registration should be directed to the Department's Registration Section at 803-898-5872.

All questions concerning the existence of nexus with South Carolina should be directed to John Rogers at 803-898-5664 or William Hunnicutt at 803-898-5886 in the Department's Revenue and Regulatory Operations Discovery Section.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth A. Carpentier

Elizabeth A. Carpentier, Director

June 25 _____, 2001
Columbia, South Carolina