
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC REVENUE PROCEDURE #08-4

SUBJECT: Taxpayers' Rights Advocate
(All Taxes)

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

SUPERSEDES: All previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-58-30 (2000)
S. C. Code Ann. Section 12-58-80 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2007)
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 It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

A. Introduction:

The Taxpayers' Rights Advocate "is responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by department employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions." Code Section 12-58-30.

The purpose of this revenue procedure is to provide a framework within which the Taxpayers' Rights Advocate ("Advocate") will work within the SC Department of Revenue ("Department") to accomplish the goals of the Taxpayer's Bill of Rights as set forth in Chapter 58 of Title 12.

B. Responsibilities of the Advocate:

The Advocate's responsibilities include:

- (1) assisting taxpayers in resolving problems with the Department;
- (2) identifying areas in which taxpayers are having problems in dealing with the Department;
- (3) working with the Department's operating divisions to change, where possible, Department administrative procedures so as to mitigate any identified problems taxpayers are having in dealing with the Department;
- (4) proposing legislative and regulatory changes to mitigate identified problems; and,
- (5) assisting in the development and implementation of a program to evaluate Department employees' performance with respect to contact with taxpayers.

Resolution of Taxpayer Problems:

It is the responsibility of the Advocate to provide an independent avenue of assistance to ensure that a tax problem, that has not been resolved through the normal channels, is handled in a fair and prompt manner.

It is important to remember that the advocate is not a substitute for established Department procedures or the formal appeals process provided for in SC Revenue Procedure #06-2 (or any subsequent revenue procedure concerning the appeals process).

The Advocate should become involved and work to facilitate a resolution if one or more of the following criteria are met:

- (1) The taxpayer has made an attempt to resolve the problem through normal channels by first contacting the employee directly involved in the matter and, if that does not resolve the matter, contacting the supervisor or manager of the section involved in the matter;
- (2) Instructions or information provided by the Department, or action taken by the Department, have been proven wrong or inadequate, resulting in confusion or hardship to the taxpayer;
- (3) The Department's response has not been provided by the date promised or within the time required by the statute;
- (4) An ongoing or persistent problem with a particular procedure exists; or

(5) The taxpayer has suffered or will suffer irreparable loss as the result of Department actions.

In addition, the Advocate may become involved and work to facilitate a resolution of other matters as directed by the Director or Deputy Director or upon the request of the appropriate Senior Administrator within the Department.

If an inquiry or referral does not meet the above criteria, then the Advocate will refer the matter to the appropriate Department employee.

Note: The above is not applicable for minor problems that can be resolved by the Advocate meeting with the appropriate section within the Department.

Resolution of Systemic Problems:

The Advocate is responsible for identifying and assisting in the resolution of systemic problems that affect taxpayers. Specifically, the Advocate identifies areas in which taxpayers are having problems in dealing with the Department; works with the Department's operating divisions to change administrative procedures causing problems for taxpayers, and proposes legislative and regulatory changes to mitigate identified problems.

The Advocate will seek to resolve systemic problems as follows:

(1) If the Advocate identifies a specific or continuing problem that affects, or may affect, many taxpayers, the Advocate should prepare a written explanation of the problem, inform the appropriate Senior Administrators, and meet with the Deputy Director. The Deputy Director and the Advocate will work together with the appropriate Senior Administrators to develop a plan of action for determining if a problem exists, what the problem is, and how to resolve it.

(2) If the problem is the result of the statute or a regulation, the Advocate will submit a recommendation for a change in the statute or regulation through the normal channels within the Department for such recommendations.

(3) If the problem can be resolved best through the issuance of a formal advisory opinion (i.e., a revenue ruling, a revenue procedure or an information letter), the Advocate should submit a written request for a formal advisory opinion to the Office of General Counsel for Policy.

(4) If the problem is a taxpayer or employee education issue, the Advocate should work with the Taxpayer Education Coordinator or the Public Information Officer as appropriate.

Note: The above is not applicable for minor problems that can be resolved by the Advocate meeting with the appropriate section within the Department.

Evaluation of Department Employees' Performance with respect to Contact with Taxpayers:

Another responsibility of the Advocate is assisting in the development and implementation of a program to evaluate Department employees' performance with respect to contact with taxpayers. The Advocate will assist the Administrator of Human Resource Planning and Development in the development, implementation and continued improvement of this program (Code Section 12-58-80).

C. Requests and Referrals to the Advocate:

Requests for assistance from the Advocate may come from the taxpayer or the taxpayer's representative (e.g., certified public accountant).

Based on the information provided by the taxpayer or taxpayer's representative, the Advocate will make a determination as to whether one of the above criteria in Section B has been met so as to allow the Advocate to become involved and to work to facilitate a resolution.

If one of the criteria in Section B for Advocate involvement is met, the Advocate will open a file on the matter and proceed in providing assistance in facilitating a resolution. However, the Advocate may refer a matter to the appropriate person within the Department if the Advocate determines that referring the matter to that person is the best way to facilitate a resolution of the matter.

If none of the criteria in Section B for Advocate involvement is met, the Advocate will refer the taxpayer or the taxpayer's representative to the appropriate person within the Department.

Referrals for assistance from the Advocate should be made by Department employees when it is determined by the employee, after consultation with his or her supervisor or manager, that one of the criteria in Section B for Advocate involvement has been met and the employee, the supervisor or manager, or the Senior Administrator are unable to resolve the matter. However, it is recommended that the employee, supervisor or manager contact the Advocate prior to formally referring the matter in case the Advocate has previously determined that referring a particular matter to another person within the Department is the best way to facilitate a resolution.

