

SC INFORMATION LETTER #06-3

SUBJECT: Regulations Approved by the General Assembly

DATE: February 24, 2006

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #05-2

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

The following regulation proposals were approved by the General Assembly on January 17, 2006 and became effective upon publication in the State Register on **February 24, 2006**. Each regulation is attached as published in the State Register.

<u>Regulation No.</u>	<u>Subject</u>	<u>Document</u>	<u>Page No.</u>
7-200.1	License and Permit Applications (ABL)	2937	2
117-1400	Industrial Customer Classification (Electric Power Tax)	2914	5
117-8	DOR Responsibilities (Repealed) (Property Tax)	2935	7
117-325	Bulk Sales (Repealed) (Sales and Use Tax)	2915	8
117-302.5	Machine Exemption (Sales and Use Tax)	2936	9
117-875	Voluntary Contributions (Individual Income Tax)	2958	20

Document No. 2937
DEPARTMENT OF REVENUE
CHAPTER 7
Statutory Authority: 1976 Code Section 12-4-320

Regulations: SC Regulation 7-200.1 Applications

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 7-200.1 to delete the cooking license provisions of subsection F and replace those provisions with one stating that the holder of a retail permit or license issued pursuant to Title 61 must obtain and maintain a retail sales tax license issued pursuant to Chapter 36 of Title 12. In addition, the provisions will state that if the retail sales tax license is revoked, then the Department must cancel, suspend or revoke all permits and licenses issued under Title 61. The Department is also considering amending subsection J to clarify that the request for refund only applies to the permit or license fee when a timely refund request is received with respect to a permit or license that was not used.

Instructions: Amend SC Regulation 7-200.1 to delete the cooking license provisions of Subsection F and replace those provisions with one stating that the holder of a retail permit or license issued pursuant to Title 61 must obtain and maintain a retail sales tax license issued pursuant to Chapter 36 of Title 12.

Text:

7-200.1

A. Filing fees. All applications filed with the South Carolina Department of Revenue must be accompanied by the appropriate filing fee before any application can be processed.

B. Contents of application. All applications shall describe with particularity the specific areas upon which the licensee shall store, sell and/or serve liquor, beer or wine. This description shall include but not be limited to the building or buildings affected, floors, rooms, patios, and recreation areas where authorization to conduct any of the above mentioned functions is requested.

C. Permits and licenses must be in same name. When a person applies for a beer and wine permit and/or a sale and consumption permit, a retail liquor store license, and/or a food preparation license, all permits and licenses must be applied for in the same name.

D. Change in Designee - Publicly Traded Corporation. A new license or permit is not necessary, provided no violations are pending, if the officer or employee designated to hold the permit or license on behalf of the publicly traded corporation is replaced by a different officer or employee. The replacement must be of good moral character, over the age of twenty-one and a resident of this State and notice of the substitution must be filed with the Department in writing.

E. Violation of license. A licensee or permittee, who permits or knowingly allows the storage, serving, sale or delivery of liquor, beer or wine in or upon those areas of this licensed establishment which were not specifically designated in the application shall be deemed to have violated said license or permit; provided, however, this regulation shall not be construed to prohibit the delivery of such containers within licensed hotels and motels to rooms which are leased and used primarily for lodging purposes.

F. In order to hold any retail alcoholic beverage permit or license under Title 61 of the South Carolina Code of Laws, the applicant, or holder of a retail alcoholic beverage permit or license, must obtain and maintain a retail sales tax license issued pursuant to Chapter 36 of Title 12 of the South Carolina Code of Laws. If the retail sales tax license of a location is revoked, canceled or otherwise terminated for any reason, the Department must cancel, suspend or revoke all retail alcoholic beverage permits or licenses issued for that location if such permits or licenses are not immediately surrendered to the Department at the time the retail sales tax license for the location is revoked, canceled or otherwise terminated.

G. Retail Liquor Dealers. Must procure permit. Every holder of a retail liquor license in this State must make application for and procure from the Department a permit to sell alcoholic beverages in sealed containers of two (2) ounces or less before any such sale is made. This permit will be issued by the Department free of charge. Any holder of a retail liquor license will be in violation of Title 61 of the 1976 Code, if such sales are made prior to obtaining this permit from the Department.

