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

SC REVENUE RULING #98-20

SUBJECT:	Kerosene (Tax on Motor Fuel)
EFFECTIVE DATE:	Applies to all periods open under the statute.
SUPERSEDES:	All previous documents and any oral directives in conflict herewith.
REFERENCES:	S. C. Code Ann. Section 12-28-110 (Supp. 1997) S. C. Code Ann. Section 12-28-310 (Supp. 1997) S. C. Code Ann. Section 12-28-320 (Supp. 1997) S. C. Code Ann. Section 12-28-330 (Supp. 1997) S. C. Code Ann. Section 12-28-970 (Supp. 1997) S. C. Code Ann. Section 12-28-990 (Supp. 1997) S. C. Code Ann. Section 12-28-1390 (Supp. 1997)
AUTHORITY:	S. C. Code Ann. Section 12-4-320 (Supp. 1997) SC Revenue Procedure #97-8
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 for 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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.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:

Is kerosene subject to the tax on motor fuels under Chapter 28 of Title 12 of the South Carolina Code of Laws?

Conclusion:

Kerosene is subject to the motor fuel tax under the provisions of Code Section 12-28-970 upon its delivery in this State into the fuel supply tank of a highway vehicle and under the provisions of Code Sections 12-28-310 and 12-28-990 when it is blended with undyed diesel fuel or gasoline.

Discussion:

The question has arisen as to how kerosene is taxed under Chapter 28 of Title 12 of the South Carolina Code of Laws. In order to determine the method by which kerosene is taxed, we must first review the various imposition sections[1] and definitional sections under the law.

Code Section 12-28-310 imposes a tax upon gasoline and diesel fuel and reads:

> Subject to the exemptions provided in this chapter, a tax of sixteen cents a gallon is imposed on all gasoline used or consumed in this State and upon all diesel fuel used or consumed in this State in producing or generating power for propelling motor vehicles. The tax levied on taxable motor fuel pursuant to this chapter is a levy and assessment on the consumer, and the levy and assessment on other persons as specified in this chapter are as agents of the State for the collection of the tax. This section does not affect the method of collecting the tax as provided in this chapter. The tax imposed by this section must be collected and paid at those times, in the manner, and by those persons specified in this chapter. The license tax imposed by this section shall be in lieu of all sales, use, or other excise tax which may otherwise be imposed by any municipality, county, or other local political subdivision of the State.

Code Section 12-28-320 establishes a presumption concerning the delivery of taxable motor fuel into a motor vehicle fuel supply tank and states:

> Except as otherwise provided under Article 7 of this chapter, the department shall consider it a presumption that all taxable motor fuel delivered in this State into a motor vehicle fuel supply tank is to be used or consumed on the highways in this State producing or generating power for propelling motor vehicles.

Code Section 12-28-330 establishes a rebuttable presumption concerning taxable motor fuel and states:

> The department shall consider it a rebuttable presumption, subject to proof of exemption under Article 7 of this chapter, that all taxable motor fuel removed from a terminal in this State, or imported into this State other than by a bulk transfer within the bulk transfer terminal system or delivered into an end user's storage tank, is to be used or consumed on the highways in South Carolina in producing or generating power for propelling motor vehicles.

[1] For purposes of this ruling, there is no need to include a discussion of the floorstocks tax imposed under Code Section 12-28-530(A).

Code Section 12-28-970, which authorizes a "backup tax," states:

(A) A backup tax equal to the tax imposed by Section 12-28-310 is imposed and must be administered in accordance with regulations promulgated by the department on the use on the highways of taxable motor fuel by an end user, including operators of state and local government vehicles, American Red Cross vehicles, and buses, and other persons exempted from the full federal highway tax, unless the person is exempted otherwise under Section 12-28-710(A)(12), upon the delivery in this State into the fuel supply tank of a highway vehicle of:

(1) diesel fuel that contains a dye;

(2) taxable motor fuel on which a claim for refund has been made;

(3) alternative fuels; or

(4) liquid on which tax previously has not been imposed by this chapter.

(B) The ultimate vendor of taxable motor fuel is jointly and severally liable for the backup tax imposed by subsection (A) if the ultimate vendor knows or has reason to know that the motor fuel, as to which tax imposed by this chapter has not been paid, is or will be consumed in a nonexempt use.

Code Section 12-28-990, which concerns persons blending untaxed materials, including blendstocks, additives, and fuel grade ethanol, with taxable motor fuels, states:

(A) Each person blending untaxed materials, including blendstocks, additives, and fuel grade ethanol with taxable motor fuels as to which tax has been paid or accrued shall remit the tax imposed by this chapter.

