

# PUBLIC DRAFT

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Comments Due by: **June 8, 2026**

## SC REVENUE PROCEDURE #26-x [Public Draft – 5/18/2026]

SUBJECT:	Use of Alternative Apportionment Methods <sup>1</sup> (Income Tax)
EFFECTIVE DATE:	Applies to all periods open under the statute after March 11, 2024 <sup>2</sup>
SUPERSEDES:	SC Revenue Procedure #15-2 and all previous advisory opinions and any oral directives in conflict herewith.
REFERENCES:	S.C. Code Ann. § 12-6-2320 (Supp. 2024)
AUTHORITY:	S.C. Code Ann. § 12-4-320 (2014) SC Revenue Procedure #09-3
SCOPE:	The purpose of a Revenue Procedure is to provide procedural guidance to the public. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

South Carolina apportions income for most businesses<sup>3</sup> on a separate entity basis using either a single sales factor<sup>4</sup> or a single gross receipts factor<sup>5</sup> apportionment formula. Separate entity reporting applies the apportionment factor for each separate entity to the income of that separate entity.

In situations where the standard apportionment method does not fairly represent the extent of a taxpayer's business activity in South Carolina, Section 12-6-2320(A) allows a taxpayer to

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<sup>1</sup> For purposes of this Revenue Procedure, "alternative apportionment method" includes alternative methods of allocating or apportioning income as referenced in Section 12-6-2320(A). This Revenue Procedure does not address the procedure for taxpayers requesting to use an alternative method tailored to a particular business as an economic development incentive under Section 12-6-2320(C); that procedure is available on the Department's website at [www.dor.sc.gov](http://www.dor.sc.gov).

<sup>2</sup> Excludes assessments under judicial review by the South Carolina Administrative Law Court, Court of Appeals, or Supreme Court as of March 11, 2024.

<sup>3</sup> Some businesses are required to use special industry apportionment formulas found in Section 12-6-2310 instead of the standard single factor formula.

<sup>4</sup> See S.C. Code Ann. § 12-6-2280 (2014).

<sup>5</sup> See S.C. Code Ann. § 12-6-2290 (2014).

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petition for, or the Department to require, use of a reasonable alternative apportionment method instead of the standard method.<sup>6</sup>

Section 12-6-2320(A) authorizes the following alternative apportionment methods: (1) Separate accounting;<sup>7</sup> (2) The exclusion of one or more apportionment factors;<sup>8</sup> (3) The inclusion of one or more additional apportionment factors;<sup>9</sup> or (4) *Any other method* that effectuates equitable apportionment of the taxpayer's income.<sup>10</sup>

Effective March 11, 2024, the South Carolina Legislature amended Section 12-6-2320(A)(4) to require that the employment of “any other method” be carried out “in accordance with subsection B.”<sup>11</sup> Section 12-6-2320(B) sets forth additional requirements for applying “any other” alternative method (other than separate accounting or the exclusion or inclusion of one or more apportionment factors), including for applying combined reporting. The statutory framework focuses on, but does not require, situations where a taxpayer has intercompany transactions that lack economic substance or are not at fair market value.<sup>12</sup>

This Revenue Procedure discusses alternative apportionment and is divided into three sections. The first two sections describe the process the Department will use under Section 12-6-2320(B). **Section I** discusses the Department's authority to redetermine a taxpayer's net income by adjusting the taxpayer's transactions or requiring a combined return. **Section II** explains how taxpayers may ask the Department for specific advice as to whether redetermination is required given the taxpayer's facts and circumstances. **Section III** provides the process for taxpayers to petition the Department to use an alternative apportionment method.

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<sup>6</sup> The party seeking relief under this provision has the burden to prove that the prescribed statutory rules do not fairly represent the taxpayer's business activity in the state, and that the alternative method is reasonable. See CarMax Auto Superstores West Coast, Inc. v. South Carolina Department of Revenue, 411 S.C. 79, 767 S.E.2d 195 (2014).

<sup>7</sup> S.C. Code Ann. § 12-6-2320(A)(1) (Supp. 2024).