H. Partnership--Change to Corporation Must Have New Permit. A permit or a license is a personal privilege granted by the State and cannot be transferred from one person to another. A corporation is a distinct entity, and is as a matter of law, a person. Therefore, if a partnership holding a beer license incorporates, even though the stockholders are the same persons as the partners were, a new permit or license must be secured for the corporation.

I. Stipulations. Any written stipulation and/or agreement which is voluntarily entered into by an applicant for a permit or license between the applicant and the Department, if accepted by the Department, will be incorporated into the basic requirements for the enjoyment and privilege of obtaining and retaining the permit or license and shall have the same effect as any and all laws and any and all other regulations pertaining to the permit or license.

Knowing violation of the terms of the stipulation or agreement shall constitute sufficient grounds to revoke said license.

J. Refund on Permit Applications. When an application for a permit or license is approved by the Department and is not used, a request for the refund of the permit or license fee must be received by the Department within the fiscal year for which the permit was issued, and in no event will a refund of an application fee be made unless a request is received by the Department within sixty (60) days of the date the permit was issued. An agent of the Department or the State Law Enforcement Division must verify in writing that the permit was not used.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Need and Reasonableness:

The proposal to amend SC Regulation 7-200.1 is needed to ensure that taxpayers understand (1) that only a cooking license is needed if a location that offers meals to the public purchases liquor for use solely in the cooking and preparing meals served by the location and not for sale to the public; (2) that all holders of a retail permit or license issued pursuant to the alcoholic beverage laws must also maintain a retail sales tax license for the same location; and (3) that only the permit or license fee is refundable if a timely refund request is received with respect to a permit or license that was not used. The proposal to amend SC Regulation 7-200.1 is also reasonable in that it is the department's responsibility to maintain regulations that are up-to-date and consistent with the law.

Statement of Rationale:

The proposal amend SC Regulation 7-200.1 is needed (1) since the statute requires only a cooking license under Code Section 61-6-700 and does not require a minibottle license when a location that offers meals to the public purchases liquor for use solely in the cooking and preparing meals served by the location and does not sell liquor as a beverage to the public, and (2) since only the permit or license fee is refundable if a timely refund request is received with respect to a permit or license that was not used. In addition, it is needed to advise taxpayers that all holders of a retail permit or license issued pursuant to the alcoholic beverage laws must also maintain a retail sales tax license for the same location.

Document No. 2914
DEPARTMENT OF REVENUE
CHAPTER 117

Statutory Authority: 1976 Code Section 12-4-320

Regulations: SC Regulation 117-1400

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-1400 concerning the electric power tax to state that the Department will no longer use the Standard Industrial Classification (“SIC”) Manual from 1967 as its guide in classifying “industrial customers” as that term is used in the electric power tax law. The Department, if this amendment is approved, will use the North American Industry Classification System (“NAICS”) Manual as its guide in classifying industrial customers under the electric power tax law. The NAICS Manual has replaced the U.S. Standard Industrial Classification (SIC) system as the classification system used by the Census Bureau.

Instructions: Amend SC Regulation 117-1400 concerning the electric power tax to state that the Department will no longer use the Standard Industrial Classification Manual from 1967 as its guide in classifying “industrial customers”.

Text:

117-1400. Hereafter, the South Carolina Department of Revenue will use Sections 31, 32, and 33 of the North American Industry Classification System (“NAICS”) Manual, as a guide to classify “industrial customers,” as such term is used in Section 12-23-10.

