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SC INFORMATION LETTER #92-16

TO: Vicki J. Ringer
Public Information Director

FROM: Deana West, Tax Analyst
Tax Policy and Appeals Department

DATE: May 12, 1992

SUBJECT: Nonresident Contractor Withholding
(Withholding)

REFERENCE: S.C. Code Ann. Section 12-9-310 (As Amended May, 1992)
Act 361 of 1992

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
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 for taxable years beginning after December 31, 1992, Code Section 12-9-310(3) has been amended to provide for additional exemptions from the 2% income tax withholding requirements on payments made to a nonresident contractor.

Code Section 12-9-310(3) provides that a South Carolina taxpayer making payments to a nonresident contractor conducting a business or performing personal services of a temporary nature in South Carolina must withhold 2% of each payment if the contract amount exceeds, or can reasonably be expected to exceed, \$10,000.

The amendment to Code Section 12-9-310(3) provides that the Tax Commission may waive all or a portion of these 2% nonresident withholding requirements when:

- (a) a portion of the contract is performed outside of this State;
- (b) a portion of the contract consists of providing tangible personal property or material;
- (c) a portion of the contract is subcontracted to others; or
- (d) the taxpayer is not conducting business of atemporary nature in this State as evidenced by substantial assets or a place of business located in this State.

The amendment further states that these withholding requirements may be waived by the Tax Commission if the payee insures the commission by bond, deposit of securities, or cash that he will comply with (1) all applicable income tax provisions contained in Chapter 7 of Title 12 and (2) the withholding requirements insofar as his obligations as a withholding agent are concerned.