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State of South Carolina  
**Department of Revenue**  
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

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SC REVENUE RULING #95-17

**SUBJECT:** Form WH-1601 - Deposit Coupon  
Interest on Late Deposits  
(Withholding)

**EFFECTIVE DATE:** November 13, 1995

**SUPERSEDES:** SC Technical Advice Memorandum #93-1 and all previous documents  
and any oral directives in conflict herewith.

**REFERENCE:** S.C. Code Ann. Section 12-54-25 (Act No. 160)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (Supp. 1994)  
SC Revenue Procedure #94-1

**SCOPE:** A Revenue Ruling is the Department of Revenue's **official advisory opinion** of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

If a withholding agent fails to timely deposit withholding taxes in accordance with Code Section 12-9-390, is the withholding agent liable for interest under Code Section 12-54-25 or penalties under Code Section 12-54-40(b)?

Conclusion:

If a withholding agent fails to timely deposit withholding taxes in accordance with Code Section 12-9-390, the withholding agent is not liable for interest under Code Section 12-54-25 unless the taxes are not paid by the due date of the quarterly return. On all withholding taxes not paid by the due date of the quarterly return, interest will be applied from the due date of the quarterly return until such taxes are paid.

However, the Department may, at its discretion, impose a penalty on the withholding agent of not less than ten dollars (\$10) nor more than one thousand dollars (\$1,000) under Code Section 12-54-40(b)(7) for failure to deposit if the deposits are not timely made. Also, penalties for failure to pay and failure to file will be assessed under Code Section 12-54-40(b)(1) & (2) if the quarterly returns are not timely filed with any requisite payment.

Facts:

Withholding agents must periodically deposit, using a deposit coupon (Form WH-1601), withholding taxes they have withheld into approved financial institutions. The money is then forwarded to the State. At the end of the calendar quarter, withholding agents will file a return, Form WH-1605. On this return the agent reports the taxes withheld and the amount of deposits made during the quarter. Any difference between these two amounts is either additional tax due by the withholding agent (paid with the Form WH-1605) or a refund or a credit to the withholding agent.

A question has arisen concerning the application of interest to late deposits.

Discussion:

Code Section 12-54-25 imposes interest on unpaid taxes, and reads:

(A) If any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety.

\* \* \* \*

(D) Except as preempted or superseded by federal law or inter-governmental compact . . . , the rate of interest on underpayments and overpayments is established by the department in the same manner and at the same time as the underpayment rate provided in Internal Revenue Code Sections 6621 and 6622.

Code Section 12-54-40 provides for various penalties and states in part:

(b) There must be added to and become a part of the tax imposed by the tax or revenue laws, and collection as such:

(1) In the case of failure to file a return on or before the date prescribed by law, . . . there must be added to the amount required to be shown as tax on the return, a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of the month during which the failure continues, not exceeding twenty-five percent in the aggregate. . .

(2)(a) In case of failure to pay the amount shown as tax on any return on or before the date prescribed by law . . . there must be added to the tax due a penalty of one-half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of the month, during which the failure continues, not exceeding twenty-five percent in the aggregate.

\* \* \* \*

(7) A failure to deposit or pay any taxes deducted and withheld pursuant to Sections 12-9-310 to 12-9-370 subjects the withholding agent to a penalty of not less than ten dollars nor more than one thousand dollars.

Based on the foregoing, with respect to withholding tax deposits, the Department will only apply interest if the withholding agent fails to timely remit all withholding taxes by the due date of the quarterly return. Interest will be applied on any withholding taxes not paid by the due date of the quarterly return from the due date of the return until such taxes are paid.

However, the Department may, at its discretion, impose a penalty on the withholding agent of not less than ten dollars (\$10) nor more than one thousand dollars (\$1,000) under Code Section 12-54-40(b)(7). Also, penalties for failure to pay and failure to file will be assessed if the quarterly returns are not timely filed with any requisite payment.

For questions concerning withholding deposits, contact Muriel Leonhardt at (803) 737-4804 or Jean Croft at (803) 737-5007.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III  
Burnet R. Maybank, III, Director

Columbia, South Carolina  
November 12, 1995