Requests to the Advocate should be addressed to:

SC Department of Revenue
Taxpayers' Rights Advocate
P.O. Box 125
Columbia, South Carolina 29214

Requests sent to the Advocate should be in writing and should include:

- Name, address and social security number or South Carolina tax account number
- Telephone number and/or e-mail address
- Type of tax or taxes and reporting periods involved
- Description of the problem and loss (if applicable)
- Summary of attempts to resolve the problem
- Dates and names of Department employee with whom the taxpayer spoke (if possible)
- Power of Attorney (if taxpayer is authorizing another person to discuss the matter with the Advocate)

The Advocate can waive the requirement for a written request for assistance if deemed necessary; however, the Advocate must maintain a written record as to the facts and the assistance provided (if any).

In attempting to resolve any taxpayer problems as a result of receiving a request for assistance from a taxpayer, the Advocate should first gather information from the operating division involved in the matter. As part of requesting information from the operating division, the Advocate shall provide the operating division a copy of the taxpayer's request for assistance. The operating division, in providing the information requested by the Advocate, shall also notify the Advocate in writing of any disagreement it has with the facts provided by the taxpayer.

Upon receipt and review of the information from the operating division, the Advocate shall discuss with the operating division the Advocate's proposal for resolving the matter and allow the operating division time to submit an alternative resolution (if the division disagrees with the Advocate's approach). If the Advocate and operating division are unable to agree on a resolution, the Advocate should prepare a written explanation of the issue and meet with the Deputy Director and the appropriate Senior Administrator to determine how best to resolve the matter.

D. Staying Actions by the Advocate:

(1) If a taxpayer has suffered or will suffer an irreparable loss due to action by the Department, the Advocate can arrange a review of the case. This review will be conducted jointly by the Advocate and the appropriate Senior Administrator(s) within the Department.

To initiate this review, the taxpayer must submit to the Advocate the following:

- (1) Letter of circumstance;
- (2) Financial statement (for businesses that are still open, taxpayer must submit the last three years financial statements);

- (3) Doctor's statement if it is a medical situation;
- (4) Documentation of bankruptcy;
- (5) Documentation of loan denials;
- (6) Information about a hardship with the Internal Revenue Service (if any); and,
- (7) Any additional information to support an irreparable loss as defined in this document.

The Advocate and the Senior Administrator(s) will then conduct a review of the matter to determine if a staying action is warranted or if an alternative resolution to the matter can be developed. The Senior Administrator may designate another manager or supervisor in the division to conduct the review with the Advocate in situations where the Senior Administrator is unable to participate. A staying action may not be implemented without the receipt of the above information and the conduct of a review as set forth in this section unless approved by the Deputy Director or Director.

If the Advocate and the Senior Administrator(s) are unable to agree on whether a staying action is warranted, the Advocate should prepare a written explanation of the issue and the Advocate and the Senior Administrator(s) should meet with the Deputy Director to determine how best to resolve the matter.

If a staying action is granted, the Advocate shall inform the taxpayer and the Senior Administrator(s) will implement the staying action as determined under this procedure. If a staying action is not granted, the Advocate shall inform the taxpayer and the Senior Administrator(s) shall proceed with its enforcement action or the resolution of the matter as determined under this procedure.

(2) If authorized by the Deputy Director, the Advocate may implement a temporary emergency staying action in cases where the conduct of a timely review is not possible and the Advocate's own review of the facts indicates the taxpayer has suffered or will suffer an irreparable loss. The implementation of a temporary emergency staying action (if authorized), and the length of any such staying action, must be in accordance with general guidelines established by the Deputy Director.

(3) For the purposes of this document, "irreparable loss" will normally involve the inability of a taxpayer to provide his or her own basic necessities and the basic necessities of his or her family. The taxpayer must be able to document this inability to provide his or her own basic necessities and the basic necessities of his or her family before a staying action can be considered. Examples of an "irreparable loss" include:

- The inability to supply appropriate shelter or food for him or her self and immediate family.

- The inability to pay for home utilities such as electrical or water service.
- The inability to purchase essential medication for him or her self and immediate family.
- The inability to afford non elective or necessary medical care for him or her self or an immediate family member.

However, enforcement actions by the Department, such as a levy against a bank account or the garnishment of wages, do not necessarily constitute an “irreparable loss.” This is true even if such enforcement actions prevent the taxpayer from paying bills (e.g., car loans, student loans, and credit card bills) the taxpayer considers to be as important as the tax debt.

E. Annual Report:

The Advocate shall coordinate the preparation of a Department report to be published annually, which may include, but is not limited to, the following information:

- Number of case files opened by the Advocate
- Information as to the source of referrals to the Advocate
- Information as to the type of problems resulting in case files being opened by the Advocate (e.g. tax type, liens)
- A list of Department initiatives to educate taxpayers and employees
- A list of Department recommendations for improving taxpayer compliance and uniform administration.

F. Other Duties of the Advocate:

The Advocate may be assigned any other duties as deemed necessary by the Department’s Deputy Director or Director as well as the Administrator to whom the Advocate reports.

G. Duties of the Deputy Director and Senior Administrators:

This revenue procedure requires the Advocate to meet with the Deputy Director and the appropriate Senior Administrator within the Department to resolve some matters between the Advocate and an operating division within the Department. The Deputy Director may designate another person within the Department to stand in the place of the Deputy Director to resolve such matters as well as any other duties assigned in this revenue procedure to the Deputy Director. In addition, the Director may also assume the duties of the Deputy Director as set forth in this revenue procedure.

The Advocate must also work with the appropriate Senior Administrator within the Department to review and/or facilitate the resolution of other matters. A Senior Administrator may designate another person within the division to stand in the place of the Senior Administrator to review and/or facilitate the resolution of such matters.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

August 27 _____, 2008
Columbia, South Carolina