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Comments Due by: **July 26, 2018**

SC REVENUE RULING #18-x [DRAFT – 6/28/2018]

SUBJECT: Manufacturing Property - New Partial Property Tax Exemption (Property Tax)

EFFECTIVE DATE: Property Tax Years Beginning After 2017

REFERENCES: S.C. Code Section 12-4-720 (2014)
S.C. Code Section 12-37-220(B)(52) (2014; Supp. 2017)
S.C. Code Section 12-43-220 (2014)

AUTHORITY: S.C. Code Section 12-4-320 (2014)
S.C. Code Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

Overview of Taxation of Manufacturers

Manufacturers are taxed on both their personal property and real property located in South Carolina. All property owned by, or leased to, a manufacturer and used in the conduct of its business is generally subject to tax as follows:¹

¹ This method of taxation does not apply to manufacturers that have a negotiated fee in lieu of taxes with the county pursuant to Code Sections 4-12-30, 4-29-67 or Chapter 44, Title 12. Instead, manufacturers negotiate through a fee agreement for a lower assessment ratio and a millage rate that is set for the life of the agreement or which varies every five years. Manufacturers may also have their real property valued at original cost for the life of the fee agreement.

Manufacturers' property that is located in a multicounty industrial park under Code Section 4-1-170 and is not subject to a negotiated fee is generally subject to a fee in lieu of taxes equal to the property taxes that would otherwise be due on the property, meaning that the fee is generally calculated in the same manner as ad valorem property taxes.

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- Personal property is valued at original cost from which a statutory depreciation percentage is deducted each year until a residual value is reached.² Code Section 12-37-930.
- Real property is generally appraised.
- An assessment ratio of 10.5% is applied to the property of the manufacturer to determine the assessed value of the property. Code Section 12-43-220(a)(1).

However, certain real property of manufacturers, such as research and development facilities, certain office facilities, and certain warehousing and wholesale distribution facilities, are statutorily considered not to be used in the conduct of the business of the manufacturer and are subject to an assessment ratio of 6%. Code Section 12-43-220(a)(2), (3) and (4).

Other real property owned, or leased by, a manufacturer and not used in the conduct of its business is assessed at 6%, while personal property is assessed at 10.5%. Code Section 12-43-220(e) and (f). Once the assessment ratio is applied to determine the assessed value of the property, that value is multiplied by the applicable millage of all taxing entities in which the manufacturer's facility is located to determine the amount of tax owed by a manufacturer.

The Department has the sole responsibility for the appraisal, assessment, and equalization of real and personal property used in the conduct of the manufacturer's business. Code Section 12-4-540. The county where the manufacturer's facility is located usually applies the applicable millage and bills the manufacturer for the tax. Manufacturers generally file with the Department a PT-300 with the appropriate schedules.

Law

Code Section 12-37-220 provides exemptions from property taxes. Item (B)(52) was added to that section in 2017 to provide a partial exemption from property taxes for the value of manufacturing property assessed for property tax purposes pursuant to Code Section 12-43-220(a)(1). ("partial exemption").³

² Generally, personal property can't be depreciated below 10% of its original cost.

³ The relief provided is in the form of a partial exemption for the property tax value of manufacturing property used in the conduct of a manufacturer's business and assessed pursuant to Code Section 12-43-220(a)(1). It is not a reduction in the assessment ratio applicable to the property. For most manufacturing property not subject to a negotiated fee in lieu of taxes, the assessment ratio applicable to manufacturer's property remains at 10.5%.

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The relevant provision of Code Section 12-37-220(B) provides:

In addition to the exemptions provided in subsection (A), the following classes of property are exempt from ad valorem taxation subject to the provisions of Section 12-4-720 [relating to the application process for a property tax exemption]:

(52)(a) 14.2857 percent of the property tax value of manufacturing property assessed for property tax purposes pursuant to Section 12-43-220(a)(1). For purposes of this item, if the exemption is applied to real property, then it must be applied to the property tax value as it may be adjusted downward to reflect the limit imposed pursuant to Section 6, Article X of the South Carolina Constitution, 1895.⁴

The Act that provides for the exemption also provides that the percentage exemption amount is phased-in in six equal and cumulative percentage installments, starting with property tax years beginning after 2017 (Act No. 40 of 2017, Section 19.B.).⁵

Code Section 12-43-220 reads in relevant part:

Except as otherwise provided, the ratio of assessment to value of property in each class shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be assessed and classified as follows:

(a)(1) All real and personal property owned by or leased to manufacturers and utilities⁶ and used by the manufacturer or utility in the conduct of the business must be taxed on an assessment equal to ten and one-half percent of the fair market value of the property.

⁴ Code Section 12-37-220(B)(52)(b),(c), and (d) address: 1) how the political subdivisions of the State will be reimbursed for lost funds as a result of the partial exemption, 2) how the partial exemption will be applied if the amount of the partial exemption for all qualifying property exceeds \$85 million in a single year, and 3) how property subject to the partial exemption will be treated for bonded indebtedness purposes. These provisions are not discussed in this document.

