



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #87-10

TO: ABC Electric Cooperative

SUBJECT: Abandoned Property

REFERENCE: S.C. Code Ann. Section 27-17-50 (1976)
S.C. Code Ann. Section 27-17-270(B) (as amended June 22, 1987)
S.C. Code Ann. Section 27-17-250 (1976)

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

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

1. Does the South Carolina Tax Commission have authority to assess civil penalties of \$100 per day upon electric cooperatives pursuant to Section 27-17-270(B) prior to June 22, 1989?
2. Does the South Carolina Tax Commission have authority, pursuant to the Unclaimed Property Act, to inspect records of the Cooperative for years prior to January 1, 1978?
3. Was the statute of limitation upon the payment of debt, as it relates to presumed Abandoned Property, barred prior to January 1, 1978?
4. May the Cooperative claim ownership in property assigned pursuant to its by-laws after the said property is unclaimed for a specified period less than 7 years?

Facts:

1. ABC Cooperative is a corporation organized and operating under Chapter 49 of Title 33 of the 1976 Code. The Cooperative received notice that a refusal to deliver certain pre-1978 records to the Audit Division would be a failure to carry out a duty under the Abandoned Property Act and would result in a civil penalty of \$100 per day being charged pursuant to Title 27-17-270(B) of the South Carolina Code As Amended June 22, 1987.
2. The Cooperative was directed to provide the Tax Commission all records of accounts for the period 1968 through 1986. The purpose of the review is to confirm previously filed reports. The cooperative has provided access to all corporate records from January 1, 1978 forward, including Abandoned Property Reports. The cooperative seeks clarification as to the relevancy of pre-1978 records to the 1978 status of the corporation.
3. The Cooperative asserts that the Cooperative has refused to pay debts of the Cooperative after such debts cease to be legally enforceable. The Tax Commission has advised that the Cooperative cannot utilize the statute of limitation to prevent claim of accounts by the Tax Commission.
4. In 1972, the Cooperative members passed, at a duly constituted annual meeting, a bylaw provision whereby the membership designated that funds owed them as capital credits would be donated to the Cooperative if not claimed within six years of the date the credit was declared payable.

Discussion:

1. Section 22, Subsection L of the 1987 Permanent Provisions amending the Abandoned Property Act states:

"Notwithstanding the amendment to section 27-17-50 of the 1976 Code contained in this section, for a period of two years after the effective date of this section, the provisions of former Section 27-17-50 of the 1976 Code, relating to the responsibilities of reporting, paying, and delivering property apply for entities organized under the provisions of Chapter 49 of Title 33 of the 1976 Code."

As the section states, the postponement relates only to reporting, paying, and delivering. "A statute is to be taken, construed, and applied in the form enacted." 73 Am Jur 2d Section 196. The amendment to 27-17-50 reduced the holding periods (the period property is to be held before it is presumed abandoned) for utilities from seven years to one year the time after which a deposit is presumed

abandoned and from seven to five years the period after which a refund is presumed abandoned. Therefore, penalties may be imposed under section 27-17-270(B) as amended. There is no provision under penalty or interest sections for exempting utilities from the application of penalty and interest for abandoned property.

2. The main thrust of the Abandoned Property Act is to affix a duty on cooperatives to transfer custody of unclaimed funds to the State. In accordance with the plain wording of the statute as adopted in 1971 and codified January 1, 1978, property is deemed abandoned if unclaimed for more than 7 years.

The South Carolina Supreme Court in South Carolina Tax Commission v. Metropolitan Life Insurance Company 266 S.C. 34, 221 SE 2d 522(1975) stated:

The South Carolina Tax Commission seeks to have Metropolitan Life Insurance Company pay its maturity value of three thousand eighty (3,080) unclaimed policies. The policies matured by 1965 and the Commission contends the funds are "abandoned property" within the meaning of the Uniform Disposition of Unclaimed Property Act. S.C. Code Section 57-240.1 et seq. (1974 Cum. Supp.). The Uniform Act was adopted in 1971. Pursuant to it, the Commission acts as a conservator of "all abandoned property."

The Supreme Court reversed the judgment of the trial court and rendered judgment for the Commission.

Pursuant to 27-17-250, the Tax Commission has authority to examine the records of any person, after reasonable notice, if it has reason to believe that such person has failed to report property that should have been reported. Thus the Tax Commission may examine records prior to 1978 if they are available.

3. This issue has been referred to the South Carolina Attorney General's office for potential litigation. It is the policy of the South Carolina Tax Commission to defer judgments on such matter until the court or the Attorney General's office has made a decision.
4. This issue has been referred to the South Carolina Attorney General's office for potential litigation. It is the policy of the South Carolina Tax Commission to defer judgments on such matter until the court or the Attorney General's office has made a decision.

Conclusion:

1. The Tax Commission has the authority to assess civil penalties of \$100 per day upon electric cooperatives pursuant to 27-17-270(B) prior to June 22, 1989.
2. The South Carolina Tax Commission has authority pursuant to the Unclaimed Property Act to inspect records of the Cooperative for years prior to January 1, 1978 if these records are available.
3. No opinion will be issued on this question pending determination by the Attorney General's office.
4. No opinion will be issued on this question pending determination by the Attorney General's office.

SOUTH CAROLINA TAX COMMISSION

s/Hunter Howard, Jr.

S. Hunter Howard, Jr., Chairman

s/John M. Rucker

John M. Rucker, Commissioner

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
November 18 _____, 1987