

SC PRIVATE LETTER RULING 89-5

TO: Mr. X

SUBJECT: Long-term Capital Gains Refund
Estimated Income Tax

REFERENCE: S.C. Code Ann. Section 12-7-460 (Law. Co-Op. Supp. 1988)
S.C. Code Ann. Section 12-7-1930 (Law. Co-Op. 1976)
S.C. Code Ann. Section 12-54-55 (Law. Co-Op. Supp. 1988)

AUTHORITY: S.C. Code Section 12-3-170
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.

Questions:

1. Can the refundable credit for 1987 capital gains be treated as a credit in calculating 1989 estimated income taxes?
2. How will this refundable credit be applied for purposes of computing the penalty for underpayment of estimated tax on form SC 2210?

Discussion:

Section 12-7-460 provides a refund of taxes attributable to long-term capital gains recognized during 1987 or January, 1988. The refund is payable in two equal installments in 1990 and 1991. In order to simplify the procedure for issuing the refund, the Commission will allow half of the refund as a refundable credit on the taxpayer's 1989 return filed in 1990 and the other half on the taxpayer's 1990 return filed in 1991 (See S.C. Information Letter #88-15).

Section 12-7-1930 provides the following steps in computing estimated tax for the taxable year:

- (1) The amount which he estimates as the amount of tax due for the taxable year under the provisions of this chapter;

- (2) The amount which he estimates as credits for taxes withheld by his employer;
- (3) The excess of the amount estimated under item (1) over the amount estimated under item (2), which shall be considered the estimated tax for the taxable year;

Section 12-54-55 provides that the penalty for underpayment of estimated taxes is simple interest determined under the provisions of IRC Section 6654. IRC Section 6654(F) provides that the tax to be used in computing the underpayment penalty is the income tax less refundable and non-refundable credits other than withholding tax credits. This tax is then multiplied by 90% and reduced by the withholding taxes.

The underpayment of estimated tax penalty is computed on form SC 2210. Line 1 of form SC 2210 is the tax after credits. The tax, after credits is then multiplied by 90% and then reduced by withholding taxes. If 90% of the tax reduced by withholding taxes is less than \$100 there will be no underpayment of estimated tax penalty for state purposes.

Therefore, the refundable credit should be treated as a credit for calculating the 1989 estimated income taxes. This credit would be taken on line 7 of the 1989 estimated tax worksheet. It should be noted that only half the refundable credit can be used in the 1989 computation. The credit should also be used to compute the tax after credits on line 1 of Form SC 2210.

Conclusion:

1. One-half of the refundable credit for 1987 capital gains can be treated as a credit in calculating 1989 estimated income taxes.
2. This refundable credit will be applied as a credit on line 1 of Form SC 2210.

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
April 7, 1989