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SC TECHNICAL ADVICE MEMORANDUM #87-15

TO: Mr. Marvin Davant, Director
Field Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: November 4, 1987

SUBJECT: Penalties for Failure to Withhold or Remit Tax
Imposed by 12-9-820 and 12-54-40

REFERENCE: S.C. Code Section 12-9-820 & 12-54-40

AUTHORITY: S.C. Code Section 12-3-170
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

May the penalty for failure to withhold or remit tax imposed by Section 12-9-820 be applied to tax periods subsequent to September 1, 1985.

Facts:

The district offices and Office Services have applied the penalty pursuant to Section 12-9-820 for returns due prior to September 1, 1985. The penalties provided by 12-54-40 have been applied for returns due subsequent to August 31, 1985.

Discussion:

Prior to September 1, 1985, penalty provisions for tax matters were located in numerous chapters of Title 12. On September 1, 1985, the legislature enacted Chapter 54 entitled "Uniform method of Collection and enforcement of taxes levied and assessed by the South Carolina Tax Commission." This act applies to every tax or revenue law of the State unless otherwise provided.

South Carolina Code of Laws, Section 12-54-190 reads:

"Unless otherwise specified, the provisions of this chapter take precedence over all other related statutory provisions."

Unless the legislation intent is contrary, all laws are presumed to be consistent with each other.

"Where it is possible to do so, it is the duty of the courts, in the construction of statutes to harmonize and reconcile laws, and to adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions:

73 Am Jur 2d Section 254

To reconcile the plain wording of these statutes with the legislative intent, Section 12-9-820 should be applied to returns due prior to September 1, 1985. This is consistent with the Tax Commission's treatment of the statutes to date.

Conclusion:

Section 12-54-40 penalties should be applied to withholding returns due subsequent to August 31, 1985 rather than Section 12-9-820 penalties.