

SC REVENUE PROCEDURAL BULLETIN #02-3

SUBJECT: Administration of Policy, Including Advisory Opinions and Informal Advice
(All Laws Administered by the Department)

EFFECTIVE DATE: October 1, 2002

SUPERSEDES: SC Revenue Procedure #99-4

REFERENCE: S.C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2001)

SCOPE: The purpose of a Revenue Procedural Bulletin is to provide procedural guidance to the public and to Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. A Revenue Procedural Bulletin does not have the force or effect of law, and is not binding on the public. It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

I. BACKGROUND INFORMATION

The Policy Section (“Policy”) of the Law & Compliance Division recommends advisory opinions to the Director for approval. Advisory opinions approved by the Director are binding on Department employees; they do not have the force or effect of law and are not binding on the public. They are intended to provide the public with guidance as to the Department’s administrative position so members of the public will not be surprised by its opinion and to ensure that the Department’s position is the same from office to office and employee to employee.

The Department issues three types of advisory opinions referred to as: (1) Revenue Advisory Bulletins, (2) Revenue Procedural Bulletins, and (3) Private Revenue Opinions. In addition, the Department issues Revenue Informational Bulletins to announce general information.

II. DISTINGUISHING ADVISORY OPINIONS AND BINDING AUTHORITY

The Department promulgates binding rules through regulations issued in accordance with the State's administrative procedures act ("APA") (Code §1-23-10 *et seq.*) and Code §12-4-320(1). Also, the Department announces general statements of position for guidance through advisory opinions which are not regulations and do not have the force of law. See Code §§1-23-10(4) and 12-4-320.

The Department's strategic plan includes: (a) educating customers on their legal requirements; (b) taking an active role in the review of legislation and recommending improvements for simplification, understanding, and ease of compliance; and (c) improving the quality of written communication to our customers. As part of the implementation of these strategies, the Department will:

1. Recommend statutory changes when a statute is unclear, can be simplified, or when the burden of compliance can be reduced;
2. Recommend regulations when a statute is unclear; and
3. Issue advisory opinions which are not binding on the public but are binding on Department employees.

A non-binding advisory opinion is issued at the Director's discretion. Under some circumstances, a binding rule may be more appropriate. In such instances, the Department will suggest legislation to the General Assembly or initiate procedures under the APA to propose a regulation, or both. The Director may issue an advisory opinion to provide the public with the Department's position during the legislative or regulatory process. If so, the advisory opinion may be used as the basis for the notice of drafting required for the promulgation of a regulation which is published in the State Register.

The purposes of advisory opinions are:

1. To provide guidance to the general public and to employees concerning the application of laws administered by the Department that are not adequately covered by statute, case law, or regulation. This guidance represents the position of the Department but is not binding on the public. It is intended to assist the public by giving them notice of the Department's position.
2. To provide procedural guidance to the general public and employees to assist in delineating procedures to follow to efficiently achieve compliance.
3. To promote uniform application of laws by the Department.
4. To respond to a member of the public's request for guidance on the application of the law in a particular situation.

5. To assist taxpayers in determining the tax consequences of a planned transaction.
6. To make public the Department's position on matters to ensure there is no possibility that the Department's positions are only available to a few practitioners.

III. DESCRIPTION OF ADVISORY OPINIONS

Advisory opinions consist of Revenue Advisory Bulletins, Revenue Procedural Bulletins, and Private Revenue Opinions. These advisory opinions remain in effect unless superseded or modified by a change in statute, regulation, court decision, or advisory opinion. If applicable, an advisory opinion will state on its face that it is being issued to supersede or modify an existing one, and the advisory opinion being revoked or modified will also be identified. Each type of advisory opinion is described in the below sections.

A. Revenue Advisory Bulletin

Definition. A Revenue Advisory Bulletin is intended to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of law to a specific set of facts or a general category of taxpayers. A Revenue Advisory Bulletin does not have the force or effect of law, and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Reasons for Issuing a Revenue Advisory Bulletin. Reasons for issuing a Revenue Advisory Bulletin may include:

1. The law or regulations are not clear and the issue may affect many people;
2. There is inconsistency in the treatment of an issue within the Department; or
3. When a request for an advisory opinion from one person concerns an issue that will affect many people.

