



SC TECHNICAL ADVICE MEMORANDUM #88-9

TO: Mr. Marvin Davant, Director  
Field Services Division

FROM: John Swearingen, Manager  
Tax Policy and Procedures Department

DATE: March 2, 1988

SUBJECT: Income Tax: Depreciation on Safe Harbor Lease Transactions

REFERENCE: S.C. Code Ann. Section 12-7-700(8) (Supp. 1983)  
Regulation 117-63

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)  
S.C. Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

Does South Carolina Code Section 12-7-700(8) and Regulation 117-63 allow federal treatment for safe harbor lease transactions entered into prior to January 1, 1983 for taxable periods beginning January 1, 1983?

Facts:

The taxpayer was the lessor in safe harbor lease transactions allowed under IRC Section 168(f)(8) and was claiming deductions in accordance with federal treatment of these transactions on its state income tax return for years after 1982. The safe harbor lease transactions were entered into prior to December 31, 1982. Effective January 1, 1983, South Carolina adopted a modified version of ACRS of which Section 168(f)(8) was a part. Tax Commission Regulation 117-63 states in part that "for purposes of depreciation only, safe harbor leases provided under IRC Section 168(f) (8) have been adopted. The lessor will be entitled to the depreciation deduction and the leasee will be entitled to a deduction for the lease payments if requirements of

IRC Section 168(f)(8) are met." The Field Services Division has taken the position that safe harbor lease's entered into prior to December 31, 1982 are not recognized for South Carolina income tax purposes and have reversed the federal treatment of these transactions on audit. Safe harbor leases's entered into after December 31, 1982 have been recognized for State purposes in accordance with Regulation 117-63. The taxpayer takes the position that there is nothing in South Carolina Law or Regulation that would prohibit a deduction for safe harbor leases on returns filed after December 31, 1982 on safe harbor lease transactions entered into before January 1, 1983.

Discussion:

The safe harbor lease rules were adopted by ERTA to allow an owner of property who was unable to use depreciation and investment tax credits on property to pass such tax benefits to other taxpayers who could use such benefits. These rules permit the owner to treat a transaction as a lease without having to meet the pre-safe harbor lease requirements for characterizing the transaction as a lease. The safe harbor lease rules became effective generally for property placed in service after 1980. However, the pre-safe harbor lease rules continue to apply to transactions that do not qualify under the ERTA safe harbor lease rules, such as when a safe harbor election was not made for the property.

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) restructured the ERTA safe harbor lease rules to provide reduced tax benefits for leases entered into or property placed in service generally after July 1, 1982, and to repeal the safe harbor lease rules effective for leases entered into after 1983.

(CCH) Para. 1815.01 (1987)

Act 151 of 1983, Permanent Provisions amended Section 12-7-700(8) to allow as a deduction for depreciation, in the case of tangible personal property with a life of ten years or less, the same depreciation as allowed by IRC Section 168 and applicable regulations.

Regulation 117-63 was amended to incorporate rules dealing with the 1983 amendment to Section 12-7-700(8). The Regulation provides in part:

For tax years beginning after December 31, 1982, personal property with a recovery period of ten years or less will be depreciated in the same manner and amount as allowed under IRC Section 168. Thus acquisition during 1981 and 1982 tax years will be allowed depreciation according to the appropriate ACRS Schedule....

For purposes of depreciation only, Safe Harbor Leases provided under IRC Section 168(f)(8) have been adopted. The lessor will be entitled to the depreciation deduction and the lessee will be entitled to a deduction for lease payments if requirements of IRC Section 168(f)(8) are met.

The plain wording of the regulation states that acquisitions during 1981 and 1982 will be allowed ACRS depreciation for tax years beginning after December 31, 1982 and that safe harbor lease provisions have been adopted. Thus, safe harbor lease transactions entered into prior to January 1, 1983 will be allowed the same treatment under IRC 168(f)(8) for taxable periods beginning January 1, 1983.

Conclusion:

South Carolina Code Section 12-7-700(8) and Regulation 117-63 allows federal treatment for safe harbor lease transactions entered into prior to January 1, 1983 for taxable periods beginning January 1, 1983.