



REVENUE RULING #89-2

**SUBJECT:** Income Tax Refund Checks

**EFFECTIVE DATE:** February 24, 1988

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

**REFERENCE:** S.C. Code Section 12-7-2250 (As Amended)

**AUTHORITY:** S.C. Code Ann. Section 12-3-170 (1976)  
SC Revenue Procedure #87-3

**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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

At what time is an overpayment of tax to be refunded for purposes of determining when the February 24, 1988 amendments to 12-7-2250 apply?

Facts:

A resident of South Carolina died on January 30, 1988. On January 15, 1988, he and his surviving spouse had filed joint state and federal income tax returns. The spouse has no income of her own for the 1987 tax year. No errors were made in the returns. A \$1,000 refund was claimed on the federal joint income tax return and a \$500 refund was claimed on the South Carolina joint income tax return. The taxpayer left a will leaving 50% of his estate outright to his only child. His only child was named as executor in the will and was appointed personal representative of the estate on February 8, 1988. The federal income tax refund check was issued jointly payable to the taxpayer and his spouse and was dated March 15, 1988. The state income tax refund check was issued March 1, 1988, and was also made jointly payable to the taxpayer and his spouse. On March 20, 1988, the surviving spouse presents both the federal and the state income tax refund checks to the Bank for payment without the endorsement of the executor of the estate. Section 12-7-2250, which provides that an income tax overpayment becomes the sole property of a decedent's surviving spouse, was amended on February 24, 1988 to remove the \$350 overpayment limitation.

Discussion:

S.C. Code Ann. Section 12-7-2250(1976) prior to its amendment stated:

Whenever an overpayment of Federal or State income tax is determined to exist and the person to whom the overpayment is due to be paid is deceased at the time such overpayment of tax is to be refunded, and irrespective of whether the deceased had filed income tax returns separately or jointly with the surviving spouse, the amount of such overpayment, if not in excess of three hundred fifty dollars, shall be the sole and separate property of the decedent's surviving spouse, if any, and the refund of the overpayment by the United States or by a State of the United States directly to the surviving spouse shall operate as a complete acquittal and discharge to it of liability from any suit, claim or demand of whatsoever nature by any heir, distributee, creditor of the decedent or any other person.

The amendment enacted February 24, 1988 removes the \$350 limitation authorizing the full amount of any Federal or State overpayment to be refunded to the surviving spouse. Attorney General Opinion Number 2903 has examined the purpose for this statute's enactment.

This office has examined the legislative history of this section and has found that it was enacted to facilitate the handling of tax refunds paid to deceased persons. The history was obtained through representatives of the South Carolina Tax Commission who were concerned with the problem of handling refunds made to deceased persons and who were responsible in seeking this legislation to facilitate the handling of such refunds. 1970 Op. Att'y. Gen. 147

This history, however does not reveal the legislature's reasoning for settling upon a \$350.00 limitation as opposed to some other amount. House Bill R362, 3370 repeals this limitation, but does not indicate the legislature's reasoning for doing so. Therefore retroactive intent of the amendment cannot be implied. Section 12-7-2250 has two requirements. First it must be determined that a refund exists. Second, the taxpayer to whom the overpayment is due must be deceased at the time the overpayment is to be refunded. The date the overpayment is to be refunded is the controlling date, as the taxpayer must be deceased on that date for the provisions of 12-7-2250 to apply. To analyze the given fact situation, it is necessary to determine when the overpayment of tax is to be refunded. The law in effect on this date will govern.

S.C. Code Ann. Section 12-7-2240 (Law. Co-op. Supp. 1988) gives guidance as to when an overpayment is to be refunded.

- (A) If the Commission discovers from the examination of the return or otherwise that the income tax, penalty, or interest paid by any taxpayer is in excess of the amount legally due, the Commission may issue to the taxpayer its voucher to the Comptroller General for the refund of such illegally collected income tax, penalty, or interest together with the interest provided for in Section 12-7-2310. Upon receipt of such voucher, properly executed and endorsed, the Comptroller General shall issue his warrant to the State Treasurer for the payment to the taxpayer of such refund, out of any income tax funds in his possession or out of any such funds that may come into his possession.

In accordance with the clear wording of Section 12-7-2240, a taxpayer has a right to a refund when the Commission discovers a refund is due and issues a voucher to the Comptroller General. However, an overpayment of tax is not payable until the Comptroller General issues his warrant to the State Treasurer for payment. The date the State Treasurer issues the refund check is the date on which a refund is to be refunded. For purposes of Section 12-7-2250, the date the Treasurer issues the refund check, which is the date on the check, will determine when the amendments to 12-7-2250 apply.

Conclusion:

An overpayment of tax is to be refunded on the date the State Treasurer issues the refund check for purposes of determining when the February 24, 1988 amendments to 12-7-2250 apply. Thus refund checks issued on or after February 24, 1988 are affected by the amendments to 12-7-2250.

SOUTH CAROLINA TAX COMMISSION

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

s/A. Crawford Clarkson, Jr.  
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A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell  
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T. R. McConnell, Commissioner

Columbia, South Carolina  
February 15, 1989