

301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #87-11

TO:	XYZ, Incorporated
SUBJECT:	Property Tax Exemption - New Manufacturing Establishment
REFERENCE:	S.C. Code Ann. Section 12-37-220(A)(7) (Supp. 1986)
AUTHORITY:	S.C. Code Ann. Section 12-3-170 (1976) SC Revenue Procedure #87-3
SCOPE:	A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies <u>only</u> to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Does the taxpayer's plant qualify for the five year exemption from county property taxes as a new business establishment provided under Code Section 12-37-220(A)(7)?

Facts:

The taxpayer has requested that its plant in ABC County be exempt from county property taxes for a period of five years as a new manufacturing establishment pursuant to Section 12-37-220(A)(7).

The taxpayer purchased an existing building and certain equipment used in working with pipe as a condition of purchasing the building. The taxpayer will utilize approximately one-half of the equipment in the building and either sell, move or store the remaining equipment. The taxpayer's business will be modular construction, manufacturing of fittings and putting flanges on pipes. These are operations the previous owner did not perform. The previous owner's primary work (90%) was making "heavy wall" pipe for nuclear plants, a market which all but disappeared, and bending pipes. The taxpayer will be performing neither of these functions and its market will not be the nuclear industry.

The previous owner sold a substantial amount of its equipment upon closing. The taxpayer will contribute a substantial amount of new working capital and equipment to enable it to perform its operations. Additionally, the previous owner had officially closed its operations as of March, 1987. The taxpayer purchased the site in September, 1987.

Discussion:

Code Section 12-37-220(A)(7) provides a five year property tax exemption from county property taxes for all new manufacturing establishments.

In determining whether a new manufacturing establishment exists, there are a number of items to consider. The following five elements appear to be the most relevant in this determination.

- 1) Change in ownership.
- 2) Change in product.
- 3) Substantial investment of new capital.
- 4) Whether there is a cessation of former business.
- 5) Change in product market.

See <u>Cummins Engine Company, Inc. v. Thomas</u> 267 S.C. 521, 230 S.E. 2d 217 (1976); <u>Arkwright Mills v. Murphy</u>, 219 S.C. 438, 65 S.E. 2d 665 (1951); <u>Chronicle Publishers, Inc. v. South Carolina Tax Commission</u>, 244 S.C. 192, 136 S.E. 2d 261 (1964).

In the taxpayer's case, there has been a change of ownership. The product line, as well as the product market, of the taxpayer differs from the "heavy wall" pipe for the nuclear industry made by the previous owner. The previous owner had completely ceased operations for a period of time and had disposed of the bulk of the special equipment used in the "heavy wall" pipe process. Additionally, a substantial amount of new working capital will be contributed by the taxpayer to start up and maintain its operations. Based on the facts, the taxpayer's plant meets the five elements outlined to a degree sufficient to allow the exemption as a new manufacturing establishment. It is not a continuation of the previous business.

Conclusion:

The taxpayer's plant qualifies for the five year exemption from county property taxes as a new business establishment under Code Section 12-37-220(A)(7).

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr. S. Hunter Howard, Jr., Chairman

s/John M. Rucker John M. Rucker, Commissioner

s/A. Crawford Clarkson, Jr. A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina November 18, 1987