State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #97-2

TO:	ABC Corporation
SUBJECT:	Qualified Recycling Facilities (Income, License, Sales and Use Tax and Fee-in-Lieu of Tax)
DATE:	June 23, 1997
REFERENCE:	S.C. Code Ann. Section 12-6-3460 (Supp. 1996) S.C. Code Ann. Section 12-6-2320 (Supp. 1996) S.C. Code Ann. Section 12-36-2120 (Supp. 1996) S.C. Code Ann. Section 4-29-67 (Supp. 1976) Section 5, Act. No. 32 (effective April 6, 1995)
AUTHORITY:	S.C. Code Ann. Section 12-4-320 (Supp. 1996) SC Revenue Procedure #94-1
SCOPE:	A Private Letter Ruling is an official advisory opinion issued by the Department of Revenue to a specific person.
NOTE:	A Private Letter Ruling may only be relied upon by the person to whom it is issued and only for the transaction or transactions to which it relates. A Private Letter Ruling has no precedential value.

Facts:

During 1995, ABC Corporation ("Taxpayer") began construction of a facility in South Carolina. As of December 31, 1996, Taxpayer had placed in service in excess of "X" dollars in assets at the facility. On April 12, 1995, the South Carolina Department of Revenue certified that Taxpayer's facility qualified as a "Qualified Recycling Facility" pursuant to Code Section 12-6-3460.

Taxpayer now plans to expand its "Qualified Recycling Facility" through the building of an addition ("Addition") that will include a "B", a "C", and peripheral equipment, including buildings to house such equipment. The Addition will produce up to "X" tons per year of "D" and "E". The Addition is currently projected to cost approximately "X" dollars and will create up to "X" additional jobs. The final product produced by the

facility (including the Addition) will be composed of at least 50% postconsumer waste material as that term is defined in Code Section 12-6-3460(A). The postconsumer waste material will continue to be melted in one of the two "F's" which are already in place at the "Qualified Recycling Facility." The molten "J" will be transported to the "B" and will be cast into "G" and then rolled into "H" at the Addition. Taxpayer will construct, own and operate the Addition and it will be fully integrated from a geographical and operational standpoint with the current "I" property located at the "Qualified Recycling Facility" and both the current facility and the Addition will be operated as a unit. For example, the operations of the Addition are dependent upon the melting of the "J" at the existing facility and the Addition will make use of infrastructure at the existing facility. The Addition will also be run by the same management that is overseeing operations at the existing facility. Because of the relationship between the current facility and the Addition, Taxpayer's facility, including the Addition, will be recertified by the Department as a "Qualified Recycling Facility."

Taxpayer currently has an Agreement for Approval for Request of Separate Accounting Treatment ("Agreement") with the South Carolina Department of Revenue ("Department") allowing Taxpayer to use a special method to allocate and apportion income in accordance with Code Section 12-6-2320(C).

Questions and Discussion:

Question 1: Will Taxpayer be entitled to the credit allowed by Code Section 12-6-3460 for the investment made at the Addition?

Answer: Yes. Under Code Section 12-6-3460, a taxpayer who is constructing or operating a "Qualified Recycling Facility" is allowed a credit equal to thirty percent of the taxpayer's investment in recycling property during the year. The credit is allowed to reduce any corporate income tax liability of the taxpayer, any sales and use tax imposed by the State or any political subdivision of the State, corporate license fees or any other similar taxes.

Under Code Section 12-6-3460(A)(3), a "'Qualified Recycling Facility' means a facility certified as a qualified recycling facility by a duly authorized representative of the department which includes all real and personal property incorporated into or associated with the facility located or to be located within this State that will be used by the taxpayer to manufacture products for sale composed of at least fifty percent postconsumer waste material by weight or by volume. The minimum level of investment for a qualified recycling facility must be at least three hundred million dollars incurred by the end of the fifth calendar year after the year in which the taxpayer begins construction or operation of the facility."

Code Section 12-6-3460(A)(1), provides that "'Investment' means the total cost of acquisition, construction, erection, and installation of all real and personal property, whether owned or leased including, but not limited to, all realty, improvements, leasehold improvements, buildings, machinery, and office equipment, which is at any time incorporated into or associated with a qualified recycling facility."

