

SC REVENUE PROCEDURE #97-3

- SUBJECT: Deed Recording Fee Refund Procedures
- EFFECTIVE DATE: December 1, 1996
- SUPERSEDES: All previous documents and any oral directives in conflict herewith
- REFERENCES: S.C. Code Ann. Section 12-24-10 et. seq. (Supp. 1996)
- AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1996)
S.C. Revenue Procedure #94-1
- SCOPE: A Revenue Procedure is a statement which provides information of a procedural nature. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Procedure or Revenue Ruling.

NEW DEED RECORDING FEE REFUND PROCEDURES

Previously, the Department of Revenue established refund procedures for documentary tax stamps and meter impression remaining on hand after December 1, 1996, the effective date of the new deed recording fee. The following outlines the procedure for seeking a refund when a taxpayer believes he has overpaid the deed recording fee with respect to a particular deed.

The new deed recording fee requires that each deed have a notation placed upon it by the Clerk of Court or the Register of Mesne Conveyances ("RMC"). This notation must include the date the deed was filed, the fee collected, and any other information the county may require. The notation must state "Exempt" if the transaction falls within one of the exemptions provided under Code Section 12-24-40.

If a taxpayer seeks a refund of any fee paid, the following procedure must be followed:

1. The original deed and the original affidavit (if the requirement for the affidavit has not been waived by the clerk or register) must be presented to the Clerk of Court or RMC. The Clerk or RMC will verify that the notation on the deed is the notation placed on the deed by the Clerk or RMC. The Clerk or RMC will then sign a letter or form verifying that the notation is authentic and present this to the taxpayer.
2. The taxpayer should then forward the original deed, the original affidavit and the notation verification letter or form to the Department of Revenue. The taxpayer should also include a cover letter requesting the refund and containing all the information required by Code Section 12-60-470. (See the attached copy of Code Section 12-60-470). All refund requests for deed recording fees should be mailed to:

SC Department of Revenue
PDMS – Miscellaneous Tax Section
P.O. Box 125
Columbia, South Carolina 29214

All refund requests received without the notation verification letter or form will be sent back to the taxpayer with a letter stating that the notation must first be verified by the Clerk or RMC and that the refund request must contain the verification letter or form. Refunds will also not be issued unless the Department receives the original deed and the original affidavit (unless the requirement for the affidavit has been previously waived by the Clerk or RMC).

3. If a refund is due, the Department will refund the State portion to the taxpayer and issue an order to the Clerk or RMC to refund that taxpayer the county portion of the fee. The Clerk or RMC should not issue a refund for the county portion of the fee unless they have received a refund order from the Department of Revenue. The Department, prior to returning the original deed and other documentation to the taxpayer, will note on the deed the date of the refund and the amount of the refund issued/ordered.
4. If the Department determines a refund is not due, the Department will advise the taxpayer. The taxpayer may appeal this denial of the refund under the provisions of Code Sections 12-60-470 and 12-24-150.

It is recommended that copies of this refund procedure be made available to taxpayers seeking a refund and/or posted at the office of the Clerk of Court or RMC.

If you have any questions concerning the refund procedures, please contact the Miscellaneous Tax Section at (803) 898-5743.

SECTION 12-60-470. Taxpayers' refund claim; time for filing; contents.

(A) A taxpayer may seek a refund of a state tax by filing a written claim for refund with the department. A claim for refund is timely filed if filed within the period specified in Section 12-54-85 even though the time for filing a protest under Section 12-60-450 has expired and no protest was filed.

(B) The refund claim must specify:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which the taxpayer relies; and
- (8) other relevant information that the department may reasonably require.

The department will make forms available which taxpayers may use to file a claim for refund.

(C)(1) Only the taxpayer legally liable for the tax may file a claim for refund or receive a refund, except that:

(a) a person who acts as a collector and remitter of state taxes may claim a credit or refund of the tax collected, but only if the person establishes that he has paid the tax in question to the State; and

(i) repaid the tax to the person from whom he collected it; or

(ii) obtained the written consent of the person from whom he collected the tax to the allowance of the credit or refund;

(b) a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the State has assigned, in writing, the right to a refund of that sales tax to the purchaser.

(2) The taxpayer legally liable for the tax may assign a refund to another person only after the taxpayer's claim is allowed, the amount of the refund is finally decided, and the department has approved the refund. The assignment must be in writing.

(3) A credit card or debit card issuer may claim a refund on behalf of a foreign mission or a foreign diplomat for purchases exempt from the sales and use tax imposed pursuant to Chapter 36 of this title

as a result of treaties signed by the United States if the: (i) credit card or debit card issuer is authorized by the United States Department of State to participate in a diplomatic tax exemption program allowing the card or card issuer to seek refunds in accordance with procedures established by the United States Department of State; (ii) sale to the foreign mission or foreign diplomat qualifies as exempt under treaties signed by the United States; (iii) Department of Revenue approves the refund; and (iv) credit or debit card issuer credits the foreign mission's or foreign diplomat's credit card or debit card account to reflect the issuance of the refund.

(4) The provisions of Section 12-60-490 also apply to a person claiming or receiving a refund pursuant to this section, except for a credit card or debit card issuer seeking a sales and use tax refund on behalf of a foreign mission or foreign diplomat pursuant to subsection (C)(3) above. A refund may be issued only after the application of Section 12-60-490 against the taxpayer legally liable for the tax and, if applicable, against another person claiming or receiving the refund pursuant to this subsection.

(5) In case of a claim for refund filed by, or a refund assigned to, a person other than the taxpayer legally liable for the tax, the department may advise the person who filed the claim or who was assigned the refund that, if applicable, the refund was reduced or eliminated as a result of taxes owed by the taxpayer legally liable for the tax and the application of Section 12-60-490 and the amount by which the refund was reduced by taxes owed by the taxpayer legally liable for the tax.

(D) The appropriate division of the department shall decide what refund is due, if any, and give the taxpayer written notice of its decision as soon as practicable after a claim has been filed.

(E) A taxpayer may appeal the division's decision by filing a written protest with the department following the procedures provided in Section 12-60-450. For purposes of complying with the provisions of Section 12-60-450, the written denial of any part of a claim for refund is the equivalent of a proposed assessment.

(F) Upon exhaustion of his prehearing remedy, a taxpayer may seek relief from the department's determination by requesting a contested case hearing before the Administrative Law Judge Division. This request must be made within thirty days after the date the department's determination was sent by first class mail or delivered to the taxpayer. Requests for a hearing before the Administrative Law Judge Division must be made in accordance with its rules.

(G) Even if a taxpayer has not filed a claim for refund, if the department determines that money has been erroneously or illegally collected from a taxpayer or other person, the department, in its discretion, may, upon making a record in writing of its reasons, grant a refund to the taxpayer or other person.

(H) A claim for refund can be amended before, but not after, the expiration of the time for filing the claim for refund under Section 12-54-85(F). The claim as amended must be treated as if it were first filed when the amendment was filed, and the procedures and time periods provided by this section must begin again.

(I) A taxpayer who requests a contested case hearing as provided in Section 12-60-460 is considered to have elected his remedy and is denied the benefits of this section.