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## **07. Income Tax Returns and Payment**

### **A. Filing Returns and Payment**

#### **1. Due Dates**

##### **a. Income Tax Returns**

##### **i. General Provisions**

Income tax return due dates are:<sup>1</sup>

1. Corporations must file returns on or before the 15<sup>th</sup> day of the third month following the end of their taxable year.
2. Foreign corporations that do not maintain an office or place of business in the United States must file returns on or before the 15<sup>th</sup> day of the sixth month following the end of their taxable year.
3. Nonprofit organizations exempt under Internal Revenue Code §501 that are reporting unrelated business income must file returns on or before the 15<sup>th</sup> day of the fifth month following the end of their taxable year.<sup>2</sup>
4. All other taxpayers must file returns on or before the 15<sup>th</sup> day of the fourth month following the end of their taxable year.

**Note:** A domestic corporation is required to file an income tax return each year from the time its charter is granted until voluntary dissolution, regardless of whether any income is earned or any business activity is conducted in South Carolina. A foreign corporation that has income tax nexus with South Carolina is required to file an income tax return from the time a certificate of authority to transact business is granted until voluntary dissolution or withdrawal from the State.<sup>3</sup> A foreign corporation that has been granted a certificate of authority to transact business in South Carolina who does not have nexus with South Carolina should notify the Department's Corporate Section or file a "zero" return each year in order to avoid a computer generated failure to file notification.

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<sup>1</sup>SC Code §12-6-4970.

<sup>2</sup>A return is not required if there is no unrelated business income.

<sup>3</sup>Instructions to Form SC 1120.

The Department will notify a domestic or foreign corporation of its failure to comply with the provisions requiring the filing of returns. If the corporation fails to file the required return within 60 days of the notice, the Department may provide the taxpayer's name to the Secretary of State. After referral, the Secretary of State may administratively dissolve a domestic corporation or revoke a foreign corporation's authority to transact business in South Carolina.<sup>4</sup>

The following types of returns are available from the Department:

1. SC1120 C Corporation Income Tax Return
2. SC1120S S Corporation Income Tax Return
3. SC1120U Public Utility Tax Return
4. SC1101-B Bank Tax Return
5. SC1104 Savings and Loan Association Tax Return
6. SC990T Exempt Organization Business Income Tax Return

Taxpayers filing a federal Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," Form 1120-H, "U.S. Income Tax Return for Homeowners Associations," Form 1120-POL, "U.S. Income Tax Return for Certain Political Organizations," Form 1120-REIT, "U.S. Income Tax Return for Real Estate Investment Trusts," or other similar federal forms should file a Form SC1120, "C Corporation Income Tax Return," for South Carolina purposes. Insurance companies do not file income tax returns with the Department. The South Carolina Department of Insurance administers insurance premium taxes and license fees.

The Department has developed the following income tax credit forms:<sup>5</sup>

- |             |   |
|-------------|---|
| 1. SC TC-1  | Drip/Trickle Irrigation Systems Credit                              |
| 2. SC TC-2  | Minority Business Credit  |
| 3. SC TC-3  | Water Resources Credit  |
| 4. SC TC-4  | New Jobs Credit   |
| 5. SC TC-5  | Scenic Rivers Credit  |
| 6. SC TC-6  | Infrastructure Credit   |
| 7. SC TC-7  | Palmetto Seed Capital Credit  |
| 8. SC TC-7A | Palmetto Seed Capital Corporation Statement of Qualified Investment |
| 9. SC TC-8  | Corporate Headquarters Credit                                       |
| 10. SC TC-9 | Credit for Child Care Program                                       |

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<sup>4</sup>SC Code §12-6-5520.

<sup>5</sup>See Section .06 of this portfolio for a discussion of each of these credits.

