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

SC PRIVATE REVENUE OPINION #01-1

SUBJECT: Use of the Headquarters Credit Against License Tax (Income and License Tax)

REFERENCES: S. C. Code Ann. Section 12-6-3410 (2000)
S. C. Code Ann. Section 12-20-100 (2000)
S. C. Code Ann. Section 12-20-175 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2000)
SC Revenue Procedure #99-4

SCOPE: A Private Revenue Opinion is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. **A Private Revenue Opinion does not have the force and effect of law, and is not binding on the person who requested it or the public.** It is, however, the Department=s opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question:

May a taxpayer subject to license tax under Section 12-20-100 of the South Carolina Code of Laws ("Code") use the headquarters credit generated under Code Section 12-6-3410 to offset its license tax liability?

Conclusion:

In the Department of Revenue's ("Department") opinion, a taxpayer that is subject to license tax under Code Section 12-20-100 may use its corporate headquarters credit generated under Code Section 12-6-3410 against its license tax.

Facts:

Taxpayer provides local, long distance and enhanced telecommunications services in selected markets in the Southeast. Taxpayer commenced service in County X in 1998. Taxpayer now provides services to several states and areas in the Southeast. Taxpayer established its corporate headquarters in South Carolina and is qualified for the headquarters credit available under Code Section 12-6-3410. Taxpayer is a regulated utility which must pay the license tax provided for in Code Section 12-20-100.

Discussion:

Code Section 12-6-3410(A) provides that "A corporation establishing a corporate headquarters in this State, or expanding or adding to an existing corporate headquarters, is allowed a credit against any tax due pursuant to Section 12-6-530 or Section 12-20-50 as set forth in this section."[emphasis added]

Code Section 12-20-50(A) states, in relevant part, that "Except as provided in Section 12-20-100, every corporation required to file an annual report shall pay an annual license fee of fifteen dollars plus one dollar for each thousand dollars, or fraction of a thousand dollars, of capital stock and paid-in or capital surplus of the corporation as shown by the records of the corporation on the first day of the taxable year in which the report is filed. In no case, may the license fee provided by this section be less than twenty-five dollars. ..."

Code Section 12-20-100(A) provides:

> In the place of the license fee imposed by Section 12-20-50, every express company, street railway company, navigation company, waterworks company, power company, electric cooperative, light company, gas company, telegraph company, and telephone company shall file an annual report with the department and pay a license fee as follows:
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> (1) one dollar for each thousand dollars, or fraction of a thousand dollars, of fair market value of property owned and used within this State in the conduct of a business as determined by the department for property tax purposes for the preceding taxable year; and
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> (2)(a) three dollars for each thousand dollars, or fraction of a thousand dollars, of gross receipts derived from services rendered from regulated business within this State during the preceding taxable year, except that with regard to electric cooperatives, only distribution electric cooperatives are subject to the gross receipts portion of the license fee under this subitem (2)(a).

(b) When a consolidated return is filed pursuant to Section 12-6-5020, the phrase "the gross receipts derived from services rendered from regulated business" does not include gross receipts arising from transactions between the separate members of the return group. [emphasis added]

Code Section 12-20-100 is not specifically mentioned as one of the sections to which the headquarters credit applies. However, Code Section 12-20-100 does indicate that it is designed to be a substitute for the license tax imposed by Code Section 12-20-50.

Code Section 12-20-175 provides that "License fees may be reduced by credits provided in Section 12-6-3410 or Section 12-6-3480, or both of them." This language was added in 1998 to reenact former Code Section 12-20-105 which was mistakenly replaced in 1997. Prior to 1997, Code Section 12-20-105 read "License fees may be reduced by credits as provided in Section 12-6-3410 or Section 12-6-3480, or both of these sections."

The preamble for Act 432 of the 1998 legislative session which enacted Code Section 12-20-175 indicates that the act was passed, in part, to allow this credit to reduce "corporate license fees."

As a general rule, statutory language creating exemptions from tax will not be strained or liberally construed in favor of the taxpayer claiming the exemption. See, York County Fair Association v. S.C. Tax Commission, 249 S.C. 337, 154 S.E. 2d 361 (1967). The language of Code Section 12-6-3410 does not specifically mention Code Section 12-20-100 as one of the sections which may be offset by the corporate headquarters credit. This would lead to the conclusion that since Code Section 12-20-100 was not specifically mentioned, the headquarters credit may not be used to offset any license tax generated under that section.

However, the rule as to strict construction of tax statutes creating credits and exemptions must give way to legislative intent. Code Section 12-20-175 and the preamble thereto indicate an intent to be able to offset all corporate license fees, and not just those in Code Section 12-20-50, by the corporate headquarters credit. A statute should not be construed so as to nullify, destroy or defeat the intention of the legislature. 73 Am Jur. 2d Statutes '145.

Additionally, Code Section 12-20-175 was first enacted in 1996 and subsequently reenacted in 1998 after it was mistakenly removed from law in its prior form, Code Section 12-20-105. Both the original form of Code Section 12-20-105 and the more recent Code Section 12-20-175 were enacted subsequent to any relevant amendment to Code Section 12-6-3410. In accordance with principles of statutory interpretation, where conflicting provisions are found in the same statute or in different statutes, the last in point of time generally prevails. See, Feldman v. South Carolina Tax Comm'n, 26 S.E. 2d 22, 203 S.C. 49 (1943).

Accordingly, in the Department's opinion, a taxpayer that is subject to license tax may use its corporate headquarters credit generated under Code Section 12-6-3410 against the license tax imposed by Code Section 12-20-100.

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth A. Carpentier
Elizabeth A. Carpentier, Director

January 22, 2001
Columbia, South Carolina