
State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #13-3

SUBJECT: Apportionment of Engineering Service Income
(Income Tax)

REFERENCES: S. C. Code Ann. Section 12-6-2210 (2012)
S. C. Code Ann. Section 12-6-2290 (2012)
S. C. Code Ann. Section 12-6-2295 (2012)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Questions:

1. How is income of ABC Consulting, Inc., an engineering service business, apportioned for South Carolina income taxes?
2. Are engineering services performed in South Carolina by independent contractors for ABC Consulting, Inc.'s customers used in determining what gross receipts from engineering services are sourced to South Carolina?

Conclusions:

1. ABC Consulting, Inc. apportions its income using gross receipts based on where the engineering services are performed.

2. Engineering services performed by independent contractors, as well as employees, in South Carolina should be considered in determining ABC Consulting, Inc.'s gross receipts sourced to South Carolina for apportionment purposes.

Facts:

ABC Consulting, Inc. ("ABC") provides engineering consulting services for the development of product designs for the automotive and consumer electronic market. ABC has approximately fifteen employees. One of the employees lives in South Carolina and works out of his home. ABC also hires engineers as independent contractors that perform services in South Carolina as well as other states.

Discussion:

A taxpayer conducting business partly within and partly outside of South Carolina is subject to income tax based on the portion of business carried on in South Carolina. Code Section 12-6-2210. The portion of income subject to South Carolina tax is determined through apportionment.¹ ABC does business in South Carolina, as well as other states, and has requested guidance on apportioning income from its engineering business conducted in South Carolina.

If a taxpayer's principal profits or income are derived from providing services, the taxpayer apportions its income based on gross receipts. Code Section 12-6-2290. Income subject to apportionment is multiplied by the gross receipts factor to determine income subject to tax in South Carolina. The numerator of the gross receipts factor is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. Code Section 12-6-2290.

In connection with services, Code Section 12-6-2295(5) provides that if the income-producing activity is performed partly within and partly without this State, gross receipts are attributable to this State to the extent the income-producing activity is performed within this State.

In *Lockwood Greene Engineers, Inc. v. South Carolina Tax Commission*, 293 S.C. 447, 361 S.E.2d 346 (1987), the South Carolina Court of Appeals considered the issue of apportioning income from an engineering firm. In describing Lockwood Greene's business, the court found:

Lockwood provides services to its clients through highly trained engineers and personnel in its various offices. A client pays an engineering firm for the expertise and time of its employees. Therefore, an engineering firm's business carried on in a state is reasonably measured by the services rendered by its personnel in this State.

¹ Allocation of certain income may be required before apportioning the remaining income; however, allocation is not an issue in this private letter ruling..

The court concluded that when apportioning income for personal service providers such as engineering firms, the income producing activity is the engineering services provided to clients. As a result, the state where those engineering services are performed is where gross receipts from its services should be sourced.

The Court further upheld the Department of Revenue's² position that gross receipts from services within the state and the total gross receipts from services may be calculated by comparing the firm's South Carolina payroll to its total payroll. In other words for an engineering service firm that only uses employees to perform its services, payroll for services performed in South Carolina over payroll for services performed everywhere should be multiplied by gross receipts of the business to obtain gross receipts from within South Carolina.

Lockwood Greene Engineers, Inc. did not involve independent contractors; however, in order to measure the activity of ABC performed in the State, the work of independent contractors they hire must be considered. To the extent ABC uses independent contractors to perform engineering services, these amounts should be considered in apportioning income to the South Carolina.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/William M. Blume, Jr.

William M. Blume, Jr., Director

August 7 _____, 2013
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

² Formerly named the Tax Commission.