



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #88-17

TO: XYZ Newspapers, Inc.

SUBJECT: Income Tax/Election to File Consolidated Return

REFERENCE: S.C. Code Ann. Section 12-7-1570 (1976)
S.C. Regulation 117-77

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

1. For the calendar year 1987, does XYZ and Company A have an obligation to file a South Carolina consolidated return? How should the income for XYZ and Company A be apportioned?
2. For the calendar year 1988, can companies A, B, & C elect to file a South Carolina consolidated income tax return?
 - a. If a consolidated return can be elected, will the gain realized by the sale of asset be deferred as described by federal regulation 1.1502?
 - b. If an election is made in 1988, is a consolidated return required to be filed in all subsequent years?
 - c. Can the business income of the consolidated group return be apportioned in South Carolina on the basis of the normal three factor formula with the denominator being total property, payroll, and sales everywhere?

Facts:

XYZ Newspapers, Inc. (XYZ) has conducted business in South Carolina for a number of years. In 1987, XYZ began a restructuring of its operations the completion of which will occur in late 1988 or early 1989. On December 30, 1987, XYZ merged into Company A. On March 29, 1988, Company A will merge into Company B. On April 2, 1988, Company B will sell substantially all of its assets to Company C in a taxable transaction. XYZ and Companies A, B, and C are active companies which report income on a calendar year basis; and are part of an affiliated group which files a federal consolidated income tax return. XYZ and Company A owned assets in the State of South Carolina during calendar year 1987. XYZ owned assets for 364 days and Company A owned assets for 1 day. Company A, Company B, and Company C will own assets in South Carolina during 1988. Company A will own assets for 89 days, Company B will own assets for three days, and Company C will own assets for 273 days. Each of these companies uses the three factor formula method of apportionment.

Discussion:

1. Pursuant to S.C. Code Ann. Section 12-7-1570, consolidated returns are permitted for
...any taxpayer capable of exercising, directly or in-directly, substantially the entire control of the business of another taxpayer, either by ownership or control of substantially the entire capital stock of such other taxpayer.

The terms "substantially controlled" and "substantially the entire control" are defined in Regulation 117-77 to mean:

...the ownership of at least 80% of the total combined voting power of all classes of stock of all corporations that are part of a consolidated return...

The regulation further states that an election to file a consolidated return should be made on an original and timely filed return and may not be changed after the return is filed.

The language of the statute and the regulation indicate that the filing of a consolidated return is not mandatory, but rather, is done at the election of the taxpayer.

The final return of XYZ should reflect business income which is apportioned to South Carolina pursuant to the normal three factor formula found in 12-7-1150, 12-7-1160, and 12-7-1170.

Company A's initial South Carolina return should reflect business income apportioned to South Carolina through the normal sales and payroll factors. Pursuant to 12-7-1150, the property factor can be determined by averaging daily or monthly values of property.

2. The provisions of S.C. Code Ann. Section 12-7-1570 and Regulation 117-77 as stated above indicate that Companies A, B, and C can elect to file a consolidated income tax return for calendar year 1988.
 - a. Any gain realized on the sale of assets by company B to Company C would be recognized. South Carolina has specifically not adopted IRC Section 1502 and Regulation 1.1502. Statutory provision for this can be found in S.C. Code Ann. Section 12-7-10 (Supp. 1987). S.C. Code Section 12-7-1570 and Regulation 117-77 do not provide for the deferred intercompany transactions found in Regulation 1.1502.
 - b. If the companies make the election to file a consolidated return as outlined above, they would be required to file consistently in subsequent years unless the Tax Commission grants permission to file separate returns. Regulation 117-77 (VIII) provides:

Once an election is made to file a consolidated return, such election must be adhered to until permission is granted by the Tax Commission to file separate returns.
 - c. The net income of those companies in the consolidated group should be computed separately and then combined to determine South Carolina consolidated net income. The property, pay-roll, and sales everywhere for each company should be computed in order to arrive at the appropriate apportionment factors. Authority for computation in this manner is found in S.C. Technical Advice Memorandum #88-8.

Conclusion:

1. The language of 12-7-1570 and Regulation 117-77 indicates that the filing of a consolidated return is not mandatory but is done at the election of the taxpayers. XYZ will apportion its business income pursuant to the 3 factor formula outlined in 12-7-1150, 12-7-1160, and 12-7-1170. Company A will apportion its business income pursuant to the normal sales and payroll factors however property will be averaged based on daily or monthly values pursuant to 12-7-1150.
2. Pursuant to 12-7-1570, Companies A, B, and C may file a consolidated return for calendar year 1988 if the appropriate election is made.
 - a. The gain realized by the sale will be recognized because South Carolina has not adopted IRC 1502.
 - b. If an election to file a consolidated return is made in 1988, subsequent returns must also be filed on a consolidated basis unless the South Carolina Tax Commission grants permission to file separately.

- c. The net income of each corporation must be computed separately and then combined to determine South Carolina consolidated net income. An apportionment factor should be computed for each company.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.
S. Hunter Howard, Jr., Chairman

s/John M. Rucker
John M. Rucker, Commissioner

s/A. Crawford Clarkson, Jr.
A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
June 30, 1988