301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #92-13

SUBJECT: Foreign Dividend Income

TAX ANALYST: Deana West

EFFECTIVE DATE: All periods open under statute.

REFERENCE: S.C. Code Ann. Section 12-7-415 (Supp. 1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

How are foreign dividends taxed in South Carolina?

Discussion:

Code Section 12-7-415 provides that the "South Carolina gross income and taxable income of a corporation...is the corporation's gross and taxable income as determined under the Internal Revenue Code with the modifications specified in [Code Section] 12-7-430".

In conforming to the Internal Revenue Code, South Carolina adopted I.R.C. Section 243, excluding certain domestic dividends from taxable income. In general, this section allows a corporation a 70% to 100% deduction for dividends received from a domestic corporation depending upon its percentage of stock ownership. South Carolina did not specifically adopt the federal dividend gross-up provision in I.R.C. Section 78 or the foreign tax credit provisions of I.R.C. Sections 901 - 908.

Guidance concerning the taxation of foreign income and dividends can be found in Code Sections 12-7-430(g) and 12-7-1120(2). Code Section 12-7-430(g) provides that "South Carolina gross income does not include gross income excluded from federal income tax by reason of any treaty of the United States. Code Section 12-7-1120(2) provides that "dividends received from corporate stocks owned, less all related expenses, shall be allocated to the state in which the principal place of business of a corporation is located...".

This year the United State Supreme Court issued an opinion concerning a corporate taxpayer's challenge to Iowa's system of taxing dividends received from a foreign subsidiary, but not taxing dividends from a domestic subsidiary. The Iowa statute that was challenged is very similar to South Carolina's statute. In June, 1992, the Court ruled in Kraft General Foods, Inc. v. Iowa Department of Revenue and Finance (Docket No. 90-1918) that Iowa's statute of taxing dividends received from foreign subsidiaries while exempting dividends from domestic subsidiaries was in violation of the Foreign Commerce Clause.

Conclusion:

In order to administer South Carolina's corporate income tax in a constitutional manner, South Carolina will tax foreign dividends in the same manner as domestic dividends. Currently, for South Carolina purposes the federal taxable income of a corporation may be reduced for foreign dividends that are included in federal taxable income as follows:

1. 70% for dividends received from less than a 20% owned foreign corporation;

2. 80% for dividends received from a 20% or more owned foreign corporation; and

3. 100% for dividends received from a foreign corporation that meets the 80% voting and value test of I.R.C. Section 1504(a)(2) and would otherwise qualify for a 100% deduction under I.R.C. 243(a)(3) if the foreign corporation were a domestic corporation.

SOUTH CAROLINA TAX COMMISSION

s/A. Crawford Clarkson Jr.
A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell
T. R. McConnell, Commissioner

s/James M. Waddell, Jr.
James M. Waddell, Jr., Commissioner

Columbia, South Carolina
December 3, 1992