11. SC TC-10	Base Closure/Federal Facility Employment Reduction Hiring Credit
12. SC TC-11	Economic Impact Zone Property Investment Credit
13. SC TC-11-R	Recapture of Economic Impact Zone Property Investment Credit
14. SC TC-12	Credit for Employers Hiring Recipients of Family Independence Payments
15. SC TC-12A	Additional Credit for Employers Hiring Recipients of Family Independence Payments in a Distressed or a Least Developed County
16. SC TC-13	Motion Picture Credit
17. SC TC-13A	Motion Picture Project Certification
18. SC TC-13B	Motion Picture Production Facility Certification
19. SC TC-14	Community Development Tax Credit
20. SC TC-15	Corporate Tax Moratorium Per Section 12-10-35
21. SC TC-16	Corporate Tax Moratorium Per Section 12-6-3365
22. SC TC-17	Recycling Property Tax Credit
23. SC TC-18	Research and Development Credit
24. SC TC-19	Credit for Conservation or Qualified Conservation Contribution
25. SC TC-20	Credit for Expenses Incurred Through Brownfields Voluntary Cleanup Program
26. SC TC-21	Credits for a Certified Historic Structure
27. SC TC-23	Textile Rehabilitation Credit
28. SC TC-24	Commercials Credit
29. SC TC-25	Motion Picture Credits
30. 1120 TC	Corporate Income Tax and License Fee Credits

## **ii. Filing Requirements Where Nexus is an Issue**

The Department has developed a voluntary compliance procedure for taxpayers who have nexus with South Carolina but are not registered with the Department to collect or remit South Carolina taxes.<sup>6</sup> This procedure is designed to encourage nonfilers to come forward voluntarily and begin paying taxes without incurring penalties and to allow the Department to maximize compliance.

### **b. Information Returns**

Certain information returns required pursuant to SC Code §12-6-4950 must be filed on or before March 15<sup>th</sup> each year.<sup>7</sup> These returns are those filed by persons making payments to another individual, corporation, or partnership for: (1) \$200 or more of interest or dividends or (2) \$800 or more of rent, salaries, wages, emoluments, or determinable gain, profit, or income

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<sup>6</sup>SC Rev. Proc. Bull. #01-5. See Section .01 E. of this portfolio for additional information on the voluntary compliance procedure where nexus is an issue.

<sup>7</sup>SC Code §12-6-4970(D).

**Note:** In an effort to reduce the paperwork burden for taxpayers, if the taxpayer files a federal Form 1099 with the Internal Revenue Service and there is no South Carolina withholding, then the taxpayer is not required to file the Form 1099 or South Carolina equivalent with the Department. This does not eliminate the requirement to file Form 1099 with the Internal Revenue Service or to give one to the payment recipient.

Notwithstanding the above, see Section .09 of this portfolio for a discussion of the due dates of returns and the appropriate forms to file for claiming job development or job retraining credits against withholding or remitting withholding on:

1. Wages.
2. S corporation nonresident shareholders.
3. Nonresident contractors conducting business or performing personal services of a temporary nature in South Carolina for contracts of \$10,000 or more.
4. Rents or royalty payments to nonresidents of \$1,200 or more in a calendar year.
5. Sales of real property and associated tangible personal property by a nonresident.

### **c. Final Returns**

A domestic corporation ceasing to exist in South Carolina must file articles of dissolution with the South Carolina Secretary of State.<sup>8</sup> It must also file a final income tax return on or before the 15<sup>th</sup> day of the third month following the filing of the articles of dissolution. A schedule must accompany the final return showing the distribution of the assets to the stockholders.<sup>9</sup> An extension of time to file may be obtained by filing Form SC1120T prior to the original due date of the return.<sup>10</sup>

A foreign corporation withdrawing from South Carolina must file articles of withdrawal with the Secretary of State.<sup>11</sup>

**Note:** A multistate corporation that ceases operations in South Carolina but otherwise continues in business is not an event that causes the income tax year to end. A taxpayer's

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<sup>8</sup>SC Code §33-14-103.

<sup>9</sup>Instructions to Form SC1120.

<sup>10</sup>SC Code §12-6-4980(B). See Section A. 2. of this portfolio for a discussion of when a federal extension is accepted by South Carolina.

<sup>11</sup>SC Code §33-15-200.

taxable year for South Carolina income tax purposes is the same as the taxpayer's taxable year for federal income tax purposes.<sup>12</sup>

A taxpayer planning to cease doing business in South Carolina by the incorporation of an existing business or, in the case of a corporate taxpayer other than a subsidiary corporation, by the dissolution or surrender of its charter, shall make a complete accounting of all items of income and expense not previously taken into account because the accounting method used by the taxpayer did not require the reporting of the items. A corporate taxpayer shall report all items of such income in its final return.<sup>13</sup>

#### **d. Amended Returns**

SC Code §12-54-85(F) sets forth time limits within which taxpayers must file claims for refunds.<sup>14</sup> See Section .10 of this portfolio for a discussion of the time limitation rules.