Persons engaged in the business of manufacturing, generating and selling electric power must furnish to the Department a list, on or before January 31 and July 31 of each year, of industrial customers for which an exemption is claimed for the preceding periods, June through December and January through June, respectively. Such lists must show the name, address, KWH consumption and the classification code as provided in the NAICS Manual.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 117-1400 concerning the electric power tax to state that the Department will use the North American Industry Classification System (“NAICS”) Manual as its guide in classifying industrial customers

under the electric power tax law. The NAICS Manual has replaced the U.S. Standard Industrial Classification (SIC) system as the classification system used by the Census Bureau. The proposal to amend the regulation is needed to reduce any taxpayer confusion that may result from having a published regulation that is using a classification system that is no longer used by the Census Bureau. The proposal to amend this regulation is also reasonable in that it is the department's responsibility to maintain regulations that are up-to date and consistent with the law.

Document No. 2935
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulations: SC Regulation 117-8

Synopsis:

The South Carolina Department of Revenue is considering repealing SC Regulation 117-8 concerning responsibilities of the Department of Revenue with respect to property taxation and fees in lieu of property taxes. Since this same regulation was codified on June 25, 2004 as SC Regulation 117-1720.1, SC Regulation 117-8 is no longer needed.

Instructions: Repeal SC Regulation 117-8

Text:

No text is necessary since the proposal is only repealing a regulation that is no longer needed since the same regulation was codified on June 25, 2004 as SC Regulation 117-1720.1

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to repeal SC Regulation 117-8 concerning responsibilities of the Department of Revenue with respect to property taxation and fees in lieu of property taxes. Since this same regulation was codified on June 25, 2004 as SC Regulation 117-1720.1, SC Regulation 117-8 is no longer needed. The proposal to repeal this regulation is needed to reduce any taxpayer confusion that may result from having two identical published regulations on the same subject. The proposal to repeal this regulation is also reasonable in that it is the department's responsibility to maintain regulations that are up-to date.

Document No. 2915
DEPARTMENT OF REVENUE
CHAPTER 117

Statutory Authority: 1976 Code Section 12-4-320

Regulations: SC Regulation 117-325

Synopsis:

The South Carolina Department of Revenue is considering repealing SC Regulation 117-325 concerning the sales and use tax and the bulk sales statute. Since the bulk sales statute in Title 36, Chapter 6 of the Commercial Code was repealed effective July 1, 2001 by Act 67 of 2001, SC Regulation 117-325 is no longer needed.

Instructions: Repeal SC Regulation 117-325 concerning the sales and use tax and the bulk sales statute.

Text:

No text is necessary since the proposal is only repealing a regulation that is no longer needed since the bulk sales statute in Title 36, Chapter 6 of the Commercial Code was repealed effective July 1, 2001 by Act 67 of 2001.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to repeal SC Regulation 117-325 concerning the sales and use tax and the bulk sales statute. Since the bulk sales statute in Title 36, Chapter 6 of the Commercial Code was repealed effective July 1, 2001 by Act 67 of 2001, SC Regulation 117-325 is no longer needed. The proposal to repeal this chapter in the code of regulations is needed to reduce any taxpayer confusion that may result from having a published regulation that is no longer needed. The proposal to repeal this regulation is also reasonable in that it is the department's responsibility to maintain regulations that are up-to date and consistent with the law.

Document No. 2936
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulations: SC Regulation 117-302.5

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-302.5 which concerns the sales and use tax exemption for machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale. As a result of two recent court decisions, the Department issued an advisory opinion, SC Revenue Ruling #04-7. This proposal to amend SC Regulation 117-302.5 will combine the guidance provided in the advisory opinion, which is based on the two court cases, with provisions of the present regulation that are still applicable under these two court decisions.

Instructions:

Amend SC Regulation 117-302.5 to combine guidance provided in the advisory opinion, which is based on the two court cases, with provisions of the present regulation that are still applicable under these two court decisions.

Text:

117-302.5 Machines

(A) Introduction:

Machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale, and the replacement parts and attachments to such machines, are exempt from the sales and use tax under Code Section 12-36-2120(17). Materials or equipment which might constitute a machine or machinery when not used for manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale are not exempted.

(B) General Guidance:

(1) A “machine used in manufacturing ... tangible personal property for sale” is exempt from the sales and use tax. For purposes of this regulation subsection (117-302.5), manufacturing includes processing, compounding, mining and quarrying.

