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SC TECHNICAL ADVICE MEMORANDUM #89-12

TO: Mr. Marvin N. Davant, Director
Field Services Division

FROM: Jerry B. Knight, Manager
Tax Policy and Procedures Department

DATE: April 19, 1989

SUBJECT: Interest & Penalties
(Retail License and License Tax)

REFERENCE: S.C. Code Ann. Section 12-35-320 (Supp. 1988)
S.C. Code Ann. Section 12-54-20 (Supp. 1988)
S.C. Code Ann. Section 12-54-40 (Supp. 1988)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC 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.

Questions:

1. Is the \$50.00 levied pursuant to Code Section 12-35-320 subject to the interest provisions of Code Section 12-54-20?
2. Is the \$50.00 levied pursuant to Code Section 12-35-320 subject to the penalty provisions of Code Section 12-54-40(b)(1) & (2)?

Facts:

Code Section 12-35-320 reads:

Every person who engages in any business as a retailer, as a condition precedent to engaging in the business, shall obtain from the Commission a retail license for each branch, establishment, or agency conducted by himand, in addition to all other license fees charged, shall pay a license tax in the amount of fifty dollars for each branch, establishment, or agency of the retailer situated or located in this State. The provisions of this section do not apply to persons using a stall or other facility at a flea market or conducting a yard sale not more than once a quarter unless the persons engage in flea markets or yard sales as a regular business, nor do they apply to organizations conducting concession sales at festivals if the gross proceeds of the sales are exempt from sales tax pursuant to Section 12-35-550. Any transient retailer who makes retail sales in this State for a period not exceeding thirty days may obtain a temporary retail license at a cost of fifty dollars. The license issued must state the period of time for which it may be used. Artists and craftsmen selling at arts and crafts shows or festival products that they have created or assembled may obtain a retail license at a fee of twenty dollars.

Discussion:

To answer the questions at hand, it must be determined if the \$50.00 is a license fee or a license tax.

Code Section 12-35-320 requires each retailer, "as a condition precedent to engaging in...business", to obtain a retail license. In addition, the retailer must "pay a license tax in the amount of fifty dollars for each branch, establishment, or agency...located in this State" (emphasis added).

Code Section 12-54-20, which contains the interest provisions, reads, in part:

- (A) Any person who fails to remit the tax due or additional tax as provided by law must be charged interest at the rate established by the Commission in the same manner and at the same time as the underpayment rate prescribed by the Internal Revenue Code. Interest must be calculated on the full amount of tax or portion of it, exclusive of penalties from the time the tax or additional tax was due until paid in its entirety. The provisions of this section apply to all taxes levied or assessed by the Commission (emphasis added).

Code Section 12-54-40(b), which contains certain penalty provisions, reads, in part:

- (1) In the case of failure to file a return on or before the date prescribed by law, (determined with regard to any extension of time for filing), there must be added to the amount required to be shown as tax on the return, a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of the month during

which the failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of this paragraph, the amount of tax required to be shown on the return must be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. In case of a failure to file a return of tax within sixty days of the date prescribed for filing the return (determined with regard to any extension of time for filing), the addition to tax must not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on the return.

(2)(a) In case of failure to pay the amount shown as tax on any return on or before the date prescribed by law (determined with regard to any extension of time for paying), there must be added to the tax due a penalty of one-half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of the month, during which the failure continues, not exceeding twenty-five percent in the aggregate.

(b) In case of failure to pay any amount in respect of any tax required to be shown on a return which is not so shown (including an assessment) within ten days of the date of the notice and demand for payment, there must be added to the amount of tax stated in the notice and demand one-half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate (emphasis added).

In summary, the \$50.00 levied against a retailer, under Section 12-35-320, is a tax. Furthermore, the interest provided for in Section 12-54-20 applies to all taxes, whether or not a return is required. The penalties provided for in Section 12-54-40(b)(1) & (2) only apply to taxes for which a return is, or required to be, filed.

Conclusions:

1. The \$50.00 license tax levied pursuant to Code Section 12-35-320 is subject to the interest provisions of Code Section 12-54-20.
2. The \$50.00 license tax levied pursuant to Code Section 12-35-320 is not subject to the penalty provisions of Code Section 12-54-40(b)(1) & (2).