

SC REVENUE RULING #05-2

- SUBJECT:** Federal Income Tax Conformity and Exceptions
(Income and Property Taxes)
- EFFECTIVE DATE:** See Discussion
- SUPERSEDES:** All previous documents and any oral directives in conflict
herewith.
- REFERENCES:** Act No. 248 of 2004
S. C. Code Ann. Section 12-6-40 (Supp. 2003)
S. C. Code Ann. Section 12-6-50 (Supp 2003)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 2000)
SC Revenue Procedure #03-1
- SCOPE:** The purpose of a Temporary Revenue Ruling is to provide
immediate guidance to the public and to Department personnel. It
is a written statement issued to apply principles of tax law to a
specific set of facts or a general category of taxpayers. **A
Temporary Revenue Ruling is an advisory opinion; it does not
have the force or effect of law and is not binding on the public.**
It is, however, temporary, and is binding on agency personnel only
until superseded or modified by a change in statute, regulation,
court decision, or advisory opinion.

Income Tax Conformity and Exceptions

South Carolina's income tax laws conform substantially to the federal income tax laws. South Carolina Code Section 12-6-50 lists the Internal Revenue Code provisions which do not apply. Each year, South Carolina's income tax laws have been amended to conform to the Internal Revenue Code of 1986 as amended through the immediately preceding December 31st, with the exceptions of Internal Revenue Code Section provisions listed in Code Section 12-6-50 that are specifically not adopted by South Carolina. The effective date provisions contained in the Internal Revenue Code are also generally adopted. Therefore, except as otherwise provided, when the annual South Carolina conformity amendment becomes effective, Internal Revenue Code provisions that went into effect during the preceding year are retroactively adopted and considered to have the same effective date as they had for federal income tax purposes.

This conformity is generally provided for in Code Section 12-6-40, however, in the 2004 legislative session, the annual conformity was provided for in a temporary proviso in the Act containing the State's budget. This temporary proviso is effective for the State fiscal year July 1, 2004 through June 30, 2005, and will expire June 30, 2005, unless reenacted by the General Assembly in this current legislative session. South Carolina's annual conformity amendment generally results in temporary differences between the federal and South Carolina law.

The purpose of this advisory opinion is to explain the conformity issues and exceptions with regard to: (1) Internal Revenue Code Section 179 expensing, (2) Internal Revenue Code Section 168(k) bonus depreciation, (3) the standard deduction marriage penalty relief provided in Internal Revenue Code Section 63, (4) charitable contributions for tsunami relief, (5) the Working Families Tax Relief Act of 2004, and (6) the American Jobs Creation Act of 2004.

LAW

Act No. 248 of 2004, Part IB, Section 73, Proviso 73.19, a temporary proviso in the State's budget, provides for income tax conformity and states:

Except as otherwise provided, where reference is made to Section 12-6-40(A) of the 1976 Code for purposes of Title 12, **for any tax year that ends in 2004** or for estate tax purposes any decedents dying in 2004, 'Internal Revenue Code' means the Internal Revenue Code of 1986, as amended through December 31, 2003, and includes the effective date provision contained in it.

For purposes of Sections 63 and 179 of the Internal Revenue Code, the amendments made by Sections 103 and 202 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, P.L. 108-27 (May 28, 2003) **are only effective for the taxable year beginning January 1, 2004** (emphasis added.)

This temporary proviso will expire on June 30, 2005, unless reenacted by the General Assembly in the current legislative session.

DISCUSSION

Based on the above, South Carolina's federal income tax conformity provisions and exceptions are as follows, subject to the exceptions also listed in Code Section 12-6-50:

1. **2004 Calendar Year Taxpayers.** South Carolina's income tax laws have been amended to conform to the Internal Revenue Code of 1986, as amended through December 31, 2003, for calendar year 2004 (*i.e.*, taxpayers with a tax year of January 1, 2004 – December 31, 2004.)

2. **Fiscal Year Ending in 2004 Taxpayers.** South Carolina's income tax laws have been amended to conform to the Internal Revenue Code of 1986, as amended through December 31, 2003, for fiscal years ending in 2004, except Internal Revenue Code Section 179, "Election to Expense Certain Depreciable Business Assets," and Section 63, "Taxable Income Defined," (see Standard Deduction Marriage Penalty Relief discussion) where they conform to the Internal Revenue Code of 1986, as amended through December 31, 2002. (See discussion below.) (This information is reported on a 2003 South Carolina income tax return.)
3. **Fiscal Year Ending in 2005 Taxpayers.** South Carolina income tax laws have been amended to conform to the Internal Revenue Code of 1986, as amended through December 31, 2002, for fiscal years ending in 2005. (This information is reported on a 2004 South Carolina income tax return.)

Caveat: These conformity conclusions are based on the law as of the date of this advisory opinion. A bill containing a permanent and codified version of income tax conformity is expected to be introduced in this current legislative session and could result in South Carolina's income tax laws conforming to the Internal Revenue Code of 1986, as amended through December 31, 2004, for all calendar year and fiscal year taxpayers. The status of current legislation may be tracked at <http://www.scstatehouse.net/html-pages/legpage.html>.