A machine qualifies for the exemption under Code Section 12-36-2120(17) if the machine is integral and necessary to the manufacturing process and the product being manufactured is being manufactured “for sale.” A machine, which includes every mechanical device or combination of mechanical powers, parts, attachments and devices to perform some function and produce a certain effect or result, is integral and necessary to the manufacturing process if it meets all of the following:

(a) The machine is used at a manufacturing facility. This exemption only applies to machines used at a facility whose purpose is that of manufacturing a product “for sale.” It does not apply to machines used at a facility whose purpose is retailing, wholesaling, distributing, or some other non-manufacturing purposes. For example, machines used by a large industrial baker in manufacturing breads, cakes, and pies for sale may be purchased tax free; however, similar machines used by a “Ma & Pa” bakery on Main Street may not be purchased tax free since they are used at a facility whose purpose is retailing.

(b) The machine is used in, and serves as an essential and indispensable component part of the manufacturing process, and is used on an ongoing and continuous basis during the manufacturing process. A machine is not a part of the manufacturing process merely because it is integral and necessary to the manufacturer. For example, machines used for warehouse, distribution, or administrative purposes are integral and necessary to the manufacturer, but not part of the manufacturing process.

(c) The machine must be substantially “used in manufacturing ... tangible personal property for sale.” The statute does not require that the machine be used exclusively in manufacturing; however, incidental manufacturing use will not qualify for the exemption. For purposes of the exemption, more than one-third of a machine’s use in manufacturing is substantial.

Machines that meet the above requirements do not lose the exemption because they do not have moving parts or because they are fixtures upon the real estate where they stand. However, buildings and parts of buildings, as well as other improvements which benefit the land generally and may serve other users of the land, do not come within the exemption.

(2) Machine Parts:

Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of machines are also exempt, provided the parts, attachments or replacements are used on or in the operation of such machines, manufactured for use on or in the operation of such machines, integral and necessary to the operation of such machines, and must be customarily so used. These restrictions are interpreted to mean that the part or attachment must be purchased in the form in which it will be used by the manufacturer without any fabrication or alteration by him, except the usual and customary minor adjustment, (except as stated in “Building of Machines”) and that it is a standard part or attachment customarily used and, further, that the machine or machinery

on which it is used would not do the work for which it was designed if it were not used. This, of course, exempts all parts and attachments without which the machine would do no work, and, in addition, it exempts parts and attachments designed to increase the efficiency of the machine.

(3) Building of Machines:

Manufacturers, and contractors building machines for manufacturers are entitled to purchase at wholesale, free of the sales or use tax, materials used by them in the building of machines for the purpose of manufacturing tangible personal property for sale. It should be noted that only those materials are exempt to manufacturers or their contractors, which are used by them in building machines for the purpose of manufacturing tangible personal property for sale. This ruling would not be applicable to tangible personal property for use as building materials from which there is erected a "building." (See section on "Buildings" below.)

(4) Conveyances:

(a) The general rule with reference to material handling machinery and/or mechanical conveyors is that such machinery is subject to the tax up to the point where the materials go into process. The machine feeding the first processing machine(s) is exempt. The last machine to come within the exemption is that machine which discharges the finished product from the last machine used in the process. Material handling machinery used for transporting (in process) material from one process stage to another comes within the exemption. Warehouse machinery used only for warehouse purposes, loading and unloading, storing, transporting raw materials and finished products, etc., is subject to the tax, unless exempt under the provisions of Code Section 12-36-2120(51). If material handling machinery is customarily used for a dual purpose, that is partly for an exempt purpose and partly for a taxable purpose, and is not otherwise exempt under the provisions of Code Section 12-36-2120(51), the machinery may be purchased free of the tax under the machine exemption (Code Section 12-36-2120(17)) provided the exempt use represents a substantial portion of its use.

For example, the following conveyances are exempt:

(i) Wheeled conveyances known as "print screen truck" used by a textile manufacturer in the movement of print screens from a holding area to the exempt print machines, to the print screen washing machine, and back to the holding area racks after the style or pattern is changed and the print screen is washed.

