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

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SC REVENUE PROCEDURE #95-4(TAX)

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

**EFFECTIVE DATE:** August 28, 1995

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

**REFERENCES:** S.C. Code Ann. Section 12-7-1200 (June 4, 1995)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (Supp. 1994)  
SC Revenue Procedure #94-1

**SCOPE:** A Revenue Procedure is a statement which provides information of a procedural nature. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Procedure or Revenue Ruling.

## **INTRODUCTION**

As a general rule, a taxpayer who operates both within and without of South Carolina determines South Carolina taxable income by allocating certain items of income in accordance with Sections 12-7-1120 and 12-7-1130 of the South Carolina Code of Laws ("Code") and then apportioning its remaining net income using the formulas described in Code Sections 12-7-1140 through 12-7-1170 or 12-7-1190.

If a taxpayer is engaged in the businesses described in Section 12-7-1140 of the Code, the taxpayer must apportion income using the formula described in Sections 12-7-1140 through 12-7-1170 of the Code. This formula uses three factors consisting of property, payroll and sales. Each factor is expressed as a fraction, using as the numerator the amount of that factor attributable to South Carolina and using as the denominator the taxpayer's total amount of that factor. The three factors are then averaged (with the sales factor being "double weighted") and divided by four and the resulting fraction, expressed in a percentage, is multiplied by the taxpayer's income (after deducting the items of income allocated under Code Sections 12-7-1120 and 12-7-1130) to determine the amount of income apportioned to South Carolina for taxation.

Under Section 12-7-1190, if the principal profits or income of a taxpayer are derived from sources other than those described in Code Section 12-7-1140, the taxpayer is required to make returns and pay annually an income tax upon a proportion of its remaining income computed on the basis

of the ratio of gross receipts from within this State during the income year to the total gross receipts of such year within and without the State (after deduction of the items of income allocated under Code Sections 12-7-1120 and 12-7-1130).

## **BACKGROUND**

The General Assembly recently enacted legislation that allows a taxpayer to request use of an alternative method of allocating or apportioning income if the taxpayer believes that the statutory formula does not fairly represent the extent of the taxpayer's business activities in South Carolina.

This legislation amended Code Section 12-7-1200 (Act. No. 25, H.B. 3534 (1995))<sup>1</sup> to read in part:

(A) If the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for, or the Department may require, in respect to all or any part of the taxpayer's business activity if reasonable:

- (1) separate accounting;
- (2) the exclusion of one or more of the factors;
- (3) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this State; or,
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Prior to this amendment, Code Section 12-7-1200 only allowed a taxpayer to request separate accounting as an alternative method of determining South Carolina taxable income.

Any taxpayer who believes that the statutory formula does not represent the extent of the taxpayer's business within this State may apply to the Department for approval of a new method. This request will be referred to as an Application for Modification of an Allocation/Apportionment Method ("Application").

## **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:

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<sup>1</sup>Code Section 12-7-1200 was also amended to allow certain taxpayers who are establishing or expanding operations in South Carolina to request an alternative method of allocating and apportioning income, whether or not the current formula used by the taxpayer (or to be used by the taxpayer) represents the extent of the taxpayer's operations within the State, provided certain requirements are met. This provision of the legislation can be found in Code Section 12-7-1200(B) and (C) and will be addressed in a separate revenue procedure that will be issued in the near future.

Department of Revenue  
Attn: Field Services Division, Office of Appeals  
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 (or would be required to be used if the taxpayer is not yet operating in South Carolina), including the following:

1. Full names and addresses, and as applicable, taxpayer identifying numbers or social security numbers of taxpayers applying for the change in allocation or apportionment method.
2. The taxpayer's tax year.
3. The tax year for which the taxpayer wishes the change to become 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 commencing in the tax year in which 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 information that the taxpayer deems relevant that the taxpayer believes may have a bearing on the Department's decision about whether to grant the allocation/apportionment method requested.

The Application shall also answer the following questions:

10. Is the new allocation/apportionment method being applied for 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 Services Division, Office of Appeals ("Appeals") will review the information submitted and will issue a decision as to whether the taxpayer may adopt the alternative method of allocation/apportionment requested. 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 Appeals, the taxpayer may appeal the denial of the Application. Any appeal will follow the procedures established in South Carolina Revenue Procedure 95-3 with the following modifications. With its decision, Appeals will issue a letter setting forth its reasons for denying the taxpayer's request to change its allocation or apportionment method. The taxpayer will have thirty days to protest Appeals' decision. If the taxpayer files a timely protest, and Appeals does not change its decision, the file will be forwarded to the Department Representative.

**FOR MORE INFORMATION**

If you have questions regarding the Application, please call Jan Crangle at (803)737-4616.

NOTE: The General Assembly, during the 1995 Legislative Session, recodified the State Income Tax and enacted a Revenue Procedures Bill. The recodified version has simplified the law by updating language and reorganizing and combining code sections in a logical manner. This law is effective for taxable years beginning after 1995. As a result of these changes, Code Sections 12-7-1120 and 12-7-1130 have been redesignated as Code Sections 12-6-2220 and 12-6-2230, respectively. Code Sections 12-7-1140, 12-7-1150, 12-7-1160 and 12-7-1170 have been redesignated as Code Sections 12-6-2250, 12-6-2260, 12-6-2270 and 12-6-2280, respectively. Code Sections 12-7-1190 and 12-7-1200 have been redesignated as Code Sections 12-6-2290 and 12-6-2320, respectively.

South Carolina Department of Revenue

s/Burnet R. Maybank III

Burnet R. Maybank III, Director

Columbia, South Carolina  
August 29, 1995