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

SC PRIVATE LETTER RULING #95-2 (TAX)

TO: ABC

SUBJECT: Income of a Nonresident Limited Partner
(Income Tax)

DATE: January 27, 1995

REFERENCE: S. C. Code Ann. Section 12-7-420 (Supp. 1993)
S. C. Code Ann. Section 12-7-450 (Supp. 1993)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1993)
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:

Is income generated by ABC, as described in the facts, South Carolina source income to its nonresident limited partners?

Conclusion:

Income generated by ABC, as described in the facts, is not South Carolina source income to its nonresident limited partners since the nonresident partnership is not considered to carry on a business or trade in South Carolina solely by reason of the purchase and sale of property for its own account.

Facts:

ABC is a limited partnership organized under the law of Delaware for the purpose of pooling resources in order to maximize investments in stocks, securities, other intangible assets, and limited partnerships for its own account. It does not give financial advice or trade for others. It pays professional investment managers and advisors a fee for managing its investments.

The general partner of ABC, is an S corporation, XYZ, incorporated under the laws of Delaware and authorized to do business in South Carolina. ABC does not maintain an office in South Carolina. XYZ, however, has an office in South Carolina and its only purpose is to: (1) handle ABC administrative affairs, (2) provide necessary administrative services for the limited partnership, and (3) choose the investment advisors and managers who make investments on behalf of the partners. At this time, such brokers and dealers are not located in South Carolina.

For rendering the above investment and administrative services on behalf of the limited partners, the general partner, XYZ, receives a management fee from ABC ¹

For federal income tax purposes, ABC reports the following character and sources of income on the limited partners K-1:

- * Dividends
- * Interest
- * Capital gains and losses
- * Ordinary income, net of expenses directly related to the income.
(This income is from trading activities of intangible property.)
- * Income from other partnerships that are located outside of South Carolina. (This income includes dividends, interest and capital gain. It also includes some income generated by a trade or business of the second tier partnership doing business outside of South Carolina.)

Discussion:

Code Section 12-7-420 addresses the taxation of partnerships and reads:

A partnership is not subject to tax under this chapter. All of the provisions of the Internal Revenue Code apply to determine the gross income, adjusted gross income, and taxable income of a partnership and its partners, subject to the modifications provided in '12-7-430.

South Carolina has adopted the partnership provisions contained in Subchapter K of the Internal Revenue Code. The character of items constituting a partners distributive share is set forth in IRC '702 which provides:

¹ This document does not address the proper taxation of XYZ. It is limited to the appropriate sourcing of the nonresident limited partners income and will not address the taxation of the general partner.

the character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share...shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

The law, therefore, provides that a partnership is not subject to income tax. Each partner is directly taxable on his distributive share of partnership income. Items of income, loss and deduction are separately stated and "passed through" to the partners. Such items retain their character at the partner level and are treated as if realized by the partner directly from the source from which realized by the partnership or as if incurred by the partner in the same manner as incurred by the partnership. (See IRC ' 702(b).)

For South Carolina purposes, the nonresident partners are taxable on their distributive share of the partnership's South Carolina taxable income as determined for a nonresident under Code Section 12-7-450. Code Section 12-7-450 taxes the nonresident on the same basis as a resident but allows several modifications as set out in the subsections of Code Section 12-7-450.

Code Section 12-7-450(a)(6) provides that the South Carolina taxable income includes income from the following sources:

Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property to the extent that such income is from property employed in a trade, business, profession, or occupation carried on in South Carolina. **A nonresident individual, nonresident partnership,...., other than a dealer holding property primarily for sale to customers in the ordinary course of his or its trade or business, is not considered to carry on a business, trade, profession, or occupation in South Carolina solely by reason of the purchase and sale of property for his or its own account;** (emphasis added).

Based upon the facts presented, ABC is a nonresident partnership that is organized for the purpose of pooling resources in order to maximize investments in stocks, securities, other intangible assets, and limited partnerships for its own account.² Pursuant to Code Section 12-7-450(a)(6), ABC is not considered to carry on a business in South Carolina since its income is solely from its purchase and sale of property for its own account. Accordingly, the income generated by ABC, as described in the facts, is not South Carolina source income to its limited partners who are nonresidents of South Carolina.

² This is distinguishable from Commission Decision #92-58 wherein it was factually determined that the South Carolina S corporation was not deriving income solely by reason of the purchase and sale of property for its own account. Its activities not only produced gains on sales of property but also significant fee income from financial advising, deal making, and financial contracts. The Commission concluded the gains and the interest were derived from property connected with the taxpayer's business and were properly apportionable, and the dividend income was allocated to the shareholder's domicile.