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

SC REVENUE RULING #97-7

SUBJECT: Personal Service Income of Resident Partners
(Income Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

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

REFERENCES: S. C. Code Ann. Section 12-6-600 (Supp. 1996)
S. C. Code Ann. Section 12-6-560 (Supp. 1996)
S. C. Code Ann. Section 12-6-2220 (Supp. 1996)
S. C. Code Regs. 117-81

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1996)
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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

How is income of a resident partner receiving personal service income from South Carolina and one or more other states reported for South Carolina individual income tax purposes?

Conclusion:

A resident partner receiving personal service income from South Carolina and one or more other states must report all personal service income to South Carolina pursuant to Code §12-6-2220(6) for individual income tax purposes. The resident partner is allowed a credit for taxes paid to other states as provided in South Carolina Code §12-6-3400.

Discussion:

Code Section 12-6-600 addresses the taxation of partnerships and reads:

An entity treated as a partnership for federal income tax purposes is not subject to tax under this chapter. Each partner shall include its share of South Carolina partnership income on the partner's respective income tax return. All of the provisions of the Internal Revenue Code apply to determine the gross income, adjusted gross income, and taxable income of a partnership and its partners, subject to the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter.

The law provides that each partner is directly taxable on his distributive share of partnership income. Items of income, such as personal service income received from a partnership performing legal or accounting services, are separately stated and passed through to the partners. Such items retain their character at the partner level and are treated as if realized by the partner directly from the source from which realized by the partnership. See *Ellis v. South Carolina Tax Commission*, 280 S.C. 65, 309 S.E. 2d 761 (1983).

For South Carolina tax purposes, resident partners are taxable on their distributive share of the partnership's South Carolina taxable income as determined for a resident under South Carolina Code §12-6-560. Code Section 12-6-560 provides:

A resident individual's South Carolina gross income, adjusted gross income and taxable income is computed as determined under the Internal Revenue Code with the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter.

Article 17 of Chapter 6 provides that certain items of income must be directly allocated and excluded from the apportioned income and the apportionment factors. Specifically, South Carolina Code '12-6-2220(6) provides:

[a]ll income from personal services received by a resident individual is allocated to this State (emphasis added.)

South Carolina Regulation 117-81 further provides resident partners an income tax credit when the partnership performs personal services in South Carolina and one or more states. It provides:

Where an individual resident of this State is a partner of a partnership rendering personal services in South Carolina and another State, **the distributive share of**

the partnership income received by the resident partner is taxable in this State and he will be allowed the tax credit provided in '[12-6-3400]...(emphasis added.)

The tax credit allowed in §12-6-3400 to resident partners is provided as a credit against South Carolina income taxes for income taxes paid to another state on income from sources within that state which is taxed under Chapter 6 and the laws of the other state regardless of the taxpayer's residence.

Therefore, a resident partner's distributable share of all partnership personal service income must be reported to South Carolina. The statute does not allow the partner to report only his apportioned share of South Carolina personal service income to South Carolina.

An example best explains this concept. Assume a multi-state law partnership is located in South Carolina and Georgia. The partnership has two partners residing in each state. The partnership files a partnership return and apportions income among South Carolina and Georgia based on an appropriate apportionment method. Each partner's K-1 shows income apportioned to his state of domicile and the other state. South Carolina's resident partners must file an individual income tax return in South Carolina reporting the personal service income distributed by the partnership from both South Carolina and Georgia sources. Each South Carolina partner is also responsible for reporting his share of the Georgia partnership income in accordance with Georgia law. The South Carolina partners are allowed a tax credit for taxes paid to Georgia on the personal service income taxed in both South Carolina and Georgia.

Note in this example that the Georgia partners are responsible for reporting their share of South Carolina partnership income to South Carolina. This may be done by each partner filing a nonresident individual income tax return or by the partnership filing a composite return computing and reporting the income tax of its nonresident partners. See SC Revenue Procedure #92-5 for more information on composite returns.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
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