⁵ See SC Revenue Ruling #16-12 for information concerning applicable property tax years for taxpayers.

⁶ Railroads, private carlines, airlines and pipelines are assessed under Code Section 12-43-220(g) as businesses engaged primarily in transportation for hire of persons or property and are therefore taxed on an assessment ratio of 9.5%. Since these businesses are assessed under Code Section 12-43-220(g) and not Code Section 12-43-220(a)(1), their property is not allowed the partial exemption.

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The purpose of this Revenue Ruling is to address questions concerning the new partial exemption in Code Section 12-37-220(B)(52).

Questions

Eligible Taxpayers

1. Q. Which taxpayers are eligible for the partial exemption?
 - A. Manufacturers are the only taxpayers eligible for the partial exemption.
2. Q. Are utilities eligible for the partial exemption?
 - A. No. Code Section 12-43-220(a)(1) makes a clear distinction between a manufacturer and a utility. Therefore, utilities and utility property are not eligible for the partial exemption since they are not considered a manufacturer under this code section.

Qualifying Property

3. Q. What qualifies as manufacturing property assessed for property tax purposes pursuant to Section 12-43-220(a)(1)?
 - A. Property owned or leased to a manufacturer which is used in the conduct of the manufacturing business will qualify as manufacturing property eligible for the partial exemption as that property is assessed for property tax purposes under Code Section 12-43-220(a)(1). Property which is not used in the conduct of the business of a manufacturer is assessed under Code Section 12-43-220(e) or (f).
4. Q. Does the partial exemption apply only to property used directly in the manufacturing process itself?
 - A. No. The partial exemption will apply to all property used in the conduct of the manufacturing business by a manufacturer, not just the property used directly in the manufacturing process.

Any property used in the conduct of the manufacturing business, including items such as machinery and equipment, office equipment, computers and real property, is eligible for the partial exemption.

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5. Q. Does the partial exemption apply to existing manufacturing property or does it only apply to manufacturing property acquired in property tax year 2018 and thereafter?
- A. The partial exemption applies to existing real and personal manufacturing property owned or leased by the manufacturer as well as newly acquired manufacturing property, if such property is used in the conduct of the manufacturing business.
6. Q. Does the partial exemption apply to manufacturing property of a manufacturer that is subject to a negotiated fee in lieu of taxes under Chapter 12, Title 4; Chapter 29, Title 4; or Chapter 44, Title 12 (“negotiated fee”)?⁷
- A. No. The partial exemption will not apply to manufacturing property subject to a negotiated fee in lieu of taxes under Chapter 12, Title 4; Chapter 29, Title 4; or Chapter 44, Title 12. The partial exemption only applies to manufacturing property assessed for property tax purposes pursuant to Code Section 12-43-220(a)(1) (the 10.5% assessment ratio).

Manufacturing property that is subject to a negotiated fee is not assessed pursuant to Code Section 12-37-220(a)(1). Instead, it is subject to a fee in lieu of taxes at an assessment ratio as provided for in the relevant negotiated fee code sections that allow for an alternative assessment ratio ranging generally from 4% to 10.5%.

7. Q. Does the partial exemption apply to manufacturing property of a manufacturer that is subject to a “non-negotiated multicounty park fee”?
- A. Yes. The partial exemption applies to manufacturing property that is subject to a non-negotiated multicounty park fee, but not to a negotiated multicounty park fee.

Section 13, Article VIII of the South Carolina Constitution and Code Section 4-1-170 allow two or more counties to jointly develop an industrial or business park for purposes of sharing the administration of, and revenue and expenses resulting from, property located in the park (“Multicounty Park”).

⁷ The negotiated fee in lieu of tax provisions allow a manufacturer who is making a capital investment of \$2.5 million (\$1 million in certain instances) at a project in South Carolina to negotiate a reduced assessment ratio, a locked millage rate or a millage rate that varies every 5 years based on the prior 5 year average, and a locked fair market value for real property for up to 40 years or more for the project. Other benefits may also be available.

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Section 13(D), Article VIII of the South Carolina Constitution provides with respect to a multicounty park:

“... The area comprising the parks and all property having a situs therein is exempt from all ad valorem taxation. The owners or lessees of any property situated in the park shall pay an amount equivalent to the property taxes or other in-lieu-of payments that would have been due and payable except for the exemption herein provided. ...”

There are two types of fee in lieu of tax arrangements associated with a multicounty park. The first is a fee that has been negotiated between the county and a company and provides for a reduced assessment ratio for qualifying property and all the other benefits associated with a negotiated fee under Chapter 44, Title 12, or Code Sections 4-12-30 and 4-29-67, where the qualifying property is located in a multicounty park (“negotiated multicounty park fee”). The second includes property that is located in a multicounty park but is not subject to a negotiated fee. The property which is located in the multicounty park, but which is not subject to a negotiated fee, is subject to a fee instead of ad valorem property taxes which is equivalent to the property taxes that would be due on the property if it were not located in the multicounty park (“non-negotiated multicounty park fee”).

