



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC REVENUE PROCEDURE #15- 2

SUBJECT: Requesting an Alternative Allocation or Apportionment Method
Under Code Section 12-6-2320(A) (Income Tax)

EFFECTIVE DATE: June 1, 2015

SUPERSEDES: SC Revenue Procedure #09-1 and all previous documents
and any oral directives in conflict herewith.

REFERENCES: S.C. Code Ann. Section 12-6-2220 (2014)
S.C. Code Ann. Section 12-6-2252 (2014)
S.C. Code Ann. Section 12-6-2280 (2014)
S.C. Code Ann. Section 12-6-2295 (2014)
S.C. Code Ann. Section 12-6-2290 (2014)
S.C. Code Ann. Section 12-6-2320 (2014)
S.C. Code Ann. Section 12-60-450 (2014)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION

Taxpayers that do business in more than one state are required to determine the amount of income taxed in each state. In South Carolina, as in most states, the division of income is done through allocation and apportionment. First, certain types of income are allocated to a specific state for taxation. See, Code Section 12-6-2220. Following the allocation of income to specific states, the remaining income is apportioned among the states in which the taxpayer does business on a formula basis. In South Carolina, the formula varies depending on the type of business that the taxpayer conducts. South Carolina generally requires the use of one of the following statutory apportionment methods:

1. For taxpayers manufacturing, buying, or assembling goods and materials in South Carolina or for those selling, distributing or dealing in tangible personal property, a single factor sales apportionment method is used in which the numerator is total sales of the taxpayer in South Carolina and the denominator is total sales of the taxpayer everywhere for the taxable year. Code Sections 12-6-2252 and 12-6-2280. (A non-exclusive list of what items are included in sales is contained in Code Section 12-6-2295.)
2. For taxpayers not dealing in tangible personal property such as financial businesses and service businesses, a gross receipts apportionment method is used in which the numerator is gross receipts from within South Carolina during the taxable year and the denominator is gross receipts from everywhere for the taxable year. Code Section 12-6-2290. (A non-exclusive list of items included in gross receipts is contained in Code Section 12-6-2295.)
3. For taxpayers such as railroad companies, telephone companies, pipeline companies, airline companies, and shipping lines, special apportionment methods are used. Code Section 12-6-2310.

States generally use one of two basic methods of reporting to determine the amount of income that will be apportioned to the taxing state: separate entity reporting and combined unitary reporting. South Carolina's standard method is separate entity reporting in which each entity applies the applicable South Carolina statutory apportionment formula to that single entity.

ALTERNATIVE METHODS OF ALLOCATION OR APPORTIONMENT¹

Under South Carolina law, taxpayers may be able to use a method other than the prescribed statutory apportionment method in certain circumstances. Code Section 12-6-2320(A) provides:

If the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of one or more of the factors;
- (3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in the State; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

¹ Although the statute refers to allocation and apportionment, this document will refer to a request for an alternative method of allocating or apportioning income as "alternative apportionment," "alternative apportionment method" or "alternative method" for simplicity.

The purpose of this Revenue Procedure is to provide a procedure for a taxpayer to request use of an alternative apportionment method if the taxpayer believes that the prescribed statutory formula does not fairly represent the extent of the taxpayer's business activities in South Carolina. This request is an "Application for an Alternative Apportionment Method under Code Section 12-6-2320(A)" (Application).²

WHEN AND WHERE TO FILE THE APPLICATION

An Application requesting an alternative apportionment method can be filed at any time. The Application must be submitted to the Department prior to the extended due date of the taxpayer's income tax return in order for the alternative apportionment method to be used, once approved, in the tax year for which the return was extended.

The Application must be filed with the Department separately from the taxpayer's income tax return and must be mailed to:

Department of Revenue
Attn: Administrator of Audit Services
Request for Alternative Apportionment
P.O. Box 125
Columbia, S.C. 29214

The process can be lengthy so taxpayers are encouraged to submit their requests as soon as possible. For questions regarding the Application or Application process, call Audit Services at 803-898-5619.

CONTENTS OF APPLICATION

The Application must set forth a complete statement of the facts and reasons as to why the statutory apportionment method does not, or will not, fairly represent the taxpayer's business activity in South Carolina. The request for an alternative apportionment method may be made for a single taxpayer, a group of affiliated corporations filing a South Carolina consolidated return, or members of a unitary business requesting to file using combined unitary reporting.³ For purposes of this Revenue Procedure, the term "taxpayer" is used to refer to a single taxpayer, the group of affiliated corporations, or members of a unitary business that is filing for an alternative apportionment method, unless otherwise stated.

² Code Section 12-6-2320(B) provides that a taxpayer planning a new facility or an expansion in South Carolina may apply to use an alternative apportionment method tailored to a particular business as an economic incentive. The procedure for a taxpayer to request approval of an economic development incentive based on an alternative apportionment method under Code Section 12-6-2320(B) is available on the Department's website at www.dor.sc.gov.

³ In *Media General Communications v. South Carolina Department of Revenue*, 388 S.C. 138, 694 S.E.2d 525 (2010), the South Carolina Supreme Court held that combined unitary reporting is an appropriate alternative method under Code Section 12-6-2320(A)(4).

