
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #95-5 (TAX)

SUBJECT: Corporate License Fees
(License Fee)

EFFECTIVE DATE: Applies to all periods open under statute.

SUPERSEDES: SC Information Letter #94-23

MODIFIES: SC Private Letter Ruling #92-7

REFERENCE: S.C. Code Ann. Section 12-19-70 (Supp. 1993)
S.C. Code Ann. Section 12-19-20 (Supp. 1993)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1993)
S.C. Revenue Procedure 94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance to all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

What entities are subject to the license fee imposed by SC Code Section 12-19-70?

Conclusion:

The following entities are subject to the license fee imposed by SC Code Section 12-19-70:

- a. Every corporation organized under the laws of this State;
- b. Every corporation organized to do business under the laws of any other state, territory, or country and qualified to do business in South Carolina, and any other corporation transacting, conducting, doing business or having an income within the jurisdiction of this State;
- c. Entities whose federal income tax is determined in accordance with the provisions of Subchapter C of the Internal Revenue Code for South Carolina income tax purposes, including limited liability companies, professional associations and other entities if they are taxed as corporations for South Carolina income tax purposes; and,

- d. Other entities if they are subject to the provisions of Subchapter S of the Internal Revenue Code for South Carolina income tax purposes¹.

Note: Entities which are not corporations under state law and are taxed under other provisions of the Internal Revenue Code, such as real estate investment trusts ("REITs") as defined in IRC Section 856 and taxed under IRC Section 857, homeowners associations as defined in and taxed under IRC Section 528, regulated investment companies as defined in IRC Section 851 and taxed under IRC Section 852, REMICs as defined in IRC Section 860D and taxed under IRC Section 860A or political organizations, as defined and taxed in IRC Section 527, are not considered corporations and thus, are not subject to the South Carolina license fee.

Discussion:

SC Code Section 12-19-70 imposes a license tax on corporations and states, in part:

In addition to all other license taxes or fees or taxes of whatever kind, every corporation required to file the report by Section 12-19-20, except the corporations enumerated in Section 12-19-100, shall pay to the Commission at the time of filing the report . . . an annual license fee . . .

Section 12-19-20 requires a report to be filed by:

Every corporation organized under the laws of this State and every corporation organized to do business under the laws of any other state, territory, or country and qualified to do business in South Carolina and any other corporation required by Section 12-7-230 to file income tax returns . . .

In order to determine what entities constitute corporations for South Carolina income tax purposes, we must look to the Internal Revenue Code.

In 1985 the South Carolina legislature passed the South Carolina Income Tax Federal Conforming Amendments of 1985 which generally adopted the Internal Revenue Code income tax provisions for South Carolina income tax purposes, with some exceptions. Included in the provisions adopted were Subchapter C and Subchapter S of Chapter 1 dealing with the taxation of regular corporations and S corporations. Since entities which are taxed under these provisions are corporations for federal income tax purposes, they are corporations for South Carolina income tax purposes and are subject to the license fee.

¹ In 1985 South Carolina adopted the Internal Revenue Code and provided in Section 12-7-455(u) that if a corporation made a valid "S" election, that election would automatically apply for South Carolina income tax purposes. However, if a taxpayer had a valid "S" election in effect for federal tax purposes prior to January 1, 1985, but had not elected that treatment for South Carolina income tax purposes, the taxpayer may continue to be taxed as a corporation for South Carolina income tax purposes or may elect to be treated as a Subchapter S corporation.

In 1994 the South Carolina legislature enacted legislation adding Chapter 43 to Title 33 of the South Carolina Code of Laws which provides for the formation of limited liability companies and added Section 12-2-25. This section provides, in part, that:

(3) 'Corporation' includes a limited liability company or professional or other association taxed for South Carolina income tax purposes as a corporation.

The effect of this legislation is to provide that if a limited liability company or a professional association is a corporation for federal income tax purposes, it is a corporation for South Carolina income tax purposes. Likewise, if a limited liability company is a partnership for federal income tax purposes, it is a partnership for South Carolina income tax purposes.

Therefore, all unincorporated associations that are taxed for South Carolina income tax purposes as a corporation in accordance with Subchapter C or Subchapter S of the Internal Revenue Code are required to pay the corporate license fee.

For questions concerning license fees, contact Jean Croft at (803) 737-5007 or John McCormack at (803) 737-4438.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank, III
Burnet R. Maybank, III, Director

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