



SC TECHNICAL ADVICE MEMORANDUM #93-1

TO: Mr. William F. Bray, Director
Office Services Division

FROM: John P. McCormack, Tax Manager
Tax Policy and Appeals Department

DATE: July 14, 1993

SUBJECT: Form WH-1601 - Deposit Coupon
Interest on Late Deposits
(Withholding)

REFERENCE: S.C. Code Ann. Section 12-54-20 (Supp. 1992)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1992)
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.

Question:

If a withholding agent fails to timely deposit withholding taxes in accordance with Code Section 12-9-390, is the withholding agent liable for interest under Code Section 12-54-20?

Facts:

Withholding agents must periodically deposit, using a deposit coupon (Form WH-1601), withholding taxes they have withheld into approved financial institutions. The money is then forwarded to the State. At the end of the calendar quarter, withholding agents will file a return, a Form WH-1605. On this return the agent reports the taxes withheld and the amount of deposits made during the quarter. Any difference between these two amounts is either additional tax due by the withholding agent (paid with the return -Form WH-1605) or a refund or a credit to the withholding agent.

A question has arisen concerning the application of interest to late deposits.

Discussion:

Code Section 12-54-20(A) imposes interest on unpaid taxes, and reads:

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 taxes levied or assessed by the commission. (Emphasis added.)

The Internal Revenue Service does not apply interest if a deposit of withholding taxes is not timely. Only penalties are applied. With respect to withholding tax deposits, the Internal Revenue Service will only apply interest if the withholding agent failed to make a deposit, or a sufficient deposit, and filed his or her quarterly return late. The interest would be applied to the additional amount due with the quarterly return from the due date of the return until the additional amount due is paid.

Conclusion:

If a withholding agent fails to timely deposit withholding taxes in accordance with Code Section 12-9-390, the withholding agent is not liable for interest under Code Section 12-54-20.

With respect to withholding tax deposits, interest is only applied if the withholding agent failed to make a deposit, or a sufficient deposit, and filed his or her quarterly return late. The interest would be applied to the additional amount due with the quarterly return from the due date of the return until the additional amount due is paid.