

SC REVENUE PROCEDURE #07-1

SUBJECT: Filing Requirements Where Nexus Is an Issue - Voluntary Filing Procedure

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Procedural Bulletin #01-5, SC Revenue Procedure #96-1 and all previous documents and any oral directives in conflict herewith.

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
SC Revenue Procedure #05-2

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

GENERAL INFORMATION:

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person, and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution, 15 U.S.C. §381 (Public Law 86-272) and other federal statutes provide limitations on a states powers to tax out of state corporations. The Department has issued several advisory opinions that provide guidance to a taxpayer trying to determine if nexus exists with South Carolina. They are available through the Department's website at www.sctax.org.

PROCEDURE FOR VOLUNTARY FILERS:

The Department has developed a voluntary compliance procedure for taxpayers who have nexus with South Carolina but are not registered with the Department to collect or remit South Carolina taxes. This procedure is designed to: (1) encourage nonfilers to come forward voluntarily and begin paying taxes without incurring penalties; and (2) allow the Department to maximize compliance with its limited audit resources.

The voluntary filing procedure described below is only available when the initial contact is made by the taxpayer and not by the Department. A taxpayer's receipt of a nexus questionnaire is not considered initial contact by the Department, however, a taxpayer that has been contacted by the Department for audit or is involved in the appeals process, for example, is considered to have been contacted by the Department.

VOLUNTARY FILER STATUS

For purposes of this advisory opinion, a taxpayer who has nexus with South Carolina but is not registered with the State to collect or remit taxes is deemed a voluntary filer provided:

1. The taxpayer either:
 - (a) registers to collect or remit taxes without having been contacted previously by the Department, or
 - (b) responds to the Department's nexus questionnaire timely and completely upon receipt, and,
 - (1) immediately registers with the Department;
 - (2) requests to be registered upon timely return of the questionnaire to the Department; or
 - (3) agrees to register if upon review of the nexus questionnaire by an employee of the Department's Nexus/Discovery Section, the employee determines that nexus exists; and,
2. The taxpayer does not appeal the determination in 1(b)(3) above or file a claim for refund for the tax periods prior to the time of voluntary filing.¹

VOLUNTARY FILER RELIEF

If a taxpayer qualifies as a voluntary filer the Department will:

1. Accept the filing of tax returns and payment of all required taxes for the three immediately preceding tax years, or the number of preceding tax years that nexus existed if less than three years (or a corresponding period for purposes of the use tax);
2. Apply interest in accordance with the South Carolina Code; and,
3. Waive all penalties, except in the cases of material misrepresentation of facts or fraud.

EXAMPLE OF RELIEF: A calendar year taxpayer discovers that nexus existed with South Carolina for the last 5 years and comes forward as a voluntary filer in February 2007. The Department will require the taxpayer to file South Carolina income tax returns for the tax years ended 2006, 2005, and 2004 - the three immediately preceding tax years. The Department will apply only interest on the tax liability for these years.

¹ The procedures set forth in this advisory opinion will not prevent a voluntary filer from claiming the lack of nexus for periods after voluntary filing.

REGISTRATION PROCEDURE FOR VOLUNTARY FILERS

A corporation that qualifies as a voluntary filer must register to collect or remit South Carolina income taxes by completing and filing Form CL-1, Initial Annual Report of Corporations and, if applicable, register to collect or remit South Carolina sales, use, or withholding taxes by completing Form SCTC-111, Business Tax Application.

All other entities that qualify as a voluntary filer must register to collect or remit South Carolina sales, use, or withholding taxes by completing Form SCTC-111, Business Tax Application.

PROCEDURE FOR NONVOLUNTARY FILERS:

If the Nexus/Discovery Section determines that a taxpayer does not qualify as a voluntary filer or has contacted the taxpayer for audit, or initiated other contact with the taxpayer, then the Department will not allow voluntary filer relief as provided in this procedure. If the Department has to go beyond the response to a nexus questionnaire and conduct an audit or investigation of the facts to determine nexus, then the taxpayer is not entitled to voluntary filer relief as provided in this procedure. A taxpayer who does not qualify as a voluntary filer is **not** subject to any time limitations. Accordingly, taxes will be assessed for all years that nexus existed in South Carolina. Also, interest and penalties will be added in accordance with the South Carolina Code.

PROCEDURE WHEN NEXUS IS UNCLEAR:

In accordance with Code Section 12-4-320(3), the Department may compromise any tax, interest, or penalty imposed by Title 12 of the South Carolina Code. If a taxpayer agrees to become a voluntary filer and completes a nexus questionnaire which shows nexus is unclear (it is uncertain whether a court would determine the existence of nexus), the Department and the taxpayer may agree to compromise the three prior years of taxes that would otherwise be due. The determination as to whether to accept a compromise of taxes rests with the Director.

ADDITIONAL INFORMATION:

All questions regarding registration should be directed to the Department's Registration Section at 803-896-1350.

All questions concerning the existence of nexus with South Carolina should be directed to the Department's Nexus/Discovery Section at 803-898-5671 or 803-898-5886.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

December 14, 2007
Columbia, South Carolina