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SC TECHNICAL ADVICE MEMORANDUM #87-6

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

FROM: John Swearingen, Manager  
Tax Policy and Procedures Department

SUBJECT: Net Operating Loss Deduction - Nonresident Partner

REFERENCE: S.C. Code Section 12-7-430(d)(2), 12-7-450

AUTHORITY: S.C. Code Section 12-7-170

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 Memorandums have no precedential value and are intended for internal use only.

Question:

Can a nonresident individual utilize Section 12-7-430(d)(2) to claim a net operating loss deduction arising from his share of a South Carolina partnership's losses?

Facts:

The taxpayer, a nonresident individual, is a partner in a South Carolina partnership conducting 100% of its business in South Carolina. In 1985 the partnership had a net loss and in 1986 the partnership had a net profit. The individual reported the net loss from the partnership on his 1985 S.C. return (this was his only S.C. income item) although his Federal return reflected taxable income.

Law/Discussion:

South Carolina Code Section 12-7-450 provides that the South Carolina taxable income of a nonresident is the same as if he were a resident with certain modifications. Subsection (a) of Section 12-7-450 states the S.C. taxable income as determined for an individual under Section 12-7-410 only includes certain items of income with a South Carolina situs, one of which is the distributive share of the South Carolina part of partnership income, gain, losses or deductions.

Code Section 12-7-410 modifies an individual's federal taxable income as specified in Sections 12-7-430 and 12-7-435. Section 12-7-430(d)(2) allows a net operating loss deduction computed in accordance with Internal Revenue Code Section 172.

Conclusion:

A nonresident individual can utilize Section 12-7-430(d)(2) to claim a net operating loss deduction arising from his share of a South Carolina partnership's losses.