



SC REVENUE RULING #94-9 (TAX)

- SUBJECT:** Retirement Income of a Surviving Spouse
(Income Tax)
- EFFECTIVE DATE:** For taxable years beginning after 1992.
- SUPERSEDES:** SC Revenue Ruling #93-12
SC Information Letter #94-3
- REFERENCE:** S.C. Code Ann. Section 12-7-435 (Supp. 1993)
- AUTHORITY:** S.C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #94-1
- SCOPE:** A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance to all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

INTRODUCTION:

Questions have arisen as to the retirement income deduction available to a surviving spouse for taxable years beginning after 1992.

Following a discussion of the statute, examples have been provided in order to better explain how the retirement income deduction under Code Section 12-7-435 applies to a surviving spouse.

Since the deduction for retirement income concerns taxable years beginning after 1992, the examples below will reflect facts and circumstances that may occur in the future.

DISCUSSION:

Effective for taxable years beginning after 1992, Code Section 12-7-435 allows a taxpayer a deduction from South Carolina taxable income, and reads in part:

- (1) Beginning with the taxable year in which a taxpayer first receives retirement income, the taxpayer may:
 - (A) deduct his retirement income in an amount not to exceed three thousand dollars annually; or
 - (B) elect irrevocably to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of sixty-five years, at which time the taxpayer may deduct his retirement income in an amount not to exceed ten thousand dollars annually.
- (2) A taxpayer who does not claim a retirement income deduction before the taxable year in which he attains the age of sixty-five years is considered to have made the election allowed pursuant to subitem (1)(B) of this item.
- (3) A taxpayer who has attained the age of sixty-five years before 1994 is considered to have made the election allowed pursuant to subitem (1)(B) of this item.
- (4) A taxpayer who in 1993 has not yet attained the age of sixty-five years and who receives retirement income in 1993 may:
 - (A) deduct his retirement income in an amount not to exceed three thousand dollars annually; or
 - (B) elect irrevocably to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of sixty-five years, at which time the taxpayer may deduct his retirement income in an amount not to exceed ten thousand dollars annually.
- (5) The deduction allowed by this item extends to the taxpayer's surviving spouse and, to the extent the surviving spouse receives retirement income attributable to the deceased spouse, applies in the same manner that the deduction applied to the deceased spouse. If the surviving spouse also has another retirement income, an additional retirement exclusion is allowed.
- (6) For purposes of this item, "retirement income" means the total of all otherwise taxable income not subject to a penalty for premature distribution received by the taxpayer or the taxpayer's surviving spouse in a taxable year from qualified retirement plans which include those plans defined in Internal Revenue Code Sections 401, 403, 408, and 457, and all public employee retirement plans of federal, state, and local governments, including military retirement for persons with twenty or more years active military duty. (Emphasis added.)

* * * *

- (8) (A) For a taxpayer born in the years 1943 through 1959, where subitems (1), (2), and (4) of this item refer to age sixty-five, the applicable age is sixty-six.
- (B) For a taxpayer born after 1959, where subitems (1), (2), and (4) of this item refer to age sixty-five, the applicable age is sixty-seven.

Where the words of a statute are clear there is no room for construction and such terms must be given their literal meaning. Duke Power Co. v. South Carolina Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987).

In Beaty v. Richardson, 56 S.C. 173, 180, 34 S.E. 73, 76 (1899), the Court stated the rule as follows: "The legislature must have intended to mean what it has plainly expressed, and consequently there is no room for construction... Where the words of a statute are plainly expressive of an intent, not rendered dubious by the context, the interpretation must conform to and carry out that intent. It matters not, in such a case, what the consequences may be."

In summary, a surviving spouse, with respect to the retirement income received, is allowed a deduction for income received from his or her retirement plan or plans (if any) and a second separate deduction for retirement income that is attributable to the deceased spouse (if any).

For each deduction allowed, the surviving spouse must deduct the lesser of the retirement income received or \$3,000.00, or the lesser of the retirement income received or \$10,000.00, depending on the election made.

With respect to the retirement income that is attributable to the deceased spouse, the surviving spouse essentially "steps into the shoes" of the deceased spouse. Therefore, the surviving spouse:

- (1) must take the same deduction the deceased spouse elected; or,
- (2) is entitled to make the election available under the law if his or her deceased spouse had not yet made the election. The deduction taken is based on the age of the deceased spouse had he or she lived.

Finally, the first year of the election under this statute is 1993. Deductions taken in previous years under the prior statute do not affect this election. Therefore, a surviving spouse receiving retirement income attributable to a deceased spouse who died prior to January 1, 1993 may make this same election on his or her 1993 tax return. However, if the deceased spouse, had he or she lived, attained the age of sixty-five years before January 1, 1994, then the surviving spouse is considered to have made the election to deduct the retirement income attributable to the deceased spouse in an amount not to exceed ten thousand dollars annually.

EXAMPLES AND CONCLUSIONS:

Example #1:

Facts: A surviving spouse receives retirement income from a plan attributable to a deceased spouse and also receives retirement income from his or her retirement plan.