Reasons for Not Issuing a Revenue Advisory Bulletin. The Department may exercise its discretion not to issue a Revenue Advisory Bulletin for any reason, including:

1. When the laws or regulations are clear;
2. When a binding rule is more appropriate. In such instances, the Department will suggest legislation to the General Assembly or initiate procedures under the APA to propose a regulation, or both. The Director may issue a Revenue Advisory Bulletin to provide the public with the Department's position during the legislative or regulatory process. The Revenue Advisory Bulletin may be used as the basis for the notice of drafting required for the promulgation of a regulation and published in the State Register;

3. In response to inquiries concerning alternative treatments or purely hypothetical situations;
4. On a matter that concerns only one person;
5. On inquiries concerning federal tax matters unless such inquiries concern differences in treatment for federal and state purposes. Other inquiries concerning federal tax matters should be directed to the Internal Revenue Service. The Department will abide by rulings of the Internal Revenue Service, issued to the taxpayer for the transaction in question, until or unless the Department specifies otherwise. The determination that the Department will not abide by an Internal Revenue Service private letter ruling will be prospective, provided that all of the provisions of federal law in question have been specifically adopted by South Carolina;
6. On a matter that is being litigated or may be litigated in the near future; or
7. When requests can best be handled by another means or by another section within the Department.

B. Revenue Procedural Bulletin

Definition. A Revenue Procedural Bulletin is intended to provide procedural guidance to the general public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing procedural guidance that may be followed in order to comply with the law. A Revenue Procedural Bulletin does not have the force or effect of law, and is not binding on the public. It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Reasons for Issuing a Revenue Procedural Bulletin. Reasons for issuing a Revenue Procedural Bulletin may include:

1. A procedural inconsistency exists within the Department;
2. The law or regulations are not clear with respect to the procedures a person should follow to comply with the law; or
3. When its issuance will assist the public in meeting their legal obligations in an effective and efficient manner.

Reasons for Not Issuing a Revenue Procedural Bulletin. The Department may exercise its discretion not to issue a Revenue Procedural Bulletin for any reason, including:

1. When the law or regulations concerning an administrative matter are clear;

2. When a binding rule is more appropriate. In such instances, the Department will suggest legislation to the General Assembly or initiate procedures under the APA to propose a regulation, or both. The Director may issue a Revenue Procedural Bulletin to provide the public with procedural guidance during the legislative or regulatory process. The Revenue Procedural Bulletin may be used as the basis for the notice of drafting required for the promulgation of a regulation and published in the State Register;
3. On a matter that concerns only one person; or
4. When requests can best be handled by another means or by another section within the Department.

C. Private Revenue Opinion

Definition. The purpose of a Private Revenue Opinion is to provide guidance to a specific taxpayer at the taxpayer's request. It is a written statement issued to apply principles of law to a specific set of facts or a particular tax situation. A Private Revenue Opinion does not have the force and effect of law, and is not binding on the person who requested it or the public. It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Reasons for Issuing a Private Revenue Opinion. Reasons for issuing a Private Revenue Opinion may include:

1. Upon written request of a specific person, or that person's representative who has a power of attorney; and
2. The law and regulations are not clear.

Reasons for Not Issuing a Private Revenue Opinion. The Department may exercise its discretion not to issue a Private Revenue Opinion for any reason, including:

1. When the law or regulations are clear;
2. When a binding rule is more appropriate. In such instances, the Department will suggest legislation to the General Assembly or initiate procedures under the APA to propose a regulation, or both;
3. In response to inquiries concerning alternative treatments or purely hypothetical situations;

4. On matters scheduled for audit or in audit, appeal or litigation;
5. On inquiries concerning federal tax matters unless such inquiries concern differences in treatment for federal and state purposes. Other inquiries concerning federal tax matters should be directed to the Internal Revenue Service. The Department will abide by rulings of the Internal Revenue Service, issued to the taxpayer for the transaction in question, until or unless the Department specifies otherwise. The determination that the Department will not abide by an Internal Revenue Service private letter ruling will be prospective, provided that all of the provisions of federal law in question have been specifically adopted by South Carolina;
6. On a matter that is being litigated or may be litigated in the near future;
7. For a member of the public whose request for an advisory opinion does not contain the information listed in Section IV of this advisory opinion; or
8. When requests can be best handled by another means or by another section within the Department.