<sup>8</sup> S.C. Code Ann. § 12-6-2320(A)(2) (Supp. 2024).

<sup>9</sup> S.C. Code Ann. § 12-6-2320(A)(3) (Supp. 2024).

<sup>10</sup> S.C. Code Ann. § 12-6-2320(A)(4) (Supp. 2024) (emphasis added).

<sup>11</sup> 2024 S.C. Acts 113.

<sup>12</sup> There may be situations when the Department asserts that a combined return is required under Section 12-6-2320(A)(4) for reasons *other than* the taxpayer's use of transactions that lack economic substance or are not at fair market value. In these instances, the Department will follow the applicable provisions of Section 12-6-2320(B).

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## **I. Redetermination of a Taxpayer’s South Carolina Net Income**

### **A. Voluntary Redetermination**

The Department and the taxpayer may agree to any reasonable alternative apportionment method that determines the taxpayer’s income to fairly represent the taxpayer’s business activity in the state.<sup>13</sup> Either party may propose a method of voluntary redetermination at any time during the audit process. The Department is not required to find that transactions lack economic substance or are not at fair market value to agree to voluntary redetermination.

Voluntary redetermination is not a “Request for Advice” as described in Section II of this Revenue Procedure or a “Request to Use an Alternative Apportionment Method” as discussed in Section III of this Revenue Procedure.

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<sup>13</sup> S.C. Code Ann. § 12-6-2320(B)(3) (Supp. 2024).

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## B. Department's Authority to Adjust Net income or Require a Combined Return

### i. Department's Notice and Request for Information

The Department has general authority to request information from taxpayers. In addition, when it has reason to believe a taxpayer did not accurately compute state income from South Carolina business activities because of intercompany transactions, the Department may send written notice requiring the taxpayer to submit information needed to evaluate the economic substance and appropriate fair market value of the transactions and to accurately compute income.<sup>14</sup>

**The taxpayer must provide all requested information within ninety (90) days of the date of the Department's notice.** Responses must fully address each item identified in the notice. The taxpayer should include all supporting documentation necessary to substantiate its reported position and allow the Department to evaluate the transactions. If the taxpayer does not provide all information by the deadline (including any extension), the Department may use the best information available to estimate the tax liability and issue a proposed assessment to the taxpayer, including penalties and interest.<sup>15</sup>

Extensions: The Department may, in its discretion,<sup>16</sup> extend the 90-day deadline on a case-by-case basis if all the following circumstances are met:

- (1) The taxpayer submits a timely written request for an extension. A request is considered timely if it is submitted at least fifteen (15) calendar days prior to expiration of the original 90-day deadline.
- (2) The taxpayer states the reason(s) for the request and the amount of additional time needed.
- (3) Pursuant to Section 12-54-85(C)(4), the taxpayer agrees to sign a waiver preserving the Department's right to timely assess any tax period(s) for which all requested information was not provided as of the 90-day deadline, if the Department subsequently reviews that information and determines a redetermination of the taxpayer's income is required.

The taxpayer should submit as much of the requested information as possible before or when making the extension request. The Department may require the taxpayer to provide some of the requested items by the original due date as a condition of granting the extension.

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<sup>14</sup> See S.C. Code Ann. § 12-6-2320(B)(1) (Supp. 2024).

<sup>15</sup> See S.C. Code Ann. § 12-60-430 (2014).

<sup>16</sup> See S.C. Code Ann. § 12-6-2320(B)(14) (Supp. 2024).

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The Department will grant or deny the taxpayer an extension in writing and will either accept the taxpayer's proposed extension deadline or identify an alternate deadline. If the taxpayer makes a timely extension request, the 90-day deadline will be automatically extended through the later of the first business day after the Department denies the extension or the stated date of the granted extension (if approved).

Note: Voluntary redetermination does not automatically relieve a taxpayer from providing the Department with the information requested in the notice unless the Department, in its discretion, states otherwise in writing. Moreover, the Department generally will not extend the 90-day deadline by which the information must be submitted based solely on voluntary redetermination discussions.

