



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

SC INFORMATION LETTER #90-34

TO: Vicki Jinnette Ringer
Public Information Director

FROM: Sally Major, Tax Analyst
Tax Policy and Appeals Department

DATE: September 12, 1990

SUBJECT: Interstate Railroad and Motor Carrier Employees
(Income Tax)

REFERENCE: 49 U.S. Code Ann. Section 11504
(As Amended July 6, 1990, by Public Law 101-322)

AUTHORITY: S. C. Code Ann. Section 12-3-140 (1976)
SC Revenue Procedure #87-3

SCOPE: An Information Letter is a temporary document issued for the purpose of disseminating general tax information and to respond to technical questions from within the Commission which are not related to a specific set of facts.

Effective July 6, 1990, the United States Code (49 USC 11504) was amended by the Amtrak Reauthorization and Improvement Act of 1990 to prohibit states from taxing compensation of nonresident railroad and motor carrier employees performing services in two or more states. This provision applies to compensation paid by interstate railroads and motor carriers subject to the jurisdiction of the Interstate Commerce Commission or to compensation paid by private motor carriers. For purposes of the motor carrier, "employee" is defined in Section 204 of the Motor Carrier Act of 1984 (49 U.S.C. 2503) as:

(A) an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle);

(B) a mechanic;

(C) a freight handler; and

(D) any individual other than an employer; who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any State, or any political subdivision of a State who is acting within the course of such employment.

Pursuant to this amendment, South Carolina may not tax the compensation of nonresident railroad and motor carrier employees who are performing services in two or more states and are covered by the Act.

Resident railroad and motor carrier employees who are covered by the Act continue to be subject to South Carolina income tax on their compensation, and the entire amount of such compensation is subject to the requirement to withhold South Carolina income tax. No other state may require income tax withholding on compensation paid to resident railroad and motor carrier employees of South Carolina covered by the Act.

Questions concerning this information letter should be directed to C.C. Burgess at (803) 737-4856.