

SC INFORMATION LETTER #93-20

TO: Vicki Ringer  
Public Information Director

FROM: John P. McCormack, Tax Manager  
Tax Policy and Appeals Department

DATE: September 22, 1993

SUBJECT: Geoffrey, Inc. v. South Carolina Tax Commission  
(Income Tax)

REFERENCE: S. C. Code Ann. Section 12-7-230 (Supp. 1992)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1992)  
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 Department of Revenue which are not related to a specific set of facts.

While the provisions of Public Law 86-272 only concern the sale of tangible personal property, taxpayers should be aware of the South Carolina Supreme Court decision in Geoffrey, Inc. v. South Carolina Tax Commission (July 6, 1993).

In 1984, Geoffrey Inc. ("Geoffrey"), a wholly-owned, second-tier subsidiary of Toys R Us, Inc., became the owner of several valuable trademarks and trade names (including "Toys R Us"). Geoffrey executed a License Agreement with Toys R Us that allows Toys R Us to use the "Toys R Us" trade names as well as other trademarks and trade names in most states.

As consideration for the licenses granted, Geoffrey receives a royalty of 1% of the net sales by Toys R Us and its subsidiaries of the "Licensed Products sold or the Licensed Services rendered under the Licensed Mark." The aggregate sales of all Toys R Us stores is reported to Geoffrey on a monthly basis and the royalty payment is made annually via wire transfer from a Toys R Us account in Pennsylvania to a Geoffrey account in New York.

The South Carolina Supreme Court held that the taxation of this royalty income did not violate the Due Process Clause or the Commerce Clause of the U.S. Constitution. Specifically the South Carolina Supreme Court held:

1. By electing to license its trademarks and trade names to Toys R Us, Geoffrey purposely sought the benefit of economic contact with South Carolina.
2. Geoffrey has two intangibles in South Carolina:
  - a. Geoffrey has a franchise (license of a trademark and trade name) in South Carolina.
  - b. Sales by Toys R Us in South Carolina create an account receivable for Geoffrey.
3. Physical presence, with respect to income tax and corporate license fees, is not necessary to meet the substantial nexus requirements of the Commerce Clause.

Accordingly, the Court found "that Geoffrey's purposeful direction of activity toward South Carolina as well as its possessing intangible property [in South Carolina] provide a definite link between South Carolina and the income derived by Geoffrey from the use of its trademarks and trade names in this State."

The Department of Revenue is reviewing this case further and its application to other intangible property.

**For additional information concerning income tax nexus, see SC Revenue Ruling #93-10 - "The Effect of 15 U.S.C. Section 381 on South Carolina's Imposition of Income Tax".**