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

SC REVENUE RULING #96-5 (TAX)

SUBJECT: Subsistence Allowance for Firefighters and EMS Personnel
(Income Tax)

EFFECTIVE DATE: For tax years beginning after December 31, 1994.

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

REFERENCES: S. C. Code Ann. Section 12-7-435 (Enacted 1995 - Act No. 145,
Section 57)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1995)
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 is 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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

INTRODUCTION:

Recently, the General Assembly amended Code Section 12-7-435(j) to extend the \$5.00 a day subsistence allowance deduction to full-time firefighters and full-time emergency medical service personnel. This deduction had previously been available only to federal and state law enforcement officers. This revenue ruling will address various questions that have arisen concerning this legislation.

LAW:

Code Section 12-7-435(j) allows as a deduction from South Carolina taxable income of an individual:

(j) ... Full-time firefighters and emergency medical service personnel may deduct as a subsistence allowance five dollars a day for each regular work day in a taxable year.

QUESTIONS AND ANSWERS:

1Q. Will the firefighter or EMS worker qualify for this allowance only on days when the employee is actually putting out fires or performing emergency medical services, or does

the deduction extend to days the employee is "on duty" but is performing other duties because there are no fires to fight or emergency medical situations?

A. The statute allows the deduction for "each regular work day in a taxable year." It does not limit the deduction to days when the employee is actually putting out fires or performing emergency medical services. As such, the firefighter or EMS worker will qualify for the allowance for all regular work days, including "on duty" days when the employee is performing other duties because there are no fires to fight or emergency medical situations. Periods of time when a firefighter or EMS worker is "on call" but is not required to perform other duties do not constitute part of a regular work day.

2Q. Is the deduction limited to "ambulance type" emergency situations or would doctors, nurses, and other certified personnel working in a hospital emergency room also qualify for the deduction?

A. "The Emergency Medical Services Act of South Carolina" (Title 44, Chapter 61 of the 1976 Code of Laws) is limited to persons providing ambulance services. Therefore, the deduction for "emergency medical service personnel" is limited to "ambulance type" emergency situations and would not apply to doctors, nurses, and other certified personnel working in a hospital emergency room.

3Q. What constitutes a regular work day? Is a shift a regular work day or does 8 hours constitute a regular work day?

A. A shift constitutes a regular work day, provided that shift exceeds six hours. For example¹:

(i) If a firefighter works an 8 hour shift 5 times during a particular week, the firefighter will be entitled to 5 subsistence allowances for that week for a total of \$25 (\$5 subsistence allowance x 5 regular work days).

(ii) If a firefighter works a 12 hour shift 3 times during a particular week, the firefighter will be entitled to 3 subsistence allowances for that week for a total of \$15 (\$5 subsistence allowance x 3 regular work days).

(iii) If a firefighter works a 24 hour shift 2 times during a particular week, the firefighter will be entitled to 2 subsistence allowances for that week for a total of \$10 (\$5 subsistence allowance x 2 regular work days)².

¹ The deduction is calculated on the number of regular work days worked during the tax year; however, the examples use the number of regular work days worked during a week in order to simplify the explanation of what constitutes a "regular work day".

² Firefighters working a 24 hour shift usually work 8 hours during the shift but must be at the station during the other 16 hours of the shift. After completing this 24 hour shift, these firefighters are usually off duty for the next 48 hours before they return for another 24 hour shift. As such, these firefighters will have either 2 or 3 shifts at the station during a calendar week.

4Q. What constitutes full-time employment?

- A. "Full-time" for purposes of the subsistence allowance will be the same as full-time for purposes of the job tax credit as defined in Code Section 12-7-1220(H)(2). Therefore, the job as firefighter or emergency medical service personnel must require a minimum of thirty-five hours of a firefighter's or EMS person's time a week. However, the provision of Code Section 12-7-1220(H)(2) that allows two "half-time jobs to equal one "full-time" job is not applicable in determining who is eligible for the subsistence allowance.

5Q. What criteria will govern whether or not a taxpayer is entitled to the deduction?

- A. For firefighters, each of the following criteria must be met:

They must be paid employees working as firefighters. Persons, other than certified firefighters, working for the firefighting department or agency performing other duties, such as dispatchers and office personnel, do not qualify for the allowance.

They must work full-time as defined above with a firefighting department, agency or a private company.

They must be certified as firefighters.

For EMS personnel, each of the following criteria must be met:

They must be paid employees working as EMT's, EMTI's, or paramedics. Persons, other than certified EMT's, EMTI's, or paramedics, working for the EMS department or agency or private EMS company performing other duties, such as dispatchers and office personnel, do not qualify for the allowance.

They must work full-time as defined above with an EMS department or agency or a private EMS company providing ambulance-type emergency services. See Question #2.

They must be certified as EMT's, EMTI's, or paramedics.

6Q. What verification/documentation is required to substantiate the subsistence allowance deduction?

- A. The burden of proof will rest with the taxpayer claiming the deduction to show (1) that he or she is entitled to this deduction, and (2) to prove the total regular work days worked during the year.

Please note that these firefighters meet the requirement of full-time employment as discussed in Question #4 since both a 2 shift and a 3 shift week requires more that 35 hours of the firefighter's time during the week.

No verification needs to be attached to the South Carolina tax return when filed. However, if the deduction is questioned, the taxpayer will need to verify that he or she meets the criteria set forth in this document. Copies of certification as a firefighter, EMT, EMTI or a paramedic and a statement from the person's employer should be sufficient verification as to the criteria set forth in this document.

SC DEPARTMENT OF REVENUE

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

March 21, 1996
Columbia, South Carolina