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

SC REVENUE PROCEDURE #09-1

SUBJECT: Applying for an Alternative Allocation/Apportionment Method (Income Tax)

EFFECTIVE DATE: January 13, 2009

SUPERSEDES: SC Revenue Procedure #95-4 and all previous documents and any oral directives in conflict herewith.

REFERENCES: S.C. Code Ann. Section 12-6-2320 (2000)

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 It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION

Code Section 12-6-2210 provides for the determination of taxable income of a business. A taxpayer whose entire business is transacted or conducted in South Carolina is subject to income tax based on the entire taxable income of the business for the taxable year. A taxpayer that transacts or conducts its business partly within and partly outside of South Carolina is subject to income tax based on the portion of its business carried on in South Carolina. This portion is determined through allocation and apportionment of income. The sum of these amounts is South Carolina taxable income.

Code Sections 12-6-2220 and 12-6-2230 provide that certain classes of income, less related expenses, are allocated. Items directly allocated include nonbusiness interest, nonbusiness dividends, nonbusiness rents and royalties from the lease or rental of real estate or tangible personal property, gains (not subject to depreciation recapture) and losses from the sale of real property, and nonbusiness gains and losses from sales of intangible property.

The income remaining after allocation is apportioned in accordance with South Carolina Code Section 12-6-2240. South Carolina generally requires the use of one of the following apportionment methods:

1. (a) A “three factor” apportionment method (based on property, payroll, and double-weighted sales) or (b) a “single factor”¹ apportionment method (based on sales) for taxpayers whose principal business in South Carolina is dealing in tangible personal property. This method is typically used by businesses that manufacture, sell, distribute, or rent tangible personal property. See Code Sections 12-6-2250, 12-6-2252, and 12-6-2295.
2. A “gross receipts” apportionment method for taxpayers not dealing in tangible personal property. This method is typically used by financial businesses and service businesses, including doctors, architects, businesses that install or repair tangible personal property, and contractors. See Code Sections 12-6-2290 and 12-6-2295.
3. A “special” apportionment method for certain companies, such as railroad companies, telephone companies, pipeline companies, airline companies, and shipping lines. See Code Section 12-6-2310.
4. An individualized apportionment method tailored to a particular business because the normally required method would not fairly represent the extent of the taxpayer’s business in South Carolina. See Code Section 12-6-2320(A).
5. An individualized apportionment method tailored to a particular business as an economic incentive. See Code Section 12-6-2320(B).

The purpose of this advisory opinion is to provide a procedure for a taxpayer to request use of an alternative allocation/apportionment method set forth in Code Section 12-6-2320(A) if the taxpayer believes that the statutory formula does not fairly represent the extent of the taxpayer’s business activities in South Carolina. This request will be referred to as an Application for Modification of an Allocation/ Apportionment Method (“Application”).²

¹Effective for tax years beginning after 2006, a single factor apportionment method for businesses dealing in tangible personal property using the three factor (with double weighted sales) apportionment method is being phased in and will replace the three factor (with double weighted sales) apportionment method for tax years beginning in 2011.

²The procedure for a taxpayer to request approval of an economic development incentive based on alternative allocation or apportionment under Code Section 12-6-2320(B) is provided in a separate advisory opinion. It is available on the Department’s website at www.sctax.org.

WHERE TO FILE THE APPLICATION

The Application must be filed separately and not attached to a tax return being filed. Mail the Application to the following address:

Department of Revenue
Attn: Administrator of Audit Services
301 Gervais Street
P.O. Box 125
Columbia, S.C. 29214

CONTENT OF APPLICATION

The Application must set forth a complete statement of the facts and reasons relating to the request to change the allocation/apportionment method currently used by the taxpayer (or any affiliated corporation included in filing a South Carolina consolidated return with the taxpayer that is requesting to change its allocation/apportionment method under this procedure) or would be required to be used if the taxpayer is not yet operating in South Carolina, including the following:

1. Full name and address, and as applicable, taxpayer identifying number or social security number of the taxpayer applying for the change in allocation or apportionment method.
2. The taxpayer's tax year.
3. The tax year the taxpayer proposes the change to be effective.
4. The present allocation/apportionment method used in South Carolina. If the taxpayer currently has no operations in South Carolina, the method that would be the method required to be used under South Carolina law if the taxpayer had been operating in this State.
5. If applicable, the approximate number of years that the present allocation and apportionment method has been used in South Carolina.
6. A complete and precise statement of the reasons for the modification requested, including why the present method does not fairly represent the activities of the taxpayer within this State.
7. Evidence supporting the taxpayer's Application including any court decisions on the matter, copies of all contracts, deeds, agreements, instruments or other documents which evidence the necessity for the modification. Do not send originals.

8. Projected net income of the taxpayer attributable to South Carolina in the tax year the new allocation/apportionment method would commence and for five years thereafter. Please provide these projections using the current (or currently required) method of allocation/apportionment and the alternative method proposed by the taxpayer. These projections should be as complete as possible and should include income allocated as well as the computations of each of the factors in question.
9. Any other relevant information that the taxpayer believes may have a bearing on the Department's decision about whether to grant the allocation/apportionment method requested.

The Application must also answer the following questions:

10. Is the proposed allocation/apportionment method to be used solely by the taxpayer or is the request to change the allocation/apportionment method to be applicable to all affiliated corporations that join with the taxpayer in filing a South Carolina consolidated return?
11. Is the taxpayer currently being audited by the Department?
12. In the past five years, has the taxpayer been audited by the Department and adjustments made to its allocation and/or apportionment method or to specific items that the taxpayer allocated or apportioned to South Carolina?
13. During the past five years, has the taxpayer or any of its affiliates applied to the Department to use a different method of allocating or apportioning income or to use separate accounting to determine its net income attributable to South Carolina?
14. Has the taxpayer made requests to any other states to use an alternative method of allocating/apportioning income? What was the result?

REVIEW OF THE APPLICATION

The Department's Field Operations Division, Audit Services Department will review the information submitted and will issue a decision as to whether the taxpayer may adopt the alternative method of allocation/apportionment requested. With its decision, Audit Services will issue a letter setting forth its reasons for approving or denying the taxpayer's request to change its allocation or apportionment method. Written approval of the new method must be received prior to using the new method to determine income allocated or apportioned to South Carolina.

APPEAL OF A DECISION

If the taxpayer disagrees with the decision of Audit Services, the taxpayer may appeal the denial of the Application. Any appeal will follow the procedures established in South Carolina Revenue Procedure #06-2 for a proposed assessment.

FOR MORE INFORMATION

If you have questions regarding the Application, please call the Administrator of Audit Services at 803-898-5604.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

Columbia, South Carolina
January 13, 2009