#### **e. Electronic Funds Transfer**

Corporations may be required to or may voluntarily participate in the payment of certain taxes, such as income taxes, estimated tax payments, corporate license fees, or withholding, through electronic funds transfer. The following briefly explains South Carolina's Electronic Funds Transfer Program.<sup>15</sup>

A corporation with \$15,000 or more in a corporate income tax, withholding, or certain miscellaneous tax liability in one tax period during the previous 12 months is required to participate in South Carolina's Electronic Fund Transfer Program ("EFT").<sup>16</sup> In addition, any corporation that does not meet the dollar threshold may voluntarily participate in the program.

To register for the EFT program, a corporation must complete Form D-128, "Registration Application for Electronic Funds Transfer." A separate form must be completed for each type of tax being paid through the program. Upon receipt of the application, the Department will establish and notify the corporation of the effective date to begin EFT payments. A corporation mandated to use EFT may withdraw from EFT if for a period of 12 consecutive months or 4 consecutive quarters, the \$15,000 threshold is not satisfied. A written request to withdraw must be provided and is effective upon notification by the Department.

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<sup>12</sup>SC Code §12-6-4410.

<sup>13</sup>SC Reg. §117-670.

<sup>14</sup>See SC Code §12-54-85 for the general rules.

<sup>15</sup>See Section .11 Worksheet 1 of this portfolio for contact information. See Rev. Proc. #91-5.

<sup>16</sup>SC Code §12-54-250.

There are four payment options that exist with EFT. These are:

1. Automated Clearing House Debit (ACH Debit). This option allows the corporation to authorize the State to electronically transfer tax payments from its depository into the State's account. Initiation of the transaction occurs through a telephone call from the corporation to the State's agent or by initiating a payment through the internet. The cost of this transaction is charged to the State.
2. Automated Clearing House Credit (ACH Credit). This option allows the corporation to initiate ACH transfers using the Cash Concentration and Disbursement Plus (CCD+) format. Initiation of the transaction must be done with the corporation's bank. The Department recommends that the taxpayer first contact its bank to discuss available ACH origination services and fees. The cost of this transaction is charged to the taxpayer.
3. Fedwires. This option is for emergencies only and must be preapproved by the Department.
4. Cash. This option may only be used if the cash is hand delivered to the Department's main office. Cash does not include cashier's checks, money orders, or personal checks.

A corporation does not need to file the paper Form SC1120-CDP, "Corporation Declaration of Estimated Income Tax Coupon," if the estimated tax payments are sent through EFT. Note, however, the paper Forms SC1120, "C Corporation Income Tax Return," or SC1120T, "Tentative Corporation Tax Return and Conditional Extension," must be filed even if the income tax payments are sent through EFT.

For withholding tax purposes, a corporation does not need to file the paper Form WH1601, "SC Withholding Tax Payment," if the ACH Debit or ACH Credit method is used. Note, however, the paper Forms WH1605, "Withholding Quarterly Tax Return," and WH1606, "Fourth Quarter/Annual Reconciliation of Income Tax Withholding," must be filed with the Department; any money due with these returns should be sent through EFT. If the corporation uses the cash method, paper Forms WH1601, WH1605, and WH1606 must be filed with the cash payment.<sup>17</sup>

## **2. Extensions of Time to File Income Tax Returns**

### **a. Initial Request**

The Department may grant an 180 day extension of time to file a South Carolina corporate income tax return, for good cause.<sup>18</sup> Form SC1120-T, "Tentative Corporation Tax

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<sup>17</sup>See Section .09 of this portfolio for more information on wage withholding.

<sup>18</sup>SC Code §12-6-4980(A).

Return and Conditional Extension,” is used to request an extension and must be filed on or before the due date of the return or annual report. A taxpayer who has been granted a federal extension of time to file does not need to file a separate South Carolina extension of time to file unless the taxpayer is required to make a South Carolina tax payment with the extension. South Carolina, however, does not accept an extension of time to file granted by another state.<sup>19</sup> The extension must reflect 100% of the anticipated tax to be paid for the period and payment of the tentative tax liability must be remitted with the extension. If the amount paid with the extension does not equal at least 90% of the tax to be paid, then a penalty is imposed from the date the return was originally due on the difference between the amount remitted and the tax to be paid for the period.<sup>20</sup> An extension of time for filing does not extend the time for paying the license fee due.<sup>21</sup>

