

SC REVENUE PROCEDURAL BULLETIN #02-4

SUBJECT: Economic Development and Applying for an Alternative Allocation/Appportionment Method

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

SUPERSEDES: Supersedes SC Revenue Procedure #96-3 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-6-2320 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2001)
S. C. Revenue Procedure #99-4

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have the force or effect of law, and is not binding on the public.** It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

INTRODUCTION

When all the business of a taxpayer is conducted in South Carolina, the taxpayer's entire net income is taxable by South Carolina. However, as a general rule, a taxpayer that operates both within and without South Carolina determines taxable income by allocating to a particular state certain items of income in accordance with Sections 12-6-2220 and 12-6-2230 of the South Carolina Code of Laws ("Code") and then apportioning its remaining net income using the method described in Code Sections 12-6-2250 through 12-6-2280 or the method described in Code Section 12-6-2290.

If a taxpayer is engaged in the businesses of manufacturing, collecting, buying, assembling, or processing goods and materials within this State or selling or dealing in tangible personal property within this State, the taxpayer must apportion income using the method described in

Code Sections 12-6-2250 through 12-6-2280. This method uses three factors consisting of a property ratio, a payroll ratio, and a sales ratio. 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 added together (with the sales factor being added twice) and divided by four and the resulting fraction, expressed as a percentage, is multiplied by the taxpayer's income (after deducting the items of income allocated under Code Sections 12-6-2220 through 12-6-2230). The result is the amount of income apportioned to South Carolina for taxation.

Under Code Section 12-6-2290, if the principal profits or income of a taxpayer are derived from sources other than those described in Code Section 12-6-2250, the taxpayer is required to make returns and pay annually an income tax upon a proportion of its remaining net income computed on the basis of the ratio of gross receipts from within this State during the tax year to the total gross receipts of such year within and without the State (after deducting the items of income allocated under Code Sections 12-6-2220 and 12-6-2230).

BACKGROUND

Code Section 12-6-2320(B) allows a taxpayer to request use of an alternative method of allocating or apportioning income attributable to South Carolina ("New Method") if the taxpayer is planning a new facility or the expansion of an existing facility in this State.¹ Code Section 12-6-2320(C) allows a taxpayer who is constructing or operating a qualified recycling facility to petition the Department of Revenue ("Department") to use a New Method for allocating or apportioning income. In order to use the New Method, the Advisory Coordinating Council for Economic Development² ("Council") must make certain findings about the project and the taxpayer and the Department must enter into an agreement allowing the use of the New Method.

Code Section 12-6-2320(B) and (C) provide in relevant part:

(B)(1) For the purposes of this chapter, the department may enter into an agreement with the taxpayer establishing the allocation and apportionment of the taxpayer's income for a period not to exceed five years, if the following conditions are met:

(a) the taxpayer is planning a new facility in this State or an expansion of an existing facility;

¹ Code Section 12-6-2320(A) allows a taxpayer to request 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 operations within the State of South Carolina. For information on how to apply for a new method of allocating and apportioning income under this subsection, please see S.C. Rev. Proc. #95-4.

² Recent legislation dropped the term "Advisory" from the title "Advisory Coordinating Council for Economic Development." See, 2000 Act No. 387, Part II, §57A effective July 1, 2000 amending Code Section 13-1-1710.

(b) the taxpayer asks the department to enter into a contract under this subsection reciting an allocation and apportionment method; and

(c) after reviewing the taxpayer's proposal and planned new facility or expansion, the Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed the costs to the public. It is within the Advisory Coordinating Council for Economic Development's sole discretion to determine whether a new facility or expansion has a significant economic effect on the region for which it is planned.

(2) For the purposes of this subsection the word "taxpayer" includes any one or more of the members of a controlled group of corporations authorized to file a consolidated return under Section 12-6-5020.

(3) Notwithstanding the provisions of item (1), the department may enter into an agreement with the taxpayer establishing the allocation and apportionment of the taxpayer's income for a period not to exceed ten years if the following conditions are met:

(a) the taxpayer is planning a new facility in this State or an expansion of an existing facility and the new or expanded facility results in a total investment of at least ten million dollars and the creation of at least two hundred new full-time jobs, with an average cash compensation level for the new jobs of more than three times the per capita income of this State at the time the jobs are filled which must be within five years of the Advisory Coordinating Council for Economic Development's certification. Per capita income for the State shall be determined by using the most recent data available from the Board of Economic Advisors;

(b) the taxpayer asks the department to enter into a contract under this subsection reciting an allocation and apportionment method; and

(c) after reviewing the taxpayer's proposal and planned new facility or expansion, the Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed the costs to the public. It is within the Advisory Coordinating Council for Economic Development's sole discretion to determine whether a new facility or expansion has a significant economic effect on the region for which it is planned.

