



SC TECHNICAL ADVICE MEMORANDUM #89-7

TO: Mr. William F. Bray, Director
Office Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: February 15, 1989

SUBJECT: Professional Associations
(Corporate License Fee)

REFERENCE: S.C. Code Ann. Section 12-19-20 (Law. Co-Op. Supp. 1988)
S.C. Code Ann. Section 12-19-70 (Law. Co-Op. Supp. 1988)
S.C. Code Ann. Section 33-2-102 (Law. Co-Op. Supp. 1988)
S.C. Code Ann. Section 33-19-700 (Law. Co-Op. Supp. 1988)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (Law. Co-Op. 1976)
SC Revenue Procedure #87-3

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.

Questions:

1. Will existing professional associations that elect to incorporate be required to file an initial annual report (Form CL-1) with their articles of incorporation?
2. How will an existing professional association compute its license fee for the license period beginning January 1, 1989?

Facts:

Professional associations formed under the South Carolina Professional Association Act of 1962 were unincorporated associations and thus not subject to the license fees upon corporations. The

South Carolina Business Corporation Act of 1988 repealed the provisions of the Professional Association Act of 1962. Under the new act, the provisions for unincorporated professional associations are replaced by provisions for incorporated professional corporations. Existing professional associations must file articles of incorporation with the Secretary of State on or before January 1, 1991 in order to elect professional corporation status.

Discussion:

1. Section 33-19-700 provides transitional rules applicable to professional associations formed under Act 784 of 1962 in existence January 1, 1989. Existing professional associations are given until January 1, 1991 to file a copy of articles of association or amendment to the articles as follows:
 - (e) Within thirty days after the effective date of this chapter, the Secretary of State shall send to the president of each professional corporation at the association's address as shown in the association's most recent annual report on file in the office of the Secretary of State a written notice stating that:
 - (1) the association is required to file with the Secretary of State on or before January 1, 1991, a copy of the association's articles of association and all amendments to the articles;
 - (2) the articles of association may have to be amended on or before January 1, 1991, in order to comply with Chapter 19 of this act;
 - (3) all future amendments and restatements of the association's articles of association must be filed with the Secretary of State and must comply with the requirements of this act; and
 - (4) no amendment or restatement of the association's articles after the effective date of this chapter may be filed in the office of the clerks of court.
 - (f) a professional corporation in existence on the effective date of this chapter is not in violation of this chapter for failure to file its articles of association with the Secretary of State as required by subsection (e) or to make any amendments to its articles of association required by this chapter or Chapters 1 through 17 of the South Carolina Business Corporation Act of 1988 until January 1, 1991.

Section 33-2-102(d) relating to filing requirements for articles of incorporation provides:

To be filed, the articles of incorporation must additionally be accompanied by the initial annual report of corporations as specified in 12-19-20.

Section 12-19-20(e) also provides that in order to file the initial articles of incorporations, the articles must be accompanied by an initial annual report together with the minimum license fee of \$25 required by Sections 12-19-70 and 12-19-120.

Thus, in order to file articles of incorporation with the Secretary of State, an existing professional association must file an initial annual report and pay the minimum \$25 license fee.

2. Section 12-19-20 requires corporations to file annual reports with the Commission. Section 12-19-70 requires every corporation required to file an annual report by Section 12-19-20, except corporations enumerated in Section 12-19-100, to pay an annual license fee.

Section 12-19-20 reads in part as follows:

Every corporation organized under the laws of this State and any other corporation required by Section 12-7-130 to file income tax returns, in addition to any other requirement of law, must make a report annually to the Tax Commission...

South Carolina Tax Commission Regulation 117-89.3 provides that unincorporated professional associations organized under the provision of the South Carolina Professional Act (1962 S.C. Acts 784) are not subject to the license fees imposed upon corporations under Section 12-19-20.

The Attorney General has issued an opinion consistent with the above regulation which analyzes this question as follows:

In 1962, by Act No. 874, Acts and Joint Resolutions at 2172, the section was amended to impose the license fee on an additional class of "any other corporation required (by Section 65-222) to file income tax returns." Because Section 65-222 is an income tax statute, it applies to both corporations and "associations". We, however, do not believe that the purpose of the 1962 amendment was to subject "associations" to corporate license fees. The wording of the Act refers to "other corporations" required to file income tax returns, not to other "taxpayers" required to file. The obvious purpose of the 1962 Act was to subject nondomesticated corporations who did business in this State to corporate license fees. The title of the Act states its purpose to make the corporate license fee filing requirements uniform with the income tax filing requirements, and the wording of the Act clearly retains the historical character of the Act as applying only to corporations for the privilege of conducting business in corporate form. 1975-1976 Op. Att'y. Gen. 32 (1976)

The language "any other corporation" has been maintained in the current statute thus making the above opinion applicable to it.

Existing professional associations are given until January 1, 1991 to file articles of incorporation with the Secretary of State. Until this filing takes place, existing professional associations are not subject to the corporation license fee. Thus, for the license fee period beginning January 1, 1989, an existing professional association will not owe a license fee.

Conclusion:

1. Existing professional associations that elect to incorporate will be required to file an initial annual report (CL-1) together with the \$25 minimum license fee with their articles of incorporation.
2. Existing professional associations are not required to pay a license fee for the license period beginning January 1, 1989. Until existing professional associations file articles of incorporation, a license fee will not be due.