



SC PRIVATE LETTER RULING #89-19

TO: XYZ, Inc.

SUBJECT: Exemption from Property Taxes & Income Tax Credit
(Property Tax & Income Tax)

REFERENCE: S.C. Code Ann. Section 12-37-220 (B)(32) (Law. Co-op.
Supp. 1988).
S.C. Code Ann. Section 12-7-1245 (Law. Co-op. Supp. 1988).

AUTHORITY: S.C. Code Section 12-3-170 (Law. Co-op. Supp. 1976)

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer,
upon request, and it applies only to the specific facts or circumstances
related in the request. Private Letter Rulings have no precedential value
and are not intended for distribution.

Questions:

1. Will the construction of XYZ's new building qualify for the property tax exemption provided by S. C. Code Section 12-37-220(B)(32)?
2. Will the costs of XYZ's new building and personal property qualify for the income tax credit provided by S. C. Code Section 12-7-1245?
3. May buildings planned and constructed as part of the same project be considered as one expansion?
4. Must the positions created to satisfy 12-37-220(B)(32) and 12-7-1245 be placed in the new buildings in order to qualify for the income tax credit?
5. If the building is sold and leased back, will the lessee (XYZ) be eligible for the income tax credit?

Facts:

XYZ (the "corporation") is a subsidiary of ABC Corporation. ABC Corporation is not required to and does not file a South Carolina income tax return. XYZ is a member, and common parent, of an affiliated group which files a South Carolina consolidated income tax return together with other members of its affiliated group.

The corporate headquarters of XYZ is in California. XYZ maintains a regional headquarters in South Carolina. There are two other principle offices located in two other states. XYZ operates in more than five states and its South Carolina facility (including the new building) is the headquarters for a region of at least five states, including South Carolina. As such, a majority of their financial, personnel, legal, planning and other business functions for the region are handled here.

The regional headquarters in South Carolina consists of a building located downtown and a complex located outside of the downtown area known as the XYZ Centre. The XYZ Centre presently consists of two buildings. In addition, there is a building under construction which will not adjoin the existing buildings. It is the costs of these buildings which are the subject of this ruling request.

Regional corporate managerial, professional, technical, and administrative personnel are located in every building in South Carolina and will be located in the new buildings as well. These employees are permanently domiciled in the South Carolina area.

Included with the employees to be assigned to the new buildings are employees from administrative departments performing financial, personnel, legal and planning functions. In addition, technical personnel, such as professional engineers, will be located in the new buildings.

XYZ's expansion of its regional headquarters will result in the construction of two buildings and the hiring of over 750 employees. The average new employee wage will be 1 1/2 times the state per capita average. XYZ 's overall per employee South Carolina cash compensation is twice the state per capita average. As part of the expansion, they will create over 150 jobs in the corporate headquarters. Of the new hires, at least 40 will be staff employees as defined in Section 12-37-220B(32); they will be executive, administrative or professional workers. Some of the new hires who will be stationed in the new buildings may be hired in advance of the date the new buildings are placed in service in order to properly train them. These employees may be assigned to temporary locations until the new building is ready to be occupied. All 750 employees hired will be in the corporate headquarters but may not be located in the new buildings.

The costs of the first building are projected to be as follows:

Land	\$ 1,000,000
Direct construction costs - steel, concrete, HVAC, windows	5,800,000
Indirect overhead costs directly related to project	1,000,000
Design costs such as engineering and architecture	400,000
Set up costs - real property such as carpet, electrical	1,200,000
- personal property such as partitions	400,000
- indirect overhead costs	150,000
- design	270,000
 Furniture, fixtures, and equipment	 2,400,000
Indirect overhead and interest expense capitalized under IRC	<u>300,000</u>
	\$13,000,000

All of these costs have been incurred and paid after the June 27, 1988 effective date of the Act. One building has been partially in use since June and has recently been completed. The other building is awaiting interior completion and will be placed in service during XYZ's next fiscal year. The taxpayer presented persuasive evidence showing that the decision to plan and concurrently construct both of these buildings was made as part of a single expansion plan.

Discussion:

1. S.C. Code Section 12-37-220(B)(32) provides:

All new corporate headquarters, corporate office facilities, distribution facilities, and all additions to existing corporate headquarters, corporate office facilities, or distribution facilities located in South Carolina, established or constructed, or placed in service after the effective date of this item, are exempt from nonschool county ad valorem taxes for a period of five years from the time of establishment, construction, or being placed in service if the cost of the new construction or additions is fifty thousand dollars or more and seventy-five or more new jobs which are full-time are created in South Carolina.