Conclusion: A surviving spouse, with respect to the retirement income received, is allowed a deduction for income received from his or her retirement plan or plans and a second separate deduction for retirement income that is attributable to the deceased spouse.

Example #2:

Facts: A surviving spouse, age 67, receives \$15,000.00 retirement income from a plan attributable to a deceased spouse who was 69 years of age at the time of death. On the 1995 tax return filed prior to death, the deceased spouse had elected to take the \$10,000.00 retirement income deduction allowed under the law. The surviving spouse is also receiving \$8,000.00 retirement income from his or her retirement plan and on the 1997 tax return the surviving spouse elected to take the \$10,000.00 retirement income deduction allowed under the law.

Conclusion: A surviving spouse, age 67, receiving \$15,000.00 retirement income from a plan attributable to a deceased spouse, who was 69 years of age at the time of death, must take the \$10,000.00 retirement income deduction allowed under Code Section 12-7-435 if, on the 1995 tax return filed prior to death, the deceased spouse had elected to take the \$10,000.00 retirement income deduction allowed under the law.

The surviving spouse is also entitled to another retirement income deduction of \$8,000.00 with respect to income received from his or her own retirement plan. Even though the surviving spouse had elected the \$10,000.00 retirement income deduction, he or she is only entitled to a deduction of \$8,000.00 since the deduction is limited to the lesser of the retirement income received or \$10,000.00.

Therefore, the total deduction allowed the surviving spouse is \$18,000.00 - a \$10,000.00 deduction for retirement income attributable to the deceased spouse and an \$8,000.00 deduction for retirement income attributable to the surviving spouse.

Example #3:

Facts: A surviving spouse, age 68, receives \$15,000.00 retirement income from a plan attributable to a deceased spouse who was 58 years of age at the time of death. On the 1993 tax return filed prior to death, the deceased spouse had taken the \$3,000.00 retirement income deduction allowed under the law.

Conclusion: A surviving spouse receiving \$15,000.00 retirement income from a plan attributable to a deceased spouse must take the \$3,000.00 retirement income deduction allowed under Code Section 12-7-435 if, on the 1993 tax return filed prior to his or her death, the deceased spouse had taken the \$3,000.00 retirement income deduction.

Example #4:

Facts: A surviving spouse, age 61, receives \$15,000.00 retirement income from a plan attributable to a deceased spouse who was 69 years of age at the time of death. On the 1995 tax return filed prior to death, the deceased spouse had elected to take the \$10,000.00 retirement income deduction allowed under the law.

Conclusion: A surviving spouse receiving \$15,000.00 retirement income from a plan attributable to a deceased spouse must take the \$10,000.00 retirement income deduction allowed under Code Section 12-7-435 if, on the 1995 tax return filed prior to his or her death, the deceased spouse had elected to take the \$10,000.00 retirement income deduction.

Example #5:

Facts: A surviving spouse, age 66, receives \$15,000.00 retirement income from a plan attributable to a deceased spouse who was 63 years of age at the time of death. On the 1995 tax return filed prior to death, the deceased spouse had elected to defer claiming the \$10,000.00 retirement income deduction until he or she attained the age of 65.

Conclusion: A surviving spouse, age 66, receiving \$15,000.00 retirement income from a plan attributable to a deceased spouse, who was 63 years of age at the time of death, is not allowed the \$10,000.00 retirement deduction until the year in which the deceased spouse, had he or she lived, would have reached age 65 if, on the 1995 tax return filed prior to death, the deceased spouse had elected to defer claiming the \$10,000.00 retirement income deduction until he or she attained the age of 65. Beginning with the year the deceased spouse would have reached age 65, the surviving spouse is allowed a \$10,000.00 retirement income deduction for income that is attributable to retirement plan of the deceased spouse.

Example #6:

Facts: A surviving spouse, age 59, receives \$15,000.00 retirement income from a plan attributable to a deceased spouse. Prior to death at age 62, the deceased spouse had not yet filed the tax return for the 1994 taxable year and had not received any retirement income. Since the deceased spouse was eligible for a retirement pension upon retirement, the surviving spouse began receiving retirement income from a plan attributable to the deceased spouse in 1994. Therefore, no election was made as to whether to take the \$3,000.00 or \$10,000.00 retirement income deduction allowed under the law.

Conclusion: A surviving spouse receiving \$15,000.00 retirement income from a plan attributable to the deceased spouse may make his or her own election on the 1994 tax return since the deceased spouse had not made an election as to whether to take the \$3,000.00 or \$10,000.00 retirement income deduction allowed under the law. Thus, if the surviving spouse elects to take the \$10,000.00 retirement income deduction with respect to retirement income attributable to a deceased spouse, the deduction is first taken in the year in which the deceased spouse, had he or she lived, would have reached age 65.