## ii. Evaluating Economic Substance and Fair Market Value

The Department will consider each tax year separately when reviewing the taxpayer's information and evaluating whether transactions lack economic substance or are not at fair market value.<sup>17</sup>

Economic Substance: Under Section 12-6-2320(B)(7), a transaction (or series of transactions) generally has economic substance if: (i) there is at least one reasonable business purpose other than the creation of state income tax benefits; and (ii) there are economic effects beyond the creation of state income tax benefits.

In ascertaining whether a transaction has economic substance under these two tests, **all** the following apply:

- 1) Reasonable business purposes and economic effects include any material benefit from the transaction other than state income tax benefits.<sup>18</sup> However, if state tax benefits are consistent with legislative intent, intent must be considered in determining whether the transaction has business purpose and economic substance.<sup>19</sup> Material benefit is evaluated with respect to the particular taxpayer and the transactions under review.
- 2) The requirement that a transaction has economic effects may be satisfied by demonstrating material business activity of the entities involved in the transaction.<sup>20</sup>

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<sup>17</sup> S.C. Code Ann. § 12-6-2320(B)(2) (Supp. 2024).

<sup>18</sup> S.C. Code Ann. § 12-6-2320(B)(7)(a) (Supp. 2024).

<sup>19</sup> S.C. Code Ann. § 12-6-2320(B)(7)(c) (Supp. 2024).

<sup>20</sup> S.C. Code Ann. § 12-6-2320(B)(7)(b) (Supp. 2024).

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Material business activity is evaluated with respect to the particular taxpayer and the transactions under review.

- 3) Centralized cash management is not evidence of a lack of economic substance.<sup>21</sup>
- 4) A financial accounting benefit related to a reduction of state income tax is not a reasonable business purpose for entering into a transaction.<sup>22</sup>

South Carolina adopts Internal Revenue Code Section 7701(o), which codifies the economic substance doctrine. The economic substance doctrine is a common-law doctrine that disallows tax benefits of a transaction unless the transaction has economic substance or business purpose. Accordingly, the Department may rely on principles in Section 7701(o) when applying each of the two tests, except where they conflict with South Carolina law.

Fair Market Value: The Department will apply standards from the regulations adopted under Section 482 of the Internal Revenue Code (“IRC”) to determine whether the taxpayer’s transactions are at fair market value.<sup>23</sup> Section 482 regulations are designed to “ensure that taxpayers clearly reflect income attributable to controlled transactions” and “prevent the avoidance of taxes with respect to such transactions.”<sup>24</sup> Generally, the regulations provide that transactions between an affiliated group of entities should have economic results consistent with those occurring between unrelated entities. For example, pricing should be arms-length and use the “best method rule.”<sup>25</sup> Moreover, contractual terms between affiliated parties should align with the actual economic reality and conduct of the parties.<sup>26</sup>

iii. Process for Redetermining Net Income When Transactions Lack Economic Substance or are not at Fair Market Value

If the Department finds that the taxpayer's intercompany transactions lack economic substance or are not at fair market value, the Department may redetermine the taxpayer’s state net income properly attributable to its South Carolina business activity.<sup>27</sup>

For purposes of redetermination, the Department will first evaluate whether transactional adjustments based on federal transfer pricing principles are adequate to accurately calculate the

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<sup>21</sup> S.C. Code Ann. § 12-6-2320(B)(7)(d) (Supp. 2024).

<sup>22</sup> See S.C. Code Ann. § 12-6-2320(B)(7)(e) (Supp. 2024).

<sup>23</sup> S.C. Code Ann. § 12-6-2320(B)(8) (Supp. 2024).

<sup>24</sup> Treas. Reg. § 1.482-1(a).

<sup>25</sup> See Treas. Reg. §§ 1.482-1(b) and 1.482-1(c).

<sup>26</sup> See Treas. Reg. § 1.482-1(d)(3)(ii).

<sup>27</sup> S.C. Code Ann. § 12-6-2320(B)(2) (Supp. 2024).

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taxpayer's net income under a separate reporting framework. If the transactional adjustments are not adequate, the Department may require a combined return.