**Note:** To extend a “consolidated” corporate income tax return, only one Form SC1120-T, “Tentative Corporation Tax Return and Conditional Extension,” is required to be filed. A schedule listing each corporation included in the consolidated return must be attached to the extension. Further, the license fee due for each corporation participating in the consolidated return is also remitted with the extension. One check may be used to remit the income taxes and license fees of the consolidated group.<sup>22</sup>

Mergers, acquisitions, and changes in control may, in the consolidated return context, result in a South Carolina return or extension being due prior to the federal return. This may not be discovered until after the due date has passed. Usually a call to the Department’s Corporate Section will prevent a penalty for late filing from being applied. If the taxpayer receives a proposed assessment for interest, or interest and penalty, due to the “late” filing, the taxpayer should request relief. In the past, the Department has waived the penalty and interest, considering the interest to be in the nature of a penalty.<sup>23</sup>

## **b. Additional Request for Extension of Time to File Income Tax Returns**

The Department may allow further time to file returns or remit tax due for good cause.<sup>24</sup> The request for an additional extension may be granted only if the request is in writing and is

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<sup>19</sup>SC Code §12-6-4980(B).

<sup>20</sup>SC Code §12-54-70.

<sup>21</sup>SC Code §12-20-20(C).

<sup>22</sup>A timely filed federal extension will be accepted if no South Carolina tax is due with the extension and all corporations filing in South Carolina are have been granted a federal extension. See Section .07 B. of this portfolio for a discussion of South Carolina’s “consolidated” (combined) return.

<sup>23</sup>See the discussion of appealing penalties and interest in Section .10 F. of this portfolio.

<sup>24</sup>SC Code §12-54-70.

submitted to the Department on or before the due date of the initial extended period. A preprinted form does not exist to request a second extension.

An additional period of time beyond the 180 days previously automatically granted will be given only in unusual circumstances.<sup>25</sup> These circumstances have included natural disasters and war. If the additional extension is not affirmatively granted, the return will be considered as filed late if it is not filed within the original extended due date.

### **c. Special Extensions Granted by the Department**

The Department may for damage caused by war, terrorist act, or natural disaster, or service with the United States armed forces or national guard in or near a hazard duty zone, extend the date for filing returns, payments of taxes, collection of taxes, and conducting audits, and waive interest and penalties.<sup>26</sup>

### **d. Invalid Extension**

If a taxpayer has not fulfilled the filing requirements for a previous period, the Department cannot grant any extension.<sup>27</sup> Even if a taxpayer applies for an extension and receives an affirmative response from the Department, the extension is void.<sup>28</sup>

The Department retains the right to terminate any extension, including automatic extensions, by mailing a notice of termination to the taxpayer or to the person who requested the extension. Any notice will be mailed at least 10 days before the termination date given in the notice. For taxpayers who have not fulfilled the filing requirement for a previous period, however, no 10 day notice will be given and the taxpayer must file the return by its original due date.<sup>29</sup>

### **e. Estimated Tax Payments**

An extension of time to file does not eliminate the requirement of making estimated tax payments.<sup>30</sup> In the case of sickness, absence, or other disability or good cause, the Department may in its discretion allow further time for filing and paying estimated taxes.<sup>31</sup>

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<sup>25</sup>SC Rev. Proc. #93-2.

<sup>26</sup>SC Code §12-4-320(6). See also SC Rev. Proc. #99-3 for tax assistance granted to hurricane victims.

<sup>27</sup>SC Code §12-54-70(d).

<sup>28</sup>SC Rev. Proc. #93-2.

<sup>29</sup>SC Rev. Proc. #93-2.

<sup>30</sup>SC Code §12-6-4990.

### 3. Saturday, Sunday, or Holiday Due Dates

When the original or extended due date for filing a return is a Saturday, Sunday, or a legal holiday, the end of the period is extended to the next business day. For this purpose, a legal holiday is any day the Department or the offices of the United States Postal Service are closed.<sup>32</sup>

A legal holiday falling on Sunday is observed on the following Monday and a legal holiday falling on Saturday is observed on the preceding Friday. The observance day is considered the legal holiday for purposes of determining timely filing.

