



SC REVENUE RULING #87-5

SUBJECT: Tax Credit for New Jobs

EFFECTIVE DATE: Approval by Commission

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

REFERENCE: S.C. Code Section 12-7-1220 (formerly 12-7-616)

AUTHORITY: S.C. Code Section 12-3-170

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Questions:

1. What is the definition of the term "full-time employee" as used in Section 12-7-1220?
2. What is the definition of the term "service related industry" as used as used in Section 12-7-1220?

Facts:

Several industries have inquired as to what constitutes a "full-time employee" and what industries are considered "service related industries" as used in the determination of the tax credit for new jobs.

Discussion:

Section 12-7-1220(B) as amended provides as follows:

"Permanent business enterprises engaged in manufacturing, processing, warehousing, wholesaling, research and development, and service related industries in counties designated by the Commission as less developed areas are allowed a job tax credit for taxes imposed by Section 12-7-230 equal to one thousand dollars annually for each new full-time employee job...."

The wording above is repeated in subsections (C) and (D) of Section 12-7-1220, except that the amount of the credit differs. There are no definitions within the statute as to the particular meaning of "full-time employee" and "service related industry."

1. Full-time is defined in Webster's dictionary as "the amount of time considered normal or standard for working during a given period." There are numerous definitions and court cases dealing with the number of hours required of a "full-time employee." One of the most widely known appears to be the number of hours required by a full-time employee as used by the Bureau of Labor Statistics. The Bureau of Labor Statistics for employment and unemployment cites a full-time worker as "those employed 35 hours a week or more."
2. The S.C. Supreme Court (Fennell v. South Carolina Tax Commission, 103 S.E.2d 424) cited the following definition of "service" from Webster:

"Any result of useful labor which does not produce a tangible commodity. In economics, such business concerns as railroads, telephone companies or laundries and such persons as physicians, are regarded as performing services."

Thus "service related industries" would be businesses primarily engaged in providing services as opposed to retail businesses engaged in selling merchandise for consumption or manufacturing business engaged in transforming materials or substances into new products.

The determination as to whether a business is a service related industry can be made by comparing the gross receipts of the business derived from providing services to total gross receipts of the business. If over 50 percent of the gross receipts are from providing services, then the business would be service related. This method has been utilized by the commission in determining whether a multistate taxpayer is providing services and thus would utilize the gross receipts ratio to apportion its income. (A multistate taxpayer deriving over 50 percent of its income from dealing in tangible personal property would utilize the three factor ratio to apportion its income).

Conclusion:

For purposes of determining the tax credit for new jobs the following definitions shall apply.

"Full-time employee" - As a general rule, it shall be presumed that an employee who works at least 35 or more hours per week is a full-time employee. However, if the facts show that a lesser number of hours is standard or customary for a particular job or industry, then a lesser number may be allowed.

A "service related industry" shall mean a business that derives over 50 percent of its gross receipts from providing services (as opposed to selling or dealing in tangible personal property). (Sept. 16, 1987)

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.
S. Hunter Howard, Jr., Chairman

s/John M. Rucker
John M. Rucker, Commissioner

s/A. Crawford Clarkson, Jr.
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Columbia, South Carolina
September 16, 1987