
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #95-8 (TAX)

TO: ABC

SUBJECT: Pollution Control Machine
(Sales and Use Tax)

DATE: August 14, 1995

REFERENCE: S. C. Code Ann. Section 12-36-2120(17) (Supp. 1994)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1994)
SC Revenue Procedure #94-1

SCOPE: A Private Letter Ruling is an official advisory opinion issued by the Department of Revenue to a specific person.

NOTE: A Private Letter Ruling may only be relied upon by the person to whom it is issued and only for the transaction or transactions to which it relates. A Private Letter Ruling has no precedential value.

Question:

Are the purchases by ABC of parts and material used to construct a dual vacuum extraction system, as described in the facts, exempt from the sales and use tax under Code Section 12-36-2120(17)?

Conclusion:

The purchases by ABC of parts and material used to construct a dual vacuum extraction system to abate pollution caused by machines used in manufacturing tangible personal property for sale, as described in the facts, are exempt from the sales and use tax under Code Section 12-36-2120(17) provided all the requirements of SC Regulation 117-173 are met.

Facts:

ABC ("ABC") is an environmental consulting firm that contracts with manufacturing companies to remediate contaminated soil and water beneath and surrounding the manufacturer's facilities. The contaminated areas are a direct result of chemical releases from machines used in manufacturing tangible personal property for sale.

ABC designs and installs dual vacuum extraction systems to contain and recover contaminants from soil and ground water. The systems are constructed from pumps, tanks, piping, and vacuum extraction devices as required by each design. The machine, through its underground pipes and vacuum system, removes water and vapor from the ground. By removing the water and vapor, contaminants are removed from the ground so they can be disposed of properly. In addition, the now clean water may, if needed, be used as a coolant in the manufacturing plant. ABC makes all purchases of the component parts that are used to construct these systems.

A system is constructed, installed and operated for a period of time sufficient to remediate the contaminated area to levels acceptable under state and federal regulations. After the remediation is complete, the system is disassembled and removed from the manufacturing facility. Equipment in working order may be used at another manufacturing facility.

Discussion:

Code Section 12-36-2120(17) exempts from the sales and use tax the gross proceeds of sales, or sales price, of:

machines used in manufacturing, processing, compounding, mining or quarrying tangible personal property for sale. "Machines" include the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of machines and which are necessary to the operation of the machines and are customarily so used. This exemption does not include automobiles or trucks:

SC Regulation 117-173 concerns pollution control machines and reads, in part:

Section 1. ... Frequently, [manufacturing, processing, compounding, mining or quarrying] machines cannot be operated when the same pollute the air or water beyond regulated levels and in compliance with orders of agencies of the United States or of this state to abate or prevent the pollution of the air or water caused or threatened by the operation of such machines it is necessary to install other machines that are designed and operated exclusively for the purpose of abating or preventing this pollution. The purpose of this regulation is to classify the machines, their parts or attachments, as machines used in mining, quarrying, compounding, processing, or manufacturing of tangible personal property when the same are installed and operated for compliance with an order of an agency of the United States or of this state to prevent or abate pollution of the air or water caused or threatened by the operation of other machines used in the mining, quarrying, compounding, processing, or manufacturing of tangible personal property.

Section 2. The term "machines" as defined in [Section 12-36-2120(17)] shall include machines, their parts and attachments, when the same are necessary to comply with the order of an agency of the United States or of this state for the prevention or abatement of pollution of the air or water caused or threatened by any machines used in the mining, quarrying, compounding, processing, or manufacturing of tangible personal property.

Section 3. Proof of the necessity of such machines. Any person engaged in the business of mining, quarrying, compounding, processing, or manufacturing of tangible personal property shall furnish the [Department of Revenue] a certified statement from the ordering agency that any machine for which the exemption is claimed is necessary to prevent or abate water or air pollution caused or threatened by the operation of other machines that are used in the mining, quarrying, compounding, processing, or manufacturing of tangible personal property.

Section 4. The order referred to herein must be issued by the agency of the United States or of this state that is primarily charged with the duty of preventing or abating the pollution. (April 5, 1973)

Based on the above, pollution control machines are exempt from the sales and use tax if:

1. the machine is installed to prevent or abate water or air pollution caused or threatened by the operation of other machines that are used in the mining, quarrying, compounding, processing, or manufacturing of tangible personal property for sale;
2. the machine is installed and operated in order to comply with an order of an agency of the United States or of this state to prevent or abate pollution of the air or water; and,
3. the person engaged in the business of mining, quarrying, compounding, processing, or manufacturing of tangible personal property furnishes the [Department of Revenue] a certified statement from the ordering agency that any machine for which the exemption is claimed is necessary to prevent or abate water or air pollution.

The above regulation does not restrict the exemption to machines that prevent pollution or that reduce the amount of pollution released into the environment. The clear language of the regulation also allows the exemption for machines used to reduce the amount of pollution already in the environment. In other words, machines used to "clean up" pollution "caused ... by the operation of other machines that are used in the mining, quarrying, compounding, processing, or manufacturing of tangible personal property" for sale qualify for the exemption under Code Section 12-36-2120(17).

Finally, in Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission, S.C., 313 S.E. 2d. 300 (1984), the State Court of Appeals held that material used to build a machine that qualifies for the exemption may be purchased free of the sales and use tax. The court cited SC Regulation 117-174.123 which states in part:

Manufacturers and compounders 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 or compounding tangible personal property for sale.

Therefore, the purchases by ABC of parts and material used to construct a dual vacuum extraction system, as described in the facts, are exempt from the sales and use tax under Code Section 12-36-2120(17).