IV. REQUESTING AN ADVISORY OPINION

Request from Persons Outside the Department. Requests for an advisory opinion should be in writing and submitted to:

Policy - Advisory Opinion Request
South Carolina Department of Revenue
301 Gervais Street
P.O. Box 125
Columbia, South Carolina 29214-0702

Policy may forward any request to another section within the Department if it is determined that it is more appropriate for another section to respond to the request. The research, review, and technical sections of the Department, and other persons a section administrator appoints, are responsible for providing informal advice and assistance to persons outside the Department and to employees of their section. These sections or persons are referred to in this document as the “review group.”

Request from Persons Within the Department. An advisory opinion may be prepared at the request of the Director, a deputy director, an administrator of a section, or based on a recommendation by Policy. Requests from other persons within the Department must be in writing and routed to Policy through the Review group of the appropriate section. If an advisory opinion on a request sent to the Review group is not warranted, the Review group of the section may respond to the question. Note, responses by these Review groups are not the position of the Department, but are informal advice designed to assist the employees. If the Review group determines that an advisory opinion is warranted, the Review group will

forward the request to Policy. To be considered for an advisory opinion, the Review group must include in its request a summary of the reasons an advisory opinion is warranted and a complete analysis of their position on the issues in question. They will also notify their administrator as to the nature of the request. At the discretion of the administrator, all requests may be routed to Policy through the office of the administrator.

Response to Requests for Advisory Opinions. Requests for advisory opinions will usually be worked on in the order received, unless reasons are given to do otherwise. If timing is important, the requesting party should provide reasons for extending expedited treatment. Policy will strive to respond to all requests as expeditiously as possible. The ultimate determination as to the type of advisory opinion to be issued or whether or not an advisory opinion should be issued rests with the Director.

Content of Request. Requests for advisory opinions should contain the following information:

1. Name, address, and telephone number of person requesting the advisory opinion;
2. A power of attorney, if the person is represented by a third party;
3. Specific questions to be answered or procedures to be addressed;
4. Complete statement of all relevant facts;
5. For advisory opinions requested by a specific taxpayer, a statement of what, if any, information the taxpayer wishes to remain confidential. This statement is important since Private Revenue Opinions are published with information deleted that the taxpayer informs Policy in writing that it wishes to remain confidential;
6. Relevant code sections, regulations, and court decisions. Applicants should refer to any legislation, court decisions, regulations, or advisory opinions which appear to support their position;
7. Copies of relevant documents (i.e. contracts, wills, deeds, etc., if any); and,
8. Whether:
 - (a) the person requesting the opinion has the same issue under audit or appeal by the Department or any other taxing or revenue authority;
 - (b) the person has been notified that an examination is pending;
 - (c) the issue is being litigated by the person or is about to be litigated;
 - (d) the Department, or any other taxing or revenue authority, has previously issued an advisory opinion on the same issue (please cite or attach a copy of the advisory opinion); or

- (e) the Attorney General’s Office or Comptroller General’s Office has been, or will be, requested to issue an opinion concerning the issue.

Examinations Prior to an Advisory Opinion Being Issued. If, prior to the issuance of a Private Revenue Opinion, a person is notified of a pending examination by the Department, or other taxing or revenue authority, the person should notify Policy of the pending examination and notify the examining auditor of the request for an advisory opinion.