(ii) Warehouse machines (e.g., forklifts) that are used substantially to feed raw material into or onto the first processing machine in the manufacturing process area in addition to being used in loading, unloading, storing, and transporting raw materials from the warehouse to the manufacturing area, or transporting finished products from the manufacturing area to the warehouse.

(b) Conveyances are subject to the tax up to the point where the materials go into the process. The last machine to come within the exemption is that machine which discharges the finished product from the last machine used in the process. Under this rule, the following conveyors are subject to the tax:

(i) Conveyors used solely by the taxpayer in the warehousing of raw materials and finished goods.

(ii) Conveyors which are not integral and necessary to the manufacturing process.

(iii) Piping leading to and from storage tanks.

(iv) Piping, pumps, and well connections installed for use by a manufacturer to supply the manufacturing plant with water necessary for the manufacture of tangible personal property.

(v) Warehouse machines that are used for warehouse purposes, such as loading, unloading, storing, transporting raw materials from the warehouse to the manufacturing area, or transporting finished products from the manufacturing area to the warehouse.

(5) Chemicals:

(a) Chemicals, including greases, oils, lubricants, and coolants, used in an exempt manufacturing machine that are essential to the functioning of the exempt machine during the manufacturing process are integral, necessary, and indispensable to the manufacturing process and are exempt as part of the machine. For example, the following are situations in which chemicals, greases, oils, lubricants, and coolants are exempt as part of an exempt machine:

(i) Chemicals, greases, oils (motor oils, gear oils, chain oils), lubricants, and coolants used in an exempt manufacturing machine when such items are integral and necessary to the manufacturing process, such as those that are essential in ensuring the functioning of the machine during the manufacturing process, and the use of such items is an ongoing, continuous activity.

(ii) Chemicals used in an exempt pollution control machine to abate or prevent pollution when such chemicals are integral and necessary to the manufacturing process, such as the treating of wastewater or otherwise preventing or abating pollution, and the use of such chemicals is an ongoing, continuous activity.

(iii) Chemicals used to clean the exterior or interior of an exempt manufacturing machine when the cleaning is integral and necessary to the manufacturing process, such as those that are essential in ensuring the quality of the product is maintained, and the use of such chemicals is an ongoing, continuous activity.

(iv) Chemicals used to prevent corrosion in an exempt manufacturing machine, such as an exempt boiler, when such chemicals are integral and necessary to the manufacturing process, such as those that are essential in ensuring the functioning of the machine during the manufacturing process, and the use of such chemicals is an ongoing, continuous activity.

(b) Situations in which the chemicals would not qualify as a part under the machine exemption and would therefore be subject to the sales and use tax, include:

(i) Chemicals used to clean non-exempt machines, such as storage tanks.

(ii) Chemicals used to clean floors, walls, and other parts of the manufacturing facility.

(iii) Paint used on exempt manufacturing machines to prevent corrosion of the machines is not exempt from the tax as a machine used in manufacturing tangible personal property for sale. (Note: This is different from the chemicals used to prevent corrosion in exempt machines, such as exempt boilers, since the painting of the machine is not an ongoing, continuous activity. It is a maintenance activity. The chemicals, unlike the paint, are integral and necessary to the operation of the machines since they are essential in ensuring the functioning of the machine during the manufacturing process and are used on an ongoing, continuous basis.)

(iv) Chemicals, greases, oils (motor oils, gear oils, chain oils), lubricants, and coolants used in an exempt manufacturing machine when such items are not integral and necessary to the manufacturing process, such as those that are not essential in ensuring the functioning of the machine during the manufacturing process. For example, grease used on a part that has been removed from an exempt manufacturing machine when such grease has been placed on the part to protect it while it is in storage and not being used is subject to the tax since the grease is not integral and necessary to the functioning of the part or the machine during the manufacturing process.

(6) Maintenance:

Maintenance machines used at a manufacturing facility are not exempt from the tax as a machine used in manufacturing tangible personal property for sale.

