



SC REVENUE RULING #89-6

SUBJECT: Six Year Statute of Limitations Applicable Returns
(All Taxes)

EFFECTIVE DATE: Applies to all returns due to be filed after September 1, 1985

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

REFERENCE: S.C. Code Ann. Section 12-54-80(2) (Supp. 1988)

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until superseded by a Regulation or is rescinded by a subsequent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:

Does the six year statute of limitations, provided for in Code Section 12-54-80(2), apply retroactively to returns due to be filed prior to the code section's effective date, September 1, 1985?

Facts:

Act 201, Section 32, of 1985 enacted a "Uniform Method of Collection and Enforcement of Taxes Levied and Assessed by the South Carolina Tax Commission". This Section of the Act was codified as Chapter 54 of Title 12 and became effective September 1, 1985.

Code Section 12-54-80 establishes the time within which the South Carolina Tax Commission ("Commission") must assess taxes due. That section reads:

Except as otherwise provided in this section, the amount of taxes due on any return which has been filed as required by provisions of law administered by the Commission must be determined and assessed within thirty-six months from the date the return was filed or due to be filed, whichever occurs later.

If, before the expiration of the time prescribed in this section for the mailing of a notice of any assessment, the taxpayer has consented in writing to the mailing of the notice after the time, notice of assessment may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

- (1) When a fraudulent return with the intent to evade tax has been filed, or in the case of failure to file a return, the tax may be assessed and collected and suit or proceedings for the collection of the tax may begin at any time.
- (2) In the case of any tax administered by the Commission, if the taxpayer omits twenty-five percent of gross income, sales price, gross receipts, gross proceeds of sale, or gross estate properly includable therein on any tax return due to be filed under provisions of law administered by the Commission, the tax may be assessed within six years after the return was filed.

Except under specific circumstances, this section provides for a three year time period, from the date a return was filed or due to be filed, for the Commission to assess taxes due. Those exceptions are: (1) failure to file, (2) fraud, and (3) a twenty-five percent omission of "gross income, sales price, gross receipts, gross proceeds of sale or gross estate properly includable" on the return.

In cases involving a twenty-five percent omission from the return, the statute of limitations, or time within which the Commission must issue an assessment, is six years after the return was filed.

Discussion:

The issue is whether Code Section 12-54-80(2) applies to returns due to be filed prior to September 1, 1985.

The case of South Carolina National Bank, as Successor in interest by way of merger to the First National Bank of South Carolina v. South Carolina Tax Commission, Opinion No. 22957 dated February 6, 1989, (which concerned a use tax audit for quarters ending December 31, 1979 through December 31, 1984) is on point.

The Supreme Court of South Carolina held:

Legislative intent governs whether a statute of limitations will have prospective or retrospective application. Cannon v. Johnson, Lane, Space, Smith & Co., Inc., 460 F. Supp. 724 (D.S.C. 1978), aff'd., 638 F.2d 12 (4th Cir. 1980). In ascertaining legislative intent, words must be given their plain and ordinary meanings. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). Statutes are not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt. Hyder v. Jones, 271 S.C. 85, 245 S.E.2d 123 (1978). In the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt. Cooper River Bridge v. S.C. Tax Commission, 182 S.C. 72, 188 S.E. 508 (1936).

The court, after reviewing Code Section 12-54-80(2), further held:

A literal reading of the statute does not indicate that the legislature intended retroactive application. Although the Notice of Assessment was issued subsequent to the effective date of Section 12-54-80(2), the tax quarters in controversy are for a period prior to the section's enactment. Thus, we conclude that Section 12-54-80(2) does not apply to the returns at issue.

We find that Section 12-35-1370 is applicable in this case. This section provides, in relevant part, as follows:

"...[E]very notice of an underpayment shall be mailed within three years after the last day of the calendar month following the period for which the amount is proposed for assessment or within three years after the day on which the return was filed..."

The quarter ending June 30, 1982 is the final quarter for which SCN paid taxes under protest. Pursuant to Section 12-35-1370, notice of underpayment should have been mailed before July 31, 1985.

Accordingly, we reverse the Circuit Court's order and hold that, in this instance, the Commission is barred from collecting taxes for the quarters prior to July 1, 1982.

Conclusion:

The six year statute of limitations, provided for in Code Section 12-54-80(2), applies only to tax returns due to be filed after September 1, 1985.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson, Jr.

A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

T. R. McConnell, Commissioner

Columbia, South Carolina
April 7, 1989