Under Code Section 12-6-3460(A)(2), "'Recycling Property' means all real and personal property, whether owned or leased including, but not limited to, all realty, improvements, leasehold improvements, buildings, machinery, and office equipment, incorporated into or associated with a qualified recycling facility."

Under Code Section 12-6-3460(A)(4), "'Postconsumer waste material' means any product generated by a business or consumer which has served its intended end use and which has been separated from the solid waste stream for the purpose of recycling and includes, but is not limited to, scrap metal and iron, and used plastics, paper, glass, and rubber."

As mentioned above, Taxpayer's facility has already been certified as a "Qualified Recycling Facility" by the Department. Since Taxpayer has met the minimum investment requirement of three hundred million dollars in the requisite time period and because Taxpayer's facility (including the Addition) will be used to manufacture products for sale composed of at least fifty percent postconsumer waste material by weight or volume, Taxpayer has been recertified by the Department as a "Qualified Recycling Facility" with the inclusion of the Addition as part of the "Qualified Recycling Facility." The Addition's final product will be composed of at least 50% postconsumer waste material and the Addition will consist of real and personal property. Thus, Taxpayer's Addition will meet the definition of "recycling property" as that term is defined in Code Section 12-6-3460(A)(2). Since the operations of the Addition is dependent upon the melting of the "J" at the existing facility and since the Addition will make use of existing infrastructure at the existing facility, and the top management of both the current facility and the Addition will be the same, (both the existing facility and the Addition will be operated as one unit) the Addition will be associated with the current "Qualified Recycling Facility." Thus, the Addition will also meet the definition of "Investment" as that term is defined in Code Section 12-6-3460(A)(1).

Accordingly, Taxpayer is entitled to a credit in an amount of thirty percent of the Taxpayer's investment in the Qualified Recycling Facility which includes the Addition. This credit may be used to reduce Taxpayer's corporate income tax, license fees or sales and use tax imposed by the State or a political subdivision of the State or any tax similar to these taxes. Any unused credit for any taxable year may be carried forward to subsequent taxable years until the credit is exhausted.

Question 2: Will the Addition, as well as property located at the Addition, be eligible for a fee-in-lieu of property taxes pursuant to Code Section 4-29-67(AA)?

Answer:

Code Section 4-29-67(AA) reads as follows:

> (AA)(1) Notwithstanding any other provision of this section, in the case of a qualified recycling facility the annual fee is available for no more than thirty years, and for those projects constructed or placed in service during more than one year, the annual fee is available for a maximum of thirty-seven years.
> (2) Notwithstanding any other provision of this section, for a qualified recycling facility, the assessment ratio may not be less than three percent.
> (3) Any machinery and equipment foundations, port facilities, or railroad track system used, or to be used, for a qualified recycling facility is considered tangible personal property.
> (4) Notwithstanding subsection (F) and (I) of this section, the total costs of all investment made for a qualified recycling facility are eligible for fee payments as provided in this section.
> (5) For purposes of any fees that may be due on undeveloped property for which title has been transferred to the county by or for the owner or operator of a qualified recycling facility, the assessment ratio is three percent.
> (6) Notwithstanding subsection (D)(2)(b) of this section, in the case of a qualified recycling facility, net present value calculations performed under this subsection must use a discount rate equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published on any day selected by the investor during the year in which assets are placed in service or in which the inducement agreement is executed.
> (7) As used in this subsection, "qualified recycling facility" and "investment" have the meaning provided in Section 12-6-3460(A).

The Addition's final product will be composed of at least 50% postconsumer waste material and the Addition will consist of real and personal property. Thus, Taxpayer's Addition will meet the definition of "recycling property" as that term is defined in Code Section 12-6-3460(A)(2). The Addition will also meet the definition of "Investment" as that term is defined in Code Section 12-6-3460(A)(1).

