

SC REVENUE PROCEDURE #96-3 (TAX)

- SUBJECT:** Economic Development and Applying for an Alternative Allocation/ Apportionment Method (Income Tax)
- SUPERSEDES:** All previous documents and any oral directives in conflict herewith
- REFERENCES:** S.C. Code Ann. Section 12-6-2320 (Supp. 1995)
- AUTHORITY:** S.C. Code Ann. Section 12-4-320 (Supp. 1995)
SC Revenue Procedure #94-1
- SCOPE:** A Revenue Procedure is a statement which provides information of a procedural nature. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Procedure or Revenue Ruling.

INTRODUCTION

When all the business of a taxpayer is conducted in South Carolina, the taxpayer's entire net income is taxable by South Carolina. However, as a general rule, a taxpayer who operates both within and without South Carolina determines South Carolina taxable income by allocating to a particular state certain items of income in accordance with Sections 12-6-2220 and 12-6-2230 of the South Carolina Code of Laws ("Code") and then apportioning its remaining net income using the formulas described in Sections 12-6-2250 through 12-6-2280 of the Code or Section 12-6-2290 of the Code.

If a taxpayer is engaged in the businesses of manufacturing, collecting, buying, assembling, or processing goods and materials within this State or selling or dealing in tangible personal property within this State, the taxpayer must apportion income using the formulas described in Sections 12-6-2250 through 12-6-2280 of the Code. This formula uses three factors consisting of a property ratio, a payroll ratio and a sales ratio. Each factor is expressed as a fraction, using as the numerator the amount of that factor attributable to South Carolina and using as the denominator the taxpayer's total amount of that factor. The three factors are then added together (with the sales factor being added

twice) and divided by four and the resulting fraction, expressed as a percentage, is multiplied by the taxpayer's income (after deducting the items of income allocated under Sections 12-6-2220 through 12-6-2230 of the Code). The result is the amount of income apportioned to South Carolina for taxation.

Under Section 12-6-2290 of the Code, if the principal profits or income of a taxpayer are derived from sources other than those described in Code Section 12-6-2250, the taxpayer is required to make returns and pay annually an income tax upon a proportion of its remaining net income computed on the basis of the ratio of gross receipts from within this State during the income year to the total gross receipts of such year within and without the State (after deducting the items of income allocated under Code Sections 12-6-2220 and 12-6-2230).

BACKGROUND

The General Assembly recently enacted legislation that allows a taxpayer to request use of an alternative method of allocating or apportioning income attributable to South Carolina ("New Method"), if the taxpayer is planning a new facility or the expansion of an existing facility within this State. In order to use the New Method, the taxpayer and the South Carolina Department of Revenue ("Department") must enter into an agreement sanctioning the use of the New Method.

This legislation amended former Code Section 12-7-1200 (Act. No. 25, H.B. 3534 (1995)), now Section 12-6-2320¹, to read in part:

(B) For the purposes of this chapter, the department may enter into an agreement with the taxpayer establishing the allocation and apportionment of the taxpayer's income for a period not to exceed five years, if the following conditions are met:

- (1) the taxpayer is planning a new facility in this State or the expansion of an existing facility;
- (2) the taxpayer asks the department to enter into a contract under this subsection reciting an allocation and apportionment method; and,

¹Code Section 12-6-2320 was also amended to allow a taxpayer to request an alternative method of allocating or apportioning income if the taxpayer believes that the statutory formula does not fairly represent the extent of the taxpayer's operations within the State of South Carolina. For information on how to apply for a new method of allocating or apportioning income under Section 12-6-2320(A), please see S.C. Rev. Proc. #95-4.

- (3) after reviewing the taxpayer's proposal and planned new facility or expansion, the Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs to the public. It is within the Advisory Coordinating Council for Economic Development's sole discretion to determine whether a new facility or expansion has a significant economic effect on the region for which it is planned.

