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SC TECHNICAL ADVICE MEMORANDUM #87-12

TO: Mr. William R. Geddings, Jr., Director
Office Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: October 21, 1987

SUBJECT: Net Operating Loss Deduction on Consolidated Return

REFERENCE: S.C. Code Section 12-7-1570 & 12-7-430(d)(2)

AUTHORITY: S.C. 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:

- 1) Can Corporation S file on a consolidated basis with Corporation P for 1986 offsetting Corporation S's 1986 loss against Corporation P's income?
- 2) Can Corporation S carry over its 1985 loss to offset income of Corporation S?

Facts:

Corporation S started business in South Carolina in 1985. Previous to 1985, there were no operations in South Carolina. The corporation suffered a loss in 1985 and 1986. The corporation filed a separate return for 1985.

Corporation P acquired all of the outstanding stock of Corporation S on December 31, 1985. Corporation P has been filing a consolidated return with its subsidiaries for several years with the State of South Carolina. Corporation P had income on a consolidated basis for 1985 and 1986.

Discussion:

- 1) Pursuant to 12-7-1570, a taxpayer capable of exercising substantially the entire control of the business of another taxpayer is permitted to file a consolidated return showing the consolidated net income. The term "consolidated net income" implies that the current year losses of one corporation will be combined with the current year income of another corporation to arrive at the consolidated net income.
- 2) S.C. Code Section 12-7-430(d)(2) provides a net operating loss deduction for corporations to the extent provided for in Internal Revenue Code Section 172. Pursuant to Section 12-7-430(d)(2), a net operating loss carry back is not allowed.

Conclusion:

- 1) Corporation S can file a consolidated return with Corporation P for 1986 offsetting Corporation S's 1986 loss against Corporation P's income pursuant to 12-7-1570.
- 2) Corporation S can carry over its 1985 loss to offset future income of Corporation S.