



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

SC PRIVATE LETTER RULING #88-11

TO: ABC Company

SUBJECT: Income Year Used As Basis For Computing License Fee
(License Fee/Corporations)

REFERENCE: S.C. Code of Laws Ann. Section 12-19-70 (Supp. 1987)
S.C. Code of Laws Ann. Section 12-19-10 (1976)

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

Does the phrase contained in 12-19-70 (Supp. 1987) "on the first day of the income year next preceding the date of filing the report..." mean that the license fee is to be computed on capital stock of the corporation as of the first day of the income year in which the report is filed or the first day of the prior income year?

Facts:

ABC Company files returns and pays fees and taxes on a calendar year basis. At the time of its initial formation in December 1986, the corporation had only nominal assets. In May of 1987, the corporation had contributed over \$7 million to its capital. The taxpayer questions whether the phrase "on the first day of the income year next preceding the date of filing the report..." means that the license fee on the return due March 15, 1988 would be based on January 1, 1987 capital or January 1, 1988 capital.

Discussion:

S.C. Code of Laws 12-19-70 (Supp. 1987) provides in part:

In addition to all other license taxes or fees or taxes of whatever kind, every corporation required to file a report by Section 12-19-20...shall pay to the Commission at the time of filing the report...an annual license fee of \$5.00 plus one mill on each dollar paid to the capital stock and paid in as surplus of the corporation as shown by the records of the corporation on the first day of the income year next preceding the date of filing the report.... (emphasis added).

The South Carolina Tax Commission has consistently interpreted this provision to mean the first day of the income year in which the report is being filed. For example, if the report is filed March 15, 1988 for a calendar year corporation, the first day of the income year next preceding the date of filing the report would be January 1, 1988. The license fee is prospectively imposed for the privilege of doing business in this state.

Further support for this methodology is found in prior law. Section 65-604 of the 1952 Code of Laws of South Carolina as amended read:

In addition to any and all other license taxes or fees or taxes of whatever kind every corporation required to file a report by Section 65-601...shall pay to the South Carolina Tax Commission, at the time of filing the report required by Section 65-601, an annual license fee of one mill upon each dollar paid to the capital stock and paid in as surplus of said corporation as shown by the records of the corporation on January first next preceding the date of filing the report. (emphasis added)

At the time of enactment of the above provision, South Carolina corporations were required to file on a calendar year basis. Pursuant to Act Number 167 (April 14, 1961), corporations became eligible to file based upon an income year other than the calendar year. Therefore, Section 65-604 of the 1952 Code was changed to reflect the fact that it was possible to have an income year that did not begin with January first. It appears that the obvious intent of the legislature in prior Statute 65-604 was to compute the license fee on the first day of the income year in which the report is filed. This intent should not be thwarted in the current statute by a change in language to encompass fiscal year taxpayers.

Therefore the statute should be properly read to mean the first day of the income year in which the report is filed. The license fee of ABC Company would be based on the capital on January 1, 1988 for the report due March 15, 1988.

Conclusion:

The phrase contained in 12-19-70 (Supp. 1987) "on the first day of the income year next preceding the date of filing the report..." is the first day of the income year in which the report is filed.

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
June 1 _____, 1988