V. PROCEDURES FOR ISSUANCE OF AN ADVISORY OPINION

A. Procedure for Issuing Revenue Advisory Bulletins and Revenue Procedural Bulletins

1. Policy, upon the receipt of a request, will acknowledge receipt in writing. If Policy receives a request which: (a) is not a request for an advisory opinion described in this advisory opinion or (b) is not a request for which an advisory opinion will be issued, then Policy will forward it to the appropriate section within the Department.
2. Policy will gather all necessary information and research the issues. Policy may request any additional information or documentation it deems necessary from any person. The person making the request will be informed that if any additional information or documentation requested is not provided within thirty days, Policy may consider the request withdrawn and the file closed. If necessary, additional time may be requested and will be granted. Policy will determine the type of advisory opinion to be drafted and will draft a proposed advisory opinion.
3. All proposed Revenue Advisory Bulletins and Revenue Procedural Bulletins will be marked “DRAFT” and circulated within the Department for comments. At the discretion of Policy, the proposed advisory opinion may be modified based on employee comments and an amended draft may be circulated.
4. All proposed Revenue Advisory Bulletins (including those requested by a specific person) and Revenue Procedural Bulletins will be marked “DRAFT” and made available to interested parties and the public for comments before consideration of the advisory opinion by the Director. A time will be given for responses to be submitted to Policy and a time will be scheduled for a conference at the Department where interested parties and the public may comment, suggest alternatives, and ask questions about the proposed advisory opinion should a conference be requested. The scheduled time for receiving written comments will generally be two weeks to a month from the date the draft is made public. The conference will be held only if one is requested by the date for receiving comments; otherwise it will be cancelled. At the discretion of Policy, the proposed advisory opinion may be modified based on public comments.

The draft advisory opinion, comment closing date, and, if a conference is requested, conference place and date, will be published on the Department's website at www.sctax.org. A request to receive this information automatically via e-mail can be made by subscribing on the Department's website to the Policy Listserver.

Note: Advisory opinions marked "draft" are staff drafts and are not the position of the Department.

5. All proposed Revenue Advisory Bulletins and proposed Revenue Procedural Bulletins are presented to the Director for consideration. If approved by the Director, the advisory opinion will be issued. If the proposed advisory opinion is not approved by the Director, then the Director will instruct Policy to make changes and issue the advisory opinion, circulate an amended draft, or communicate to whomever necessary that the advisory opinion will not be issued.

B. Procedure for Issuing Temporary Advisory Opinions

1. Due to time constraints and emerging issues, it may be necessary to provide written guidance in a short amount of time. In such instances, the Director may instruct Policy to issue a temporary advisory opinion, or may issue the Department's position through a news release, in court filings, or by any other means.
2. The advisory opinion will be issued as a "Temporary Revenue Advisory Bulletin" or "Temporary Revenue Procedural Bulletin" and will be immediately distributed.
3. The temporary advisory opinion will become a proposed Revenue Advisory Bulletin or a proposed Revenue Procedural Bulletin. The proposed advisory opinion will be circulated within the Department and made available to interested parties and the public for comment. A time will be given for responses to be submitted to Policy and a time will be scheduled for a conference at the Department where, should a conference be requested, interested parties and the public may comment, suggest alternatives, and ask questions about the proposed advisory opinion. The scheduled time for receiving written comments will generally be two weeks to a month from the date the proposed advisory opinion is made public. The conference will be held only if someone requests a conference by the date for receiving comments; otherwise it will be cancelled. At the discretion of Policy, the proposed advisory opinion may be modified based on public comments.

The proposed advisory opinion, comment closing date, and, if a conference is requested, conference date will be published on the Department's website at www.sctax.org. A request to receive this information automatically via e-mail can be made by subscribing on the Department's website to the Policy Listserver.

4. The proposed final Revenue Advisory Bulletin or proposed final Revenue Procedural Bulletin will be presented to the Director for consideration. If approved by the Director, the final advisory opinion will replace the temporary advisory opinion and will be issued. If the proposed final advisory opinion is not approved by the Director, then the Director will instruct Policy to make changes and issue the final advisory opinion, circulate an amended draft, or revoke the temporary advisory opinion by issuing an advisory opinion merely stating that the temporary advisory opinion is revoked. See the discussion in Section VIII for the use of a temporary advisory opinion.