Additional legislation (Act. No. 32, H.B. 3775 (1995)) also provides a special rule for taxpayers that operate "qualified recycling facilities," as that term is defined in Code Section 12-7-1275(A), now Section 12-6-3460(A). This new provision provides:

(C) Notwithstanding the provisions of this section, a taxpayer who is constructing or operating a qualified recycling facility as defined in Section 12-7-1275(A) [12-6-3460(A)] may petition the department for the use of separate accounting with respect to all or any part of the taxpayer's or taxpayer's subsidiaries' business activities or for the use of any other method to determine the taxpayer's or taxpayer's subsidiaries' taxable income. The department shall forward the petition with its comments concerning the economic impact of the suggested method to the Advisory Coordinating Council for Economic Development. The department may approve the petition upon certification of the Advisory Coordinating Council for Economic Development that the benefits to the public exceed the costs to the public.

The alternative methods of allocating or apportioning income under these new provisions include, but are not limited to: (a) separate accounting; (b) the exclusion of one or more factors from the apportionment formula; or, (c) the inclusion of one or more additional factors in the apportionment formula.

Any taxpayer who wishes to take advantage of the new provisions contained in Sections 12-6-2320(B) and (C) of the Code may request approval of a New Method from the Department and the Advisory Coordinating Council for Economic Development ("Council").

HOW TO PETITION FOR THE NEW METHOD

Requesting a New Method Under Section 12-6-2320(B)

If a taxpayer is seeking approval for the New Method pursuant to Section 12-6-2320(B) of the Code, the taxpayer must first submit an application to the Council requesting that the Council certify that taxpayer's proposed facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that the benefits to the public exceed the costs to the public. The Council may request in the application any

information that it deems relevant to determine if it should grant the certification required by Section 12-6-2320(B)(3). The information that the Council may request the taxpayer to provide includes, but is not limited to: (a) information about the new facility; (b) information about the taxpayer's current methods of allocating and apportioning income and the New Method requested; and, (c) projections of taxpayer's South Carolina taxable income using both taxpayer's current method of allocating and apportioning income and the New Method. It is within the Council's sole discretion to determine whether a new facility or expansion has a significant economic effect on the region for which it is planned.

The request for a New Method under Section 12-6-2320(B) of the Code must be filed separately from any tax return that may be required to be filed and the request must be filed with the Council prior to the close of the taxpayer's first taxable year in which the taxpayer wishes to use the New Method.

Requesting a New Method Under Section 12-6-2320(C)

If a taxpayer is seeking approval for the New Method pursuant to Section 12-6-2320(C) of the Code, the taxpayer must first submit an application for the use of the New Method to the department. The application that must be used is the same application that must be submitted to Council if a taxpayer is applying under Section 12-6-2320(B) of the Code. The application must also contain a statement authorizing the Department to release information to the Council. The application should be sent to the following address:

South Carolina Department of Revenue
Attn: Economic Development Projects Coordinator
Administrative Section
301 Gervais Street
Columbia, S.C. 29214

The Department will then forward the request to the Council along with its comments concerning the economic impact of the New Method. The Council will then examine the application and information submitted by the taxpayer and determine whether the benefits to the public of taxpayer's new facility or expansion and the adoption of the New Method exceed the costs to the public.

The request for a New Method under Section 12-6-2320(C) of the Code must be filed separately from any tax return that is required to be filed and the request must be filed with the Department prior to the close of the taxpayer's first taxable year in which the taxpayer wishes to use the New Method.

REVIEW OF THE REQUEST

If the Council certifies the taxpayer's new facility or expansion, it will forward to the Department a copy of taxpayer's application with the certification to the Department's Economic Development Projects Coordinator. The Department's Economic Development Projects Coordinator will review the application and, in conjunction with the Director of the Department, will determine whether the taxpayer may adopt the New Method.

If the taxpayer is permitted to adopt the New Method, the Department will enter into an agreement with the taxpayer setting forth the terms under which the taxpayer may use the New Method. Pursuant to the statute, the taxpayer will be allowed to use the New Method for a period of five years. If applicable, the New Method must also be used to determine the taxpayer's license fee. The agreement must be signed and executed before the New Method may be used by the taxpayer. If taxpayer's request for a new Method is not granted, the taxpayer has no further rights of appeal.

Once an agreement has been entered into the Economic Development Project Coordinator will forward a copy of it to the appropriate divisions of the Department.

FOR MORE INFORMATION

If you have any further questions, regarding the Request, please contact Meredith Cleland at (803)737-4402.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/ Burnet R. Maybank III

Burnet R. Maybank III, Director

Columbia, South Carolina
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