Machines that are used to maintain non-exempt machines (machines that are not integral and necessary to the manufacturing process), or are not used on an ongoing, continuous basis to maintain exempt manufacturing machines (machines that are integral and necessary to the manufacturing process) are maintenance machines and are not exempt from the tax as machines used in manufacturing tangible personal property for sale.

The following machines are maintenance machines and therefore subject to the sales and use tax:

(a) Pressure washing machines and ultrasonic cleaning machines used to clean non-exempt machines or parts, such as storage tanks.

(b) Machines used to clean floors and other parts of realty (e.g., machines used in removing sawdust from the floor of a sawmill).

(c) Machines, such as maintenance machines, which are not integral and necessary to the manufacturing process.

(d) Machines, such as pressure washing machines and ultrasonic cleaning machines, used to clean exempt manufacturing machines or parts when the cleaning of the exempt manufacturing machine or part is not integral and necessary to the manufacturing process, such as those that are not essential in ensuring the functioning of the exempt machine or part during the manufacturing process or those that are not essential in ensuring the quality of the product is maintained. In addition, if the cleaning is not an ongoing, continuous activity, then the machines are not integral and necessary to the manufacturing process.

(7) Storage:

Machines used at a manufacturing facility for storage are not exempt from the tax as a machine used in manufacturing tangible personal property for sale. For example, the following machines are for storage and therefore taxable:

(a) Racks used to store raw materials or finished goods.

(b) Storage tanks used to store raw materials, gasses, or water.

(c) Racks and tanks used to store a finished product while it cures.

Note: See example of exempt warehouse machines in Section (B)(4)(a)(ii).

(8) Buildings:

A building which houses a manufacturing process, and the various parts of such a building, are not exempt from the tax as a machine, or a part or attachment to a machine, used in manufacturing tangible personal property for sale. For example, the following parts of a building are not exempt:

(a) Paint or sealant used to seal the floor or walls of the manufacturing area of a building to provide chemical resistance in the event of a spill.

(b) Paint used on the floor of the textile manufacturing area of a building to facilitate the threading of machines so that employees can more easily see the thread.

(c) Paint used on exempt manufacturing machines to prevent corrosion of the machines.

Note: Paint is not integral and necessary to the operation of the manufacturing machines. This is different from the chemicals used to prevent corrosion in exempt machines, such as exempt boilers. Such chemicals, unlike the paint, are exempt when such chemicals are integral and necessary to the functioning of the exempt machine during the manufacturing process and the use of these chemicals to prevent corrosion is an ongoing, continuous activity. Paint is not integral and necessary to the functioning of the machine “during the manufacturing process” and painting the machine is not an ongoing continuous activity.

(d) Foundations (consisting of pilings, pile caps, elevated slab, and slab on grade) of a building in which exempt manufacturing machines are the plant manufacturing process or system as a whole.

(e) Structural steel, steel decking, and checker plate of a building in which exempt manufacturing machines are housed.

(f) Hangers and supports used in a manufacturing building to route exempt process piping from one area of the manufacturing process to another area of the manufacturing process via pipe racks and cable trays.

(g) Architectural roofing and siding enclosing a manufacturing building housing exempt manufacturing machines.

(h) Pipe, valves, fittings, etc., regardless of size, which are purchased by paper manufacturers specifically for use in drinking water lines, fire protection lines, or for transmission of water from source to water treatment plant, or from water treatment plant itself.

(i) Piping furnished and installed along with pump houses and well connections by a contractor when intended for use by a paper manufacturer to supply his plant with the water necessary to the manufacturer of paper.

(j) Power lines bringing electricity into the plant.

(k) All wires, fixtures, etc., used in lighting.

(9) Administrative Machines, Furniture, Equipment and Supplies:

Administrative machines, furniture, equipment, and supplies, such as office computers used for word processing, recordkeeping, employee payroll, customer billing, purchasing, accounting, and similar purposes, office furniture, office supplies, such as pens, pencils, paper, and similar items, educational material, or items used for the personal comfort,

convenience, or use of employees, are not machines used in the process of manufacturing tangible personal property for sale and are not exempt from the tax.