Subsection (3) defines "corporate headquarters" as:

the location where corporate staff members or employees are domiciled and employed, and where the majority of the company's financial, personnel, legal, planning, or other business functions are handled either on a regional or national basis and must be the sole such corporate headquarters within the region or nation;

Subsection (5) defines "region" or "regional" as:

a geographic area comprised of either:

(a) at least five states, including South Carolina, or

(b) two or more states, including South Carolina, if the entire business operations of the corporation are performed within fewer than five states;

XYZ's South Carolina facility (including the new building) constitutes:

- a. the location where corporate staff members or employees are domiciled and employed;
- b. the location where the majority of their financial, personnel, legal, planning or other business functions are handled (on a regional basis); and
- c. the sole headquarters within the region.

XYZ operates in more than five states and its South Carolina facility (including the new building) is the headquarters for a region of at least five states, including South Carolina. Therefore, the definition of "corporate headquarters" in Section 12-37-220(B)(32) has been met. XYZ has stated that in excess of seventy-five new full-time jobs will be created, thus the new jobs requirement is met.

All costs relating to the new buildings have been incurred after the June 27, 1988 effective date in Section 12-37-220. The statute states that the headquarters must be "established or constructed, or placed in service after the effective date of this item". The first building was initially placed in service in June 1989. XYZ will be eligible for exemption from nonschool county ad valorem taxes for a period of five years from the date of establishment or date placed in service pursuant to Section 12-37-220(B)(32).

2. S.C. Code Section 12-7-1245 provides:

A corporation establishing a corporate headquarters in the State, or adding to an existing corporate headquarters, is allowed a credit against any tax due pursuant to Section 12-7-230 or Section 12-19-70 of the 1976 Code in an amount equal to twenty percent of the (1) costs incurred in the design, preparation, and development of either establishing or expanding a corporate headquarters, and (2) direct construction or the direct lease costs during the first five years of operations for the corporate headquarters. This credit applies to all qualifying costs incurred to establish or expand a corporate headquarters which add at least seventy-five new jobs which are full-time in South Carolina with at least forty of the new jobs classified as staff employees, and the cost of the new construction or additions is fifty thousand dollars or more. This credit only applies to facilities established for the direct use of the headquarters staff employees. This credit is nonrefundable but an unused credit may be carried forward for ten taxable years for all qualifying corporate headquarters costs or headquarters cost or fifteen years for all qualifying corporate headquarters costs in connection with which at least one hundred fifty new full-time jobs are created which (1) have an average cash compensation level more than one and one-half times the per capita income of the State at the time the jobs are filled, and (2) result in a total employee cash compensation per South Carolina employee of more than twice the per capita income of the State at the time the newly created jobs are filled. In addition to the credits set forth above, qualifying headquarters meeting these per capita income criteria are further entitled to the credit in this section for personal property used for corporate headquarters related functions and services or research and development related functions and services.

For purposes of this section, the terms "corporate headquarters", "new jobs", and "full-time" are defined as provided in Section 12-37-220(B).

XYZ is expanding its corporate headquarters with the construction of two new office buildings. The statute cited above provides a credit for corporate expansion to include the cost of the buildings if 75 new jobs are created, 40 of which are staff employees. One hundred fifty employees meeting per capita income criteria must be hired before the credit for personal property is allowed. The employees hired and the personal property purchased must be used in the South Carolina headquarters complex.

The costs listed in the facts (supra) have been incurred for facilities established for the direct use of headquarters staff pursuant to 12-7-1245, as amended. The definition of corporate headquarters is discussed in Question Number 1 above. The definition of "staff employee" or "staff member" is as follows:

"staff employee" or "staff member", [as used in the definition of corporate headquarters] means executive, administrative, or professional worker. At least eighty percent of an executive employee's business functions must involve the management of the enterprise and directing the work of at least two employees. An executive employee has the authority to hire and fire or has the authority to make recommendations related to hiring, firing, advancement, and promotion decisions, and an executive employee must customarily exercise discretionary powers. An administrative employee is an employee who is not involved in manual work and whose work is directly related to management policies or general business operations. An administrative employee must customarily exercise discretion and independent judgement. A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study. The work must be original and creative in nature, and the work cannot be standardized over a specific period of time. The work must require consistent exercise of discretion.

Therefore, all costs as shown above will be eligible for the credit since the per capita income criteria are met. More than 150 new employees will be hired to work in the headquarters complex and forty new positions will be staff employees.

