

SC REVENUE PROCEDURE #97-1

**SUBJECT:** Procedures for Promulgating, Amending or Repealing Department of Revenue Regulations

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

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

**REFERENCES:** S. C. Code Ann. Section 1-23-10 et. seq. (Revised 1986 and 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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Procedure or Revenue Ruling.

**PROCEDURES FOR PROMULGATING, AMENDING OR**  
**REPEALING DEPARTMENT OF REVENUE**  
**REGULATIONS**

The General Assembly has established procedures for promulgating, amending or repealing regulations.

The Department of Revenue ("Department"), through the issuance of this revenue procedure, is establishing internal procedures to ensure compliance with the statute.

**Note: The statutory provisions for promulgating, amending or repealing a regulation are in Article 1, Chapter 23 of Title 1 of the South Carolina Code of Laws. The Rules of Procedure for a public hearing are in the State Register, Volume 19, Issue 5 (May 26, 1995) and are also available from the Administrative Law Judge Division.**

**Persons responsible for various procedures established by this document should review the statute and the procedures for a public hearing, especially those referenced in this document, to ensure all reports and other information are complete and timely filed with the proper authorities.**

### **SUBMITTING A PROPOSAL**

- (A) An employee submitting a regulatory proposal must have the proposal approved by his or her Division Administrator. The proposal must be submitted in accordance with the internal procedures established by that division.
- (B) The Division Administrator, having approved a regulatory proposal from within the division, will forward the proposal to the Office of the General Counsel - Policy Section ("Policy"). The proposal must include:
  - 1. A draft of the proposed regulation or fairly detailed outline of what the proposed regulation should contain.
  - 2. A statement explaining why the regulatory proposal is needed and why it is a reasonable approach. Any information that supports the need and reasonableness of the proposal should be attached.
  - 3. The names of employees who will serve as contact persons for the proposal.

The Division Administrator will also inform the administrators of the other divisions that a regulation is being proposed and the basic purpose of the proposal.

### **INITIAL DRAFTING OF THE REGULATORY PROPOSAL**

Upon receipt of a regulatory proposal, Policy shall:

- 1. Review the proposal and work with the division to develop the proposal. This may include preparing or revising a draft regulation, a statement of need and reasonableness based on an analysis of the factors listed in Code Section 1-23-115(C)(1) through (11), a section by section discussion of the proposed

regulation, and a memorandum containing any information that may assist the Administrative Division in determining whether or not the proposal will have a "substantial economic impact" as that term is defined in Code Section 1-23-10(7).

Note: See Code Sections 1-23-110, 1-23-111, and 1-23-115 for more information concerning the factors used in preparing the statement of need and reasonableness.

2. Discuss the proposal with the administrator of the Administrative Division. Policy will forward to the administrator of the Administrative Division the memorandum, as outlined above, containing any information that may assist in determining whether or not the proposal will have a "substantial economic impact" The Administrative Division will use this memorandum to prepare, if deemed necessary, an assessment report as to the regulation's "substantial economic impact." See Code Section 1-23-115 for information concerning the requirements of an assessment report. The assessment report will be sent to Policy prior to any discussion of the regulatory proposal with the Department's Director.
3. Circulate the draft regulation and other proposal information as deemed necessary within the Department of Revenue for comments and suggestions. Policy may amend the draft based on the comments received.
4. Present the draft proposal to the Department's administrators for review and discussion.
5. Prepare a final draft proposal for review by the Department's Director.

### **APPROVAL BY THE DIRECTOR OF THE DEPARTMENT OF REVENUE**

Once the proposal is completed by Policy, the General Counsel or his designee will discuss the matter with the Department's Director and seek the Director's approval to give notice of a drafting period ("Notice of Drafting"). In addition to approving or rejecting the proposal, the Director may require the proposal to be amended.

### **PREPARING AND PUBLISHING THE "NOTICE OF DRAFTING"**

Upon approval by the Department's Director, Policy will forward a copy of the proposal to the administrator of the Administrative Division. The Administrative Division will prepare the Notice of Drafting, have it published in the State Register, and compile all comments received as a result of the publication of the Notice of Drafting.

Reference: Code Section 1-23-110(A)(1).

## **REVIEW OF COMMENTS**

- (A) All comments received by the Administrative Division will be forwarded to Policy and that office will meet with persons, associations and other governmental agencies that wish to discuss the issues in more detail. Policy may amend the draft based on the comments received.
- (B) If Policy amends the draft regulation based on the information received, the amended draft will be circulated within the Department for comments and suggestions.
- (C) The General Counsel will present the amended draft proposal to the Department's administrators for review and discussion.
- (D) Based on the information received throughout this process, Policy will prepare a final amended draft proposal for review by the Department's Director.

## **APPROVAL BY THE DIRECTOR OF THE DEPARTMENT OF REVENUE**

Once the proposal is completed by Policy, the General Counsel or his designee will discuss the matter with the Department's Director and seek the Director's approval to give notice of a public hearing ("Notice of Public Hearing"). In addition to approving or rejecting the proposal, the Director may require the proposal to be amended.

