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SC TECHNICAL ADVICE MEMORANDUM #87-3

TO: Mr. William R. Geddings, Jr., Director
Office Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: April 9, 1987

SUBJECT: Penalty For Failure to File and Failure to Pay

REFERENCE: S.C. Code Sections 12-54-40, 12-54-70

AUTHORITY: S.C. Code Section 12-3-170

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memorandum have no precedential value and are intended for internal use only.

Question:

If a taxpayer with an extension under 12-54-70 fails to file within the extended time, what penalty applies and from what date is it applied?

Facts:

The taxpayer filed a tentative return prior to the due date requesting a six month extension. One hundred percent of the anticipated tax was remitted with the tentative return. The taxpayer failed to file before the extended due date and the tax paid with the tentative return was at least ninety percent of the liability.

Laws:

S.C. Code Section 12-54-70 provides that the Commission may grant an extension for filing of returns or remitting of tax due. The taxpayer must file the request, a tentative return, and remit one hundred percent of the anticipated tax prior to the due date of the return in order to receive an extension. Section 12-54-70 provides a penalty of five percent per month or fraction thereof (not to exceed twenty-five percent) if the taxpayer fails to pay at least ninety percent of the tax due.

S.C. Code Section 12-54-40(b)(1) provides a penalty of five percent per month or fraction thereof (not to exceed twenty-five percent) for failure to file. This penalty is determined with regard to any extension of time for filing.

S.C. Code Section 12-54-40(b)(2)(a) provides a penalty of one-half of one percent per month or fraction thereof (not to exceed twenty-five percent) for failure to pay. This penalty is determined with regard to any extension of time for paying.

Conclusion:

The above facts indicate that the taxpayer met all the requirements of Section 12-54-70. The request for extension, the tentative return and the remittance of one hundred percent of the anticipated tax was received prior to the due date. Additionally, at least ninety percent of the liability was paid with the tentative return; therefore the penalty imposed under 12-54-70 would not apply.

The penalties for failure to file and failure to pay provided under 12-54-40 would apply. As both of these are determined with regard to extension, they would be applied from the extended due date to the date the taxpayer actually filed the return. Interest would be applied to any balance due from the date originally due as provided in Sections 12-54-70(a) and 12-54-20.