C. Procedure for Issuing Private Revenue Opinions

1. If Policy receives a request which: (a) is not a request for a Private Revenue Opinion described in this advisory opinion or (b) is not a request for which a Private Revenue Opinion will be issued, then Policy will determine whether or not an advisory opinion can be issued on the matter or will forward it to the appropriate section within the Department for an informal response. Policy will notify the person making the request that the request has been referred to another section or that an advisory opinion will not be issued on the matter.
2. Policy will gather all necessary information and research the issues. Policy may meet with or request any additional information or documentation from any person it deems necessary. The person making the request will be informed that if any additional information or documentation requested is not provided within thirty days, Policy may consider the request withdrawn and the file closed. If necessary, additional time may be requested and will be granted. Policy will determine the type of advisory opinion to be drafted and will draft a proposed advisory opinion. If Policy determines the issue raised will affect many people, a Revenue Advisory Bulletin may be issued rather than a Private Revenue Opinion.
3. All proposed Private Revenue Opinions will be marked “DRAFT” and circulated within the Department for comments. At the discretion of Policy, the proposed advisory opinion may be modified based on employee comments and an amended draft may be circulated.
4. A “Notice of Proposed Advisory Opinion” will be sent to the person requesting the advisory opinion, or that person’s representative who has a power of attorney, for comments before consideration of the advisory opinion by the Director. A time, generally thirty days from the time the draft is sent, will be given for a response to be submitted to Policy. Additional time will be granted upon request. Written comments will be reviewed and, at the discretion of Policy, the proposed advisory opinion may be modified. The requesting party will be given an opportunity to: (1) provide additional information or arguments if they disagree with the proposed advisory opinion or (2) withdraw the request for the proposed advisory opinion.

Note: Advisory opinions marked “draft” are staff drafts and are not the position of the Department.

If additional information is provided, Policy may modify the draft at its discretion based on any new information presented. If the request is withdrawn, all correspondence and documents may be retained for future reference. Policy may furnish its views to appropriate Department personnel who may consider it for any reason within their authority.

5. All proposed Private Revenue Opinions are presented to the Director for consideration. If approved by the Director, the advisory opinion will be issued. If the Private Revenue Opinion is not approved by the Director, then the Director will instruct Policy to make changes and issue the advisory opinion, circulate an amended draft, or communicate to the person requesting it that the Private Revenue Opinion will not be issued.

VI. DESCRIPTION OF REVENUE INFORMATIONAL BULLETINS

Definition. A Revenue Informational Bulletin is a written statement issued by the Department to announce general information useful in complying with the laws administered by the Department. A Revenue Informational Bulletin has no precedential value, and is not binding on the public, the Department, or its employees.

Reasons for Issuing a Revenue Informational Bulletin. Reasons for issuing a Revenue Informational Bulletin may include:

1. A code section or regulation is added, amended, or rescinded, or a case is decided and the Department wants to notify the public;
2. To publish information to Department employees and the public that is based on data supplied by other agencies, such as per capita income figures and county rankings for job tax credit purposes;
3. To publish information to Department employees and the public that is supplied by the Internal Revenue Service regarding similar provisions adopted by South Carolina, such as interest rates; or
4. A previous Revenue Informational Bulletin is being revised.

Reasons for Not Issuing a Revenue Informational Bulletin. The Department may exercise its discretion not to issue a Revenue Informational Bulletin for any reason, including:

1. When the primary purpose is to provide interpretations or procedural guidance; or

2. When announcements of general information can best be handled by other means or by another section within the Department.

VII. FORMAT OF ADVISORY OPINIONS AND REVENUE INFORMATIONAL BULLETINS

Each type of advisory opinion and Revenue Informational Bulletin will be numbered sequentially. The numbering sequence will begin anew each calendar year with the first two digits denoting the year of issuance (*i.e.*, SC Revenue Advisory Bulletin #02-1, SC Revenue Procedural Bulletin #02-1). Revenue Advisory Bulletins, Revenue Procedural Bulletins, Private Revenue Opinions, Temporary Revenue Advisory Bulletins, and Temporary Revenue Procedural Bulletins will contain a place designated for the signature of the Director and the date of approval. Advisory opinions will generally be formatted as shown in Exhibits 1 and 2, unless the dissemination of policy with respect to a particular issue can best be accomplished by a different format. Revenue Informational Bulletins will generally be formatted as shown in Exhibit 3.

VIII. PUBLIC DISCLOSURE OF INFORMATION AND USE OF TEMPORARY ADVISORY OPINIONS AND PRIVATE REVENUE OPINIONS

Advisory opinions and Revenue Informational Bulletins are available on the Department's Internet website. The Department's website is www.sctax.org. The Department may take other steps to accomplish disclosure, as deemed appropriate.