The Department is authorized to make any other tax adjustments permitted by law.<sup>28</sup>

## a. Transactional Adjustments

The Department may apply standards from the regulations adopted under IRC Section 482 to adjust a taxpayer's intercompany transactions. Some of the adjustments the Department may make include adding back (disallowing) deductions as a whole or in part; attributing income to affiliated entities; disregarding or collapsing transactions; reclassifying income as apportionable or allocable; or any other adjustments permitted by law.<sup>29</sup>

## b. Combined Return

The Department may find that the taxpayer must submit a combined return and notify the taxpayer in writing. The taxpayer must submit the combined return within ninety (90) days of the date of the Department's notice unless the Department agrees to extend the deadline.

If the taxpayer does not submit the combined return by the deadline (including any extension), the Department may use the best information available to estimate a combined tax liability and issue a proposed assessment, including penalties and interest.<sup>30</sup>

The taxpayer's submission of the combined return in compliance with the Department's notice does not constitute a filed return or the taxpayer's agreement regarding the correctness of a related assessment and/or additional tax.<sup>31</sup>

## 1. Combined Group

The combined return should include all members of the taxpayer's affiliated group that are conducting a unitary business,<sup>32</sup> regardless of whether a member is independently doing business in South Carolina.<sup>33</sup> An affiliated group is two or more entities where greater than 50% of the

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<sup>28</sup> S.C. Code Ann. § 12-6-2320(B)(15) (Supp. 2024).

<sup>29</sup> S.C. Code Ann. § 12-6-2320(B)(8) (Supp. 2024); See also S.C. Code Ann. § 12-6-2320(B)(15) (Supp. 2024).

<sup>30</sup> See S.C. Code Ann. §§ 12-60-430 (2014) and 12-6-2320(B)(12) (Supp. 2024).

<sup>31</sup> S.C. Code Ann. § 12-6-2320(B)(4) (Supp. 2024).

<sup>32</sup> In very general terms, a unitary business is one where the members of the group all contribute to income through functional integration, centralized management, and economies of scale. Container Corporation of America v. Franchise Tax Board of California, 463 U.S. 159, 181 (1983). Only members of a unitary business may be part of a unitary combined return.

<sup>33</sup> See S.C. Code Ann. §§ 12-6-2320(B)(2)(ii) (Supp. 2024) and 12-6-2320(B)(6) (Supp. 2024).

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voting stock (for corporations) or ownership interest (for noncorporate entities) is directly or indirectly controlled by common ownership.<sup>34</sup>

Notwithstanding the above, the Department or the taxpayer may propose and agree to a combination of less than all members of the unitary group; however, the Department may not require this without the taxpayer's consent.<sup>35</sup> In addition, the following entities are excluded from a combined return:

- (a) A taxpayer not required to file a federal income tax return;
- (b) An insurance company, *other than a captive insurance company*:<sup>36</sup>
  - (i) Subject to tax under Title 38;
  - (ii) Whose premiums are subject to tax under Chapter 7, Title 38 or a similar tax in another state;
  - (iii) Licensed as a reinsurance company;
  - (iv) That is a life insurance company as defined in Section 816 of the Internal Revenue Code; or
  - (v) That is an insurance company subject to tax imposed by Section 831 of the Internal Revenue Code.
- (c) A taxpayer exempt from taxation under Section 501 of the Internal Revenue Code;
- (d) A foreign taxpayer as defined in Section 7701 of the Internal Revenue Code, other than a domestic branch thereof;
- (e) A taxpayer with at least eighty percent of its gross income from all sources in the tax year being active foreign business income as defined in Section 861(c)(1)(B) of the Internal Revenue Code;
- (f) Any other entity not subject to tax under Section 12-6-530.<sup>37</sup>

## 2. Apportionment

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<sup>34</sup> S.C. Code Ann. § 12-6-2320(B)(10) (Supp. 2024).

<sup>35</sup> S.C. Code Ann. § 12-6-2320(B)(4) (Supp. 2024).

<sup>36</sup> A "captive insurance company" means an insurer that is part of an affiliated group where the insurer receives more than fifty percent of its net written premiums or other amounts received as compensation for insurance from members of the affiliated group. S.C. Code Ann. § 12-6-2320(B)(10)(b) (Supp. 2024).

