



SC REVENUE PROCEDURE #90-5

SUBJECT: 1-Day Withholding Deposits

TAX ANALYST: Jean P. Croft

EFFECTIVE DATE: August 1, 1990

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

REFERENCE: S.C. Code Ann. Section 12-9-390 (Supp. 1989)

AUTHORITY: S.C. Code 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 adopt Federal withholding procedures for 1-day deposits for South Carolina purposes.

As part of the Omnibus Budget Reconciliation Act of 1989, Congress enacted Section 6302(g) of the Internal Revenue Code. This section states that if, on any day, a withholding agent has \$100,000 or more of FICA tax and income tax (including backup withholding) withheld for deposit with respect to any eighth-monthly period\*, that agent must deposit those taxes by the close of the applicable banking day. For 1990 the applicable banking day is the next banking day (see Note 2). The provisions of this section are effective for deposit periods beginning after July 31, 1990.

S.C. Code Section 12-9-390(A) states, in part, that:

[e]very withholding agent required to make a return or deposit and pay taxes to the Internal Revenue Service under the Internal Revenue Code of 1986, as amended through December 31, 1989, and applicable regulations effective as of December 31, 1989, shall at the same time, make a return or deposit

\*An "eighth-monthly period" is defined as the first three days of a calendar month, days 4 through 7, 8 through 11, 12 through 15, 16 through 19, 20 through 25, and the remainder of the calendar month following the 25th of the month. An employer who has withholding amounts of

at least \$3,000 but less than \$100,000 at the end of an eighth-monthly period must deposit these taxes within 3 banking days of the close of this period and pay to the Commission any taxes deducted and withheld under the provisions of Sections 12-9-310 to 12-9-370.

All withheld funds must be deposited at financial institutions selected by the State Treasurer if the deposit is also required under the Internal Revenue Code of 1986, as amended through December 31, 1989, and applicable regulations as of December 31, 1989.

Therefore, if a withholding agent is required to make a deposit of taxes withheld for federal income tax purposes under IRC Section 6302(g), he must also make a deposit for State income tax purposes. For example:

An employer has \$3,000 in outstanding Federal liability and \$310 in South Carolina liability as of the third of the month. Both the Federal and South Carolina deposit limits have been met for the eighth monthly period deposit and, since the Federal deposit amount is at least \$3,000 but less than \$100,000, both the Federal and South Carolina withholding amounts must be deposited within 3 banking days.

On the 4th, the employer has another \$110,000 in Federal liability, and South Carolina has \$11,000. The federal deposit is due the next banking day in the amount of \$110,000, which excludes the \$3,000.

Under this rule, South Carolina taxes must also be deposited at this same time in the amount of \$11,000, excluding the \$310 of previously "fixed" but undeposited liability.

The Internal Revenue Service has issued Notice 90-37 explaining this change in the deposit rules and changes in the penalties for failure to deposit. The provisions of this Notice dealing with the changes in the deposit rules will also be followed for South Carolina withholding purposes; however, since South Carolina has not adopted the penalty provisions of the Internal Revenue Code, the sections of Notice 90-37 dealing with the change in the penalties for failure to withhold will not be followed for South Carolina withholding purposes. The appropriate South Carolina penalties will apply.

Note 1: Most banks and savings and loans within the State have been selected by the State Treasurer to accept withholding deposits. Questions concerning whether a certain financial institution may accept withholding deposits should be directed to the financial institution itself or to the Tax Commission at (803) 737-4873.

Note 2: The Revenue Reconciliation Act of 1990 provides that withholding deposits equal to or greater than \$100,000 must be made by the close of the next banking day for all years. As of the date of this Revenue Procedure, South Carolina has not adopted the withholding provisions of the Internal Revenue Code as amended for 1990; however, these sections will be considered for adoption by the Legislature during the upcoming session.

Currently, IRC §6302(g) provides that, if on any day, a person has on hand with respect to any eighth-monthly period \$100,000 or more of withheld income taxes for deposit, then that person must deposit those taxes by the close of the "applicable banking day" after such day. The "applicable banking day" is defined for the given years as:

1990	1st
1991	2nd
1992	3rd
1993	1st
1994	1st

If the State adopts the Internal Revenue Code, as amended through December 31, 1990, IRS Notice 90-37 will still be followed for South Carolina withholding deposit purposes but the applicable banking day will, for all years, continue to be the first banking day after the withholding amount equals \$100,000.