Use of a Temporary Revenue Advisory Bulletin or Temporary Revenue Procedural Bulletin. As discussed in Section V above, a Temporary Revenue Advisory Bulletin or Temporary Revenue Procedural Bulletin may be replaced by a final Revenue Advisory Bulletin or final Revenue Procedural Bulletin that is different. For transactions which occur after the temporary advisory opinion is issued and before the final advisory opinion is issued, members of the public may rely on the temporary advisory opinion or the final advisory opinion, whichever is more favorable to them.

Use of a Private Revenue Opinion. A Private Revenue Opinion may only be relied upon by the person to whom it is issued for the transaction to which it relates. It has no precedential value. If it is determined that the representations made in the request do not reflect an accurate statement of the material facts or the transaction was not carried out as proposed, the Private Revenue Opinion may not be relied upon by the person who requested it. A reference to the Private Revenue Opinion should be made on any relevant return, application, or document filed.

Although a Private Revenue Opinion may not be relied upon by others, it is public information and is made available to the public to provide insight as to the thoughts of the Department on a particular matter. However, persons should be aware that the facts of a Private Revenue Opinion request may be voluminous and only a summary of the facts may be set forth in the document.

IX. INFORMAL RESPONSE FROM POLICY

A. Informal Oral Advice

Policy is available to informally discuss questions of law or fact by telephone or in person as requested by any person within or without the Department. Such oral advice does not represent the opinion of the Department, and is not binding on the person who asked for such advice or any Department employee, or the Department. A request for informal oral advice will have no effect on an audit. There is no formal request procedure for informal oral advice.

B. Informal Written Advice

If a person within or without the Department desires informal written advice, Policy will generally forward such requests to the appropriate Review group within the Department. Policy may, at its discretion, issue informal non-binding written advice if the facts and circumstances warrant. Such informal written advice is not a Revenue Advisory Bulletin, Revenue Procedural Bulletin, or Private Revenue Opinion, and is not binding on any Department employee, the Department, or the person who made the request. All requests for informal written advice should be in writing. A request for informal written advice will have no effect on an audit.

Pursuant to the South Carolina Taxpayers' Bill of Rights, if the Department finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Department, then the person is relieved of any penalty or interest. See South Carolina Code §12-58-100.

C. Conference to Facilitate Audits

General Statement. Policy will participate in an optional, informal conference that is requested by the auditor and the taxpayer to assist the parties involved in an audit in clarifying the facts and issues and possibly settling the audit.

Request for Conference to Facilitate an Audit. A conference with Policy is voluntary. The auditor and the taxpayer must both consent to use the process and agree to participate in the conference. The process may be terminated at any time by any party involved.

A request to initiate the process may be made: (1) at any time during the audit process and (2) for any type tax or dollar amount under audit. The auditor may suggest the process to the taxpayer or the taxpayer may suggest the process to the auditor.

Once the auditor and the taxpayer agree to participate in this process, the auditor will submit a written request for a conference. The request will be considered made once the auditor submits the following information in writing to the Chief Counsel of Policy: (1) a brief

summary of the facts under audit; (2) a list of issues; (3) the auditor's proposed conclusions and the reasons for them; and (4) any comments that the taxpayer would like to make. The taxpayer's comments may include additional facts, issues, and/or conclusions.

Once the request is received, it will be reviewed and Policy will inform the auditor of the Policy member who will attend the conference. The auditor will then schedule the conference at a time acceptable by the auditor, the taxpayer, and the Policy member. The taxpayer and his representative, if any, may attend the meeting in person or by conference call.

Reasons a Conference May Not be Provided. Reasons a conference may not be provided may include:

1. The appeals file has been forwarded to the Office of General Counsel for the Department's Final Determination;
2. Policy determines the written request does not provide the information necessary to assist the parties; or
3. Policy determines time constraints prevent expeditious handling of the matter.

