

SC INFORMATION LETTER 98-20

SUBJECT: ADMINISTRATIVE PRONOUNCEMENT
Retirement Income Deduction Election
(Income Tax)

DATE: August 18, 1998

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S. C. Code Ann. Section 12-6-1170 (Supp. 1997)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

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.

NOTICE TO ALL RETIREES AND TAX PREPARERS

In 1995, the department issued an advisory opinion, SC Revenue Ruling #95-15, to address whether a person who has filed an income tax return electing one of the retirement income deductions available under Code Section 12-6-1170 could file an amended return to change the election.

The opinion, in discussing when an election is or is not made, states in part:

For example, if a person does not place a number on the appropriate line of the return (Lines 2a and 2b for the 1993 and 1994 returns) or does not otherwise inform the Department that an election is being made, an election has not been made. However, if for example a person places a number or writes ADefer@ on the appropriate line of the return (Lines 2a and 2b for the 1993 and 1994 returns) or otherwise informs the Department that an election is being made, an election has been made.

If the number placed on the appropriate line of the return (Lines 2a and 2b for the 1993 and 1994 returns) is zero, then it is presumed that the person has elected to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of sixty-five years, at which time the taxpayer would deduct his retirement income in an amount not to exceed ten thousand dollars annually.

A subsequent law change eliminates the election and allows a taxpayer to claim a retirement income deduction in an amount not to exceed three thousand dollars annually until the age of sixty-five years, at which time the taxpayer can begin deducting his retirement income in an amount not to exceed ten thousand dollars annually. An additional income tax deduction was also provided for persons age sixty-five years or older under this legislative amendment. (See Code Section 12-6-1170.) However, persons who elected to defer the retirement income deduction under the prior law must continue to defer their retirement income deduction until they reach the age of sixty-five years. The election, by law, was irrevocable.

It has come to our attention that some taxpayers, who were presumed to have elected to defer claiming a retirement income deduction until the age of sixty-five years by placing zero on the appropriate line of the return (Lines 2a and 2b for the 1993 and 1994 returns), did not actually intend to make such an election. For example, some tax preparation software programs used by taxpayers or their preparers automatically place a zero on any line not filled in by the taxpayer or preparer.

Therefore, any taxpayer who used a software program that automatically placed a zero on every line not filled in by the taxpayer, or who otherwise placed zero on every line of the return which did not require another number, may file an amended return to change the election provided no other statements or information was placed on the original return to indicate that the election was being made.

Any other taxpayer who feels he did not make an irrevocable election to defer the retirement income deduction may submit to the department amended tax returns for the applicable years (1994 - 1997) and a letter explaining why he feels he did not make the election. If the return in question was completed by a tax preparer, a letter from the preparer should accompany the amended returns explaining why the tax preparer feels the election was not made. All such letters and amended returns should be mailed to: **SC Department of Revenue, Office Services Division, P.O. Box 125, Columbia, SC, 29214.**

All amended returns must be filed prior to the expiration of the statute of limitations for filing a refund claim as set forth in Code Section 12-54-85(F), except for the amended return for 1994 which may be filed on or before April 15, 1999.

The department will review each amended return and accompanying letter or letters and determine whether or not the taxpayer may now claim a retirement income deduction in an amount not to exceed of three thousand dollars annually until the age of sixty-five years and therefore claim a refund for any or all of the above years. Once the determination is made, the department will either issue the refund or a letter explaining why the refund is not due.

If you have any questions concerning this matter, you may call (803) 898-5709.