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

SC REVENUE RULING #95-15 (TAX)

SUBJECT: Retirement Income Deduction
(Income Tax)

EFFECTIVE DATE: For taxable years beginning after 1992.

REFERENCE: S.C. Code Ann. Section 12-7-435 (Supp. 1994)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1994)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance to all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

May a person who has filed an income tax return electing one of the retirement income deductions available under Code Section 12-7-435¹ file an amended return to change the election?

Conclusion:

Election May Not Be Changed

A person may not change his retirement income deduction election if:

1. the person filed an income tax return electing under Code Section 12-7-435 to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of sixty-five years, at which time the taxpayer would deduct his retirement income in an amount not to exceed ten thousand dollars annually.

¹The General Assembly, during the 1995 Session, recodified the State Income Tax and enacted a Revenue Procedure Bill. The recodified version has simplified the law by updating language and reorganizing and combining code sections in a logical manner. This law is effective for taxable years beginning after 1995. As such, the provisions of Code Section 12-7-435 can be found in Code Section 12-6-1170 for taxable years beginning after 1995. The Department will apply the timetable for amending an election to the 1993 and 1994 tax returns as well as those returns filed after the effective date of the Revenue Procedure Bill - August 1, 1995.

2. the person failed to make an election **and** the person has attained the age of sixty-five years. This person is deemed to have made the election to claim the deduction in an amount not to exceed ten thousand dollars.
3. the person filed an income tax return electing under Code Section 12-7-435 to deduct his retirement income in an amount not to exceed three thousand dollars annually **and** an amended return changing the election is not filed within three years of the date the first return in which the election was made was filed or due to be filed, whichever occurs later.

Election May Be Changed

A person may change his retirement income deduction if:

1. the person filed an income tax return electing under Code Section 12-7-435 to deduct his retirement income in an amount not to exceed three thousand dollars annually **and** an amended return changing the election is filed within three years of the date the first return in which the election was made was filed or due to be filed, whichever occurs later. If an amended return changing the election is filed within three years of the date the first return in which the election was made was filed or due to be filed (whichever occurs later), amended returns for any other year in which the deduction was taken must also be filed at the same time; otherwise, the change of election will not be allowed.
2. the person failed to make an election **and** the person has not yet attained the age of sixty-five years. For the 1993 and 1994 state income tax returns, the election would be made on Lines 2a and 2b of the return.

Note: It is the longstanding policy of the Department of Revenue that an election, whether or not irrevocable, may be changed without penalty if the return in which the election is made is filed prior to the due date of the return (without regards to extensions) and the amended return filed in order to change the election is filed on or prior to the same due date. This same policy will apply to elections made with respect to the retirement income deduction under Code Section 12-7-435.

In addition, please see Code Section 12-7-435(8) for the dates when the age requirements of this deduction will change.

Facts:

Recently, taxpayers have asked whether or not they may amend their 1993 tax returns to change the election they made with respect to the deduction for retirement income. Essentially, we have received inquiries concerning the following:

1. The taxpayer originally elected to deduct his retirement income in an amount not to exceed three thousand dollars annually. The taxpayer now wishes to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of

sixty-five years, at which time the taxpayer would deduct his retirement income in an amount not to exceed ten thousand dollars annually.

2. The taxpayer originally elected to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of sixty-five years, at which time the taxpayer would deduct his retirement income in an amount not to exceed ten thousand dollars annually. The taxpayer now wishes to deduct his retirement income in an amount not to exceed three thousand dollars annually.
3. The taxpayer failed to take action on the return with respect to the retirement income deduction. In other words, the taxpayer left Lines 2a and 2b of the tax return blank. The taxpayer wishes to amend his return to make an election.

These taxpayers want to amend their returns because they were not aware of the election, they were not advised about the election by their preparers, or they have reconsidered their election and would like to change it.