Actions by Policy. The auditor, taxpayer, or taxpayer's representative, if any, and Policy member must be present (in person or by phone) at the conference. Other persons may also be present at the request of the auditor, the taxpayer, or Policy member. One meeting should be sufficient to discuss the matter. If the Policy member determines another meeting will be useful, it will be scheduled. The Policy member will help the parties clarify the facts and issues, help the parties understand the other's position, and explain alternative ways, if any, the issues may be viewed. Policy will not take sides in the facilitation. Any opinion expressed by Policy is unofficial, informal advice. The parties may agree that a settlement will be based upon facts presented, the law, or the hazards of litigation. If the parties agree to propose a settlement based upon the hazards of litigation, then the auditor will prepare a written report summarizing the settlement offer and send it to the General Counsel for review. If a settlement cannot be reached, the parties may agree to resolve some of the issues or stipulate some of the facts. The Policy member will keep the Chief Counsel for Policy and the General Counsel informed about the process.

Policy will not issue an advisory opinion on any matter discussed during the conference. Policy may at a future date, however, issue an advisory opinion based on legal issues discussed in the matter.

How the Procedure Affects the Audit Process. This procedure will neither stop nor delay the audit. Any statements made by Policy, the auditor, or the taxpayer during the conference will not be binding on the auditor, the taxpayer, Policy, or the Department. The conference will concern only the periods at issue in the audit. This process has no precedential value. Since this process is voluntary, the parties are free to agree with any suggested settlement or to continue with the audit and appeal process.

X. QUESTIONS

For questions concerning this advisory opinion, contact Policy at (803) 898-5140, John P. McCormack at (803) 898-5138, Deana West at (803) 898-5139, or Jerilynn VanStory at (803) 898-5151.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth Carpentier
Elizabeth Carpentier, Director

September 18, 2002
Columbia, South Carolina

EXHIBIT 1
FORMAT OF ADVISORY OPINIONS

(Advisory opinions do not require a standard format, but will generally be formatted as shown.)

SC REVENUE ADVISORY BULLETIN #

- SUBJECT:** Title
(Tax, License, or Revenue Type)
- EFFECTIVE DATE:** If applicable, specify a date or the phrase, “Applies to all periods open under the statute.”
- SUPERSEDES:** Specify which advisory opinion, if applicable, and the phrase, “All previous advisory opinions and any oral directives in conflict herewith.”
- REFERENCES:** Cite South Carolina code sections referenced: i.e. “S. C. Code Ann. Section XX-XX-XXX (Supp. Year)”
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. Year)
S. C. Code Ann. Section 1-23-10(4) (Supp. Year)
SC Revenue Procedural Bulletin #02-3
- SCOPE:** The purpose of a Revenue Advisory Bulletin is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Advisory Bulletin does not have the force or effect of law, and is not binding on the public.** It is, however, the Department’s position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Question(s):

Conclusion(s):

Facts: (Optional)

Discussion: (Optional)

Note: The Director’s signature and date approved is placed at the end of the advisory opinion along with the following statement: For questions concerning (subject of advisory opinion), contact (name of contact person or applicable section within the Department) at home number). This statement may be modified as deemed necessary.

SC REVENUE PROCEDURAL BULLETIN

SUBJECT: Title
(Tax, License, or Revenue Type)

EFFECTIVE DATE: If applicable, specify a date or the phrase, “Applies to all periods open under the statute.”

EXPIRATION DATE: If Needed

SUPERSEDES: Specify which advisory opinion, if applicable, and the phrase, “All previous advisory opinions and any oral directives in conflict herewith.”

REFERENCES: Cite South Carolina code sections referenced i.e. “S. C. Code Ann. Section XX-XX-XXX (Supp. Year)”

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. Year)
S. C. Code Ann. Section 1-23-10(4) (Supp. Year)
SC Revenue Procedural Bulletin #02-3

SCOPE: The purpose of a Revenue Procedural Bulletin is to provide procedural guidance to the public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. **A Revenue Procedural Bulletin does not have the force or effect of law, and is not binding on the public.** It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

This advisory opinion does not require a standard format.

The Director’s signature and date approved is placed at the end of the advisory opinion along with the following statement: For questions concerning (subject of advisory opinion), contact (name of contact person or applicable section within the Department) at (phone number). This statement may be modified as deemed necessary.

