



SC REVENUE RULING #91-10

- SUBJECT:** Claims for refund  
(All taxes other than property taxes)
- MODIFIES AND SUPERCEDES:** All previous documents and any oral directives in conflict herewith.
- REFERENCES:** S.C. Code Ann. Section 12-47-440 (1976)  
S.C. Code Ann. Section 12-54-30 (Supp. 1990)
- 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 A Revenue Ruling is public information and remains a permanent document until superceded by a Regulation or rescinded by a subsequent Revenue Ruling.

Question:

Does a taxpayer have a right to a conference before the Commissioners in connection with a refund request?

Discussion:

Prior to answering the question presented, we must first determine the Commission's authority to issue refunds.

Code Section 12-54-30 provides:

If the commission discovers on examination of a return or otherwise that the tax, penalty, or interest paid by any person is in excess of the amount legally due, the commission may order a refund or give credit for the overpayment. Upon the allowance of a credit or refund of any tax, penalty, or interest paid, interest is allowed and paid on the amount of the credit or refund at the rate provided for in Section 12-54-20 from the date the tax, penalty, or interest was paid to the date the order for refund or credit was issued. No interest may be paid on income tax refunds provided for under Sections 12-9-380 and 12-7-1980 during the first seventy-five days following the due date for the filing of the return or the date the return was filed, whichever occurs later.

This statute provides authority for the Commission to grant a refund of any taxes it believes have been paid in excess of what is legally due.

Code Section 12-47-440 provides:

Notwithstanding any other provisions of this Title, whenever it shall appear to any taxpayer that any license fee or tax imposed under this Title has been erroneously, improperly or illegally assessed, collected or otherwise paid over to the Commission, the taxpayer, by whom or on whose behalf the license fee or tax was paid, may make application to the Commission to abate or refund in whole or in part such license fee or tax. Should the Commission, after having given such taxpayer a reasonable opportunity to be heard, decline to make such abatement or refund, the taxpayer may, within thirty days of the date of receipt of notice of the Commission's action declining the abatement or refund, bring an action against the Commission for recovery of the license fee or tax. The provisions of this section shall apply whether or not the license fee or tax in question was paid under protest, but shall only be available where the application provided for here is made in writing to the Commission within a period of three years from the date the license fee or tax was due to have been paid, without regard to extensions of time for payment, or if a later date would result, within one year of payment where an additional license fee or tax is assessed and paid. Such action shall be brought in the court of common pleas for Richland County except that a resident of this State may elect to bring said action in the court of common pleas for the county of his residence. A taxpayer or licensee who brings an action provided for in Sections 12-47-210 and 12-47-220 shall be considered as having elected his remedy and is denied the benefits of this section.

The South Carolina Supreme Court in Bass v. State of South Carolina, 395 S.E.2d 171 (1990), pet. for cert. filed October 24, 1990, held that Code Section 12-47-440 applies only to claims for refunds of license fees and license taxes and cannot be used to claim a refund of other taxes. The Commission will only issue refunds under Code Section 12-47-440 for license fees and license taxes.

Under Code Section 12-47-440, in the case of license fees or license taxes, a taxpayer may request a refund from the Commission. The Commission is required under this section to give the taxpayer reasonable opportunity to be heard. In order to provide the taxpayer with an opportunity to be heard, the Commissioners will grant a conference to a taxpayer whose claim for refund has been denied by one of the operating divisions of the commission. If, following a conference, the Commissioners refuse to issue a refund, the taxpayer may bring an action within thirty days against the commission for recovery of license fees or license taxes.

Under Section 12-54-30, the Commission may grant the refund or may hold a conference with the taxpayer to determine if a refund should be granted. It is the policy of the Commission to grant a conference before the Commissioners when a tax refund claim is initially denied provided the refund request is made in writing to the Commission within three years from the date the tax was due to have been paid, without regard to extensions of time for payment, or if a later date would result, within one year of payment where an additional tax is assessed and paid.

It should be noted that the statute does not grant the taxpayer the right to appeal to the court of common pleas a denial of a refund by the Commission pursuant to Code Section 12-54-30. See, Argent Lumber Co. v. Query, 178 S.C. 1, 182 S.E. 93 (1935).

Conclusion:

License Fees and License Taxes:

In the case of license fees and license taxes, a taxpayer is entitled to a conference before the Commissioners under Code Section 12-47-440 if a timely filed refund claim is denied by one of the Commission's operating divisions. If after the conference the Commissioners still deny the claim for refund, the taxpayer can bring an action in the court of common pleas for recovery of the license fee or license tax.

Other Taxes:

Under Code Section 12-54-30, the Commissioners will grant a conference to taxpayers whose tax refund claims have been denied by one of the Commission's operating divisions, provided the claim is filed with the Commission within the time period outlined in the discussion. There is no right to appeal the Commissioners' decision following a conference regarding a refund for taxes under Code Section 12-54-30.

Since there is no right to appeal the Commissioners' decision under Code Section 12-54-30, a taxpayer should review Code Sections 12-47-210 and 12-47-220 (payment under protest) before paying taxes, other than license fees and license taxes, which he deems to be erroneously, improperly or illegally assessed. Taxpayers should consult with their tax advisors before paying any tax with which they may disagree.

For questions concerning this document, contact the Tax Policy Division at 737-4440.

SOUTH CAROLINA TAX COMMISSION

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

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

Columbia, South Carolina

May 29 1991