



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

SC PRIVATE LETTER RULING #89-7

TO: XYZ Corporation

SUBJECT: Exemption from County Ad Valorem Taxes; Corporate Headquarters Credit; Jobs Tax Credit

REFERENCE: S.C. Code Ann. Section 12-7-1220 (Law.Co-op. Supp. 1988)
S.C. Code Ann. Section 12-7-1245 (Law.Co-op. Supp. 1988)
S.C. Code Ann Section 12-37-220 (B) (32) (Law. Co-op. Supp. 1988)

AUTHORITY: S.C. Code Section 12-3-170
S.C. Revenue Procedure #87-3

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 general distribution.

Questions:

1. Based upon the facts submitted, will the property representing the \$25 million investment be exempt from county ad valorem taxes for the year in which the building is completed and in connection with which the 75 new jobs are filled, and for the four years thereafter, under Section 12-37-220(B)(32)?
2. Will the XYZ Corporation be entitled to the corporate income tax credit under Section 12-7-1245, in an amount equal to 20% of the \$25 million proposed investment?
3. Based on the facts submitted, will the Corporation be entitled to the corporate income tax credit for new jobs, under Section 12-7-1220?

Facts:

XYZ has requested a ruling on a proposed investment in this state and has submitted the following facts relating to the proposed investment.

Corporate Headquarters

XYZ (the "Corporation"), a South Carolina Business corporation, has acquired land on which it intends to construct an office building consisting of approximately 100,000 square feet of floor

space, and purchase various furniture, fixtures and equipment, including but not limited to computer equipment, to be housed in such building and used in the conduct of business, at a total cost of approximately \$25 million (the "Expansion"). The building will be located adjacent to or in the immediate vicinity of the Corporation's existing corporate headquarters in South Carolina.

The Corporation will create at least 75 additional full-time (i.e., at least 35 hours each week) jobs at its South Carolina headquarters in connection with the Expansion, and not less than 40 of those jobs will be filled by "staff employees" who will occupy executive, administrative, or professional positions for the Corporation and work in, or make direct use of, the proposed office building.

For purposes of this letter, an "executive" means an employee who spends at least 80% of his or her business function in the management of one or more of the Corporation's enterprises and direction of the work of at least two employees, and who has the authority to hire and fire or has the authority to make recommendations relating to hiring, firing, advancement and customarily exercise discretion with respect to the authority given him or her in undertaking his or her job function. An "administrative" employee is an employee who is not involved in manual work (e.g., strenuous or substantial physical labor), and whose work is directly related to management policies or general business operations; and each such administrative employee will customarily exercise discretion and independent judgment in undertaking his or her job function. A "professional" is an advance type in a field of science or learning (e.g., law, and the like) where such knowledge is derived from a course exercise discretion pursuant to the undertakings involved in his or her job function.

Jobs Tax Credit

During each of the Corporation's next few taxable years, the Corporation contemplates a net increase in a developed county of at least fifty new full-time jobs. Each such increase will be determined by comparing the monthly average number of full-time employees subject to South Carolina income tax withholding for the taxable year of the increase with the number of full-time employees subject to South Carolina income tax withholding for the prior taxable year. The Corporation anticipates that during the five years after each year in which a net increase of at least fifty new full-time jobs occurs in the developed county, no such net employment increase shall fall below fifty. No such net employment increase in full-time jobs will result from a merger, acquisition, or bankruptcy of any business enterprise in South Carolina which might be acquired by the Corporation. Each such net increase in full-time jobs will occur in a developed county in South Carolina.

Discussion:

1. S.C. Code Section 12-37-220(B)(32) was enacted effective June 27, 1988 to allow a five year exemption from county property tax for corporate headquarters, corporate office facilities, and distribution facilities. The pertinent parts of the statute relating to corporate headquarters are as follows:

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 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.

For the purpose of this exemption, the term:

1. "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;
2. "full-time" means a job requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of company operations or a job requiring a minimum of thirty-five hours of an employee's time for a week for a year in which the employee was initially hired for or transferred to the South Carolina corporate headquarters, corporate office facility, or distribution facility and worked at a rented facility pending construction of a corporate headquarters, corporate office facility, or distribution facility;
3. "corporate headquarters" means 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;
4. "staff employee" or "staff member" 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 exercise discretion and independent judgment. 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.

The planned expansion by XYZ would qualify as an addition to an existing corporate headquarters therefore exempting it from county ad valorem tax for a period of 5 years. The term "county ad valorem tax" does not include school districts or special purpose districts.

2. S.C. Code Section 12-7-1245 was enacted to allow a credit for addition to existing corporate headquarters as follows:

A corporation establishing a corporate headquarters in this State, or adding to 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 purposes of this section, the terms "corporate headquarters", "new jobs", and "full-time" are defined as provided in Section 12-37-220(B).

The amount of any credit allowed under this section must be reduced by the amount of any past-due debt owed to the State of South Carolina by the taxpayer.

It appears from the language of this statute that the office building, furniture, fixtures, and equipment (including but not limited to computer equipment) would be qualified for the credit provided that this personal property serves to support those employees performing functions for the corporate headquarters as defined in Section 12-37-220(B). This result is founded upon subsection 1 of the above stated statute. Computer equipment would be deemed necessary to the design, preparation, and development of this corporation's planned expansion provided that it is used by staff employed to serve functions of a typical corporate headquarters; not those of line personnel employed to design and produce software.

3. S.C. Code Section 12-7-1220 allows a credit for new jobs. The Corporation's expansion is in a county which has been designated a developed county. Section 12-7-1220(D) relating to the job tax credit states:

Permanent business enterprises engaged in manufacturing, processing, warehousing, wholesaling, research and development, and service-related industries in counties designated by the commission as developed areas are allowed a job tax credit for taxes imposed by Section 12-7-230 equal to three hundred dollars annually for each new full-time employee job for five years beginning with years two through six after the creation of the job. The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to South Carolina income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent businesses that increase employment by fifty or more in developed areas are eligible for the credit. The credit is not allowed during any of the five years if the net employment increase falls below fifty.

The commission shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of fifty.

Conclusion:

1. Based upon the facts submitted, the property representing the \$25 million investment will be exempt from county property taxes for the first five years that it is subject to county property taxes.
2. Based upon the facts submitted, the Corporation will be entitled to the corporate income tax credit under Section 12-7-1245, in an amount equal to 20% of the full \$25 million proposed investment provided that the personal property is used to serve the functions of the corporate headquarters and not those of software design and production.
3. Based upon the facts submitted, the corporation will be entitled to the corporate income tax credit for new jobs, under Section 12-7-1220.

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
December 12 1989