<sup>37</sup> S.C. Code Ann. § 12-6-2320(B)(10) (Supp. 2024).

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If the Department requires a combined return, the combined state net income of the taxpayer and all affiliated unitary entities will be apportioned using a formula that fairly represents the taxpayer's South Carolina business activity and fairly reflects the statutorily applicable apportionment formula. Depending on the taxpayer's business, South Carolina's statutory apportionment formula apportions income using either a single sales factor or a single gross receipts factor.<sup>38</sup> Sales and gross receipts are determined in accordance with Section 12-6-2295.<sup>39</sup>

#### iv. Statement of Findings

If the Department adjusts intercompany transactions or requires a combined return, it will provide the taxpayer with a written statement of findings within ninety (90) days of issuing a proposed assessment.<sup>40</sup> The statement will detail the facts, circumstances, and reasons for the adjustment(s) and the Department's proposed method of computing the taxpayer's state net income.<sup>41</sup>

The statement may be included as part of the Department's proposed assessment. It may also be supplemented and/or issued separately from the proposed assessment.

#### C. Penalties

The Department will not impose penalties resulting from redetermination under this section, except when the taxpayer fails to provide a timely combined return if one is required.<sup>42</sup> However, penalties may be imposed on the portion of any assessed liability arising from adjustments that are not caused by the application of Section 12-6-2320.

#### D. Extensions of Time

The Department and the taxpayer may mutually agree to extend any time limit under this section.<sup>43</sup>

#### E. Appeals

Taxpayers may appeal final Department Determinations under this section to the South Carolina Administrative Law Court.<sup>44</sup> Appeals will follow the procedures established in Chapter 60 of

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<sup>38</sup> See S.C. Code Ann. §§ 12-6-2250 and 12-6-2290 (Supp. 2014).

<sup>39</sup> S.C. Code Ann. § 12-6-2320(B)(9) (Supp. 2024).

<sup>40</sup> The statement of findings may be labeled "Audit Explanation" or some variation.

<sup>41</sup> S.C. Code Ann. § 12-6-2320(B)(5) (Supp. 2024).

<sup>42</sup> S.C. Code Ann. § 12-6-2320(B)(12) (Supp. 2024).

<sup>43</sup> S.C. Code Ann. § 12-6-2320(B)(14) (Supp. 2024).

<sup>44</sup> S.C. Code Ann. § 12-6-2320(B)(16) (Supp. 2024).

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Title 12. More information can be found in SC Revenue Procedure #20-1 or on the Department's website.

## **II. Request for Advice**

Under Section 12-6-2320(B)(13), a taxpayer may submit a written request to the Department for specific advice as to whether a transactional adjustment or a combined return is required under the taxpayer's facts and circumstances.

The following provisions apply to all requests for advice:

1. Oral requests will not be accepted.
2. The Department will not issue advice to an unidentified taxpayer.
3. The Department will not issue advice about matters for which a taxpayer is currently under audit by, or in litigation with, the Department.
4. Advice may only be requested on matters affecting the taxpayer's own business operations and reporting requirements.
5. Advice is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are true and accurate. If the taxpayer provides information that is not correct, or significantly changes, the advice may not be valid.

Whether a change is "significant" is evaluated with respect to the particular taxpayer and the transactions under review. Significant for this purpose includes (1) any change that was disclosed or required to be disclosed in the taxpayer's request for advice or the Department's notice, or on the taxpayer's financial statements, or (2) any change that decreases the taxpayer's South Carolina income taxes by the lesser of 10% or \$100,000.

6. A "Request for Advice" under this section is not a voluntary redetermination or a "Request to Use an Alternative Apportionment Method."<sup>45</sup>
7. The Department's advice is not a Department Determination and is not subject to the appeals process under the Revenue Procedures Act.<sup>46</sup>

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<sup>45</sup> Section I.A. of this Revenue Procedure discusses voluntary redetermination. Section III discusses requests for alternative apportionment.

<sup>46</sup> See S.C. Code Ann. § 12-6-2320(B)(13) (Supp. 2024).