(10) Protective Clothing

Protective clothing worn by an employee working in the area in which the manufacturing process occurs does not qualify as a machine and is not exempt from the tax as a machine used in manufacturing tangible personal property for sale under Section 12-36-2120(17). However, “clothing and other attire required for working in a Class 100 or better as defined in Federal Standard 209E clean room environment” is exempt under the provisions of Section 12-36-2120(54).

(C) Other Examples of Exempt Manufacturing Machines and Machine Parts:

The following are additional examples of machines or machines parts exempt from the tax, provided they are (1) used at a manufacturing facility, (2) used in, and serve an essential and indispensable component part of the manufacturing process, and are used on an ongoing and continuous basis during the manufacturing process, and (3) used substantially in manufacturing tangible personal property for sale:

- (1) Buffing machines used to buff the cot of an exempt textile spinning machine to maintain the yarn quality at a consistent level.
- (2) Traveling water screens used to filter water from a river, lake, or other water source at a water treatment plant processing water for sale.
- (3) Quality control machines used in a lab at a manufacturing facility to test sample products being manufactured for sale.
- (4) Pressure washing machines and ultrasonic cleaning machines, used to clean exempt manufacturing machines or parts, when the cleaning of the exempt manufacturing machine or part is to ensure the functioning of the exempt machine or part during the manufacturing process or to ensure the quality of the product is maintained.
- (5) Machines or machine parts used in removing sawdust from saws in a sawmill that are either attached to the sawing mechanism or are essential in ensuring the quality of the product is maintained.
- (6) Trucks too large to be lawfully used upon the highways of this state, when used in quarry pits for transporting rock or granite from the blasting site to the crushing machine.
- (7) Sand handling and sand condition machines used by manufacturers for conditioning and transporting, while in process, and for use in mold making.

- (8) Tanks which are a part of the chain of processing operations.
- (9) Patterns which become parts or attachments for molding machines when purchased by a manufacturer for his use.
- (10) Machines used in making molds from sand for use in manufacturing tangible personal property for sale.
- (11) Machines used in measuring, or weighing, and packaging by manufacturers to put the product in condition for sale on the open market for the purpose for which it was produced.
- (12) Transformers, capacitors and voltage regulators used in manufacturing and processing tangible personal property for sale, used by producers or distributors of electricity which process the electricity, and all transformers used by other manufacturers as a part of their manufacturing machinery.
- (13) Machines used by cotton ginner in their processing operations.
- (14) Pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in processing milk for sale. The machine exemption does not extend to cover milking machines.
- (15) Boiler tubes used in repairing boilers used to furnish heat or power used in manufacturing tangible personal property for sale.
- (16) Machines used by persons in the business of producing scrap iron and other metals from junk for resale to steel mills and/or foundries, such as hydraulic baling presses (to compress sheet steel into bales), cranes (to feed scrap metals to baling press), and alligator shears (to cut scrap steel to predetermined sizes).
- (17) Machines used by dental laboratories in manufacturing for sale plates, bridgework, artificial teeth and other prosthetic devices.
- (18) Machines used in processing and manufacturing by electric power companies including all producing stationary machines in an electric power generating house, stationary, processing machines located in substation houses and transformers, pole or otherwise.
- (19) Starters, switches, circuit breakers and other electrical equipment which are parts of, or attachments of machines, come within the machine exemption. In order to be exempt this equipment must be either attached directly to the machine or be immediately adjacent thereto. Switchboards and control boards and cabinets controlling the general electrical supply system are not considered to be parts or attachments of machines used in manufacturing. (Note, however, that, switchboards, automatic or manually operated, which serve to operate exempt machinery may be

classified a part or attachment thereto, provided, same are attached thereto or located within the same structure or compound.) The general rule is that power distribution machinery for operating machines used in manufacturing tangible personal property which starts at the main switch within the factory building or compound is exempt.

(20) Machines used in the wood preserving process by persons engaged in the business of treating lumber or lumber products (wood preserving) which they own and treat for sale.

(21) Gas pressure regulators located in the lead off from the gas main.

