
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC INFORMATION LETTER #96-25

SUBJECT: ADMINISTRATIVE PRONOUNCEMENT
Final Regulations on Entity Classification

DATE: December 19, 1996

SUPERSEDES: SC Information Letter #96-15 and all previous documents and any oral directives in conflict herewith.

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1995)
SC Revenue Procedure #94-1

SCOPE: An Information Letter is a document issued for the purpose of disseminating general information or information concerning an administrative pronouncement.

Information Letters issued to disseminate general information have no precedential value and do not represent the official position of the Department. Information Letters designated as administrative pronouncements are official advisory opinions of the Department.

On December 18, 1996, the Internal Revenue Service issued final regulations for determining the classification of an unincorporated business organization as either a partnership or a corporation for federal income tax purposes. These rules are effective as of January 1, 1997 and are referred to as "check the box."

These regulations replace the existing four characteristic test of (1) continuity of life, (2) centralized management, (3) limited liability, and (4) free transferability of interests with a much simpler approach that is generally elective. The final regulations generally apply to domestic and foreign unincorporated entities, such as limited liability companies, including single member limited liability companies. These regulations permit a limited liability company a choice to be taxed as a partnership (a sole proprietorship for a one member entity) or as a corporation.

Also, the final regulations include rules for default classification. The default rules provide most eligible entities with the classification they would choose without requiring an election to be filed. An eligible entity that does not want the classification provided by the default provision or wants to change its classification, may file an election to obtain the chosen classification. Further, under the new rules, existing entities that want to retain their current classification are not required to file an election.

The Department of Revenue will follow these final regulations on entity classification as of their effective date of January 1, 1997.