Legal South Carolina holidays are as follows:<sup>33</sup>

New Year's Day	January 1
Martin Luther King Day	Third Monday in January
Washington's Birthday	Third Monday in February
Confederate Memorial Day	May 10
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day <sup>34</sup>	Second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Friday following Thanksgiving
Christmas Eve	December 24, if declared a State holiday by the Governor
Christmas Day	December 25
Day after Christmas	December 26

### 4. Timely Filing

The Department will consider a return or other document as timely filed if:

1. The document is deposited in the United States mails in an envelope or wrapper and is addressed to the appropriate Department office, with proper postage prepaid; and
2. The postmark date falls within the prescribed period for filing, including valid extensions.

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<sup>31</sup>SC Code §12-6-3920.

<sup>32</sup>SC Code §12-60-50.

<sup>33</sup>SC Rev. Proc. Bull. #00-2.

<sup>34</sup>The Department offices are open on Columbus Day, however, this day is considered a legal holiday since the offices of the U.S. Postal Service are closed.

**Note:** The date on the postmark must be legible, otherwise, the return will not be considered filed until it is received. Further, in order for metered mail to be considered timely filed, it must have a metered postmark date within the filing period, and the document must be received by the Department within the ordinary delivery time from that date.<sup>35</sup>

## **B. Special Types of Returns**

### **1. “Consolidated” (Combined) Returns**

#### **a. Definition**

South Carolina uses an unusual method to compute the tax on a “consolidated” corporate income tax return, Form SC1120, that may be filed by certain affiliated corporations. South Carolina has not adopted the federal consolidation rules in Internal Revenue Code §§1501 through 1505. There are no elimination adjustments for intercompany transactions such as those for federal income tax purposes. South Carolina’s “consolidated” rules treat each corporation in an affiliated group as a separate taxpayer.<sup>36</sup> This approach requires the computation of the separate net income or loss of each corporation with the application of separate apportionment ratios for each. The separate South Carolina income or loss of each corporation is added together to arrive at combined, “consolidated,” net income upon which the tax is computed.<sup>37</sup> Credits may then be applied to reduce the total tax liability of the group, regardless of whether the corporation earning the credit had a separate South Carolina tax liability. Only corporations meeting certain requirements are allowed to file a consolidated South Carolina income tax return. These requirements are discussed below.

**Note:** The term “consolidated” will be used throughout this portfolio for consistency.

#### **b. General Rules**

South Carolina’s consolidated return is a single corporate income tax return for two or more corporations in which income or loss is separately determined as follows:<sup>38</sup>

1. South Carolina taxable income or loss is computed separately for each corporation.
2. Allocable income or loss is allocated separately for each corporation.

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<sup>35</sup>SC Code §12-60-50(B) and Internal Revenue Code §7502.

<sup>36</sup>SC Code §12-6-30(1) defines taxpayer; the term does not include an affiliated group of corporations. Also, see Commission Decisions #93-78 (July 29, 1993) and #94-1 (January 4, 1994).

<sup>37</sup>Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986).

<sup>38</sup>SC Code §12-6-5020(D).

3. Apportionable income or loss is computed utilizing separate apportionment factors (gross receipts, or the “three factor” method with double weighted sales, for each corporation).
4. Income tax credits, including the carryover of unused credits, may be determined on a combined basis. Limitations on credits which refer to the income or the income tax liability of a corporation are deemed to refer to the consolidated group. Credits reduce the consolidated group’s tax liability regardless of whether or not the corporation entitled to the credit contributed to the tax liability.<sup>39</sup>
5. Income or loss computed above is added together and reported on one return for the controlled group.

A consolidated return may be filed by the following controlled corporations:<sup>40</sup>

1. A parent and substantially controlled subsidiary or subsidiaries.
2. Two or more corporations under substantially the entire control of the same interest.

The terms “substantially controlled” and “substantially the entire control” mean the ownership of at least 80% of the total combined voting power of all classes of stock of all corporations that are a party to a consolidated return.

Other consolidated return requirements include:

1. The election to file a consolidated return or separate returns must be made on an original and timely filed return<sup>41</sup> and may not be changed<sup>42</sup> after the return is filed.<sup>43</sup>

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<sup>39</sup>SC Code §12-6-5020(F).

<sup>40</sup>SC Code §12-6-5020(A).

<sup>41</sup>Commission Decision #90-42 (October 29, 1990) determined that a taxpayer who neglected to file a return may not file on a consolidated basis at a later date, since such return is untimely.

