



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

SC PRIVATE LETTER RULING #88-9

TO: Mr. X

SUBJECT: Income Tax/Allocation of Moving Expense Deduction

REFERENCE: S.C. Code Ann. Section 12-7-445 (Supp. 1987)
S.C. Code Ann. Section 12-7-450 (Supp. 1987)
IRC Section 217

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:

Can part year residents moving into the state allocate their allowable moving expense deduction to South Carolina on their South Carolina income tax return or should this itemized deduction be apportioned?

Facts:

The taxpayer was a resident of Connecticut between January and August 1987. In August of 1987, the taxpayer was relocated to South Carolina and all reimbursed moving expenses were included in his South Carolina W-2. Connecticut does not have an income tax thus preventing the taxpayer from filing a South Carolina Resident return and claiming the credit for taxes paid to another state pursuant to 12-7-445(a). Under 12-7-445(b), the taxpayer files as if he were a nonresident for the entire year with certain modifications. The SC1040NR would require that the taxpayer apportion his itemized deductions while taking the full amount of his reimbursement into income. In years prior to 1987, moving expenses were allowed as a deduction in arriving at adjusted gross income for Federal Income Tax purposes. The 1986 Tax Reform Act moved the deduction for moving expenses from adjusted gross income to an itemized deduction. The 1987 tax legislation in South Carolina conformed to the Federal changes.

As a result of this legislation, the SC1040NR instructions were changed. The instructions as changed require a taxpayer moving out of state to add back moving expenses prior to apportioning itemized deductions. Per the instructions, taxpayers moving into the state do not add back their moving expenses prior to apportioning itemized deductions.

Discussion:

S.C. Code Ann. Section 12-7-445(b) (Supp. 1987) provides:

An individual who is a resident of South Carolina for part of a year may elect to:

- (b) Report and compute his South Carolina tax as if he were a nonresident for the entire year, except that for purposes of this computation the South Carolina taxable income for that period during which the individual was a resident includes all items of income, gain, loss or deductions whether or not derived from sources within South Carolina with the modifications specified in Sections 12-7-430 and 12-7-435.

Code Section 12-7-450(a)(2), which relates to compensation for services performed in South Carolina by nonresident individuals, provides:

- (a) South Carolina taxable income as determined in Sections 12-7-410, 12-7-420, or 12-7-425 only includes income from the following sources:

Income, gains, losses, or deductions attributable to:

- (2) A business, trade, profession, or occupation carried on in South Carolina or compensation for services performed in South Carolina;

Code Section 12-7-450(b)(2) states:

If a nonresident individual itemizes deductions, the itemized deductions must be reduced to an amount which is the same proportion as South Carolina adjusted gross income is a federal adjusted gross income.

It has been the policy of the Commission to exclude all moving expenses for individuals moving out of South Carolina as a deduction related to compensation earned outside South Carolina. This policy is reflected in the computational portion and instructions of Form SC1040NR for 1987. In prior years, a taxpayer moving into the state could allocate all moving expenses to this state on the SC1040NR because it was an adjustment to income rather than an itemized deduction. This result was changed when the Tax Reform Act of 1986 made moving expenses an itemized deduction thus requiring apportionment pursuant to Section 12-7-450(b)(2).

A policy of requiring taxpayers moving out of the state to exclude all moving expenses while requiring taxpayers moving into the state to take a proportionate share of the moving expense deduction is not a consistent approach to taxation. In addition, requiring a taxpayer to include

moving expense reimbursement into income while only allowing him to take a proportionate share of his moving expense deduction violates the matching principle. This doctrine of matching income and expenses is firmly grounded in South Carolina law. Since 1966, five South Carolina cases have specifically applied the matching principle, thereby firmly entrenching this doctrine as applicable law. To apply the matching principle to the factual situation outlined above would require that all expenses relating to income earned in South Carolina be allowed as a deduction in South Carolina. Pursuant to Internal Revenue Code Section 217, as adopted by South Carolina in 12-7-10, moving expenses must be "in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work" (emphasis added). This clearly establishes the relationship between the moving expense deduction and income earned in this state for part year residents moving into South Carolina. Therefore, the matching principle dictates that moving expense reimbursements and deductions be allocated to South Carolina for taxpayers moving into this State.

It should be noted that the moving expense deduction is an itemized deduction. Therefore, if the taxpayer should take the standard deduction, there would be no moving expense deduction and no allocation of the deduction.

Conclusion:

Part year residents moving into the state may allocate their allowable moving expense deduction to South Carolina on SC Form 1040NR pursuant to the principle of matching income with related expenses as espoused in numerous South Carolina cases and the definition of the deduction allowed for moving expense provided by IRC Section 217(a).

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
March 30, 1988