
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #95-10 (TAX)

TO: Bank

SUBJECT: Bank Reorganizations
(Tax on Banks and Bank Holding Companies)

DATE: August 28, 1995

REFERENCE: S.C. Code Ann. Section 12-7-415 (Supp. 1994)
S.C. Code Ann. Section 12-7-20(11) (Supp. 1994)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1994)
SC Revenue Procedure #94-1

SCOPE: A Private Letter Ruling is an **official advisory opinion** issued by the Department of Revenue to a specific person.

NOTE: A Private Letter Ruling may only be relied upon by the person to whom it is issued and only for the transaction or transactions to which it relates. A Private Letter Ruling has no precedential value.

Question:

For purposes of the reorganization transaction involving Bank, Interim and Holding, will South Carolina follow the federal treatment of the Internal Revenue Code ("IRC") sections specifically listed in the Facts of this private letter ruling?

Conclusion:

For purposes of the reorganization transaction involving Bank, Interim and Holding, South Carolina will follow the federal treatment as to all parties to the reorganization.

Facts:

Bank is a national bank that was formerly a federally chartered stock savings bank. Holding has been formed by Bank in order to allow Bank to engage in a reorganization. Immediately prior to the reorganization, all of the stock of Holding will be held by Bank. Holding will, in turn, form Interim. Immediately prior to the reorganization, all of the stock of Interim will be held by Holding. Both Bank and Holding are South Carolina corporations.

Bank will report its South Carolina taxable income each year based upon its taxable income calculated and reported for federal income tax purposes adjusted for deductions of interest income earned on federal obligations and federal income tax incurred.

On the date of the reorganization, Interim will merge into Bank and the shareholders of Bank will surrender their stock in Bank and will receive stock of Holding in exchange for their stock in Bank. The dissenting shareholders will receive cash in the reorganization. Immediately after the transaction, all of the stock of Bank will be held by Holding, the new holding company.

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

IRC Sections 368(a)(1)(A), 368(a)(2)(E), 368(b), 354, 358, 357, 361, 1032 and 1223.

Bank will be a "bank" as that term is defined in Section 12-11-10 of the South Carolina Code of Laws ("Code") and as such is taxed under Chapter 11, Title 12 of the Code (Income Tax on Banks). Holding will be a holding company taxed under the corporate income tax provisions of Chapter 7, Title 12 of the Code and Interim (during the period of its existence) will be a corporation taxed under the corporate income tax provisions of Chapter 7, Title 12 of the Code.

Discussion:

Chapter 11 of Title 12 of the Code imposes a tax upon every bank engaged in business in this State with respect to the net income of the taxpayer doing a banking business within this State or from sales or rentals of property within this State, computed at the rate of four and one half percent of the entire net income of such bank or taxpayer.

Chapter 7 of Title 12 of the Code imposes an income tax on corporations (excluding banks and certain other types of corporations). With respect to such taxation, 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 the modifications specified in Section 12-7-430."

Section 12-7-20(11) of the Code as amended by Act. No. 60(July 12, 1995) defines "Internal Revenue Code" as the Internal Revenue Code of 1986 as amended through December 31, 1994. In adopting the Internal Revenue Code, South Carolina, in Section 12 of 1985 Act No. 101, as amended by Section 25P of 1987 Act No. 170, specifically did not adopt certain federal code sections. None of the IRC code sections cited in the Facts above are specifically excluded from the South Carolina law. The question is whether the principles embodied in the Internal Revenue Code sections listed in the Facts which apply to corporations taxed under Chapter 7, Title 12 of the Code should apply to transactions involving banks taxed under Chapter 11, Title 12 of the South Carolina Code of Laws.

The traditional theory of the reorganization provisions of the Internal Revenue Code is that gain or loss should not be recognized on mere changes of form when there is no substantive change in the rights of the parties and their relationship to the corporate assets. The reorganization provisions generally provide that there is no gain or loss recognized at the shareholder level on the exchange of stock in the old corporation for stock in the new corporation or to the corporation on the exchange of its assets provided the transaction can meet the requirements of creating a tax free reorganization. See, Bittker & Eustice, *Federal Income Taxation of Corporations and Shareholders* paragraph 12.01[2] and [3](sixth ed. 1994). The same policy reasons that encouraged the adoption by South Carolina of the Internal Revenue Code sections listed in the Facts to corporations taxed under Chapter 7 of Title 12 encourage the extension of these provisions to transactions that occur among taxpayers subject to tax under Chapter 11, Title 12. Thus, in this case, South Carolina will follow the federal tax treatment of the reorganization.

Note: This document addresses the South Carolina income tax treatment only as it relates to those IRC sections specifically listed in the Facts. Additionally, Chapter 11 of the Code is currently under review and this PLR may only be relied upon for this transaction.