



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

SC PRIVATE LETTER RULING #93-3

TO: APC

TAX MANAGER: John P. McCormack

SUBJECT: Apportionment of Income – Motor Carrier  
(Income Tax)

DATE: June 3, 1993

REFERENCES: S.C. Code Ann. Section 12-7-1120 (Supp. 1992)  
S.C. Code Ann. Section 12-7-1130 (1976)  
S.C. Code Ann. Section 12-7-640 (1976)  
S.C. Code Ann. Section 12-7-1190 (1976)  
S.C. Code Ann. Section 58-23-10 (1976)  
S.C. Code Ann. Section 58-23-1110 (Supp. 1992)  
S.C. Code Ann. Section 12-31-10 (Supp. 1992)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1992)  
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:

Is APC required to apportion its income for South Carolina income tax purposes in accordance with Code Section 12-7-640 (vehicle miles driven within South Carolina to total miles driven)?

Facts:

APC is licensed as a motor carrier by the South Carolina Public Service Commission and the Interstate Commerce Commission.

APC does not own any trucks used to transport petroleum products. All the hauling is done by its membership, who acts as independent contractors in hauling the petroleum. However, APC leases the trucks from its membership – the independent contractors.

APC solicits business, coordinates deliveries of the petroleum maintains the liability insurance on the vehicles, and handles all the billing for the hauling. APC pays the independent contractor a set fee for making the deliveries.

For many years APC apportioned its income using the mileage method set forth in Code Section 12-7-640. After a recent audit, APC agreed to apportion its income based on the gross receipts method under Code Section 12-7-1190.

After further consideration, APC now requests a private letter ruling to address which apportionment method APC should use in filing its South Carolina corporate income tax returns.

Discussion:

South Carolina, like most other states, requires corporations that operate in several states to determine their South Carolina taxable income by allocating certain income and apportioning the remaining income based on specific ratios.

Code Sections 12-7-1120 and 12-7-1130 allocate certain interest, dividend, rental, and other income. In other words, if income is allocated to South Carolina, then that income is fully taxable in this State. If the income is allocated to another state, then no portion of that income will be taxed by South Carolina.

Once the income provided for in these sections is allocated, the remaining income of the corporation is apportioned using various ratios, depending on the type of business. With respect to the two apportionment methods in question, Code Section 12-7-640 applies to motor carriers and Code Section 12-7-1190 applies to corporation whose “principle profits and income...are derived from sources other than manufacturing, producing, collecting, buying, assembling, processing or selling, distributing or dealing in tangible personal property...”.

Code Section 12-7-640 requires certain industries to apportion their income based on ratios “unique” to their industries. With respect to motor carriers that section reads, in part:

(2) Motor carriers of property and passengers. – Motor carriers of property shall apportion their net apportionable income to South Carolina by the use of the ratio of vehicle miles within South Carolina to total vehicle miles everywhere.

The income tax statute, however, does not provide a definition of the term “motor carriers”.

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 S.C. 529, 220 S.E. 2d 231, Investors Premium Corp. v. South Carolina Tax Commission, 260 S.C. 13, 193 S.E. 2d 642. Also, where the terms

of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning. *Mitchell v. Mitchell*, 266 S.C. 196, 222 S.E. 2d 217; *Green v. Zimmerman*, 269 S.C. 535, 238 S.E. 2d 323.

In this case, the ordinary and popular meaning of the term “motor carrier” is consistent with the definition established by the State and federal agencies that regulate intrastate and interstate commerce through their enforcement of various statutory provisions. These agencies are the South Carolina Public Service Commission and the Interstate Commerce Commission.

Chapter 23 of Title 58 concerns various statutory provision affecting motor vehicle carriers and the regulation of these carriers by the Public Service Commission. Code Section 58-23-10(4) defines “motor vehicle carriers” to mean:

...every corporation or person, their lessees, trustees or receivers, owning, controlling, operating or managing any motor propelled vehicle, not usually operated on or over rails, used in the business of transporting persons or property for compensation over any improved public highway in this State.

Article 11 of the chapter concerns the rights and duties of the Public Service Commission. Code Section 58-23-1110(5), which is found in Article 11, defines the term “motor carrier” to mean:

...every corporation or person, their lessees, trustees, or receivers, owning, controlling, operating, or managing any motor propelled vehicle used in transporting persons or property for compensation over any improved public highway in this State, whether or not for compensation, as defined by Section 58-23-30 and includes, but is not limited to, motor vehicle carriers as defined in [Section] 58-23-10 and private carriers;

Based on the above, the Public Service Commission has issued to APC Certificate Number 224. This is a certificate of public convenience and necessity for carriers as defined in Code Section 58-23-10(4), as cited above.

APC operated under a similar certificate issued to a “common carrier by motor vehicle” by the Interstate Commerce Commission (Certificate Number MC 106119). See 49 USCA 303.

Also, 13 Am Jur 2d, Carriers, Section 7 provides some guidance, and reads in part:

To constitute a common carrier, it is not essential that the person or corporation undertaking such service own the means of transportation. Hence, one whose business is for hire to take goods from the custody of their owner, assume entire possession and control of them, transport them from place to place, and deliver them at a point of destination to consignees or agents there authorized to receive them, is a common carrier, although he contracts with others to transport the goods in vehicles of which they are the owners, and the movements of which he himself does not manage or control

Therefore, APC is a motor carrier.

Also, the fact that the independent contractor must apportion his income based on the same apportionment formula as does APC does not change the statutory requirements APC must follow under Code Section 12-7-640. Both APC and the independent contractors are motor carriers and must apportion their income in accordance with Code Section 12-7-640.

Conclusion:

Associated Petroleum Carriers (APC) is a motor carrier and is required to apportion its income for South Carolina income tax purposes in accordance with Code Section 12-7-640 (vehicle miles driven within South Carolina to total miles driven).