

INFORMATION GUIDE

Request For Advisory Opinion



**South Carolina
Department of Revenue
Policy Division**

OGCP-1 (Rev. 1/14/13) 9072

PURPOSE

This information guide briefly explains the procedure for obtaining a written determination, as outlined in Revenue Procedure #09-3, from the South Carolina Department of Revenue (Department).

Private Letter Rulings

Private Letter Rulings (PLRs) are the primary vehicle for responding to advisory opinion requests from outside the Department. A PLR is an official advisory opinion issued by the Department to a specific person. A PLR may only be relied upon by the person to whom it is issued for the transaction to which it relates. A PLR has no precedential value.

When Private Letter Rulings Will Not be Issued

The Department may exercise its discretion **NOT** to issue a PLR for any reason, including:

- A. In response to inquiries concerning alternative tax treatments or hypothetical situations;
- B. On matters scheduled for audit or in audit, appeal, or litigation;
- C. On inquiries concerning federal tax matters unless such inquiries concern differences in treatment for federal and state purposes. Other inquiries should be directed to the Internal Revenue Service;
- D. When other types of written determinations are deemed more appropriate;
- E. When the law or regulations are clear; or
- F. When a binding rule is more appropriate.

Form of Request

Requests for PLRs must be in writing from a specific person or that person's representative. PLRs will NOT be issued in response to oral inquiries.

Mailing of Request

Requests for PLRs should be forwarded to:

Policy - Advisory Opinion Request
South Carolina Department of Revenue
P.O. Box 12265
Columbia, SC 29211

Content of Request

Each request should contain the following:

- A. Name, address and telephone number of taxpayer;
- B. A power of attorney if the taxpayer is represented by a third party (Form SC 2848);
- C. Specific question(s) to be answered;
- D. Complete statement of all facts;
- E. A statement of what, if any, information should remain confidential;
- F. Copies of relevant documents (i.e., contracts, wills, deeds, etc.);
- G. Relevant code sections, regulations, court decisions, or advisory opinions which appear to support the taxpayer's position; and,
- H. The person requesting the PLR must state in the request if:
 1. The same issue is under audit by the Department or any other taxing authority;

2. The taxpayer has been notified concerning a pending examination;
3. The Department, or any other taxing authority, has previously issued an advisory opinion on the same issue or the taxpayer has requested an advisory opinion on the same issue from another state. (Please cite or attach a copy);
4. The issue is being litigated; or,
5. The Attorney General's Office or Comptroller General's Office has been, or will be, requested to issue an opinion concerning the issue.

Response To Requests for Private Letter Rulings

Requests for PLRs will be worked on in the order received, unless reasons are given to do otherwise. If timing is important, the requesting party should provide reasons for extending expedited treatment.

How Private Letter Rulings Are To Be Utilized

A PLR may only be relied upon by the person to whom it is issued for the transaction to which it relates. A reference to the PLR should be made on any relevant return, application or document filed.

Revocation or Modification of PLR

The Department has the authority to ascertain whether the representations made in the request reflect an accurate statement of the material facts or whether the transaction was carried out as proposed. If not, the PLR will not afford the person who requested it any protection.

Examinations Prior to PLR Being Issued

If, prior to the issuance of a PLR, a taxpayer is notified of a pending examination by the Department, or other taxing authority, the taxpayer should notify the Policy Division and the examining auditor of the request for an advisory opinion.

Withdrawal of Request

The taxpayer may withdraw a request for a PLR any time prior to approval by the Department. The Policy Division may furnish its views to appropriate Department personnel who may consider it for any reason within their authority. If the request is withdrawn, all correspondence and documents may be retained for future reference.

Notice of Proposed Advisory Opinion

Prior to issuance of a PLR, the taxpayer or representative will be provided a draft of the proposed advisory opinion and given an opportunity to: (1) provide further information or arguments if they disagree with the proposed advisory opinion or (2) withdraw the request. There are no provisions for appealing an adverse advisory opinion. Issuance of an adverse advisory opinion is not to be construed as meaning a taxpayer does not have the right to those provisions of the law which relate to the appeals process or a claim for refund.

Public Disclosure of Private Letter Rulings

PLRs are subject to disclosure pursuant to the Freedom of Information Act. However, pursuant to S.C. Code Section 30-4-40(2) and (8)(b), the Department will "sanitize" (delete any reference to the taxpayer) PLRs prior to disclosure to protect the privacy of taxpayers. (See Content of Request). Advisory Opinions are available on the internet at www.sctax.org.

Other Advisory Opinions Issued by the Department

A. Revenue Ruling

A Revenue Ruling is intended to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of law to a specific set of facts or a general category of taxpayers. A Revenue Ruling does not have the force or effect of law, and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

B. Revenue Procedure

A Revenue Procedure is intended to provide procedural guidance to the general public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing procedural guidance that may be followed in order to comply with the law. A Revenue Procedure does not have the force or effect of law, and is not binding on the public. It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.