The statute provides that the total costs of all investments made for a "Qualified Recycling Facility" are eligible for fee payments. Since the Addition will be an investment in recycling property as those terms are defined in Section 12-6-3460(A), and since Taxpayer' facility with the inclusion of the Addition has been recertified as a

"Qualified Recycling Facility" by the Department, the Addition will be eligible for fee-in-lieu of property tax benefits if the county agrees, or has agreed, to allow such property to be eligible for the fee and the other requirements for a fee-in-lieu of taxes have been met.

Question 3: Will the income and loss from the Addition be subject to Taxpayer's special method of allocation and apportionment pursuant to Code Section 12-6-2320(C) and the Agreement executed by the Department and the Taxpayer?

Answer: Yes. Code Section 12-6-2320(C) allows a taxpayer operating or constructing a "Qualified Recycling Facility" as that term is defined in Code Section 12-6-3460(A) to petition the Department for the use of separate accounting with respect to all or any part of the taxpayer's or taxpayer's subsidiaries' business activities or for the use of any other method to determine the taxpayer's or taxpayer's subsidiaries' taxable income.

On April 12, 1995, Taxpayer petitioned, and was granted, by the Department, the right to use separate accounting for any or all of its divisions located in South Carolina. Upon approval of Taxpayer's request, the Taxpayer and the Department executed an Agreement for Approval for Request of Separate Accounting Treatment ("Agreement"). [Sentence eliminated by taxpayer's request]

Taxpayer currently has "X" separate divisions in South Carolina. One of these divisions consists of the "Qualified Recycling Facility" which is located in "Y" County, South Carolina. The Addition will be part of this division. Thus, income and loss for the Addition will be computed in the same manner as income and loss is computed for the "Y" County division for purposes of determining Taxpayer's South Carolina taxable income.

Question 4: Will Taxpayer be allowed the credit allowed by Section 5, Act. No. 32 (effective April 1995) for all funds collected by Taxpayer with respect to Section 12-10-80 for employees working at the Addition?

Answer: Yes. Section 5 of Act. No. 32 (effective April 6, 1995) allows a taxpayer who is constructing or operating a "Qualified Recycling Facility" as defined in Code Section 12-7-1275 (now 12-6-3460) a credit in the amount of all funds collected as permitted in Code Section 12-10-80. These credits can be used to reduce the taxpayer's corporate income tax, corporate license fees, sales or use tax imposed by the State or a political subdivision of the State or any tax similar to these taxes. Any unused credit may be carried forward to subsequent tax years until the credit is exhausted.

Taxpayer's Addition will employ additional persons. Taxpayer's facility, including the Addition, is certified as a "Qualified Recycling Facility" by the Department. Provided that the Taxpayer meets the requirements of Code Section 12-10-80, Taxpayer will qualify for the credit provided in Section 5, Act. No. 32 (effective April 6, 1995) for all funds collected as permitted in Code Section 12-10-80. Any unused credit may be carried forward to subsequent tax years until the credit is exhausted.

Question 5: Will the Addition qualify for the exemptions from sales and use taxes set forth in Code Section 12-36-2120(50)?

Answer: Yes. Code Section 12-36-2120(50) provides an exemption from sales and use tax for:

(a) recycling property;
(b) electricity, natural gas, propane, or fuels of any type, oxygen, hydrogen, nitrogen, or gasses of any type, and fluids and lubricants used by a qualified recycling facility;
(c) tangible personal property which becomes, or will become, an ingredient or component part of products manufactured for sale by a qualified recycling facility;
(d) tangible personal property of or for a qualified recycling facility which is or will be used (1) for the handling of or transfer of postconsumer waste material, (2) in or for the manufacturing process, or (3) in or for the handling or transfer of manufactured products;
(e) machinery and equipment foundations used or to be used by a qualified recycling facility.

For purposes of Code Section 12-6-2120(50), "recycling property", "qualified recycling facility" and "postconsumer waste material" have the same meaning as provided in Section 12-7-1275(A) (now Code Section 12-6-3460).

As stated above, Taxpayer's Addition will qualify as "recycling property" and the Addition will be incorporated into, and be a part of Taxpayer's "Qualified Recycling Facility", therefore, Taxpayer's Addition and purchases of all materials or items listed in 12-36-2120(50) used at the Addition will be exempt from South Carolina sales and use taxes.