



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

SC PRIVATE LETTER RULING #89-17

TO: XYZ

SUBJECT: Minority Business Credit
(Income Tax)

REFERENCE: S.C. Code Ann. Section 11-35-5230 (1976) (Law. Co-Op. 1976)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (Law Co-Op. 1976)

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 distribution.

Question:

May the Minority Business Credit (S.C. Code Section 11-35-5230) be applied against the earnings of each subsidiary before consolidation or is the credit's application limited to the consolidated earnings of the parent corporation and subsidiaries as a whole?

Facts:

XYZ (parent corporation and general contractor) files an annual South Carolina income tax return on a consolidated basis with its subsidiaries. For purposes of applying the Minority Business Credit, XYZ has requested an interpretation of Section 11-35-5230.

Discussion:

S.C. Code Section 11-35-5230 provides in pertinent part:

(B) (1) Firms with state contracts that subcontract with minority firms shall be eligible for an income tax credit equal to four percent of the payments to minority subcontractors for work pursuant to a state contract. Such subcontractors must be certified as to the criteria of a minority firm as defined in Section 11-35-5010 of this code and any regulations which may be promulgated thereunder.

(2)The tax credit is limited to a maximum of twenty-five thousand dollars annually. A firm shall be eligible to claim a tax credit for a period of five years from the date the first income tax credit is claimed.

The term "firm" as used in this statute is defined by Webster's Third New International Dictionary as "a business unit or enterprise". A unit is defined by Webster's as "a member of an aggregate that is the least part to have a clearly definable separate existence and normally a basic element of an organization within an aggregate". The above definitions lead one to conclude that the word "firm" utilized in Section 11-35-5010 was intended to mean a business enterprise or a business unit of a larger organization such as a subsidiary. The Legislature intended to promote the use of minority firms. We conclude that the Legislature intended to extend this benefit to each subsidiary.

With respect to the construction of statutes:

"Although a strict construction is a narrow construction and the statute may not be extended by implication or inference, the construction should not be unduly technical, arbitrary, severe, artificial, or narrow. The words used need not be given any meaning other than their full meaning, where such construction is in harmony with the context. A strict construction permits the words to be read naturally.

73 Am. Jur. 2d, Statutes, Section 275.

Section 11-35-5230, when given its full meaning, should be read as allowing a maximum credit of \$25,000 per entity. A narrow reading would require an implication or inference which would be unduly technical and narrow.

This position is supported by the South Carolina Supreme Court's determination of the effect of a consolidated return on the separate taxpayers. In Emerson Electric Co. v. Wasson (1986) 287 SC 394, 339 SE2d 118 the court stated:

The legislature's use of the plural "taxpayers" instead of taxpayer indicates that corporations filing consolidated returns are not to be considered a single entity.

It should be noted that this Supreme Court decision overturned a decision of the Court of Appeals. The Court of Appeals had concluded that the consolidated entities should be considered as one or homogenized. Emerson v. Wasson (1984, SC App) 332 SE2d 671.

The credit for each subsidiary in the consolidated return is limited to the lesser of \$25,000 annually or the subsidiary's tax liability. The tax liability on the consolidated return must be allocated to each subsidiary based on the taxable income allocation method provided in Internal Revenue Code Section 1552(a)(1). Under this method the consolidated tax liability is allocated based on a ratio of each subsidiary's South Carolina taxable income to total South Carolina taxable income of all corporations in the consolidated return.

Example: A, B, and C file a consolidated return. A has S.C. taxable income of \$100,000, B has S.C. taxable income of \$900,000, while C has a loss of \$300,000 resulting in a consolidated S.C. taxable income of \$700,000. The S.C. tax would

be \$35,000. Under the allocation formula 10% (100,000 divided by 1,000,000) of the tax or \$3,500 is allocated to A and 90% (900,000 divided by 1,000,000) of the tax or \$31,500 is allocated to B. No part of the consolidated tax liability is allocated to C since C had no taxable income. Thus, assuming that each corporation would otherwise qualify for the credit, A's minority business credit is limited to \$3,500, B's credit is limited to \$25,000 and C would not be eligible for the credit.

The only member of the consolidated group eligible for the credit is the company with the state contract. Each corporation is also limited to five years of credits and there is no carryover of unused credits. The five year period begins with the date the first credit is claimed. As a result of the limitations on the credit, related corporations and corporations filing a consolidated return will be examined closely to ensure there are no transfers of contracts, business opportunities or assets to avoid the credit limitations.

Conclusion:

Therefore, each subsidiary is entitled to the Section 11-35-5230 credit and the credit limitations are applied separately to each subsidiary.

SOUTH CAROLINA TAX COMMISSION

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

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

s/T. R. McConnell
T. R. McConnell, Commissioner

Columbia, South Carolina
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