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SC PRIVATE LETTER RULING #87-7

TO: XYZ Company

SUBJECT: Income Tax Credit

REFERENCE: S.C. Code Section 12-7-2410

AUTHORITY: S.C. Code Section 12-3-170

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 distribution.

Question:

Is a South Carolina resident allowed a credit for taxes paid to a State on account of pension income?

Facts:

The taxpayer, a physician, has a money purchase pension plan which he has funded over the years through his professional corporation medical practice in a State. The taxpayer is now in semi-retirement and will begin to draw his retirement income starting in mid 1988 at which time he will be a resident of South Carolina. A State will tax the pension income as it considers a retirement annuity or pension to be deferred compensation for personal services and the source of the income from personal services is the place where the services are actually performed and not the residence of the taxpayer or the place of payment.

Discussion:

South Carolina Code Section 12-7-2410 provides a credit for income tax paid by a South Carolina resident to another state as follows:

Whenever an individual who is a resident of South Carolina is liable for income tax in another state on account of (1) income earned from personal services rendered in the other state, or (2) income received through a nonresident fiduciary, the Tax Commission shall credit the amount of income tax payable for the income year by the taxpayer under this

Title with the amount of tax paid by the taxpayer to another state on South Carolina taxable income. In no case shall the credit herein allowed exceed an amount equivalent to the proportion of South Carolina Income Tax attributable to the South Carolina taxable income as determined in accordance with Section 12-7-410, as modified by Sections 12-7-430 and 12-7-435 and taxed by another state.

The South Carolina Code has no definition as to what constitutes income earned from personal services. The South Carolina Supreme Court used the following to define "earned" in Adam v. Burts 140 S.E.2d 586.

"In Webster's New Twentieth Century Dictionary the work "earned" is defined as meaning "to gain as profit". Webster's New Collegiate Dictionary defines the word "earned" as meaning to "deserve" and to "merit". The word "earned" has been construed as meaning entitled to a sum of money under the terms of a contract. WesternStates L. Ins. Co. v. Lockwood, 166 Cal. 185, 135 P. 496.

"Earned" means to merit or deserve, as labor or services; to do that which entitles one to a reward whether the reward is received or not, to acquire by labor, services or performance. Cold Metal Process v. Commissioner, 6 Cir., 247 F2d 864. Income is earned when all events have occurred which fix its amount and determine the liability of the party from whom it is forthcoming to pay."

The S.C. Supreme Court in Fennell v. South Carolina Tax Commission 103 SE. 2d 424 ruled that income from services rendered by dentists as well as other professionals, was from "personal services".

The pension income in question was "earned" during the course of the taxpayer's career as a physician in California. The "personal services" which earned the pension income were rendered in California.

Conclusion:

The taxpayer, a resident of South Carolina, is allowed a credit for taxes paid to a State on account of pension income.

SOUTH CAROLINA TAX COMMISSION

s/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
July 22, 1987