- 3 XYZ has constructed two buildings at their South Carolina location and seeks guidance as to whether these two buildings will be viewed as one expansion or two expansions. This determination becomes necessary in determining whether XYZ must meet the employment requirements once for both buildings or for each building separately.

Sections 12-7-1245 and 12-37-220 allow tax benefits for the addition to an existing corporate headquarters however no definition of "addition" is provided. It is therefore incumbent upon the South Carolina Tax Commission to construe this section in light of its legislative intent. The legislature intended to promote employment opportunities in this state by providing an incentive for corporations to establish regional or national headquarters in this state.

Since the phrase "addition to an existing corporate headquarters" may mean the building of one building or many buildings, a reasonable interpretation is to look to the plan of expansion. Since the plan of expansion included the current construction of both buildings, then the buildings should be construed as one addition therefore requiring XYZ to fulfill the employment provisions once (i.e. hire a total of 150 employees to obtain all the benefits of this legislation rather than 300).

4. Pursuant to Sections 12-37-220(B)(32) and 12-7-1245, seventy-five or more new full-time jobs must be created in South Carolina. Section 12-7-1245 adds the additional requirement that 150 full time employees meeting certain income requirements must be hired in order to obtain the benefit of a credit for personal property related to the corporate headquarters and the carry forward for any unused credit. Although the new employees are not required to work in the newly constructed portion of the corporate headquarters, they are required to work in the South Carolina headquarters complex.

Section 12-7-1245 reads, in part: "This credit applies to all qualifying costs incurred to establish or expand a corporate headquarters which add at least seventy-five new jobs ...". The context of this provision indicates that the headquarters must add seventy-five new jobs however it does not address where they must be placed within the headquarters. The definition of "new job" in Section 12-37-220(B)(32) also supports this interpretation. This provision reads: "new job" means any job created by an employer in South Carolina at the time a new facility or an expansion is initially staffed, but does not include a job created when an employee is shifted from an existing South Carolina location to work in a new or expanded facility". Therefore the new employees must be located in the expanded headquarters complex but not necessarily in the expanded portion of the complex.

Initial staffing may occur prior to the completion of the building if the purpose for such early staffing is to train the new employees and these employees will be placed in the corporate headquarters during the construction of the expansion or immediately after its completion.

5. Assuming the sale and leaseback transaction is merely a financing arrangement, the seller-lessee would remain the owner of the property for income tax purposes and would, therefore, qualify for the income tax credit provided by S.C. Code Section 12-7-1245.

"... a sale-leaseback transaction may be treated for [income] tax purpose as a financing arrangement where the seller-lessee retains the beneficial interest in the property and the buyer-lessor is given the legal title only as security for the lenders." Federal Tax Coordinator 2d, Deductible Taxes, Section K-4025 (1988).

Conclusions:

1. The construction described will be considered an addition to an existing corporate headquarters pursuant to S. C. Code Ann. Section 12-37-220(B)(32) and will be deemed to have been placed in service after the effective date of this section. Therefore, the facilities will be eligible for exemption from non school county ad valorem taxes for a period of five years from the date they are placed in service provided that they comply with the provisions relating to creating the seventy-five positions.
2. The costs of XYZ's new buildings and personal property will be considered qualifying costs incurred to establish or expand a corporate headquarters if at least one hundred fifty new full-time jobs are added in the South Carolina headquarters complex, with at least forty of the new jobs classified as staff employees. The salaries of these employees and all of XYZ's South Carolina employees must meet the stated per capita income requirements. In addition, the personal property must be used in the headquarters complex.

3. Buildings planned and constructed as part of the same project may be considered as one expansion thereby requiring XYZ to meet the employment requirement of Sections 12-37-220 and 12-7-1245 only once. Upon review of the documents, it appears that this project was one expansion.
4. The positions created to satisfy 12-37-220(B)(32) and 12-7-1245 need not be placed in the new buildings however they must be employed in the South Carolina headquarters complex. Early staffing for the purpose of training is acceptable if the employee will be placed in the corporate headquarters during the construction of the expansion or immediately after its completion.
5. XYZ is entitled to the income tax credit contained in Section 12-7-1245 if the sale-leaseback transaction is merely a financing arrangement for income tax purposes and XYZ (seller-lessee) retains the beneficial interest in the new building.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson, Jr.

A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

T. R. McConnell, Commissioner

Columbia, South Carolina
November 30, 1989