The request must include at a minimum the following information:

1. Full name, address, and taxpayer identifying number of the taxpayer applying for the alternative apportionment method.
2. The taxpayer's tax year.
3. Whether the alternative apportionment method will be used by a single entity, all affiliated corporations in the case of a consolidated return, or all unitary entities in the case of a combined unitary report.
4. The tax year in which the taxpayer requests the first use of the alternative apportionment method.
5. Whether the alternative apportionment method will be used for all business activities or a portion of the business activities of the taxpayer.
6. The statutory apportionment method (or alternative apportionment method if one has previously been approved) currently used in South Carolina and the number of tax years it has been used. (If the taxpayer currently does not have business activity in South Carolina, provide the statutory method that would be required under South Carolina law once the taxpayer has business activity within this State.)
7. An explanation of why the statutory apportionment method does not fairly represent the taxpayer's business activity within South Carolina.
8. The apportionment method proposed by the taxpayer and why the alternative apportionment method will more fairly represent the taxpayer's business activity in the State.
9. Projected net income of the taxpayer attributable to South Carolina in the tax year the new allocation/apportionment method would commence and for three years thereafter. Please provide these projections using the current (or currently required) method of allocation/apportionment and the alternative method proposed by the taxpayer. These projections should be as complete as possible and should include income allocated, as well as the computations of each of the factors in question.
10. Evidence supporting the taxpayer's Application including any court decisions and copies of all documents or other information that support the taxpayer's claim that the statutory method does not fairly represent the taxpayer's business activity in South Carolina and that the use of the alternative apportionment method will more fairly represent that activity. Do not send original documents.

11. If more than one entity is involved, an organization chart showing all of the entities and their relationship.
12. Information about transactions between related parties, including types of transactions, frequency of transactions, amounts paid, and support for the reasonableness of the amounts paid.

The Application must also answer the following questions:

1. Is the taxpayer currently being audited?
2. In the past five years, has the taxpayer been audited by the Department and adjustments made to its apportionment method or to specific items that the taxpayer allocated or apportioned to South Carolina?
3. During the past five years has the taxpayer applied to the Department to use an alternative apportionment method? What was the result?
4. Has the taxpayer made requests to any other states to use an alternative apportionment method? What was the result?

REVIEW OF THE APPLICATION

1. The Department will acknowledge receipt of the Application within 10 days of receipt and identify the Department contact for the Application.
2. The Department will review all information presented by the taxpayer and may request additional information if the Department believes such information will assist it making its decision whether the alternative apportionment method more fairly represents the taxpayer's business activity in the State than the statutory method.
3. The Department or the taxpayer may request a conference (by telephone or in person) to discuss the Application at any time during the process. The conference will be held within 30 days of the request of either party, unless circumstances require an extension of this time period.
4. A power of attorney is required if the taxpayer is represented by a third party (Form 2848).

APPROVAL AND USE OF AN ALTERNATIVE APPORTIONMENT METHOD

1. Until the taxpayer receives permission from the Department to use the alternative apportionment method, the taxpayer must continue to use the statutory method or the previously approved alternative apportionment method.
2. The taxpayer and the Department may agree on an alternative apportionment method other than that originally requested by the taxpayer.
3. If the Department approves the use of an alternative apportionment method, the taxpayer and the Department will enter into a written agreement relating to the use of the alternative method describing the method and when the use of the alternative method will begin.
4. If the taxpayer requested an alternative apportionment method prior to the extended due date of a return, but that method is approved after the due date of the return, the taxpayer must file its return using the statutory apportionment method or the previously approved alternative apportionment method. Once the alternative apportionment method is approved, unless the taxpayer and Department agree to begin the alternative method in a subsequent tax year, the taxpayer must amend the return for the year the application was originally filed using the approved alternative method.
5. Other than as provided in #4 above, the taxpayer cannot file amended returns using the approved alternative apportionment method for any tax period.
6. The taxpayer must attach a copy of the alternative apportionment agreement to the taxpayer's income tax return.
7. If the taxpayer is filing as part of a unitary group and acquires or disposes of any members, the taxpayer must notify the Department in writing so these members can be added or deleted from the agreement. The Department may request additional information about how these additions or deletions affect the use of the alternative apportionment method. This notification should be mailed to the same address as the original Application before the end of the tax year in which the change occurred.
8. If the business activities of the taxpayer change in South Carolina, the taxpayer must notify the Department in writing and provide the Department with information as to how these changes may affect the taxpayer's alternative apportionment method. This notification should be mailed to the same address as the original Application before the end of the tax year in which the change occurred.

TERMINATION OF ALTERNATIVE APPORTIONMENT AGREEMENT

1. The taxpayer and Department may agree to terminate the alternative apportionment agreement at any time and the taxpayer will begin using the statutory method based on the date agreed on by the parties.
2. If the Department no longer believes the alternative apportionment method fairly represents the taxpayer's business activity in the State or that the statutory method more fairly represents the taxpayer's business activity, the Department may revoke permission to use the alternative apportionment method. The alternative apportionment method will not be revoked by the Department with respect to transactions or activities that have already occurred, unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the Department reasonably relied in approving the alternative apportionment method.
3. If the Department has approved an alternative apportionment method, the taxpayer must receive permission from the Department to change to the statutory method or another alternative apportionment method. Requests should be should be mailed to the same address as the original Application.

APPEAL OF A DECISION

If the taxpayer disagrees with the decision of the Department, the taxpayer may appeal the denial or revocation of the Application. Any appeal will follow the procedures established in Code Section 12-60-450 and Chapter 60 of Title 12 for a proposed assessment.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III
Rick Reames III, Director

June 12, 2015
Columbia, South Carolina