<sup>42</sup>Commission Decision I-D-388 (July 14, 1986) determined that a taxpayer that elected to file a separate return on a Certified Public Accountant’s erroneous advice that the corporations could not file a consolidated return was properly denied a request to change the election from a separate return to a consolidated return by filing an amended return. The Department allows the election on a timely extended return, providing all the corporations to be included on the return are included on an extension.

<sup>43</sup>SC Code §12-6-5020(G).

**Comment:** There is no election statement such as federal Forms 1122 or 851. Instead a schedule computing the apportioned income of each member should be attached. The act of filing a consolidated return and checking the consolidated box on the face of the return is sufficient to make the election for South Carolina.

2. Once a consolidated return is filed, permission must be granted by the Department to file separate returns.<sup>44</sup>
3. All corporations included in a consolidated return must be subject to South Carolina corporate income tax.<sup>45</sup> In other words, each corporation must have nexus with South Carolina. Since banks and savings and loans are not subject to corporate income tax, they may not file a consolidated return.
4. All corporations included in a consolidated return must use the same accounting year.<sup>46</sup>
5. A corporation doing business entirely within South Carolina may file a consolidated return with a corporation doing a multistate business. Two or more corporations doing a multistate business may file a consolidated return.<sup>47</sup>
6. A corporation using the gross receipts method of apportionment may consolidate with a corporation using the “three factor,” double weighted sales, method.
7. Either a consolidated or separate South Carolina income tax return can be filed if a taxpayer files a consolidated return for federal purposes.

**Comment:** Many South Carolina consolidated returns are improperly prepared. Common errors include eliminating intercompany transactions and using one combined apportionment formula that uses the combined information of the group and multiplying each subsidiary’s income by the resulting percentage. Confusion may exist in this area due to the design of the South Carolina form (it contains space for only one corporate apportionment factor computation), instructions, and software vendor/operator errors. Indeed in the past, blank apportionment factor lines (due to several factors being used for the group) sometimes generated notices from the Department.

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<sup>44</sup>SC Code §12-6-5020(H).

<sup>45</sup>SC Code §12-6-5020(B).

<sup>46</sup>SC Code §12-6-5020(E).

<sup>47</sup>SC Code §12-6-5020(C).

## 2. Composite Returns for S Corporations

An S corporation may file a composite individual income tax return on behalf of qualifying nonresident shareholders. A composite return allows the S corporation to combine and report the separate South Carolina income and tax attributable to the nonresident shareholders on a single individual income tax return.<sup>48</sup> Form SC1040, “South Carolina Individual Income Tax Return,” is used to file a composite return on behalf of individual shareholders. The composite return is signed by an authorized officer of the S corporation.<sup>49</sup>

The composite return is due on or before the 15<sup>th</sup> day of the fourth month following the shareholders’ taxable year end.<sup>50</sup> This will generally be a calendar year with the composite return due on or before the following April 15<sup>th</sup>.

The composite return may be extended by filing Form SC4868, “Request for Extension of Time to File South Carolina Tax Return.” Any tax estimated to be due must be paid with the timely filed extension. An authorized officer of the S corporation may sign the extension request.

The tax due in connection with the composite return is subject to the declaration of estimated tax rules. In general, composite estimated tax payments are required to be made by the S corporation on behalf of any nonresident shareholder participating in the composite return whose expected amount of tax owed with the composite return will be \$100 or more. Estimated tax payments are remitted on Form SC1040ES, “Individual Declaration of Estimated Tax,” and are due for calendar year taxpayers other than corporations on the following dates:<sup>51</sup>

- |                   |                                      |
|-------------------|--------------------------------------|
| 1. First Quarter  | April 15                             |
| 2. Second Quarter | June 15                              |
| 3. Third Quarter  | September 15                         |
| 4. Fourth Quarter | January 15 of the following tax year |

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<sup>48</sup>SC Code §12-6-5030(A) and (B).

<sup>49</sup>SC Code §12-6-5030(B).

<sup>50</sup>SC Code §12-6-4970(A).

<sup>51</sup>SC Code §12-6-3910(A)(3).