This advisory opinion explains South Carolina's current conformity with regard to the following federal income tax laws:

1. Section 179 Expense

Federal Overview

The Internal Revenue Code Section 179 deduction allows an eligible taxpayer to expense the cost of qualifying property instead of depreciating the property. In general, under the Jobs and Growth Tax Relief Reconciliation Act of 2003, P.L. 108-27 (May 28, 2003), the maximum amount of Section 179 expense deduction increased from \$24,000 for tax years beginning in 2002 to \$100,000 for property placed in service in tax years beginning in 2003, 2004, and 2005 (the amounts are indexed for inflation.) For tax years that begin in 2004, the maximum Section 179 deduction amount, indexed for inflation, is \$102,000. If the investment in qualifying property exceeds \$400,000 for property placed in service in tax years beginning in 2003 and \$410,000 for tax years that begin in 2004 (\$200,000 previously), then the maximum deduction amount is decreased dollar for dollar. In addition, off the shelf computer software placed in service in tax years beginning in 2003, 2004, or 2005 may be expensed, instead of being amortized over 3 years. The maximum amount will revert to \$25,000 per year and the threshold amount reverts back to \$200,000 in 2006 if new legislation is not enacted. (See Internal Revenue Code Section 179 for complete details.)

South Carolina Implications

South Carolina did not adopt the above Internal Revenue Code Section 179 provisions in 2003.

Based on the above temporary proviso, South Carolina has adopted these new provisions only for taxable years beginning January 1, 2004. Accordingly, the Section 179 expense deduction amounts set forth in the Jobs and Growth Tax Relief Reconciliation Act of 2003, P.L. 108-27 (May 28, 2003) applies only to calendar year 2004 taxpayers (*i.e.*, taxpayers with a tax year of January 1, 2004 – December 31, 2004.)

The Section 179 expense deduction amounts set forth in the Jobs and Growth Tax Relief Reconciliation Act of 2003, P.L. 108-27 (May 28, 2003) do not apply to the following taxpayers:

1. Fiscal year taxpayers whose tax year ends in 2004 (*e.g.*, a June 1, 2003 to May 31, 2004 fiscal year taxpayer filing a 2003 tax return). These taxpayers must apply the Section 179 rules in the Internal Revenue Code of 1986, as amended through December 31, 2002. A South Carolina modification is required on the South Carolina income tax return.
2. Fiscal year taxpayers whose tax year ends in 2005 (*e.g.*, a June 1, 2004 to May 31, 2005 fiscal year taxpayer filing a 2004 tax return). These taxpayers must apply the Section 179 rules in the Internal Revenue Code of 1986, as amended through December 31, 2002. A South Carolina modification is required on the South Carolina income tax return.

2. Bonus Depreciation – Section 168(k)

Federal Overview

Internal Revenue Code Section 168(k) provides for a 30% additional first year depreciation allowance for qualifying property as provided in the Job Creation and Worker Assistance Act of 2002, and a 50% additional first year depreciation allowance for qualifying property as provided in the Jobs and Growth Tax Relief Reconciliation Act of 2003.

South Carolina Implications

In 2003, Code Section 12-6-50(4) was amended to specifically not adopt Internal Revenue Code Section 168(k). Accordingly, South Carolina does not allow the use of bonus depreciation for income tax or property tax purposes for any year. A South Carolina modification is required to the South Carolina return.

A taxpayer claiming bonus depreciation for federal purposes must maintain a separate depreciation schedule for South Carolina and adjust the basis of the asset. Upon disposition, any gain or loss must be calculated to reflect the difference in federal and South Carolina basis.

Reminder: When computing the assets depreciated value for South Carolina property tax purposes, bonus depreciation is not claimed; the taxpayer must use the South Carolina income tax depreciation amount for South Carolina property tax purposes.

3. Standard Deduction Marriage Penalty Relief – Section 63

Federal Overview

The basic standard deduction of a married taxpayer filing jointly is increased to twice the basic standard deduction amount for a single filer for tax years beginning in 2003 and 2004. The applicable percentage changes in 2005 – 2008. For 2003, the additional standard deduction was \$1,550. This has no effect on married taxpayers who itemize on their federal return.

South Carolina Implications

For 2003, South Carolina did not adopt this provision and a South Carolina addback was required.

For calendar year 2004, South Carolina has adopted the amendments made to Internal Revenue Code Section 63, in the Jobs and Growth Tax Relief Reconciliation Act of 2003, P.L. 108-27 (May 28, 2003). Accordingly, a South Carolina addback is not required on the 2004 calendar year South Carolina individual income tax return.

4. January 2005 Charitable Contributions for Tsunami Relief

Federal Overview

On January 7, 2005, President Bush signed Public Law 109-1. This law allows taxpayers to claim a charitable contribution deduction on their 2004 federal income tax return for cash contributions made in January 2005 for the relief of victims in areas affected by the December 26, 2004 Indian Ocean tsunami. See Internal Revenue Code Section 170 for charitable contribution deduction requirements.

South Carolina Implications

Since South Carolina has only adopted the Internal Revenue Code through December 31, 2003, the provisions of Public Law 109-1 have not been adopted by South Carolina at this time. Accordingly, South Carolina does not allow a January 2005 tsunami contribution to be deducted as though it was made in 2004. A South Carolina addback is required for the accelerated federal deduction.

5. Other Federal Laws Enacted in 2004

Federal Overview and South Carolina Implications

At this time, South Carolina has not adopted the Working Families Tax Relief Act of 2004, P.L. 108-311 (October 4, 2004) or the American Jobs Creation Act of 2004, P.L. 108-357 (October 22, 2004).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank III, Director

March 16, 2005
Columbia, South Carolina