



SC REVENUE PROCEDURE #89-2

SUBJECT: Substantial Understatement of Tax Disclosure Statements
Code Section 12-54-155

EFFECTIVE DATE: January 1, 1989

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

REFERENCE: S.C. Code Ann. Section 12-54-155 (Supp. 1988)

AUTHORITY: S.C. Code Ann. Section 12-3-130 (1976)
SC Revenue Procedure #87-3

SCOPE: A Revenue Procedure is a statement describing agency procedures
and is applicable only to employees of the South Carolina Tax
Commission.

PURPOSE: To establish procedures for filing the disclosure statement, as
provided in Code Section 12-54-155, for specific tax returns.

Facts:

Code Section 12-54-155 imposes a penalty for a substantial understatement of tax, and reads, in part:

- (a) If there is a substantial understatement of tax for any taxable period, there must be added to the tax an amount equal to twenty-five percent of the amount of any underpayment attributable to the understatement.
- (b)(1)(A) For purposes of this section, there is a substantial understatement of tax for any taxable period if the amount of the understatement for the taxable period exceeds the greater of ten percent of the tax required to be shown on the return for the taxable period or five thousand dollars.
 - (B) In the case of a corporation other than an S corporation or a personal holding company (as defined in IRC Section 542), paragraph (1) must be applied by substituting "ten thousand dollars" for "five thousand dollars".

(2)(A) For purposes of paragraph (1), "Understatement" means the excess of the amount of the tax required to be shown on the return for the taxable period over the amount of the tax imposed which is shown on the return.

(B) The amount of the understatement under subparagraph (A) must be reduced by that portion of the understatement which is attributable to (i) the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment or (ii) any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

The statute provides in subsection (b)(2)(B) that the understatement "must be reduced by that portion of the understatement which is attributable to...(ii) any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return" (emphasis added).

Certain tax returns, due to their design, size or the method by which they are processed, do not allow items to be "adequately disclosed in the return or in a statement attached to the return". Such returns include the following:

- 1) Sales Tax (Form ST-3 only)
- 2) Soft Drink Tax (Form L-2028)
- 3) Admissions Tax (Form L-511)
- 4) Highway Use Tax (Form L-320)
- 5) Withholding Tax (Form WH-1605)

The following procedure has been established for filing the "Disclosure Statement" with respect to the above referenced tax returns, as provided in Code Section 12-54-155.

PROCEDURE:

The above returns should be filed as they have been filed in the past. If the taxpayer determines that a Disclosure Statement should be filed, then such a statement should be filed, prior to the due date of the return (with regard to extensions), in a separate mailing to the following address:

Disclosure Statement
South Carolina Tax Commission
Director - Office Services Division
P.O. Box 125
Columbia, South Carolina 29214

All statements for the above returns will be reviewed by the Office Services Division, date stamped and forwarded to the file room. However, upon review and as deemed necessary by the Division, copies of disclosure statements should be forwarded to appropriate personnel within the Commission.

The disclosure statements forwarded to the file room will be retained, alphabetically, in a file entitled "Disclosure Statements - Code Section 12-54-155".

Furthermore, the taxpayer must retain a copy of the disclosure statement, with a copy of the return to which the statement refers.

The statement should be captioned - "Disclosure Statement", and contain the following information:

1. Taxpayer's name and address
2. Taxpayer's file number
3. Type of tax
4. Tax return (Period and Year)
5. Description of item being disclosed
6. Amount of disclosed item described
7. Detailed explanation of item and tax treatment thereof

The statement should be signed and dated by the person who signed the return to which the statement applies.

NOTE: A DISCLOSURE STATEMENT WILL NOT BE ACCEPTED IN THE ABOVE MANNER FOR RETURNS NOT LISTED IN THIS REVENUE PROCEDURE. STATEMENTS FOR RETURNS NOT LISTED MUST BE A PART OF THE RETURN OR ATTACHED TO SUCH RETURNS.