

SC INFORMATION LETTER #08-27

SUBJECT: Extensions for Partnerships, Estates, and Trusts

DATE: December 12, 2008

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
SC Revenue Procedure #05-2

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

Federal Extension Changes from 6 Months to 5 Months

On June 30, 2008, the Internal Revenue Service announced in IR-2008-84 a change reducing from 6 months to 5 months the period to extend the time to file returns for certain businesses that generate Schedules K-1 and other similar statements. This change is effective for extension requests with respect to tax returns due on or after January 1, 2009, and applies to entities that file the following returns and forms that have a tax year ending on or after September 30, 2008:

1. Form 1065, US Return of Partnership
2. Form 1041, US Income Tax Return for Estates and Trusts
3. Form 8804, Annual Return for Partnership Withholding Tax

South Carolina Extension Changes

The Department is also reducing from 6 months to 5 months the period extending the time to file the following tax returns due on or after January 1, 2009¹:

1. Form SC 1065, South Carolina Partnership Return
2. Form SC1041, SC Fiduciary Income Tax Return.

¹ For tax returns due in tax year 2009 only, the Department is allowing a transition period to implement this change in the extended due date. If a partnership, estate, or trust has a valid federal or SC 5 month extension or files a valid SC 8736 "Request for Extension of Time to File South Carolina Return for Fiduciary and Partnership," the Department will waive late filing penalties (as authorized under Code Section 12-54-160) if the return is received within the former 6 month extension date.

Note: This reduction in the extension time period does not change the procedure for requesting an extension of time, nor does it affect extensions of time to file other types of business returns, such as those used by corporations (S or C corporations.)

Listed below are several reminders of general rules applicable to extension requests as provided in Code Sections 12-6-4980 and 12-54-70:

Use of South Carolina Form. If the taxpayer chooses to use a South Carolina extension form, SC8736, "Request for Extension of Time to File South Carolina Return for Fiduciary and Partnership," then the extension must be filed on or before the original due date of the return. The extension must reflect 100% of the anticipated tax to be paid for the period and payment of the tentative tax liability must be remitted with the extension. If the amount paid with the extension does not equal at least 90% of the tax to be paid, then a penalty is imposed from the date the return was originally due on the difference between the amount remitted and the tax to be paid for the period.

Use of IRS Form if Taxpayer Owes No SC Tax. A taxpayer who has been granted a federal extension of time does not need to file a separate South Carolina extension of time if the taxpayer is not required to make a SC tax payment with the extension.