(B) A fuel vendor subject to tax under subsection (A) shall remit tax with the report required under Section 12-28-1390(B).

(C) Any person other than a fuel vendor liable for the tax payable under subsection (A) shall remit the tax directly to the department within thirty days of the blending event in accordance with regulations promulgated by the department.

Code Section 12-28-1390, which concerns a fuel vendor's reports and the reporting of blending, states:

(A) A fuel vendor shall file an annual report of total gallons of gasoline sold at retail through a retail outlet accessible to the general public by that vendor by county before February twenty-eighth annually for the preceding calendar year.

(B) A fuel vendor shall make and file quarterly reports on the last day of the month following the close of each calendar quarter of sales of K-1 kerosene, or other untaxed blendstocks, other than dyed diesel fuel, in accordance with regulations promulgated by the department. The department may waive this report requirement if it becomes unnecessary to the administration of this chapter. Persons who are required to identify separately and schedule sales and transfers of undyed K-1 kerosene in reports otherwise required by this article are exempt from this requirement.

(C) A fuel vendor making sales of K-1 kerosene or other untaxed blendstocks for blending with taxable diesel fuel or gasoline or which sells untaxed K-1 kerosene or other untaxed motor fuel or blendstocks for use as taxable motor fuel shall remit monthly a report on or before the last day of the following month and remit with the report any tax payable pursuant to this section or Section 12-28-990.

(D) A fuel vendor shall retain for three years all purchase invoices for taxable motor fuel which clearly must designate the amount of tax paid to this State as a separate line item. This line item also must be described generally as a "South Carolina Motor Fuel Tax". In the absence of invoices with the disclosures, the fuel vendor is jointly liable for the state tax imposed by this chapter and the department has authority to proceed against the fuel vendor to collect the tax. (Emphasis added.)

In understanding the above imposition section we must review the following definitions found in Code Section 12-28-110:

* * * *

(15) "Diesel fuel" means a liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a diesel-powered highway vehicle. "Diesel fuel" does not include jet fuel if the buyer is registered to purchase jet fuel subject to federal taxes applicable to jet fuel and the seller obtains certification of that fact satisfactory to the Internal Revenue Service before making the sale.

* * * *

(28) "Gasoline" means all products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel. It does not include a product sold as a product other than gasoline and has an American Society for Testing Materials octane number of less than seventy-five as determined by the "motor method" and does not include aviation gasoline if the buyer is registered to

purchase aviation gasoline free of tax and the seller obtains certification of that fact satisfactory to the Department before making the sale.

* * * *

(37) "K-1 kerosene" means burner fuel designed for unvented space heaters which meets American Society for Testing Materials standard D-3699, in effect January 1, 1995, and successor rules, as the specification for #1-K kerosene.

(38) "Liquid" means a substance that is liquid in excess of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds a square inch absolute.

(39) "Motor fuel" means gasoline, diesel fuel, and blended fuel.

* * * *

(55) "Taxable motor fuel" means gasoline, diesel fuel, kerosene, and blends of them and any other substance blended with them.

"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).

Based on the above, kerosene is subject to the tax on motor fuel under the backup tax provisions of Code Section 12-28-970 since:

1. the imposition provisions of Code Section 12-28-310 only apply to gasoline and diesel fuel as those terms are defined in Code Section 12-28-110;

2. the presumptive provisions of Code Section 12-28-330, while applying to taxable motor fuel, do not apply to kerosene since these provisions can only apply to a taxable motor fuel for which a tax is imposed upon its removal from the terminal, its importation into the State, or its delivery into an end user's storage tank;

3. the backup tax provisions apply to a liquid on which tax previously has not been imposed by motor fuel tax law;

4. the provisions of Code Sections 12-28-990 and 12-28-1390 indicate that kerosene is not taxed until such time it is blended with taxable diesel fuel or gasoline or sold for use as taxable motor fuel; and,

5. kerosene falls within the definition of a "liquid" as set forth in Code Section 12-28-110(38).

In addition, a mixture of kerosene and diesel fuel falls within the definition of diesel fuel found in Code Section 12-28-110(15) and must be taxed in the same manner as "pure" undyed diesel fuel. As such, kerosene mixed with undyed diesel fuel or gasoline is subject to the tax at the time it is blended with the undyed diesel fuel or gasoline.

Therefore, kerosene is subject to the motor fuel tax upon its delivery in this State into the fuel supply tank of a highway vehicle and when it is blended with undyed diesel fuel or gasoline. Finally, it should be noted that this has been the position of the department since the enactment of the new motor fuel law by the General Assembly in 1996.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

Columbia, South Carolina
September 22, 1998