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SC TECHNICAL ADVICE MEMORANDUM #88-18

TO: Mr. C. Norwood Gayle, Jr., Acting Director
Office Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: August 10, 1988

SUBJECT: Corporate Extensions (Income Tax)

REFERENCE: S.C. Code Ann. Section 12-54-70 (1987 Supp.)
S.C. Code Ann. Section 12-7-20(11) (As Amended)
S.C. Code Ann. Section 12-54-160
IRS Temporary Regulation 1.444-3T

AUTHORITY: Code Section 12-3-170
SC Revenue Procedure #87-3

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 Memoranda have no precedential value and are not intended for general distribution.

Questions:

1. Will the automatic extension provision in IRS Temporary Regulation 1.444-3T(c) be recognized for corporate taxpayers or will the tax-payer be required to file a tentative return (SC1120T) as provided in Section 12-54-70?
2. If SC1120T is required to be filed, will the taxpayer be subject to the penalties for failure to file and failure to pay on the income tax and license fee?

Facts:

The Internal Revenue Code as amended through December 31, 1987 has been adopted. This includes IRC Section 444 which allows partnerships, S Corporations and Personal Service Corporations to make a fiscal year election. IRS Temporary Regulation 1.444-3T provides procedures for making a 444 election. Section 1.444-3T(c)(1)(i) of this regulation grants an

automatic extension to August 15, 1988 to file the tax return for the first tax year beginning after December 31, 1986. Section 1.444-3T(c)(1)(ii) waives the late payment penalty for this first tax year. This waiver is for the period beginning with the last day for payment and ending with the later of the date provided by the automatic extension or the date provided by additional extensions.

Code Section 12-54-70 requires the filing of a tentative return in order to receive an extension for State purposes. South Carolina has specifically not adopted IRC Section 6081 dealing with extension of time for filing returns. Income Tax Regulation 117-79 states that a copy of a federal extension may be substituted for the state extension for individuals, partnerships and fiduciaries. This regulation requires corporations to file a tentative return.

Discussions:

South Carolina Code Section 12-54-70 and Regulation 117-79 require corporations to file a tentative return and pay 100% of the anticipated tax. This would include income tax and license fees.

Section 12-54-160 provides that the Commission may waive, dismiss, or reduce penalties. The Commission recognizes the problems and uncertainties relating to the fiscal year election under IRC 444 and the delay in the issuance of Temporary Regulation 1.444-3T. Therefore, the Commission will waive the failure to file and failure to pay penalty for the period provided in Temporary Regulation 1.444-3T(c)(1)(ii).

This waiver includes penalties for the income tax and the license fee. Interest will not be waived. Taxpayers should type or print "Section 444 Return" on the first page of the return.

Conclusion:

1. The automatic extension provisions in IRS Temporary Regulation 1.444-3T(c) will not be recognized for corporate taxpayers. Pursuant to Section 12-54-70 and Regulation 117-79, corporate taxpayers are required to file a tentative return (SC1120T).
2. The penalties for failure to file and failure to pay applicable to a "Section 444 Return" will be waived for the period beginning with the due date of the return and ending with the date provided under the Federal automatic extension or the Federal additional extension.