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

SC REVENUE RULING #97- 2

SUBJECT: Tax Waivers and Inventories
(Estate Tax)

EFFECTIVE DATE: April 1, 1996

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

REFERENCES: S. C. Code Ann. Section 12-15-1520 (Supp. 1995)
S. C. Code Ann. Section 12-16-1530 (Supp. 1995)
Regulation 117-181.2
Regulation 117-181.3

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valid and remains in effect until superseded or modified by a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.

Questions:

1. Is a South Carolina Form E.T. 491-A (Application for South Carolina Waiver of Objection to Transfer of Intangible Personal Property of Resident Decedent) or Form E.T. 491-C (Notification of Intent to Transfer Checking or Savings Account) required to be filed with the Department?
2. Is an inventory of the contents of a decedents safe deposit box and a South Carolina Form E.T. 491-B (Nonresident Decedent Waiver Application Form) required to be filed with the Department?

Conclusions:

1. South Carolina Form E.T. 491-A (Application for South Carolina Waiver of Objection to Transfer of Intangible Personal Property of Resident Decedent) and Form E.T. 491-C (Notification of Intent to Transfer Checking or Savings Account) are no longer required to be filed with the Department. Therefore, intangibles such as stocks, bonds, notes and mortgages may be transferred without notifying the Department.

Note: A waiver, Form SC4422, is still required to be filed for real estate if an estate tax return is required to be filed with the Internal Revenue Service.

2. An inventory of the contents of a decedents safe deposit box and a South Carolina Form E.T. 491-B (Nonresident Decedent Waiver Application Form) are no longer required to be filed with the Department. However, nothing in this ruling relieves a business from its obligation to comply with the laws in Chapter 19 of Title 34 or any other laws concerning safe deposit boxes.

Discussion:

Effective April 1, 1996 the following two estate tax code sections were repealed.

1. Code Section 12-16-1520 relating to the 10 day notice required to be given to the Department prior to the transfer of assets in a decedent's estate, waivers, and exceptions; and,
2. Code Section 12-16-1530 relating to the Department's authority to examine certain assets of a decedent at the time of transfer or delivery.

Estate tax regulations 117-181.2 and 117-181.3 prescribe rules concerning the transfer of securities, deposits or other assets and the transfer of contents of safe deposit boxes.

Regulation 117-181.2, entitled "Transfer of Securities, Deposits or Other Assets," prescribes the forms to be used for waivers of the 10 day notice period of the intent to transfer a decedent's assets as required by Code '12-16-1520 (repealed effective April 1, 1996).

Regulation 117-181.3, entitled "Transfer of Contents of Safe Deposit Boxes," prescribes the procedures for taking an inventory of a safe deposit box as required by Code "12-16-1520 and 12-16-1530 (repealed effective April 1, 1996).

The status of a regulation was examined in Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984) wherein it was determined that "[a]lthough a regulation has the force of law, it must fall when it alters or adds to a statute."

Based upon the above, since Code "12-16-1520 and 12-16-1530 were repealed effective April 1, 1996, Regulations 117-181.2 and 117-181.3 are no longer valid effective April 1, 1996. Accordingly, intangibles such as stocks, bonds, notes and mortgages may be transferred without notifying the Department on waiver application forms. In addition, safe deposit box inventories are no longer required to be filed with the Department. However, nothing in this ruling relieves a business from its obligation to comply with the laws in Chapter 19 of Title 34 or any other laws concerning safe deposit boxes.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

Columbia, South Carolina
February 11, 1997