Composite return requirements include:<sup>52</sup>

1. Nonresident fiduciary and individual shareholders may participate in filing a composite return.<sup>53</sup>
2. All participating shareholders must have the same tax year.
3. A composite return may be filed even if some of the nonresident fiduciary and individual shareholders eligible to participate in filing a composite return choose not to participate.<sup>54</sup>
4. Shareholders having income within South Carolina from sources other than the S corporation may **not** be included in the composite return.<sup>55</sup>

A composite return is completed as follows:<sup>56</sup>

1. The composite return is remitted using the S corporation's name, address, and federal identification number on the front page of Form SC1040, "South Carolina Individual Income Tax Return," instead of using the individual taxpayer's name, address, and social security number.
2. There are two methods in which the tax may be computed on a composite return. Each method is explained below:

Method 1: The S corporation may compute each participating shareholder's tax in the same manner as if he was separately reporting his own income and deductions. In other words, each shareholder would be entitled to his prorated share of his standard deduction or itemized deductions as well as his prorated personal exemption amount from his federal return. After separately computing each shareholder's tax, these amounts are added to arrive at the total tax due on the composite return. This total tax amount should be entered on the "TAX" line on page 1 of Form SC1040. A modified South Carolina taxable income amount does not have to be entered on page 1 of Form SC1040, however, a schedule must be attached to the composite return showing each shareholder's name, address, social security number, South Carolina taxable income, prorated exemptions, and deductions and amount of tax separately computed.

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<sup>52</sup>SC Rev. Proc. #92-5.

<sup>53</sup>SC Code §12-6-5030(A)

<sup>54</sup>SC Code §12-6-5030(D).

<sup>55</sup>SC Code §12-6-5030(A)

<sup>56</sup>SC Rev. Proc. #92-5.

**Note:** If there is not sufficient information to determine the separate liability or the state of residence, then no deduction is allowed for personal exemptions, individual itemized deductions, or standard deductions.<sup>57</sup>

Method 2: The S corporation may report each participating shareholder's entire share of South Carolina taxable income without regard to deductions and exemptions. Each participating shareholder's tax should be separately computed (*i.e.*, apply the tax table separately to each shareholder's taxable income). The separate tax amounts are added to arrive at the total tax due on the composite return. This total tax amount should be entered on the "TAX" line on page 1 of Form SC1040. A modified South Carolina taxable income amount does not have to be entered on page 1 of Form SC1040, however, a schedule must be attached to the composite return showing each participating shareholder's name, address, social security number, South Carolina taxable income, and amount of tax separately computed.

Partnerships may also file composite returns for nonresident partners. Corporate partners may **not** be included on the composite return since they are required to file an annual report and pay a license fee.

### C. Estimated Tax Payments

South Carolina corporate estimated tax payments must be made in accordance with Internal Revenue Code §§6654 and 6655 except that:<sup>58</sup>

1. The small amount provisions in Internal Revenue Code §§6654(e)(1) and 6655(f) are \$100. Estimated tax payments are not required for corporations whose South Carolina income tax is less than \$100.
2. Income for the first installment for corporations is annualized using the first two months of the taxable year.
3. The due dates of estimated payments for calendar year corporations are:<sup>59</sup>
  - a. First quarter: April 1.
  - b. Second quarter: June 15
  - c. Third quarter: September 15
  - d. Fourth quarter: December 15

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<sup>57</sup>SC Code §12-6-5030(C).

<sup>58</sup>SC Code §12-6-3910.

<sup>59</sup>SC Code §12-6-3910(A)(3)(b).

In applying the estimated tax payment provisions to a fiscal year taxpayer, the estimated tax payments are due on the 15<sup>th</sup> day of the fourth, sixth, ninth, and twelfth months of the tax year. For example, for a fiscal year filer with a June 30 year end, estimated tax payments are due October 15th, December 15th, March 15th, and June 15th.

Estimated tax payments are considered payments on account of income taxes and license fees for the taxable year designated.<sup>60</sup> Estimated payments will be deemed to apply first to income taxes and then apply to license fees.<sup>61</sup>

Comment: This provision has caused some confusion about whether license fees must be paid by estimated tax payments. It is the Department's position that a taxpayer may, but is not required, pay corporate license fees by estimated payment. The license fee must be paid by the original due date of the return, without regard to extensions.

To the extent that corporate estimated tax payments and withholdings are in excess of the taxpayer's income tax liability and license fee liability as shown on the income tax return, the taxpayer may claim a:<sup>62</sup>

1. Refund.
2. Credit for estimated income tax for the succeeding taxable year; or
3. Credit against the corporate license fee for the current taxable year.

Form SC1120-CDP, "Corporation Declaration of Estimated Income Tax," is used to remit corporate estimated tax payments.