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8. The Department may use information the taxpayer provides for any purpose authorized by law.<sup>47</sup>

## A. Request Contents

The taxpayer's written request for advice should include the following information:

1. The full legal name, address, and taxpayer identification number for all affiliated parties involved in the transactions for which the taxpayer is requesting advice. Indicate which parties are South Carolina filers.
2. An executed power of attorney if the taxpayer is represented by a third party (Form SC2848).
3. A complete statement of the facts and circumstances for which advice is requested.
4. A statement attesting that the taxpayer is not currently under audit by, or in litigation with, the Department regarding these issues.
5. An organization chart showing all affiliated entities, the type of each entity, and their relationship. Types of entities include partnerships, corporations, S-corporations, disregarded entities for tax purposes, and entities exempt from South Carolina income taxes (with the reason for exemption).
6. For all affiliated entities: a description by entity of the nature of the business, business purpose, and activities within South Carolina and everywhere; products and services; types of customers; and details of any intercompany transactions, including intellectual property used in the business and the use of personnel or material by members whether or not such use is documented.
7. Transfer pricing studies, intercompany agreements/contracts, exhibits, flow charts, and other relevant documents for every transaction between affiliated parties regardless of whether paid or documented. The information should designate types of transactions; frequency of transactions; amounts paid and received (by entity name and FEIN); and support for the reasonableness of the amounts paid as well as business purpose for the transactions.

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<sup>47</sup> Section 12-6-2320(B)(15) provides, "Nothing in this section may be construed to limit or negate the department's authority to make tax adjustments as otherwise permitted by law."

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8. Agendas and meeting minutes for all Board of Director and Subcommittee meetings during the period for which the advice is requested and the period preceding the request.
9. A statement as to whether intercompany transactions involving the transfer of goods, services, or intangibles are in the process of seeking resolution of actual or potential transfer pricing disputes through (1) the Federal Advance Pricing and Mutual Agreement Program or (2) federal or state litigation.
10. Any other information the taxpayer believes is relevant to its situation.

## B. Where to Submit the Request

The written request and supporting information may be emailed to the Department's Income Tax Audit Division at [Audit@dor.sc.gov](mailto:Audit@dor.sc.gov) with the subject line "Request for Advice."

It may also be mailed to:

South Carolina Department of Revenue  
Attn: Administrator of Income Tax Audit  
Request for Advice  
300A Outlet Point Blvd.  
Columbia, SC 29214

## C. Department's Advice

The Department will review the request and may require additional information to facilitate a thorough and efficient review and provide the advice. The Department will provide written advice within 120 days of the date the Department receives all requested information from the taxpayer.<sup>48</sup>

## **III. Request to Use an Alternative Apportionment Method**

Section 12-6-2320(A) allows a taxpayer to petition the Department to use an alternative apportionment method instead of the standard method. A taxpayer may not use an alternative method prior to receiving the Department's approval. For the petition to be granted, the taxpayer must show that the prescribed statutory rules do not fairly represent the taxpayer's business activities in the state and that the alternative method is reasonable.

The taxpayer may request to use any of the following alternative methods:

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<sup>48</sup> See S.C. Code Ann. § 12-6-2320(B)(13) (Supp. 2024).

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- (1) Separate accounting;<sup>49</sup>
- (2) The exclusion of one or more apportionment factors;<sup>50</sup>
- (3) The inclusion of one or more additional apportionment factors;<sup>51</sup> or
- (4) *Any other method* that effectuates equitable apportionment of the taxpayer's income.<sup>52</sup>

A request to use an alternative method is not a “Voluntary Redetermination” or a “Request for Advice”<sup>53</sup>

## A. Request Contents

The taxpayer's request to use an alternative apportionment method must explain the method the taxpayer currently uses<sup>54</sup> in South Carolina and the tax years the method has been used. (If the taxpayer currently does not have business activity in South Carolina, the request should indicate the statutory method that would be required once the taxpayer has business activity in this state.) The request must also set forth a complete statement of the facts and reasons why the taxpayer believes the statutory method does not, or will not, fairly represent its South Carolina business activity, and include supporting information.<sup>55</sup> The request must then describe the taxpayer's proposed alternative method and explain why the method fairly represents the taxpayer's business activity in the state.

