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SC INFORMATION LETTER #90-37

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Public Information Director

FROM: Jean Croft, Tax Analyst  
Tax Policy and Appeals Department

DATE: October 12, 1990

SUBJECT: Refunds

REFERENCE: SC Code Ann. §12-47-210 (1976)  
SC Code Ann. §12-47-220 (1976)

AUTHORITY: S.C. Code Section 12-3-140  
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.

On July 31, 1990 the Supreme Court of South Carolina issued an amended opinion in the case of Bass, et al. v. State of South Carolina, etc., et al., Op. No. 23216 which held that federal retirees are not due a refund on South Carolina income taxes paid on federal retirement income. The Court stated:

Even were we to examine state law, the federal retirees would be barred from receiving a refund. The proper refund statutes under which the federal retirees should have proceeded are S.C. Code Ann. §§12-47-210 and 12-47-220 (1976), which require the taxpayer to pay under protest before bringing a refund action.<sup>5</sup> We have previously stated that the exclusive remedy for the recovery of the erroneous assessment of income taxes is through these "pay under protest" statutes.

Footnote 5 goes on to say:

Section 12-47-440 under which the federal retirees proceeded, deals only with the recovery of license fees and taxes. See, *City of Columbia v. Glens Falls Insurance Company*, 245 S.C. 119, 139 S.E. 2d 529 (1964).

At this time, the full implications of this decision are unclear. In order to insure the protection of a taxpayer's rights to recover taxes (other than license fees and license taxes) he deems to be illegal or incorrectly paid, the provisions of sections 12-47-210 and 12-47-220 (payment under protest) should be used. Taxpayers should consult with their tax advisors before paying any tax with which they may disagree.