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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 #96-1

**SUBJECT:** Filing Requirements Where Nexus Is an Issue

**EFFECTIVE DATE:** Applies to all periods open under the statute.

**SUPERSEDES:** SC Revenue Procedure #92-2  
SC Information Letter #94-5  
All previous documents and any oral directives in conflict herewith.

**REFERENCE:** S.C. Code Ann. Section 12-4-320(3) (Supp. 1995)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 1995)  
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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Procedure or Revenue Ruling.

**GENERAL INFORMATION:**

A taxpayer must have a minimum connection with a state in order for the taxpayer to be subject to the taxing jurisdiction of the state. This minimal connection is commonly referred to as "nexus." The Department of Revenue has issued several policy documents that provide guidance to a taxpayer trying to determine if nexus exists with South Carolina.

For purposes of this document, nexus for income tax purposes also means a taxpayer is not protected from income taxation under Public Law 86-272. Public Law 86-272 prohibits a state from imposing an income tax on the income derived from within its borders under certain conditions. SC Revenue Ruling #93-10 reviews the effect of Public Law 86-272 and provides assistance in determining whether a taxpayer's activities are protected from South Carolina income taxation.

Since the provisions of Public Law 86-272 apply only to sales of tangible personal property, guidance is often requested concerning the existence of nexus and the State's ability to tax income derived from the selling or providing of services, and the selling, leasing, renting, licensing or other disposition of real estate or intangibles. SC Information Letter #93-20 discusses income taxes that may be due in connection with income derived from intangibles. See also Geoffrey, Inc. v. South Carolina Tax Commission, 437 S.E.2d 13 (1993).

In addition, SC Revenue Ruling #89-13 provides assistance in determining whether certain activities of an out-of-state retailer create nexus and a duty to collect South Carolina's use tax.

## **PROCEDURE FOR VOLUNTARY FILERS:**

The Department has developed a voluntary compliance procedure for taxpayers who have nexus with South Carolina but are not registered with the Department to collect or remit South Carolina taxes. This procedure is designed to: (1) encourage nonfilers to come forward voluntarily and begin paying taxes without incurring penalties; and (2) allow the Department to maximize compliance with its limited audit resources.

The voluntary filing procedure described below is only available when the initial contact is made by the taxpayer and not by the Department. A taxpayer's receipt of a nexus questionnaire is not considered initial contact by the Department, however, a taxpayer that has been contacted by the Department for audit or is involved in the appeals process, for example, is considered to have been contacted by the Department.

## **VOLUNTARY FILER STATUS**

For purposes of this document, a taxpayer who has nexus with South Carolina but is not registered with the State to collect or remit taxes is deemed a voluntary filer provided:

1. The taxpayer either:
  - (a) registers to collect or remit taxes without having been contacted previously by the Department, or
  - (b) responds to the Department's nexus questionnaire timely and completely upon receipt, and,
    - (1) immediately registers with the Department;
    - (2) requests to be registered upon timely return of the questionnaire to the Department; or
    - (3) agrees to register if upon review of the nexus questionnaire by a Field Services Division's employee, the employee determines that nexus exists; and,
2. The taxpayer does not appeal the determination in 1(b)(3) above or file a claim for refund for the tax periods prior to the time of voluntary filing.\*

## **VOLUNTARY FILER RELIEF**

If a taxpayer qualifies as a voluntary filer the Department will:

1. accept the filing of tax returns and payment of all required taxes for the three immediately preceding tax years, or the number of preceding tax years that nexus existed, if less than three years (or corresponding period for purposes of the use tax);

2. apply interest in accordance with the South Carolina Code; and,
3. waive all penalties, except in the cases of material misrepresentation of facts or fraud.

**EXAMPLE OF RELIEF:** A calendar year taxpayer discovers that nexus existed with South Carolina for the last 5 years and comes forward as a voluntary filer in February 1996. The Department will require the taxpayer to file South Carolina income tax returns for the tax years ended 1995, 1994, and 1993 - the three immediately preceding tax years. The Department will apply only interest on the tax liability for these years.\*

## **REGISTRATION PROCEDURE FOR VOLUNTARY FILERS**

A corporation that qualifies as a voluntary filer must register to collect or remit South Carolina income taxes by completing and filing a Form CL-1, Initial Annual Report of Corporations and, if applicable, register to collect or remit South Carolina sales, use, or withholding taxes by completing Form SCTC-111, Business Tax Application.

All other entities that qualify as a voluntary filer must register to collect or remit South Carolina income, sales, use, or withholding taxes by completing Section B and other applicable portions of Form SCTC-111, Business Tax Application.

## **PROCEDURE FOR NONVOLUNTARY FILERS:**

If the Field Services Division determines that a taxpayer does not qualify as a voluntary filer or has contacted the taxpayer for audit, or initiated other contact with the taxpayer, then the Department will not allow voluntary filer relief as provided in this procedure. If the Department has to go beyond the response to a nexus questionnaire and conduct an audit or investigation of the facts to determine nexus, then the taxpayer is not entitled to voluntary filer relief as provided in this procedure. A taxpayer who does not qualify as a voluntary filer is **not** subject to any statute of limitation. Accordingly, taxes will be assessed for all years that nexus existed in South Carolina. Also, interest and penalties will be added in accordance with the South Carolina Code.

## **PROCEDURE WHEN NEXUS IS UNCLEAR:**

In accordance with Code Section 12-4-320(3), the Department may compromise any tax, interest, or penalty imposed by Title 12 of the South Carolina Code. If a taxpayer agrees to become a voluntary filer and completes a nexus questionnaire which shows nexus is unclear (it is uncertain whether a court would determine the existence of nexus), the Department and the taxpayer may agree to compromise the three prior years of taxes that would otherwise be due. The determination as to whether to accept a compromise of taxes rests with the Director.

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\* The procedures set forth in this Revenue Procedure will not prevent a voluntary filer from claiming the lack of nexus for periods after voluntary filing.

**ADDITIONAL INFORMATION:**

All questions regarding registration should be directed to the Department's License and Registration Section at 803-737-4872.

All questions concerning the existence of nexus with South Carolina should be directed to John Rogers at 803-737-4764 or John Swearingen at 803-737-4617 in the Department's Field Services Division.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III  
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Burnet R. Maybank, III, Director

Columbia, South Carolina  
February 5, 1996