Example #7:

Facts: A surviving spouse, age 59, receives \$15,000.00 retirement income from a plan attributable to a deceased spouse. Prior to death at age 62, the deceased spouse had not yet filed the tax return for the 1994 taxable year in which retirement income was first received. The deceased spouse received \$2,000 in retirement income prior to his or her death. Therefore, no election was made as to whether to take the \$3,000.00 or \$10,000.00 retirement income deduction allowed under the law with respect to the \$17,000.00 in retirement income attributable to the deceased spouse.

Conclusion: The personal representative of the deceased spouse's estate must file a tax return for the deceased spouse. The return for the deceased spouse can be a return separate from the one filed by the surviving spouse or can be part of a joint return.

Joint Return for 1994: If a joint return is filed for 1994, the personal representative must elect whether to take the \$3,000.00 or \$10,000.00 retirement income deduction allowed under the law with respect to the \$17,000 in retirement income attributable to the deceased spouse. If the personal representative elects to take the \$10,000.00 retirement income deduction with respect to retirement income attributable to the deceased spouse, the deduction is first taken in the year in which the deceased spouse, had he or she lived, would have reached age 65. If the personal representative elects to take the \$3,000.00 retirement income deduction with respect to retirement income attributable to the deceased spouse, the deduction can be taken on the 1994 tax return.

Separate Returns for 1994: If separate returns are filed, the personal representative of the estate must elect whether to take the \$3,000.00 retirement income deduction (since the deceased spouse was under age 65 at death) allowed under the law with respect to the \$2,000.00 in retirement income received by the deceased spouse prior to his or her death. If the personal representative elects to take the \$3,000.00 deduction on the 1994 tax return of the deceased spouse, then the personal representative will take a \$2,000.00 retirement deduction on the deceased spouse's 1994 return and the surviving spouse will only be entitled to deduct on his or her 1994 return that portion of the \$3,000.00 (i.e. \$1,000.00) deduction not used on the deceased spouse's 1994 return. If the deceased spouse had received \$3,000.00 or more in 1994, then the surviving spouse is not entitled to a retirement income deduction on his or her separate 1994 tax return for the \$15,000.00 in retirement income attributable to a deceased spouse. For years after 1994, the surviving spouse is entitled to the \$3,000.00 retirement income deduction with respect to retirement income attributable to a deceased spouse.

If the personal representative elects not to take the \$3,000.00 deduction on the 1994 tax return of the deceased spouse, then the surviving spouse is not entitled to a retirement income deduction on his or her separate 1994 tax return for the \$15,000.00 in retirement income he or she received that is attributable to the deceased spouse. Beginning with the first year after 1994 in which the deceased spouse, had he or she lived, would have reached age 65, the surviving spouse is entitled to the \$10,000.00 retirement income deduction with respect to retirement income attributable to a deceased spouse.

Note: If the deceased spouse had been age 65 or older at death and separate returns are filed, then the personal representative of the estate will take the \$10,000.00 retirement income deduction allowed under the law with respect to the \$2,000.00 in retirement income received by the deceased spouse prior to his or her death. Therefore, the personal representative may deduct the \$2,000.00 on the deceased spouse's return. The remaining portion of the \$10,000.00 (i.e. \$8,000.00) deduction not used on the deceased spouse's 1994 return should be taken by the surviving spouse on his or her 1994 return. For years after 1994, the surviving spouse is entitled to the \$10,000.00 retirement income deduction with respect to retirement income attributable to the deceased spouse.

IMPORTANT THINGS TO REMEMBER:

Additional Retirement Income Deduction - As stated in Examples #1 and #2, the surviving spouses in Examples #3, #4, #5, #6 and #7 are each entitled to another retirement income deduction of either \$3,000.00 or \$10,000.00, depending on the election made, if the surviving spouse is also receiving income from his or her own retirement plan or plans.

Limitation on Retirement Income Deductions - If the retirement income received does not exceed the maximum deduction allowed, the surviving spouse may deduct the lesser of the retirement income received or \$3,000.00, or the lesser of the retirement income received or \$10,000.00, depending on the election made.

Age Requirements for \$10,000.00 Retirement Income Deduction - For a taxpayer born in the years 1943 through 1959, the applicable age for the \$10,000.00 deduction is sixty-six instead of sixty-five. For a taxpayer born after 1959, the applicable age for the \$10,000.00 deduction is sixty-seven instead of sixty-five.

Retirement Income Attributable to a Deceased Spouse who Died Prior to January 1, 1993 - A surviving spouse receiving retirement income attributable to a deceased spouse who died prior to January 1, 1993 may make this same election on the 1993 tax return with respect to retirement income he or she is receiving from a plan attributable to the deceased spouse. However, if the deceased spouse, had he or she lived, attained the age of sixty-five years before January 1, 1994, then the surviving spouse is considered to have made the election to deduct the retirement income attributable to the deceased spouse in an amount not to exceed ten thousand dollars annually.

SOUTH CAROLINA DEPARTMENT OF REVENUE

Columbia, South Carolina
July 6 _____, 1994

For questions concerning the income tax deductions for retirement income, contact Research and Review - Office Services Division at (803) 737-4867 or 737-4495 or John P. McCormack at (803) 737-4438.