Additionally, the request must provide the following information<sup>56</sup> (or indicate the information is not applicable):

1. The full legal name, address, taxpayer identification number (TIN), and tax year of the taxpayer (and all affiliated entities if applicable).
2. An executed power of attorney if the taxpayer is represented by a third party (Form SC2848).
3. The tax year for which the taxpayer requests the first use of the alternative method.

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<sup>49</sup> S.C. Code Ann. § 12-6-2320(A)(1) (Supp. 2024).

<sup>50</sup> S.C. Code Ann. § 12-6-2320(A)(2) (Supp. 2024).

<sup>51</sup> S.C. Code Ann. § 12-6-2320(A)(3) (Supp. 2024).

<sup>52</sup> See S.C. Code Ann. § 12-6-2320(A)(4) (Supp. 2024) (emphasis added).

<sup>53</sup> Section I.A. of this Revenue Procedure discusses “Voluntary Redetermination.” Section II discusses “Requests for Advice.”

<sup>54</sup> This may be the statutory method or an alternative method if one has been previously approved.

<sup>55</sup> The taxpayer should send copies rather than original documents.

<sup>56</sup> The Department may use information the taxpayer provides for any purpose authorized by law.

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4. Whether the alternative method requested will be used for all, or a portion of, the taxpayer's business activities.
5. An organization chart showing all affiliated entities, the type of each entity, and their relationship. Types of entities include partnerships, corporations, S-corporations, disregarded entities for tax purposes, and entities exempt from South Carolina income taxes (with the reason for exemption).
6. For all affiliated entities: a description by entity of the nature of the business, business purpose, and activities within South Carolina and everywhere; products and services; types of customers; and details of any intercompany transactions, including intellectual property used in the business and the use of personnel or material by members whether or not such use is documented.
7. Transfer pricing studies, intercompany agreements/contracts, exhibits, flow charts, and other relevant documents for every transaction between affiliated parties regardless of whether paid or documented. The information should designate types of transactions; frequency of transactions; amounts paid and received (by entity name and FEIN); and support for the reasonableness of the amounts paid as well as business purpose for the transactions.
8. A statement as to whether intercompany transactions involving the transfer of goods, services, or intangibles are in the process of seeking resolution of actual or potential transfer pricing disputes through (1) the Federal Advance Pricing and Mutual Agreement Program or (2) federal or state litigation.
9. Answers to the following questions:
  - A. Is the taxpayer currently being audited by, or in litigation with, the Department?
  - B. Has the taxpayer been audited in the past five years? If so, did the Department adjust the taxpayer's income allocations or apportionment method?
  - C. During the past five years, has the taxpayer submitted a request to use an alternative method? If so, what was the result?
  - D. Has the taxpayer made requests to any other states to use an alternative apportionment method? If so, what was the result?

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E. Is the taxpayer in transfer pricing or alternative apportionment negotiations or litigation in other states? If so, what are the parties' respective positions?

10. Calculated projections of the taxpayer's net income beginning in the tax year before the new method would commence, and for three years thereafter, under both the requested alternative method and the current apportionment method. Projections should be as complete as possible and include income allocated, as well as factor computations for each of the factors in question.

11. Any other information the taxpayer believes supports its request or may be relevant to the Department's decision about whether to approve the request.

## B. Where to Submit the Request

The taxpayer must file a request with the Department separately from its income tax return. The request may be emailed to the Department's Audit Division at [Audit@dor.sc.gov](mailto:Audit@dor.sc.gov) with the subject line "Request for Alternative Apportionment."

It may also be mailed to:

South Carolina Department of Revenue  
Attn: Administrator of Income Tax Audit  
Request for Alternative Apportionment  
300A Outlet Point Blvd.  
Columbia, SC 29214

## C. Approval to Use an Alternative Apportionment Method

The Department will review the taxpayer's request and the support presented and will notify the taxpayer if additional information is needed. A decision will not be made until the taxpayer provides all required information.

