



SC TECHNICAL ADVICE MEMORANDUM #87-2

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

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: April 9, 1987

SUBJECT: Extension For Filing - Penalty

REFERENCE: S.C. Code Section 12-54-70

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 Memorandums have no precedential value and are intended for internal use only.

Question:

Does the failure to file and failure to pay penalty apply if the amount paid with the tentative return fails to reflect at least ninety percent of the actual tax liability for the period?

Facts:

The taxpayer filed a tentative South Carolina return and paid one hundred percent of the anticipated tax prior to the due date of the return. When the taxpayer filed the return, it was determined that the tax paid with the tentative return failed to reflect ninety percent of the tax due. The return was filed before the extended due date.

Law:

South Carolina Code Section 12-54-70 provides for granting an extension and the penalty for failure to pay ninety percent of the actual tax due with the tentative return as follows:

- (a) The Commission may, for good cause, allow further time for the filing of returns or remitting of tax due, required under the provisions of law administered by the Commission. The request for an extension may be granted only if the request is filed with the Commission on or before the day the return of the tax is due. A tentative return is required reflecting one hundred percent of the anticipated tax to be paid for the taxable period, to be accompanied by a remittance for the tentative tax liability. Interest at the rate as provided under Section 12-54-20, calculated from the date the tax was originally due, must be added to the balance due whenever an extension to file or to remit tax due is granted.
- (b) If the amount remitted with the tentative return fails to reflect at least ninety percent of the tax to be paid for the period granted by the extension, a penalty as provided in item (b) (1) of Section 12-54-40 must be imposed, in the absence of reasonable cause, on the difference between the amount remitted and amount required to be remitted under the provisions of this Section.

Discussion:

Section 12-54-70(a) has three requirements that are to be met before an extension is granted. First, the request must be filed on or before the due date of the return. Second, a tentative return is required reflecting one hundred percent of the anticipated tax. Third, one hundred percent of the anticipated tax is to be paid with the tentative return (or the balance of the anticipated tax after deducting declaration payments and previous year's overpayments). If these three conditions are met, the extension is granted.

Section 12-54-70(b) provides that a penalty must be imposed if the amount paid with the tentative return is not at least ninety percent of the actual tax liability. This penalty is five percent per month or fraction thereof not to exceed twenty-five percent as provided in item (b)(1) of Section 12-54-40. The penalty is applied to the difference between the anticipated tax paid on the tentative return and the tax liability for the period.

Interest must be added to the balance due on the return from the original due date. The failure to pay penalty provided at 12-4-40(2)(a) would not apply as this penalty is determined with regard to any extension of time to pay.

Conclusion:

The facts as outlined above indicate that the taxpayer met all the requirements to receive an extension; however, the taxpayer failed to pay with the tentative return at least ninety percent of the tax liability for the period. Therefore, a penalty of five percent per month (not to exceed 25%) plus interest must be added to the balance due from the original due date to the date the tax was paid.