SC PRIVATE REVENUE OPINION

SUBJECT: Title
(Tax, License, or Revenue Type)

REFERENCES: Cite South Carolina code sections referenced: i.e. "S. C. Code Ann. Section XX-XX-XXX (Supp. Year)"

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. Year)
S. C. Code Ann. Section 1-23-10(4) (Supp. Year)
SC Revenue Procedural Bulletin #02-3

SCOPE: A Private Revenue Opinion is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. **A Private Revenue Opinion does not have the force and effect of law, and is not binding on the person who requested it or the public.** It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question(s):

Conclusion(s):

Facts:

Discussion: (Optional)

Note: The Director's signature and date approved is placed at the end of the advisory opinion along with the following statement: **CAVEAT:** This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

EXHIBIT 2
FORMAT OF TEMPORARY ADVISORY OPINIONS

SC TEMPORARY REVENUE ADVISORY BULLETIN #

SUBJECT: Title
(Tax, License, or Revenue Type)

EFFECTIVE DATE: If applicable, specify a date or the phrase, “Applies to all periods open under the statute.”

SUPERSEDES: Specify which advisory opinion, if applicable, and the phrase, “All previous advisory opinions and any oral directives in conflict herewith.”

REFERENCES: Cite South Carolina code sections referenced: i.e. “S. C. Code Ann. Section XX-XX-XXX (Supp. Year)”

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. Year)
S. C. Code Ann. Section 1-23-10(4) (Supp. Year)
SC Revenue Procedural Bulletin #02-3

SCOPE: The purpose of a Temporary Revenue Advisory Bulletin is to provide immediate guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Temporary Revenue Advisory Bulletin does not have the force or effect of law, and is not binding on the public.** It is, however, temporary, and is binding on agency personnel only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Question(s):

Conclusion(s):

Facts: (Optional)

Discussion: (Optional)

Note: The Director’s signature and date approved is placed at the end of the advisory opinion along with the following statement: For questions concerning (subject of advisory opinion), contact (name of contact person or applicable section within the Department) at (phone number). This statement may be modified as deemed necessary.

SC TEMPORARY REVENUE PROCEDURAL BULLETIN #

SUBJECT: Title
(Tax, License, or Revenue Type)

EFFECTIVE DATE: If applicable, specify a date or the phrase, “Applies to all periods open under the statute.”

EXPIRATION DATE: If Needed

SUPERSEDES: Specify which advisory opinion, if applicable, and the phrase, “All previous advisory opinions and any oral directives in conflict herewith.”

REFERENCES: Cite South Carolina code sections referenced: i.e. “S. C. Code Ann. Section XX-XX-XXX (Supp. Year)”

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. Year)
S. C. Code Ann. Section 1-23-10(4) (Supp. Year)
SC Revenue Procedural Bulletin #02-3

SCOPE: The purpose of a Temporary Revenue Procedural Bulletin is to provide immediate procedural guidance to the public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. **A Revenue Procedural Bulletin does not have the force or effect of law, and is not binding on the public.** It is, however, temporary, and is binding on agency personnel only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

This advisory opinion does not require a standard format.

The Director’s signature and date approved is placed at the end of the advisory opinion along with the following statement: For questions concerning (subject of advisory opinion), contact (name of contact person or applicable section within the Department) at (phone number). This statement may be modified as deemed necessary.

EXHIBIT 3
FORMAT OF REVENUE INFORMATIONAL BULLETINS

SC REVENUE INFORMATIONAL BULLETIN #

- SUBJECT:** Title
(Tax, License, or Revenue Type)
- DATE:** Specify date issued
- SUPERSEDES:** If Needed
- REFERENCE:** Cite South Carolina code sections referenced i.e. “S. C. Code Ann. Section XX-XX-XXX (Supp. Year)”.
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. Year)
S.C. Code Ann. Section 1-23-10(4) (Supp. Year)
SC Revenue Procedural Bulletin #02-3
- SCOPE:** A Revenue Informational Bulletin is a written statement issued to the public by the Department to announce general information useful in complying with the laws administered by the Department. **A Revenue Informational Bulletin has no precedential value, and is not binding on the public or the Department.**

A standard format is not required.