



SC INFORMATION LETTER #94-3 (TAX)

SUBJECT: ADMINISTRATIVE PRONOUNCEMENT
Retirement Income of a Surviving Spouse
(Income Tax)

DATE: January 27, 1994

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 12-7-435 (Supp. 1993)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #93-6

SCOPE: An Information Letter is a document issued for the purpose of disseminating general information or information concerning an administrative pronouncement.

Information Letters issued to disseminate general information have no precedential value and do not represent the official position of the Department. Information Letters designated as administrative pronouncements do represent the official position of the Department.

Questions have arisen concerning the application of the retirement income deduction under Code Section 12-7-435 to a surviving spouse receiving retirement income attributable to a deceased spouse who died prior to January 1, 1993. Code Section 12-7-435 is effective for tax years beginning after December 31, 1992.

In SC Revenue Ruling #93-12, the Department of Revenue set forth its policy with respect to the retirement income deduction available to a surviving spouse under Code Section 12-7-435.

The ruling states:

... a surviving spouse, with respect to the retirement income received, is allowed a deduction for income received from his or her retirement plan or plans (if any) and a second separate deduction for retirement income that is attributable to the deceased spouse (if any).

For each deduction allowed, the surviving spouse must deduct the lesser of the retirement income received or \$3,000.00, or the lesser of the retirement income received or \$10,000.00, depending on the election made.

With respect to the retirement income that is attributable to the deceased spouse, the surviving spouse essentially "steps into the shoes" of the deceased spouse. Therefore, the surviving spouse:

- (1) must take the same deduction the deceased spouse elected; or,
- (2) is entitled to make the election available under the law if his or her deceased spouse had not yet made the election. The deduction taken is based on the age of the deceased spouse had he or she lived.

Finally, the first year of the election under this statute is 1993. Deductions taken in previous years under the prior statute do not affect this election.

The Commissioners, in a business meeting on January 26, 1993, clarified this ruling and determined that a surviving spouse receiving retirement income attributable to a deceased spouse who died prior to January 1, 1993 may:

- (1) deduct the retirement income attributable to the deceased spouse in an amount not to exceed three thousand dollars annually; or**
- (2) elect irrevocably to defer claiming the retirement income deduction until the taxable year the deceased spouse would have attained the age of sixty-five years had he or she lived, at which time the surviving spouse may deduct the retirement income attributable to the deceased spouse in an amount not to exceed ten thousand dollars annually.**

However, if the deceased spouse, had he or she lived, attained the age of sixty-five years before January 1, 1994, then the surviving spouse is considered to have made the election to deduct the retirement income attributable to the deceased spouse in an amount not to exceed ten thousand dollars annually.

As stated in SC Revenue Ruling #93-12, it is important to remember that:

- (1) A surviving spouse is entitled to another retirement income deduction of either \$3,000.00 or \$10,000.00, depending on the election made, if the surviving spouse is also receiving income from his or her own retirement plan or plans.
- (2) If the retirement income received does not exceed the maximum deduction allowed, the surviving spouse may deduct the lesser of the retirement income received or \$3,000.00, or the lesser of the retirement income received or \$10,000.00, depending on the election made.

(3) For a taxpayer born in the years 1943 through 1959, the applicable age for the \$10,000.00 deduction is sixty-six instead of sixty-five. For a taxpayer born after 1959, the applicable age for the \$10,000.00 deduction is sixty-seven instead of sixty-five.

For questions concerning the income tax deductions for retirement income, contact Research and Review - Office Services Division at (803) 737-4867 or 737-4495 or John P. McCormack at (803) 737-4438.