
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #95-3 (TAX)

TO: ABC Company

SUBJECT: Job Tax Credit
(Income Tax)

DATE: March 20, 1995

REFERENCE: S. C. Code Ann. Section 12-7-1220 (Supp. 1993)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #94-1

SCOPE: A Private Letter Ruling is an **official advisory opinion** issued by the Department of Revenue to a specific person.

NOTE: A Private Letter Ruling may only be relied upon by the person to whom it is issued and only for the transaction or transactions to which it relates. A Private Letter Ruling has no precedential value.

Question:

Is ABC Company, an S corporation from 1986 to December, 1993 and a C corporation from December, 1993 and thereafter, eligible for the five year job tax credit provided in Code Section 12-7-1220?

Conclusion:

ABC Company, an S corporation from 1986 to December, 1993 and a C corporation from December, 1993 and thereafter, is eligible for the five year job tax credit provided in Code Section 12-7-1220, providing all statutory requirements of Code Section 12-7-1220 are met.

Since ABC Company did not have a corporate level tax liability during the years it was an S corporation, any job tax credit earned during those years may be carried forward for 10 years from the time earned and used, to the extent not previously used, to offset any corporate level tax liability incurred during the next ten years, including any years it is a C corporation.

Facts:

ABC Company, (ABC), is a manufacturing corporation located in AAA county, a less developed county for purposes of the job tax credit. ABC qualified to do business in South Carolina on September 2, 1986 as an S corporation when it purchased the assets of another company. As an S corporation, ABC added a number of employees between September 2, 1986 and December 18, 1993. During this time, ABC paid no corporate level taxes. Also, ABC did not qualify under Code Section 12-7-1220(J) to pass its job tax credit through to its shareholders.

On December 18, 1993, ABC revoked its S election under Internal Revenue Code Section 1362(a). For tax purposes, ABC, as a C corporation, is the same taxpayer.

Discussion:

Code Section 12-7-1220(B) provides for a job tax credit for new-full time jobs created in less developed counties, such as AAA County. This subsection provides, in part:

Corporations operating manufacturing...facilities in counties designated by the commission as less developed are allowed a job tax credit for taxes imposed by Section 12-7-230...equal to one thousand dollars annually for each new full-time employee job for five years beginning with years two through six after the creation of the job.

* * *

(H) For purposes of this section:

(3) "Corporation" means a business entity which is **subject to** South Carolina taxes as contained in Section 12-7-230 and Chapter 7, Title 38. (Emphasis added).

Code Section 12-7-230 imposes a tax on corporations and reads:

(A) Every corporation organized under the laws of this State, whose entire business is transacted or conducted within this State, shall make a return and shall pay annually an income tax equivalent to five percent of the entire net income received by the corporation during the income tax year...

Code Section 12-7-235 provides for an exemption from tax for S corporations and reads, in part:

(b) If a small business corporation makes a valid election under the provisions of Subchapter S of the Internal Revenue Code to be exempt from federal income taxes to the extent provided in Subchapter S of the Internal Revenue Code, the small business corporation is similarly exempt from the tax imposed by '12-7-230. The shareholders shall include in their South Carolina taxable income their proportionate share of the corporation's South Carolina taxable income...

Generally, income earned by an S corporation is taxed only once, at the shareholder level. However, the following situations can cause the S corporation itself to be subject to tax:

1. excess net passive income tax;
2. capital gains tax and built-in gains tax;
3. investment credit recapture tax; and,
4. LIFO recapture tax.

Code Section 12-7-415 provides that the South Carolina gross income and taxable income of a corporation...is the corporation's gross income and taxable income as determined under the Internal Revenue Code with the modifications specified in Code Section 12-7-430. No modifications are set forth in Code Section 12-7-430 for South Carolina taxable income of S corporations with respect to excess passive income, built in gains, and the like. Accordingly, South Carolina would impose a corporate tax on excess net passive income, built-in gains, and the like, added to the federal income of an S corporation.

Based upon the above analysis, an S corporation is "subject to" taxes under Code Section 12-7-230. Very few S corporations generate a corporate tax liability in South Carolina. The lack of corporate tax, however, does not prevent an S corporation from claiming a job tax credit and carrying forward the credit as provided below in Code Section 12-7-1220(G).

Code Section 12-7-1220(G) reads:

A credit claimed under this section but not used in a taxable year may be carried forward for ten years from the close of the tax year in which the credit is earned by the corporation. However, the credit established by this section taken in one year must be limited to an amount not greater than fifty percent of the taxpayer's state corporate income tax or premium tax liability which is attributable to income or premiums derived from operations in the State for that year. The statute, therefore, provides that the job tax credit may be used by corporations "subject to" taxes imposed under Code Section 12-7-230 as follows:

(1) to offset corporate taxes imposed under Code Section 12-7-230 (see Code Section 12-7-1220(B)),

(2) carried forward for ten years from the close of the tax year in which the credit is earned when no corporate tax liability exists (see Code Section 12-7-1220(G)), or,

(3) to offset individual income taxes of S corporation shareholders when the S corporation qualifies to use the fee in lieu of property taxes and the S corporation has no corporate level tax liability (see Code Section 12-7-1220 (J)(1)).¹

Under the rule of statutory construction of statutes in pari materia, statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great, connected, homogenous system. Such statutes are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act, as far as this can reasonably be done. Indeed, as a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, unless a different purpose is shown plainly. 73 Am.Jur.2d Statutes Section 188.

In reviewing Code Section 12-7-1220 in its entirety, the legislature intended the job tax credit to be available as an economic incentive to encourage businesses subject to corporate level taxes to expand work forces in South Carolina. Although it is rare that S corporations are subject to corporate level taxes and it is rare that S corporations convert to C corporations, S corporations may earn and carryover a job tax credit.

Based upon the facts presented, ABC Company is "subject to" taxes imposed under Code Section 12-7-230 and, therefore, is eligible for the five year job tax credit for jobs created on September 2, 1986 and thereafter, provided all the statutory requirements have been met. The statute provides that the credit may be carried forward for ten years from the close of the tax year in which the credit was earned.

ABC did not provide any specific information concerning the number of new full-time jobs created or the year in which the qualifying jobs were created. If, for example, the new full-time jobs created by ABC in 1986 met all statutory requirements and qualified for the job tax credit for the five years 1987 - 1991, then the first year of the credit available in 1987 could be carried forward ten years, the second year of the credit available in 1988 could be carried forward for ten years, and the credit available in years 1989, 1990 and 1991 could be carried forward for ten years, providing the statutory requirements continue to be met.

¹ ABC does not qualify to use the fee in lieu of property taxes.