Unlike the negotiated multicounty park fee, the non-negotiated multicounty park fee property uses the assessment ratio and the valuation that would otherwise be applicable to the property if it were not located in a multicounty park. For manufacturers, the assessment ratio is generally 10.5%. Since the partial exemption is applicable if the manufacturing property is assessed under Code Section 12-43-220(a)(1), and non-negotiated multicounty park fee manufacturing property is generally assessed under that provision, manufacturing property subject to a non-negotiated multicounty park fee is eligible for the partial exemption from value for qualifying manufacturing property.⁸

⁸ In a 1990 opinion, the South Carolina Attorney General was asked whether the 5 year exemption from county taxes for certain manufacturing property contained in Code Section 12-37-220(a)(7) applied to property located in a multicounty park. The South Carolina Attorney General opined that the exemption applied to such property stating that if a manufacturer would ordinarily be entitled to the exemption if the property were subject to ad valorem property taxes instead of a multicounty park fee, the exemption should apply, relying on the premise that the fee owed under the multicounty park fee must be the same as any taxes that would be owed if the property were subject to ad valorem property taxes. See, 1990 Op. Atty. Gen. No. 90-29.

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Application of the Partial Exemption to Eligible Property

8. Q. How is the partial exemption phased in?
- A. The partial exemption is phased in over six equal and cumulative percentage installments. The cumulative exemption amount for each year is as follows:

Property Tax Year Beginning In	Exemption Amount
2018	2.38095%
2019	4.7619%
2020	7.14285%
2021	9.5238%
2022	11.90475%
2023 and thereafter	14.2857%

9. Q. Will a manufacturer need to apply for the partial exemption pursuant to Code Section 12-4-720 or will the exemption automatically apply when it files its manufacturing return, the PT-300, with appropriate schedules attached?
- A. The partial exemption will automatically be applied when the manufacturer files its manufacturing return, the PT-300, in conjunction with appropriate schedules (the appropriate schedules are usually the Schedules A, B, C, D or L⁹). All property reported on the appropriate schedules will be subject to the partial exemption. Since the partial exemption will be applied by the Department, a manufacturer should not reduce the value of its property by the amount of the partial exemption when reporting property on the PT-300 and applicable schedules. The amount of the partial exemption will be reflected on the certification that is sent from the Department to the county.

Personal Property Located on Real Property Owned or Leased by a Manufacturer and Assessed at 6%

10. Q. Will personal property owned or leased to a manufacturer and used for research and development be considered manufacturing property and therefore qualify for the partial exemption?

⁹ Other schedules may be applicable in certain specific instances.

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- A. If the personal property is considered used in the conduct of the business of the manufacturer, then it is assessed pursuant to Code Section 12-43-220(a)(1) and will receive the partial exemption. Manufacturers who qualify because the personal property is used in the conduct of their business will file a PT-300 with a Schedule C – “Manufacturing Research and Development.” The partial exemption will automatically be applied by the Department to this property if the appropriate schedule is filed.

Real property owned by, or leased to, a manufacturer and used primarily for research and development is not considered used by a manufacturer in the conduct of the business of the manufacturer and is assessed at 6% pursuant to Code Section 12-43-220(a)(2). This real property will not qualify for the partial exemption.

11. Q. Will personal property owned by, or leased to, a manufacturer which is located in an office facility that meets the qualifications of Code Section 12-43-220(a)(3) qualify for the partial exemption?

- A. If the personal property located at an applicable office facility is considered used in the conduct of the business of the manufacturer, then it is assessed pursuant to Code Section 12-43-220(a)(1) and will receive the partial exemption.

Manufacturers who qualify because the personal property is used in the conduct of their business will file a PT 300 with a Schedule D – “Manufacturing Corporate Headquarters Distribution Facility.” The partial exemption will automatically be applied by the Department to this property if the appropriate schedule is filed.

Real property owned by, or leased to, a manufacturer and used primarily as an office building is not considered used in the conduct of the business of the manufacturer and is assessed at 6% pursuant to Code Section 12-43-220(a)(3) if the office building is not located on the premises of, or contiguous to, the plant site of the manufacturer. This real property will not qualify for the partial exemption.

12. Q. Will personal property owned by, or leased to, a manufacturer which is used primarily in a warehousing and wholesale distribution area that meets the requirements of Code Section 12-43-220(a)(4) qualify for the partial exemption?

- A. If the personal property used for warehousing or wholesale distribution is considered used in the conduct of the business of the manufacturer, then it is assessed pursuant to Code Section 12-43-220(a)(1) and will receive the partial exemption. Manufacturers who qualify because the personal property is used in the conduct of their business will file a PT-300 with a Schedule L –

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“Manufacturing Warehouse.” The partial exemption will automatically be applied by the Department to this property if the appropriate schedule is filed.

Real property owned by, or leased to, a manufacturer and used primarily for warehousing and wholesale distribution is not considered used in the conduct of the business of the manufacturer and is assessed at 6% pursuant to Code Section 12-43-220(a)(4) if it is physically separated from the manufacturing plant or the area is separated from the manufacturing plant by a permanent wall. This real property will not qualify for the partial exemption.