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SC TECHNICAL ADVICE MEMORANDUM #90-10

TO: Mr. William F. Bray, Director
Office Services Division

FROM: John P. McCormack, Manager
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DATE: April 18, 1990

SUBJECT: Investment Income of Children Under Age 14
(Income Tax)

REFERENCE: S. C. Code Ann. Section 12-7-210 (Supp. 1989)
S. C. Code Ann. Section 12-7-430 (Supp. 1989)
S. C. Code Ann. Section 12-7-435 (Supp. 1989)
S. C. Code Ann. Section 12-7-455 (Supp. 1989)

AUTHORITY: S. C. Code Ann. Section 12-3-170 (1976)
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 parents, who have elected to include their child's unearned income in their federal gross income pursuant to Internal Revenue Code Section 1(i)(7), modify their South Carolina taxable income to exclude the child's income?

Facts:

For tax years beginning in 1989, there are two possible federal filing alternatives for children under age 14 with investment income:

1. The child will file a U. S. Individual Income Tax Return.
2. Parents elect to report certain unearned income of the child in their gross income for the taxable year. The child will not file a U. S. Individual Income Tax Return. Internal Revenue Code Section 1(i)(7) provides for the election to claim certain unearned income of a child on the parents' return only in the following circumstances, and reads, in part:

(A) In general. -If-

(i) any child...has gross income for the taxable year only from interest and dividends,

(ii) such gross income is more than \$500 and less than \$5000,

(iii) no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

(iv) the parent of such child...elects the application of subparagraph (B)

such child shall be treated...as having no gross income for such year and shall not be required to file a return under section 6012.

(B) INCOME INCLUDED ON PARENT'S RETURN.--In the case of a parent making the election under this paragraph--

(i) the gross income of each child to whom such election applies...shall be included in such parent's gross income for the taxable year,...

Discussion:

Code Section 12-7-210 imposes an income tax, and reads, in part:

(A) For taxable years beginning before 1990, a tax is imposed on the South Carolina taxable income of individuals...

* * * *

(B) For taxable years beginning in 1990, a tax is imposed on the South Carolina taxable income of individuals...

* * * *

(C) For taxable years beginning after 1990, a tax is imposed on the South Carolina taxable income of individuals... (emphasis added)

Code Section 12-7-430 defines "taxable income", and reads:

The South Carolina gross income, adjusted gross income, and taxable income of an individual is the individual's gross income, adjusted gross income, and taxable income as determined under the Internal Revenue Code with the modifications specified in Sections 12-7-430 and 12-7-435.

A review of Code Sections 12-7-430 and 12-7-435 reveals that no provisions were made for modification of a parent's South Carolina income for a child's unearned income elected to be taxed as the parents.

Furthermore, Code Section 12-7-455(1) provides:

Any election for federal income tax purposes automatically applies for South Carolina income tax purposes and a taxpayer may not elect differently for South Carolina income tax purposes.

In summary, an individual's South Carolina income tax is based on federal taxable income, with certain specific modifications. Also, any election for federal income tax purposes applies for South Carolina income tax purposes.

Conclusion:

Parents, who elect to include their child's unearned income in their federal gross income pursuant to Internal Revenue Code Section 1(i)(7), may not modify their South Carolina taxable income to exclude the child's income.

However, any modifications provided under Code Section 12-7-430, such as interest from U. S. obligations, will be allowed.