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SC TECHNICAL ADVICE MEMORANDUM #90-2

TO: Mr. Gary L. Turner, Director  
Administrative Division

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

DATE: January 10, 1990

SUBJECT: Refunds - Statute of Limitations  
(Repealed Stamp Taxes)

REFERENCE: S.C. Code Ann. Section 12-47-440 (1976)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)  
SC Revenue Procedure #97-3

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:

May the Commission issue refunds for various tax stamps, returned by taxpayers, when such taxes were repealed, or switched to a reporting format, more than three years ago?

Facts:

Many of the first taxes imposed by the State were stamp taxes, taxes imposed on certain commodities and evidenced by a stamp affixed to the item. Over the past two decades, South Carolina has repealed several stamp taxes, or has converted such taxes to a monthly reporting system, thereby, eliminating the need for the stamps.

The stamps taxes in question are:

<u>Stamp Tax</u>	<u>Year Repealed</u>	<u>Act Number</u>
Bedding	1978	Act 560
Ammunition	1984	Act 512
Malt and Malt Extract	1986 (February)	Act 305
Soft Drinks	1984*	Act 512

\* Converted to a monthly reporting system

Discussion:

The issue is whether the Commission has the authority to refund taxes for tax stamps returned by taxpayers.

Code Section 12-47-440 reads:

Notwithstanding any other provisions of this Title, whenever it shall appear to any taxpayer that any license fee or tax imposed under this Title has been erroneously, improperly or illegally assessed, collected or otherwise paid over to the Commission, the taxpayer, by whom or on whose behalf the license fee or tax was paid, may make application to the Commission to abate or refund in whole or in part such license fee or tax. Should the Commission, after having given such taxpayer a reasonable opportunity to be heard, decline to make such abatement or refund, the taxpayer may, within thirty days of the date of receipt of notice of the Commission's action declining the abatement or refund, bring an action against the Commission for recovery of the license fee or tax. The provisions of this section shall apply whether or not the license fee or tax in question was paid under protest, but shall only be available where the application provided for here is made in writing to the Commission within a period of three years from the date the license fee or tax was due to have been paid, without regard to extensions of time for payment, or if a later date would result, within one year of payment where an additional license fee or tax is assessed and paid. Such action shall be brought in the court of common pleas for Richland County except that a resident of this State may elect to bring said action in the court of common pleas for the county of his residence. A taxpayer or licensee who brings an action provided for in Sections 12-47-210 and 12-47-220 shall be considered as having elected his remedy and is denied the benefits of this section (emphasis added).

In summary, a taxpayer has three years from the date the tax or fee was due to have been paid, or one year from the date a tax or fee was assessed and paid, whichever is later, to file a written claim for refund.

Conclusion:

The Commission may not issue refunds for various tax stamps, returned by taxpayers, when the taxes in question were repealed, or switched to a reporting format, more than three years ago.