## **D. Certificate of Compliance**

### **1. General Provisions**

A certificate of compliance from the Department is prima facie evidence that the tax has been paid, that the return has been filed, or that information has been supplied as required.<sup>63</sup> Requests for a certificate of compliance are often made by parties applying for a bank loan; issuing stock; purchasing a business, real estate, or assets of a business; or contracting to perform work in South Carolina.

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<sup>60</sup>SC Code §12-6-3910(B).

<sup>61</sup>SC Code §12-6-3910(D). Applies to estimated payments made after 2002.

<sup>62</sup>SC Code §12-6-3910(C).

<sup>63</sup>SC Code §12-6-5510.

The Department has established a formal, written procedure for requesting a certificate of compliance.<sup>64</sup> Form C-268, "Certificate of Tax Compliance Request Form," is used to request a certificate of compliance letter.<sup>65</sup> The form or a request containing all required information must be mailed or hand delivered the Department along with a \$60 nonrefundable processing fee.<sup>66</sup> Oral requests are not accepted. A corporate officer or person designated by the Board of Directors or a third party with a valid power of attorney attached may request the certificate of compliance.

A certificate of compliance will indicate whether the taxpayer owes the Department any returns or taxes based on the information available. It will not include whether a taxpayer has been selected for audit, is currently under audit, is currently in appeals or litigation with the Department, or has been issued a proposed notice of assessment.

The Department will mail the certificate of compliance to the taxpayer or to anyone authorized by the taxpayer to receive this information.<sup>67</sup> If a taxpayer is not in compliance, then the Department will inform the taxpayer of the reasons and, if not otherwise noted on the request, will send a letter to a third party authorized by the taxpayer that indicates the taxpayer is not in compliance for a specific tax type. Upon satisfaction of the noncompliance, a compliance letter can be issued, if requested. Due to the confidentiality of the information, the results may be faxed or picked up at the Department's main office if the taxpayer or the authorized person gives the Department written permission.

## **2. Taxes Due Upon Change of Ownership**

Persons that are buying a retail business may later find that the seller did not pay all taxes due the State. South Carolina Code §12-54-124 provides that in the case of the transfer of a majority of the assets of a business, other than cash, whether through the sale, gift, devise, inheritance, liquidation, distribution, merger, consolidation, corporate reorganization, lease or otherwise, any tax generated by the business which was due on or before any part of the transfer constitutes a lien against the assets in the hands of a purchaser, or any other transferee, until the

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<sup>64</sup>SC Rev. Proc. #03-5. It establishes a procedure for use by taxpayers requesting a certificate of compliance from the Department pursuant to SC Code §12-54-124, certificate of compliance exception to lien placed on assets transferred. The process also applies to persons requesting a certificate of compliance for other reasons.

<sup>65</sup>Form C-268 is available on the Department's website. A written request made not using Form C-268 may result in substantial processing delays. A request should be mailed to the Tax Compliance Officer, SC Department of Revenue, Columbia, SC, 29214-0027. A hand delivered request should be placed in a closed envelope addressed to the "Tax Compliance Officer."

<sup>66</sup>Unless this temporary proviso is re-enacted by the General Assembly in the next legislative session, the \$60 fee imposed will expire on June 30, 2005.

<sup>67</sup>Generally, the results are sent within 10 business days after receipt of a properly completed request by the Tax Compliance Officer.

taxes are paid. The Department may not issue a license to continue or conduct the business to the purchaser until all taxes due South Carolina have been settled and paid and may revoke a license issued to the business in violation of this section. This provision does not apply if a transferee receives a timely certificate of compliance from the Department.

SC Rev. Rul. #04-2 explains a method by which a transferee who is not receiving business assets, or where the transferor is not transferring a majority of the assets of the business in this and other related or planned transfers, may obtain from the transferor a “transferor affidavit” to protect the transferee from the application of SC Code §12-54-124. The Department, however, will pursue the transferor if the transferor does not file all applicable returns and pay its tax liabilities.

**Comment:** In order to avoid this result, the Department recommends that the purchaser ask the seller to request a certificate of compliance or transferor affidavit to be remitted to the purchaser before finalizing the purchase.

**Note:** Neither SC Code Section §12-54-124, a “certificate of compliance,” or the “transferor affidavit” protect the transferee from a lien placed on the assets prior to the transfer by other statutory or judicial means. For example, the transferee is not protected from a lien existing on the property due to nonpayment of real property taxes.<sup>68</sup>

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<sup>68</sup>SC Rev. Rul. #04-2.