(22) Machines used in the meatpacking process by meatpackers whose activities include the curing of meats and the production of animal by-products such as lard, sausages, or tankage.

(23) Machines used by ice manufacturers in manufacturing ice for sale.

(24) Machines used to condition air (including humidification systems) for quality control during the manufacturing process of tangible personal property made from natural fibers and synthetic materials. This exemption applies to the pipes and duct used to distribute the processed air to the production areas within the plant.

(25) Recording instruments attached to manufacturing machines.

(26) Machines used by a manufacturer in the tire recapping process.

(27) Machines used by municipalities in processing or compounding water for sale.

(28) Belting purchased for use on a particular machine used in manufacturing tangible personal property for sale even though such belting may not be purchased to the exact length required.

(29) Machines purchased by persons in the business of collecting old and used paper (waste paper) for the purpose of grading, sorting and packaging the same for sale or resale to paper mills.

(30) Insulation for pipe coverings, tank coverings, and boiler insulation purchased by a paper manufacturer from the vendor in its final prefabricated form for a specific insulation job, provided it does not have to be cut and fitted at the paper mill. Certain fabrication is permissible around valve openings, pipe openings at pipe joints, etc. Note, where insulation is purchased in blocks, such blocks are to be considered as taxable, except as noted above with respect to the purchase of material in building a machine used in manufacturing tangible personal property for sale.

(31) Electrical equipment used as direct controls of machinery used in manufacturing is considered as part of manufacturing machinery.

(32) Machines used for the generation of electricity, such as boilers, engines, condensers, generators, and transformers and their attachments.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to repeal SC Regulation 117-302.5 concerning the sales and use tax machine exemption. The proposed regulation is needed to ensure that taxpayers understand the application of the sales tax machine exemption statute as a result of *Springs Industries, Inc. v. SCDOR* (99-ALJ-17-0153-CC) and *Anonymous Taxpayer v. SCDOR* (02-ALJ-17-0350-CC). The proposal is reasonable since it is consistent with the decisions in these two court cases.

Document No. 2958
DEPARTMENT OF REVENUE
CHAPTER 117

Statutory Authority: 1976 Code Section 12-4-320

Regulations

SC Regulation 117-875

Synopsis:

The South Carolina Department of Revenue is considering adding SC Regulation 117-875 concerning voluntary income tax check off funds. Act No. 248, Part IB, Section 64, Proviso 64.16, "Voluntary Tax Contribution K-12," and Proviso 64.17, "Voluntary Tax Contribution for PRT," stated that these check off provisos would be implemented by the Department by regulation. This regulation, if approved, would also be used for other check offs currently provided in Chapter 6 of Title 12 and any future check offs.

Instruction:

Add SC Regulation 117-875 concerning voluntary income tax check off funds.

Text:

All voluntary contributions designated on the individual income tax return, as provided by law, are determined at least annually by the Department. The total amount shall be credited to the appropriate check off fund at the earliest possible time.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Need and Reasonableness:

This proposal to add this regulation is needed since Act No. 248, Part ID, Section 64, Proviso 64.16, "Voluntary Tax Contribution K-12," and Proviso 64.17, "Voluntary Tax Contribution for PRT," stated that these check off provisos would be implemented by the Department by regulation. This regulation, if approved, is reasonable since it would also be used to consistently distribute monies to other check offs currently provided in Chapter 6 of Title 12 and any future check offs.

Statement of Rationale:

The purpose of this proposal is to add SC Regulation 117-875 concerning voluntary income tax check off funds to state that all voluntary contributions designated on the

individual income tax return, as provided by law, are determined at least annually by the Department and that the total amount shall be credited to the appropriate check off fund at the earliest possible time. This proposal to add this regulation is needed since Act No. 248, Part ID, Section 64, Proviso 64.16, “Voluntary Tax Contribution K-12,” and Proviso 64.17, “Voluntary Tax Contribution for PRT,” stated that these check off provisos would be implemented by the Department by regulation. This regulation, if approved, is reasonable since it would also be used to consistently distribute monies to other check offs currently provided in Chapter 6 of Title 12 and any future check offs.