(C) Notwithstanding the provisions of this section, a taxpayer who is constructing or operating a qualified recycling facility as defined in Section 12-6-3460 may petition the department for the use of separate accounting with respect to all or any part of the taxpayer's or taxpayer's subsidiaries' business activities or for the use of any other method to determine the taxpayer's or taxpayer's subsidiaries' taxable income. The

department shall forward the petition with its comments concerning the economic impact of the suggested method to the Advisory Coordinating Council for Economic Development. The department may approve the petition upon certification of the Advisory Coordinating Council for Economic Development that the benefits to the public exceed the costs to the public.

The alternative methods of allocating or apportioning income under these provisions include, but are not limited to: (a) separate accounting; (b) the exclusion of one or more factors from the apportionment formula; or, (c) the inclusion of one or more additional factors in the apportionment formula.

Any taxpayer who wishes to take advantage of the provisions contained in Code Sections 12-6-2320(B) or (C) may request approval of a New Method from the Department and the Council.

HOW TO PETITION FOR THE NEW METHOD

Requesting a New Method Under Code Section 12-6-2320(B)

If a taxpayer is seeking approval for the New Method pursuant to Code Section 12-6-2320(B), the taxpayer must first submit an “Application for Qualification of Income Apportionment Incentive” (“Application”) to the Council requesting the Council to certify that the taxpayer’s proposed facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that the benefits to the public exceed the costs to the public. The Council may request in the Application any information that it deems relevant to determine if it should grant the certification required by Code Section 12-6-2320(B). The information the Council may request the taxpayer to provide includes, but is not limited to: (a) information about the new facility or expansion; (b) information about the taxpayer’s current methods of allocating and apportioning income and the New Method requested; and (c) projections of taxpayer’s South Carolina taxable income using both taxpayer’s current method of allocating and apportioning income and the New Method.

It is within the Council’s sole discretion to determine whether a new facility or expansion has a significant beneficial economic effect on the region for which it is planned in accordance with any guidelines or rules that it may adopt. The application and the guidelines of the Council may be obtained from the Council’s staff by calling (803)737-0095.

The request for a New Method under Code Section 12-6-2320(B) must be filed separately from any return that may be required. The Application should be sent to the following address:

South Carolina Coordinating Council for Economic Development
P.O. Box 927
1201 Main Street
Suite 1600
Columbia, SC 29202

Requesting a New Method Under Section 12-6-2320(C)

If a taxpayer is seeking approval for the New Method pursuant to Code Section 12-6-2320(C), the taxpayer must first submit an application for the use of the New Method to the Department. The application that must be used is the same as the Application submitted to the Council if a taxpayer is applying under Code Section 12-6-2320(B) and any additional application as may be adopted by the Department. The Council may ask the taxpayer to provide the same information that it would require if the taxpayer were petitioning pursuant to Code Section 12-6-2320(B). The Application should be sent to the following address:

South Carolina Department of Revenue
Attn: Law & Compliance Division
PO Box 125
301 Gervais Street
Columbia, SC 29214

The Department will then forward the request to the Council along with its comments concerning the economic impact of the New Method. The Council will then examine the Application and information submitted by the taxpayer and determine whether the benefits to the public of taxpayer's new facility or expansion exceeds the costs to the public. The request for a New Method under Code Section 12-6-2320(C) must be filed separately from any tax return that is required to be filed.

NEGOTIATION OF THE AGREEMENT

For a project under Code Section 12-6-2320(B), the Council must certify that the taxpayer's facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that the benefits of the project to the public exceed the costs of the project to the public. For a project under Code Section 12-6-2320(C), the Council must certify that the benefits of the project to the public exceed the costs of the project to the public.

Once the appropriate certification has been made, the Council will forward to the Department a copy of taxpayer's Application along with the certification of the Council. The Department will review the Application and will determine whether the taxpayer may adopt the New Method. In making its determination, the Department may request any additional information it deems necessary from the taxpayer in order to determine if it is appropriate for the Department to enter into a contract allowing the taxpayer to use the New Method.

If the taxpayer is permitted to adopt the New Method, the Department will enter into a Special Allocation and Apportionment Agreement ("Agreement") with the taxpayer setting forth the terms under which the taxpayer may use the New Method. The Agreement must be executed prior to the close of the taxpayer's first taxable year in which the taxpayer wishes to use the New Method. If an Agreement is entered into, the taxpayer should attach a copy of the Agreement to the tax return for the first tax year that the New Method is to be used.

FOR MORE INFORMATION

If you have any further questions, regarding requesting a special method of allocation or apportionment, please contact Jerilynn VanStory at (803) 898-5151.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth Carpentier _____
Elizabeth Carpentier, Director

September 18, 2002
Columbia, South Carolina