## **REQUESTING A PUBLIC HEARING**

If the Director approves the issuance of a "Notice of Public Hearing," the Office of the General Counsel - Revenue or Regulatory Litigation ("Revenue or Regulatory Litigation") shall request such a hearing in accordance with the procedures established by the Administrative Law Judge Division. Revenue or Regulatory Litigation shall inform Policy once the date for the public hearing has been set.

Reference: State Register, Volume 19, Issue 5 (May 26, 1995) - Page 33

## **PREPARING AND PUBLISHING THE "NOTICE OF PUBLIC HEARING"**

Once a date for the public hearing has been set with the Administrative Law Judge Division, Policy will forward a copy of the revised proposal to the administrator of the Administrative Division. The Administrative Division will prepare the "Notice of Public Hearing," have it published in the State Register, and compile all comments received.

A copy of all written comments received will be forwarded to Policy. If the Administrative Division receives any oral comments, it shall prepare a memo to Policy listing each person who made such comments and a synopsis of that person's comments. If any other division receives oral comments, it shall prepare a memo to both Policy and the Administrative Division listing each person who made such comments and a synopsis of that person's comments.

Reference: Code Section 1-23-110(A)(3)

### **REQUIREMENTS FOR THE PUBLIC HEARING**

(A) A public hearing will only be held if requested by 25 or more persons, an association with 25 or more members, or a governmental agency.

Reference: Code Section 1-23-110(A)(3) and State Register, Volume 19, Issue 5 (May 26, 1995) - Page 33

(B) If the requirements of (A) above are not met, then Revenue or Regulatory Litigation will notify the Administrative Law Judge Division that a public hearing is not required. Such notification must be made at least 10 days before the date scheduled for the public hearing. The Administrator of the Administrative Division will then seek approval of the regulation by the General Assembly.

Reference: State Register, Volume 19, Issue 5 (May 26, 1995) - Page 33

(C) If the requirements of (A) above are met, then Revenue or Regulatory Litigation, will notify the Administrative Law Judge Division that a public hearing is required. Revenue or Regulatory Litigation will then pre-file the documents required by the Administrative Law Judge Division.

Reference: State Register, Volume 19, Issue 5 (May 26, 1995) - Pages 33 - 34

(D) Revenue or Regulatory Litigation will represent the Department at the public hearing and may request the assistance of any Department employee in the matter.

Reference: Code Section 1-23-111

### **REPORT BY THE ADMINISTRATIVE LAW JUDGE**

(A) If the Administrative Law Judge finds that the Department's regulation has met the statutory requirement as to need and reasonableness, then Revenue or Regulatory Litigation will send the report and all other necessary information and reports to the Administrative Division and the General Counsel. General Counsel will inform the Department's Director and administrators of the report.

(B) If the Administrative Law Judge finds that the Department's regulation has not met the statutory requirement as to need and reasonableness, then General Counsel or his designee will discuss the matter with the Department's Director to determine which of the following actions will be taken by the Department:

1. The Department will follow the suggested modification found in the report of the Administrative Law Judge and submit the revised proposal for legislative approval pursuant to Code Section 1-23-120.
2. The Department will not follow the suggested modification found in the report of the Administrative Law Judge and submit the original proposal for legislative approval pursuant to Code Section 1-23-120. A copy of the report by the Administrative Law Judge must be submitted to the General Assembly at this time.
3. The Department will withdraw the proposed regulation by publication of a notice in the State Register. The Administrative Division will prepare the notice and have it published. The termination of the promulgation process is effective upon publication of the notice.

Regardless of the decision, Revenue or Regulatory Litigation will send the report and all other necessary information and reports to the Administrative Division along with a memo stating the course of action the Department will take in this matter. General Counsel will inform the other administrators of the report and the Department's decision.

Reference: Code Section 1-23-111(C)

### **SUBMITTING THE REGULATION TO THE GENERAL ASSEMBLY**

The Administrative Division will be responsible for submitting the proposed regulation (as submitted or as revised per the suggestions of the Administrative Law Judge) to the General Assembly for approval.

Reference: Code Section 1-23-120 and Code Section 1-23-125

### **OTHER INFORMATION**

Emergency Regulations: The statute establishes procedures for enacting an emergency regulation. The Department's Director may modify the internal procedures established in this document to ensure timely promulgation of an emergency regulation.

Reference: Code Section 1-23-130

Regulation Adopting Internal Revenue Service Regulations, Rulings, Etc.: General Assembly review is not required for regulations promulgated by the Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical advice memorandums of the Internal Revenue Service so as to maintain conformity with federal income tax laws.

Reference: Code Section 1-23-120(G)(3)

Petitions from Taxpayers: Any interested person may petition the Department of Revenue in writing requesting the promulgation, amendment, or repeal of a department regulation. Such petition should be sent to the following address:

General Counsel  
SC Department of Revenue  
P.O. Box 125  
Columbia, South Carolina 29214

The General Counsel will discuss the petition with the Department Director and with the administrator of the Administrative Division.

If the Department decides to initiate the petition, the General Counsel shall inform the petitioner within 30 days of the submission date of the petition and have Policy begin the process of drafting a regulatory proposal as established by this document.

If the department decides to not initiate the petition, the General Counsel shall inform the petitioner within 30 days of the submission of the petition. The letter must state the reasons for denying the petition.

Reference: Code Section 1-23-126

SC Revenue Procedure #97-1

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

January 17 , 1997  
Columbia, South Carolina