



STATE OF SOUTH CAROLINA  
**DEPARTMENT OF REVENUE**

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 125, Columbia, South Carolina 29214-0575

SC PRIVATE LETTER RULING #24-1

**SUBJECT:** Sale of a Partnership Interest  
(Income Tax)

**REFERENCES:** S.C. Code Ann. § 12-6-600  
S.C. Code Ann. §§ 12-6-2210, -2220, and -2240  
I.R.C. §§ 741 and 751

**AUTHORITY:** S.C. Code Ann. § 12-4-320  
S.C. Code Ann. § 1-23-10(4)  
S.C. 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 by the taxpayer. Moreover, it is binding on agency personnel only with respect to the taxpayer and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, provided the representations made in the request reflect an accurate statement of the material facts.

**QUESTION:**

How should the Taxpayer's sale of an interest in a multistate partnership that does business in South Carolina be reported to South Carolina for income tax purposes?

**FACTS:**

The Taxpayer, a South Carolina resident individual, was an active owner of a tiered pass through entity structure comprised of two limited liability companies that are treated as partnerships for tax purposes.<sup>1</sup> The Taxpayer was a partner in "Management Partnership," which owned 49% of "Operating Partnership" ("Management Partnership" and "Operating Partnership" are together referred to as the "Partnerships").

---

<sup>1</sup> Partnerships include LLCs that have elected to be taxed as partnerships under the check-the-box regulations found in Section 301.7701-3 of the Treasury Regulations. See S.C. Code Ann. § 12-2-25(A). For clarity in this private letter ruling the entities will be referred to as partnerships and the owners as partners.

The Partnerships conducted business in multiple states, including South Carolina. Operating Partnership was in the business of buying and selling metal alloys. Management Partnership was responsible for carrying out managerial functions for Operating Partnership's business. These functions included business performance reviews; strategic planning; personnel development; and managing supplier and customer relations. Management Partnership received pass through income from Operating Partnership, which was in turn passed through to its partners (including the Taxpayer).

The Taxpayer worked full time as president and executive officer of Management Partnership until he retired at the end of 2013. After retirement, he continued to take part in certain managerial functions on a more limited basis until 2021. In 2021, the Taxpayer sold his interest in Management Partnership. As a result of the sale, the Taxpayer reported a \$2.6 million long term capital gain entirely to South Carolina.

In the year of the sale, the Partnerships' South Carolina apportionment ratio was 2.4%. No information was provided about the assets the Partnerships owned at the time of the sale.

The Taxpayer asks if the entire \$2.6 million gain on the sale of his partnership interest is a South Carolina gain, or whether a portion of the gain is "out-of-state income/gain."

## **ANALYSIS:**

### **Allocation and Apportionment:**

South Carolina adopts the Internal Revenue Code (IRC) with certain modifications noted in S.C. Code Ann. §§ 12-6-40 and -50. Specifically, South Carolina adopts Subchapter K of the IRC, which governs taxation of partners and partnerships, subject to allocation and apportionment as provided in Article 17 of Chapter 6 of the South Carolina Code. S.C. Code Ann. § 12-6-600. South Carolina taxes income allocated to this State plus income apportioned to this State.

S.C. Code Ann. §§ 12-6-2220 and -2230 list certain types of income directly allocated for South Carolina income tax purposes. Any income that is not directly allocated is apportioned<sup>2</sup> among the states in which the business is conducted, with South Carolina taxing an amount representing the portion of the business carried on within the State.<sup>3</sup>

S.C. Code Ann. § 12-6-2220(5) allocates "gains and losses from sales of intangible personal property<sup>4</sup> not connected with the business of the taxpayer" to the domicile of an individual taxpayer; but it does not allocate gains and losses from sales of intangible personal property connected with the taxpayer's business. Therefore, it must be determined whether the gain from the sale of intangible personal property (partnership interest) was connected with the "business of the taxpayer."

---

<sup>2</sup> See S.C. Code Ann. § 12-6-2240.

<sup>3</sup> See S.C. Code Ann. § 12-6-2210(B).

<sup>4</sup> A partnership interest is intangible personal property.

As a partner, the Taxpayer is in the business of the partnership by reason of the pass through principle. Under this principle, partnership income or loss is not taxed at the entity level, but is passed through to the partners to be included on the partners' returns. The court in *Ellis v. South Carolina Tax Commission*<sup>5</sup> relied on the pass through principle and held "...the character of any item of income, gain, loss deduction or credit included in a partner's distributive share of gains and losses shall be the same as if such item was realized directly from the source from which realized or incurred by the partnership. In other words, each item... is treated as if it were realized or incurred by the partner directly from the source without ever having passed through the partnership." The partnership interest therefore was connected with the Taxpayer's business. Accordingly, the gain from the sale is not allocated to South Carolina under S.C. Code Ann. § 12-6-2220(5).

It is not possible to determine whether any part of the gain is otherwise allocable under S.C. Code Ann. §§ 12-6-2220 and -2230 because no information is available about the nature of the assets owned by the Partnerships. However, any amount of gain that is not allocated should be apportioned among the states where the business was conducted, including South Carolina, as required by S.C. Code Ann. § 12-6-2240.

The proportion of the business carried on within this State was 2.4% in the year of the sale, so the Taxpayer should apportion 2.4% of the non-allocated gain on the sale of his partnership interest to South Carolina.

#### **Character:**

As noted, South Carolina has adopted Subchapter K of the IRC. For South Carolina income tax purposes, IRC §§ 741 and 751 determine the character of the gain from the sale of a partnership interest.

IRC § 741 generally treats the gain or loss on the sale of a partnership interest as gain or loss from the sale of a capital asset, except as otherwise provided in IRC § 751 (relating to "unrealized receivables" and "inventory items"). If the partnership owns IRC § 751 property at the time of the sale, the character of the portion of the partner's gain attributable to the IRC § 751 property is changed from capital to ordinary.

Because no information was provided about the Partnerships' assets at the time of the sale, the Department cannot give an opinion on the proper characterization of the South Carolina gain. To the extent any of the gain is attributable to assets described in IRC § 751, the Taxpayer should report those amounts as ordinary income. The remainder of the gain, if any, is capital.

#### **CONCLUSION:**

The proportion of the Taxpayer's business carried on within South Carolina was 2.4% in the year of the sale, so the Taxpayer should apportion to this State 2.4% of any portion of the gain that is not directly allocated under S.C. Code Ann. §§ 12-6-2220 or -2230.

---

<sup>5</sup> 280 S.C. 65, 67, 309 S.E.2d 761-763 (1983).

In addition, if the Partnerships owned any IRC § 751 assets at the time of the sale, the portion of the Taxpayer's gain attributable to those assets should be reported as ordinary income. The remainder of the gain, if any, should be reported as long term capital gain. Only the South Carolina portion of the capital gain is included as a long term capital gain in determining the taxpayer's net capital gain eligible for the 44% deduction in S.C. Code Ann. § 12-6-1150.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell  
\_\_\_\_\_  
W. Hartley Powell, Director

February 21, 2024  
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.**