



SC TECHNICAL ADVICE MEMORANDUM #88-21

TO: Mr. Marvin N. Davant, Director
Field Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Division

DATE: November 23, 1988

SUBJECT: Withholding W-4 (Income Tax)

REFERENCE: S.C. Code Ann. Section 12-9-110 (1987 Supp.)
S.C. Code Ann. Section 12-9-120 (1976)
S.C. Code Ann. Section 12-9-130 (1987 Supp.)
S.C. Code Ann. Section 12-9-160 (1987 Supp.)
S.C. Regulation 117-91.11

AUTHORITY: S.C. Code Ann. 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.

Question:

1. Is the SC-W4 an acceptable withholding certificate for the purpose of an employee certifying his or her withholding exemptions for periods after December 31, 1986?
2. Is the Commission the appropriate authority to resolve problems concerning a South Carolina withholding exemption certificate submitted as a Federal W-4?
3. What is the correct number of exemptions to be used for computing withholding in the absence of a properly completed SC-W4 or Federal W-4?

Facts:

S.C. Code Section 12-9-110 was amended in 1987 to allow an employee to claim for South Carolina withholding purposes up to the number of exemptions claimed for federal withholding purposes. A problem arose as to whether this amendment preempts the continued use of SC-W4 and requires the exclusive use of Federal W-4 for purposes of claiming South Carolina withholding exemptions. Further, I.R.S. Publication 15, Circular E (Rev. January 1988) requires that Form W-4 be sent to the I.R.S. for review when questions arise as to whether the correct number of exemptions were claimed. Conflict arises between the I.R.S. position and S.C. Code Section 12-9-130 which directs the Commission to resolve problems concerning the number of exemptions an employee claimed for South Carolina withholding purposes. Also 12-9-160 provides that if an employee fails to furnish his employer with an exemption certificate, the employee is only entitled to an exemption for a single taxpayer. This appears to conflict with the IRC provisions adopted in 12-9-110 which provide an employee is not entitled to more withholding exemptions than claimed for federal purposes. IRC provisions allow zero exemptions when an employee fails to furnish an exemption certificate.

Discussion:

1. South Carolina Code Section 12-9-120 states that, "withholding exemption certificates shall be in such form and shall contain such information as the Commission may prescribe." Commission Regulation 117-91.11 provides that a properly completed Federal Form W-4 is acceptable for reporting an employee's withholding exemptions.

However, the Commission's SC-W4, (formerly S.C. Form W/H 1602) is also acceptable for reporting on employee's exemptions. Although Section 12-9-110 prevents an employee from claiming more exemptions on the state withholding form than on the Federal withholding form, the statute should not be interpreted as repealing Section 12-9-120 which provides that the Commission shall prescribe the form of the exemption certificate.

2. South Carolina Code Section 12-9-130 states that, "...any employer who believes an employee has filed an incorrect exemption certificate must furnish a copy of the certificate to the Tax Commission within thirty days after it is filed. In the event the exemption certificate filed is determined to be incorrect, the Tax Commission must notify the employer and employee stating the rate at which taxes must be withheld...." The words of the statute must be literally applied because they are clear and leave no room for construction. Mitchell v. Mitchell, 266 S.C. 196, 222 S.E. 2d 499 (1976). Accordingly the Tax Commission is the proper authority to resolve problems concerning a South Carolina withholding statement, regardless of whether the statement submitted is on a federal or state form.
3. Section 12-9-160 provides that if an employee fails to furnish his employer with an exemption certificate, the employer must withhold the tax allowing the employee the exemption of a single taxpayer.

Section 12-9-110 provides that an employee is entitled to with-holding exemptions in an amount not to exceed the lesser of those allowed pursuant to IRC Section 3402 or those actually claimed for federal withholding purposes. IRC Section 3401(e) provides that if no certificate is in effect under 3402(f), then the number of with-holding exemptions is zero.

South Carolina did not adopt the provisions of 3401(e), thus there is no conflict between the number 12-9-160 and the Federal provisions adopted under 12-9-110.

Conclusion:

1. The SC-W4 is an acceptable withholding certificate for the purpose of an employee certifying his or her withholding exemptions for periods after December 31, 1986.
2. The South Carolina Tax Commission is the appropriate authority to resolve problems concerning a South Carolina withholding exemption certificate submitted on a Federal W-4 form.
3. The correct number of exemptions to be used for computing withholding in the absence of a properly completed SC-W4 or Federal W-4 is a single exemption as provided under Section 12-9-160.