



SC PRIVATE LETTER RULING #92-7

TO: ABC

SUBJECT: Qualified Real Estate Investment Trust Subsidiary
(Income Tax and Corporate License Fee)

TAX ANALYST: Sally Major

REFERENCES: S.C. Code Ann. Section 12-7-230 (Supp. 1991)
S.C. Code Ann. Section 12-19-20 (Supp. 1991)
S.C. Code Ann. Section 12-19-70 (Supp. 1991)
S.C. Code Ann. Section 33-15-101 (1976)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
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 distribution.

Questions:

1. Is a qualified real estate investment trust subsidiary of ABC, which is a real estate investment trust, taxed as a separate corporation or as part of the ABC for South Carolina income tax purposes?
2. Is a qualified real estate investment trust subsidiary of ABC required to file an annual report and pay the annual license fee?

Facts:

ABC was organized as a Massachusetts business trust in 19XX and from its inception has elected to be treated as a real estate investment trust (REIT) under Internal Revenue Code Section 856. ABC is planning to form a Delaware corporate subsidiary (subsidiary). One hundred percent of the subsidiary's stock will be owned by ABC. The subsidiary will be a general partner in a

partnership that owns and rents real property located in South Carolina. This partnership interest is currently owned by ABC. Neither the partnership nor the subsidiary does business in any other state. The subsidiary will be a qualified real estate investment trust subsidiary within the meaning of Internal Revenue Code Section 856(i).

Discussion:

CORPORATE INCOME TAX:

Code Section 12-7-230(A) provides, in part:

... every foreign corporation transacting, conducting, doing business, or having an income within the jurisdiction of this State, whether or not the corporation is engaged in or the income derived from intrastate, interstate, or foreign commerce, shall make a return and shall pay annually an income tax equivalent to five percent of a proportion of its entire net income, to be determined as provided in this chapter. The term "transacting", "conducting", or "doing business", as used in this section, includes the engaging in or the transacting of any activity in this State for purpose of financial profit or gain.

Code Section 12-7-415 provides that "[t]he 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 the modifications specified in Section 12-7-430."

Internal Revenue Code Sections 856 through 859 deal with the taxation of Real Estate Investment Trusts for federal income tax purposes. These sections have been adopted by South Carolina for purposes of determining South Carolina taxable income under Code Section 12-7-415.

Internal Revenue Code Section 856(i) provides, in part:

- (1) For purposes of this title -
 - (A) a corporation which is a qualified REIT subsidiary shall not be treated as a separate corporation, and
 - (B) all assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the real estate investment trust.
- (2) For purposes of this subsection, the term "qualified REIT subsidiary" means any corporation if 100 percent of the stock of such corporation is held by the real estate investment trust at all times during the period such corporation was in existence.

The taxpayer has indicated that the subsidiary will be a "qualified REIT subsidiary" for federal income tax purposes and as a result, for federal income tax purposes, it will not be treated as a

separate corporation. In addition, its assets, liabilities, and items of income, deduction, and credit will be treated as though they are assets, liabilities, and items of income, deduction and credit of ABC.

Since South Carolina has adopted the Internal Revenue Code Sections 856 through 859, South Carolina will treat these items as they are treated for federal purposes. In other words, for South Carolina income tax purposes, the subsidiary would not be taxed as a separate corporate entity.

CORPORATE LICENSE FEE AND ANNUAL REPORT:

Code Section 12-19-20(a) provides, in part:

Every corporation organized under the laws of this State and every corporation organized to do business under the laws of any other state, territory, or country and qualified to do business in South Carolina and any other corporation required by Section 12-7-230 to file income tax returns, in addition to any other requirements of law, must make a report annually to the Tax Commission on or before the fifteenth day of the third month next after the preceding income year in a form prescribed by the Tax Commission or the Secretary of State containing all information and facts either the Tax Commission or the Secretary of State may require for the administration of the provisions of this chapter and the provisions of Title 33.... (Emphasis added.)

Code Section 12-19-70 provides, in part:

In addition to all other license taxes or fees or taxes of whatever kind, every corporation required to file the report by Section 12-19-20, except the corporations enumerated in Section 12-19-100, shall pay to the Commission at the time of filing the report as required by Section 12-19-20 an annual license fee of fifteen dollars 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. In no case may the license fee provided by this section be less than twenty-five dollars. The license fee provided for by this section must be paid at the time of filing the report pursuant to the provisions of Section 12-19-20.

Code Section 12-19-100 imposes a special license fee on certain types of corporations. The subsidiary does not qualify as a corporation subject to the license fee under Code Section 12-19-100.

Code Section 33-15-101 provides, in part:

- (a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the Secretary of State.
- (b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

...(9) owning, without more, real property or personal property.... (Emphasis added.)

The Secretary of State's office requires that foreign corporations which are general partners in either a general partnership or a limited partnership which is transacting business in the State must obtain a certificate of authority to do business in South Carolina. By obtaining this certificate of authority to do business, a foreign corporation is qualified to do business in South Carolina and must file an annual report as required by Code Section 12-19-20 and pay the annual license fee required by Code Section 12-19-70.

Because the partnership is renting real property, and is therefore doing more than merely owning real or personal property, it is considered to be transacting business in South Carolina. Therefore, as the general partner in the partnership, the subsidiary must obtain a certificate of authority to do business in the State from the Secretary of State and file an annual report and pay an annual license fee to the State. Since neither the partnership nor the subsidiary does business in any state except South Carolina, the subsidiary must pay the license fee based on the entire capital stock and paid in as surplus of the corporation as shown by the records of the corporation.

Conclusions:

1. The qualified real estate investment trust subsidiary of ABC is not taxed as a separate corporation for South Carolina income tax purposes. The assets, liabilities, and items of income, deduction, and credit of the subsidiary are treated as assets, liabilities, and items of income, deduction and credits of ABC.
2. The qualified real estate investment trust subsidiary of ABC, as a general partner in a partnership transacting business in South Carolina, must file an annual report and pay the annual license fee required by Code Sections 12-19-20 and 12-19-70.

Note: Since the annual report required by Code Section 12-19-20 and the South Carolina income tax return are on the same form (SC 1120), the subsidiary should file Form SC 1120 and pay the license fee. On the income tax portion of the return, the subsidiary should report zero taxable income and file a statement with the return indicating it is a subsidiary of a qualified real estate investment trust and has no income for South Carolina corporate income tax purposes. The subsidiary should include the name and federal employer identification number of the parent entity. Additionally, the subsidiary should attach a copy of this ruling or a statement citing this ruling to the return.