Discussion:

Effective for taxable years beginning after 1992, Code Section 12-7-435 allows a taxpayer a deduction from South Carolina taxable income, and reads in part:

- (1) Beginning with the taxable year in which a taxpayer first receives retirement income, the taxpayer may:
 - (A) deduct his retirement income in an amount not to exceed three thousand dollars annually; or
 - (B) elect irrevocably to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of sixty-five years, at which time the taxpayer may deduct his retirement income in an amount not to exceed ten thousand dollars annually.
- (2) A taxpayer who does not claim a retirement income deduction before the taxable year in which he attains the age of sixty-five years is considered to have made the election allowed pursuant to subitem (1)(B) of this item.
- (3) A taxpayer who has attained the age of sixty-five years before 1994 is considered to have made the election allowed pursuant to subitem (1)(B) of this item.
- (4) A taxpayer who in 1993 has not yet attained the age of sixty-five years and who receives retirement income in 1993 may:

- (A) deduct his retirement income in an amount not to exceed three thousand dollars annually; or
 - (B) elect irrevocably to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of sixty-five years, at which time the taxpayer may deduct his retirement income in an amount not to exceed ten thousand dollars annually.
- (5) The deduction allowed by this item extends to the taxpayer's surviving spouse and, to the extent the surviving spouse receives retirement income attributable to the deceased spouse, applies in the same manner that the deduction applied to the deceased spouse. If the surviving spouse also has another retirement income, an additional retirement exclusion is allowed.
- (6) For purposes of this item, "retirement income" means the total of all otherwise taxable income not subject to a penalty for premature distribution received by the taxpayer or the taxpayer's surviving spouse in a taxable year from qualified retirement plans which include those plans defined in Internal Revenue Code Sections 401, 403, 408, and 457, and all public employee retirement plans of federal, state, and local governments, including military retirement for persons with twenty or more years active military duty.

* * * *

- (8) (A) For a taxpayer born in the years 1943 through 1959, where subitems (1), (2), and (4) of this item refer to age sixty-five, the applicable age is sixty-six.
- (B) For a taxpayer born after 1959, where subitems (1), (2), and (4) of this item refer to age sixty-five, the applicable age is sixty-seven.

Based on the clear language of the statute, the election to deduct retirement income in an amount not to exceed three thousand dollars annually is revocable. We must now determine if other provisions of the law place limitations on the taxpayer's ability to change this election.

Code Section 12-54-85 establishes a three year statute of limitations for assessing taxes due and establishes a three year statute of limitations for taxpayers seeking refunds or credits. See Senate Bill 285 of 1995.

"In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction." Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992). Smalls v. Weed, 293 S.C. 364, 293 S.E.2d 531 (1987).

Therefore, in considering the statute as a whole, if a taxpayer originally elected to deduct his retirement income in an amount not to exceed three thousand dollars annually, and it has been three years since the date the return in which the election was made was filed or due to be filed (whichever occurs later), then the taxpayer may not amend his return to change the election. It should be noted that this conclusion is consistent with the manner in which all other amended returns are treated.

Otherwise, any person taking advantage of the \$3,000 deduction for a period of more than three years could change his election and not be required to remit the tax due on the \$3,000 deduction taken on returns that are beyond the statute of limitation. As such, a person who retires well before the age of sixty-five could take advantage of both deductions for most of the years in question. "In seeking the intention of the legislature, we must presume that it intended by its action to accomplish something and not to do a futile thing." McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

Further review of the language of the statute establishes that only the election to defer claiming a retirement income deduction not to exceed ten thousand dollars until the taxable year in which the taxpayer attains the age of sixty-five years is irrevocable.²

In addition, since the statute states that "the taxpayer may" elect one of the two deduction options, the election is not mandatory. As such, the taxpayer who failed to take action on the return with respect to the retirement income deduction has not made an election and may file an amended return to make the election.

For example, if a person does not place a number on the appropriate line of the return (Lines 2a and 2b for the 1993 and 1994 returns) or does not otherwise inform the Department that an election is being made, an election has not been made. However, if for example a person places a number or writes "Defer" on the appropriate line of the return (Lines 2a and 2b for the 1993 and 1994 returns) or otherwise informs the Department that election is being made, an election has been made.

If the number placed on the appropriate line of the return (Lines 2a and 2b for the 1993 and 1994 returns) is zero, then it is presumed that the person has elected to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of sixty-five years, at which time the taxpayer would deduct his retirement income in an amount not to exceed ten thousand dollars annually.

²It should be noted that under Code Section 12-7-435(2) "[a] taxpayer who does not claim a retirement income deduction before the taxable year in which he attains the age of sixty-five years is considered to have made the election" to claim the deduction in an amount not to exceed ten thousand dollars.

SC Revenue Ruling #95-15

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

Columbia, South Carolina
October 19, 1995

For questions concerning the retirement income deduction election and amended returns, please contact C.C. Burgess at (803) 737-4856, Faye Harmon at (803) 737-4495, or John P. McCormack at (803) 737-4438.