



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

SC PRIVATE LETTER RULING #90-6

TO: X  
Y  
Z

SUBJECT: Reorganization of Corporations  
(Income Tax)

DATE: February 28, 1990

REFERENCES: S.C. Code Ann. Section 12-13-10 (Supp. 1989)  
S.C. Code Ann. Section 12-7-415 (Supp. 1989)  
S.C. Code Ann. Section 12-7-20 (11) (Supp. 1989)  
S.C. Code Ann. Section 12-13-20 (Supp. 1989)  
1985 Act No. 101, Section 12  
1987 Act No. 170, Section 25 P

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:

For purposes of the reorganization transaction involving the above-listed taxpayers, will South Carolina follow federal treatment in connection with the Internal Revenue Code Sections specifically listed in the "Facts" of this Private Letter Ruling?

Facts:

The above-listed companies are proposing the following transaction:

Z will convert from a federally-chartered mutual savings bank to a federally-chartered stock savings bank. Simultaneously, Z will be acquired by X, an out of state corporation resulting in Z being a separate, wholly owned subsidiary of X.

At the conclusion of the above transaction, X will be the parent corporation of two wholly owned subsidiaries, Z and Y.

The transaction as outlined by the taxpayers involves the following sections of the Internal Revenue Code of 1986 ("IRC"):

IRC Section 368(a)(1)(F)  
IRC Section 368  
IRC Section 1032  
IRC Section 362  
IRC Section 354  
IRC Section 305  
IRC Section 358  
IRC Section 307  
IRC Section 1012  
IRC Section 381  
IRC Section 316  
IRC Section 312  
IRC Section 243  
IRC Section 593  
IRC Section 1223

Z and Y are both "associations" as defined in Code Section 12-13-10 and as such are taxed under Chapter 13 of the South Carolina Code (Income Tax on Building and Loan Associations). X is a holding company taxed under the/corporate income tax provisions of Chapter 7 of the South Carolina Code.

Discussion:

Chapter 7 of Title 12 of the South Carolina Code of Laws imposes an income tax on corporations. With respect to such taxation, Code Section 12-7-415 provides in part:

The South Carolina gross income and taxable income of a corporation, ... ,is the corporation's gross income and taxable income as determined under the Internal Revenue Code with modifications specified in Section 12-7-430.

Code Section 12-7-20 (11) defines "Internal Revenue Code" as "the Internal Revenue Code of 1986 as amended through December 31, 1988".

Chapter 13 of Title 12 of the South Carolina Code of Laws imposes an income tax on corporations insured by the Federal Savings and Loan

Insurance Corporation or regulated by the Federal Home Loan Bank or State Board of Financial Institutions. With respect to such taxation, Code Section 12-13-20 provides in part:

The term "net income", as used in this chapter [Income Tax on Building and Loan Associations], means taxable income as determined for a regular corporation in Chapter 7 of this title after deducting all earnings accrued, paid, credited, or set aside for the benefit of holders of savings or investment accounts, any additions to reserves which are required by law, regulation, or direction of appropriate supervisory agencies, and a bad debt deduction....

As indicated above, taxable income as determined under Chapter 7 is determined under the Internal Revenue Code as of December 31, 1988, except to the extent the Internal Revenue Code is modified or specifically not adopted; therefore, taxable income under Chapter 13 is also determined under the Internal Revenue Code. Since Z, Y, and X are taxed under Chapter 7 or Chapter 13 of the South Carolina Code, income tax transactions involving these corporations are taxed based on the Internal Revenue Code as of December 31, 1988, except to the extent it is modified or specifically not adopted.

In adopting the Internal Revenue Code, the State in Section 12 of 1985 Act No. 101, as amended by Section 25 P of 1987 Act No. 170 specifically did not adopt certain federal code sections. None of the Internal Revenue Code sections presented in the facts is specifically excluded from South Carolina law except IRC Section 593. Additionally, none of the Internal Revenue Code sections presented in the facts is modified by Code Section 12-7-430.

IRC Section 593 deals in part with reserves for losses for certain financial institutions. We must now review the issue of the bad debt deduction of Z.

Code Section 12-13-20, which deals with the taxation of building and loan associations, including Z, provides in part:

...The bad debt deduction allowable for South Carolina income tax purposes is the amount determined under the Internal Revenue Code and the applicable regulations amended through December 31, 1986....

IRC Section 593 has been amended only once since the Tax Reform Act of 1986 and that amendment applies only if there is a capital gain differential. Since there currently is not a capital gain differential, IRC Section 593, as amended by the Tax Reform Act of 1986, is the applicable federal law.

The Tax Reform Act of 1986 was enacted on October 22, 1986. Although the amendments the Tax Reform Act made to IRC Section 593 apply only to tax years beginning after December 31, 1986, the Internal Revenue Code was amended by the Tax Reform Act prior to December 31, 1986.

In summary, IRC Section 593 as amended through December 31, 1986, including the Tax Reform Act of 1986, is incorporated in South Carolina Law by Code Section 12-13-20 to the extent it affects the bad debt deduction allowable in South Carolina.

Conclusion:

Except for IRC Section 593, South Carolina will follow the federal law as of December 31, 1988 as it pertains to the Internal Revenue Code sections listed in the "Facts" section of this ruling. South Carolina will follow the federal law, as of December 31, 1986, including the amendments made by the Tax Reform Act of 1986, as it pertains to the bad debt deduction of Z under IRC Section 593.

Note: This document, with respect to IRC Section 593, only deals with the effect of the bad debt deduction of Z and expresses no opinion as to the effect of distributions to shareholders under IRC Section 593(e).

Note: This document addresses South Carolina income tax treatment only as it relates to those IRC Code Sections specifically listed in the facts.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

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S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

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A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina  
February 28, 1990