If the Department tentatively approves the use of an alternative method, the Department will notify the taxpayer, and the parties will enter into a written agreement outlining the approved terms. The approval is not granted until the agreement is executed. The taxpayer must attach a copy of this agreement to all income tax returns filed using the alternative method. If the request is denied, the Department will issue a letter explaining the denial.

**A taxpayer may not use an alternative method prior to obtaining the written, executed agreement.** The Department will not grant retroactive approval for prior tax periods, and the

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taxpayer may not file an amended return to use an approved method for periods prior to approval. If the Department does not approve the method until after the due date of the return, the taxpayer must file the return using the statutory method (or previously approved alternative method).<sup>57</sup>

The taxpayer and the Department jointly may agree on, and enter into a written agreement for, an alternative method other than that originally requested by the taxpayer.

The Department's approval is granted to the taxpayer requesting it on the assumption that the taxpayer's stated facts and circumstances are true and accurate. If the taxpayer provides information that is not correct, the Department may retroactively revoke the approval.

i. Taxpayer's Responsibility to Notify Department of Changes

The taxpayer must notify the Department in writing of any non-de minimus change in facts, including business activities or other information provided in the taxpayer's prior alternative apportionment request, and explain how the change impacts the standard and the approved alternative apportionment methods. For example, taxpayers should report reorganizations, mergers, acquisitions, changes to the unitary group, new intercompany agreements, and new transfer pricing studies.

If the Department determines the taxpayer's changes are significantly<sup>58</sup> different than the previous facts relied upon in approving the alternative method, the Department may approve continued use of the alternative method under the new facts or terminate the agreement as of the beginning of the tax year in which the change occurs. The fact that an alternative method is more or less advantageous to the taxpayer in a particular taxable year is not, of itself, a significant change.

Failure to notify the Department of significant changes may result in termination of the agreement.

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<sup>57</sup> If the Department receives the request prior to the due date of the return but does not approve the method until after the due date of the return, the taxpayer must file the return using the statutory method (or previously approved alternative method). However, once the alternative method is approved, the taxpayer may amend the return to use the alternative method for the year the request was originally filed unless both parties agree to begin the alternative method in a subsequent tax year.

<sup>58</sup> Whether a change is "significant" is evaluated with respect to the particular taxpayer and the transactions under review and for this purpose includes (1) any change that was disclosed or required to be disclosed in the taxpayer's request for alternative apportionment or the Department's notice, or on the taxpayer's financial statements, or (2) any change that decreases the taxpayer's South Carolina income taxes by the lesser of 10% or \$100,000.

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Notification should be provided to the same address as the original request before the end of the tax year in which the change occurred.

ii. Termination of Alternative Apportionment Agreement

The Department and the taxpayer may jointly agree to terminate the alternative apportionment agreement at any time, effective at the end of an agreed to taxable year. In this case, the taxpayer will begin using the statutory method or another approved alternative method for the tax year agreed to by the parties.

The Department may revoke permission to use the alternative method if the taxpayer misrepresented, or if there is a significant change in, the facts upon which the Department reasonably relied in approving the alternative method, and the Department no longer believes that the alternative method fairly represents the taxpayer's South Carolina business activity or that the statutory method now fairly represents the taxpayer's business activity. The Department will not revoke the alternative method with respect to transactions or activities that occurred in tax periods prior to a significant change in facts or law.

After the Department approves an alternative method, the taxpayer must request permission from the Department to change back to the statutory method or to another alternative method. Taxpayers should submit such requests to the same address as the original request, and include all information discussed in part A of this Section.

iii. Appeal of Department's Denial or Revocation

If the Department denies a taxpayer's request to use an alternative apportionment method or revokes an approved method, the taxpayer may appeal the Department's denial or revocation within ninety (90) days of the date of the denial or revocation.<sup>59</sup> Appeal procedures are established in Title 12, Chapter 60 of the South Carolina Code. SC Revenue Procedure #20-1 provides more information on the Appeals process.

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<sup>59</sup> See S.C. Code Ann. § 12-60-450 (2014).