



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE PROCEDURE #92-2

SUBJECT: Filing Requirements Where Nexus Is an Issue
(Income and Use Taxes)

TAX ANALYST: Steve C. Hallman

EFFECTIVE DATE: Applies to all open periods.

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

REFERENCE: 15 U.S.C. Section 381
S.C. Code Ann. Section 12-4-320(3) (Enacted June 1991)
S.C. Code Ann. Section 12-49-70 (Supp. 1990)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Enacted June 1991)
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 guidelines to assist Commission employees in determining the filing requirements of taxpayers for income and use taxes where nexus is an issue.

BACKGROUND INFORMATION:

Before a state can require a business or company to collect and/or remit taxes, the business or company must have a minimal connection or link with the taxing state known as "nexus". For purposes of this document, nexus for income tax purposes also means a taxpayer is not protected from income taxation by 15 U.S.C. Section 381 (Public Law 86-272).

The Commission has issued two revenue rulings to assist taxpayers in determining whether or not they have nexus with South Carolina, SC Revenue Rulings #89-13 and #91-16.

Income Tax:

SC Revenue Ruling #91-16 gives guidance as to whether certain activities carried on within this State by persons selling tangible personal property are protected from income taxation by 15 U.S.C. Section 381 (Public Law 86-272).

Use Tax:

SC Revenue Ruling #89-13 concerns the State's use tax and gives guidance as to whether certain activities carried on by out-of-state retailers provide the requisite nexus to impose a duty to collect the tax. On June 13, 1990, the Governor approved a resolution declaring South Carolina an "economic presence" state with respect to use tax; however, the Tax Commission is currently allowing a moratorium period (as authorized by the statute) on enforcing collection based upon economic presence. (See SC Information Letter #90-29.) Therefore, South Carolina is presently requiring only retailers with a physical presence in this State to register and collect the use tax, but retailers with an "economic presence" in this State are encouraged to register and collect the tax during the moratorium period.

PROCEDURE:

The following outlines the Commission's policy with respect to taxpayers who have nexus with South Carolina, but who are not registered with the State to collect and/or remit the income and/or use taxes.

I. Voluntary Filers:

For purposes of this document, a taxpayer who has nexus with South Carolina is considered as a voluntary filer if:

- A. the taxpayer registers to collect and/or remit income or use taxes without having been previously contacted by the Commission; or,
- B. the taxpayer, upon receiving and entirely completing a Commission questionnaire regarding his business activities within this State, registers or requests to be registered when the questionnaire is returned to the Commission; or
- C. the taxpayer, upon receiving, entirely completing and returning a questionnaire regarding his business activities in this State within the time stated in the letter accompanying the questionnaire, agrees to register if nexus is determined to exist by the Commission.

If a taxpayer qualifies as a voluntary filer:

- A. South Carolina will accept voluntary registration, filing of returns and payment of all required taxes for three (3) back years (or less, if nexus existed for less than three years.)
- B. Interest will be applied in accordance with the South Carolina Code.
- C. Penalties will be waived except in cases of material misrepresentation of facts or fraud.

The provisions of this section do not apply to persons who do not have nexus with South Carolina. Such persons may register to collect and/or remit income or use taxes with no requirement to file back period returns. See also Sections III and IV.

II. Non-Voluntary Filers:

For purposes of this document, a taxpayer having nexus with South Carolina is considered as a non-voluntary filer if:

- A. the taxpayer does not qualify as a voluntary filer as defined above; or,
- B. the taxpayer, has been sent, but has not timely or entirely completed and returned the Commission questionnaire on his business activities in this State; or,
- C. the taxpayer has returned the questionnaire, but has not agreed to register if the Commission finds nexus exists; or,
- D. the taxpayer has been informed that he has been selected for audit purposes.

If a taxpayer qualifies as a non-voluntary filer:

- A. South Carolina will request registration, filing of returns and payment for all required taxes for ten (10) back years (or less, if nexus existed for less than ten years.) See Code Section 12-49-70 concerning the presumption of payment of taxes after ten years.
- B. Interest will be applied in accordance with the South Carolina Code.
- C. Penalties will be assessed.

Where the Commission finds a non-voluntary filer has nexus with South Carolina, but refuses to register, file returns, or pay all required taxes, steps will be taken to enforce compliance.

The provisions of this section do not apply to persons who do not have nexus with South Carolina. Such persons may register to collect and/or remit income and use taxes with no requirement to file back period returns. See also sections III and IV.

III. Change in Commission Policy:

In cases where there is a change in Commission policy, prospective treatment may be given with no requirement to file back year returns. The determination as to whether there is a change in Commission policy rests with the Commission and will be documented by a Commission Decision, Revenue Ruling or Information Letter.

As stated above, retailers with mere "economic presence" in this State, but with no physical presence in this State, are encouraged to register and collect the use tax. Such retailers who voluntarily register during the moratorium period will not be required to file back period returns.¹

IV. Compromise of Tax Liability:

In accordance with Code Section 12-4-320(3) the Commission may compromise any tax, interest or penalty imposed by Title 12 of the South Carolina Code. Thus, if nexus is not clear, (i.e. if it is unclear whether or not a court would determine that nexus exists) the Commission and the taxpayer may agree to compromise the income and/or use taxes that may be due. The determination as to whether to accept a compromise of taxes rests with the Commission.

V. Additional Information:

If you would like to confer with someone regarding whether nexus exists with South Carolina under certain situations, please contact Alfred Nix, John Rogers or John Swearingen by telephoning (803) 737-4814, (803) 737-4764 or (803) 737-4617 respectively, or by letter at P.O. Box 125, Columbia, S.C. 29214.

If you would like information concerning registration to collect and/or remit various taxes administered by the Commission, please contact our License and Registration Section by telephoning (803) 737-4872 or by letter at the address given above.

¹The U.S. Supreme Court has agreed to consider a case that may affect a state's power to impose a use tax on businesses with mere "economic presence". Accordingly, this moratorium period may change.