

SC REVENUE PROCEDURE #05-1

- SUBJECT:** Governmental Wastewater Treatment Facilities Application for Exemption or Refund (Sales and Use Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-36-2120(17) (2000 and Supp. 2004)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2003)
SC Revenue Procedure #03-1
- SCOPE:** The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. A Revenue Procedure is an advisory opinion; it does not have the force or effect of law, and is not binding on the public. It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Introduction:

In order to comply with environmental laws and regulations, manufacturers must prevent or abate pollution caused by their machines used in manufacturing tangible personal property for sale.

With respect to wastewater created at their manufacturing facilities, a manufacturer may construct an on-site wastewater treatment facility or may work with a governmental entity (e.g., the state, a municipality, a county, or a special purpose district) and have its wastewater treated at the wastewater treatment facility operated by the governmental entity. Under certain circumstances, the sales to, or purchases by, a governmental entity or contractor of machines used at a governmental wastewater treatment facility, or the materials used to construct such machines, may be exempt from sales and use tax.

From time to time, a governmental entity, or a contractor hired to construct a wastewater treatment facility for a governmental entity, may apply for a sales and use tax exemption or a refund of the sales and use tax with respect to the purchase of machines used at a governmental

wastewater treatment facility or the materials used to construct such machines. (Note: A governmental entity or contractor who, as the purchaser, has paid sales tax to a retailer for a specific transaction may only file a claim for refund if the retailer who paid the sales tax to the State has assigned, in writing, the right to a refund of that sales tax to the governmental entity or contractor. See Code Section 12-60-470(C)(2).)

This revenue procedure will address the information needed by the Department in order to determine if the issuance of an exemption certificate, or a refund, is warranted with respect to a governmental wastewater treatment facility.

Law:

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, recycling, 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 the machines and which (a) are necessary to the operation of the machines and are customarily so used, or (b) 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 air, water, or noise that is caused or threatened by any machine used as provided in this section. This exemption does not include automobiles or trucks.

SC Regulation 117-302.6 concerns pollution control machines, and reads:

Code Section 12-36-2120(17) exempts from the sales or use tax the gross proceeds of the sale of machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property and the term "machine" includes parts of such machines, attachments and replacements therefor which are used or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and which are customarily so used ..." Frequently, these machines cannot be operated when the same pollute beyond regulated levels and in compliance with orders of agencies of the United States or of this state to abate or prevent pollution 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 caused or threatened by the operation of other machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property.

The term "machine" 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

that is caused or threatened by any machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property.

Any person engaged in the business of mining, quarrying, compounding, processing and manufacturing of tangible personal property shall furnish the department a certified statement from the ordering agency that any machine for which the exemption is claimed is necessary to prevent or abate 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.

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.

In *Hercules Contractors and Engineers Inc. v. S.C. Tax Commission*, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984), the Court determined that a machine must be substantially “used in manufacturing ... tangible personal property for sale” in order to qualify for the exemption. The statute does not require that the machine be used exclusively in manufacturing; however, incidental manufacturing use will not qualify for the exemption.

In the Department’s opinion, more than one-third of a machine’s use in manufacturing is substantial. See *SC Revenue Ruling #04-7*.

Therefore, in addition to any other requirements set forth in the code and regulations, more than one-third of the wastewater processed at a governmental wastewater treatment facility must come from machines exempt from the sales and use tax under Code Section 12-36-2120(17) in order for sales to, or purchase by, a governmental entity or contractor of machines used at a governmental wastewater treatment facility, or the materials used to construct such machines, to be exempt.

For more information on this exemption, see SC Regulation 117-302.5 and SC Revenue Ruling #04-7.

Procedure:

(A) When applying for an exemption certificate or a refund of taxes with respect to machines used at a governmental wastewater treatment facility, or the materials used to construct such machines, a governmental entity or contractor should provide the Department the following information with the application or refund request:

1. If an exemption certificate is being requested, a completed Form ST – 10 should be provided.
2. If a claim for refund is being filed, the information required in Code Section 12-60-470 must be provided. (Note: A purchaser who has paid sales tax to a retailer for a specific transaction may only file a claim for refund if the retailer who paid the sales tax to the State has assigned, in writing, the right to a refund of that sales tax to the purchaser. See Code Section 12-60-470(C)(2).)
3. The following general information about the governmental wastewater treatment facility:

- a) A list of all sources of wastewater processed at the facility (e.g., residential, commercial, manufacturing, storm water run-off, etc.).
 - b) Total wastewater (in MGD¹) processed at the facility.
 - c) Total wastewater (in MGD) from manufacturers processed at the facility.
 - d) A list of the top ten manufacturers in terms of wastewater (in MGD) processed at the facility.
4. The following specific information with respect to each of the top ten manufacturers listed in 3(d) above.
- a) A list of all sources of wastewater generated at the manufacturing plant that is sent to and processed by the governmental wastewater treatment facility (e.g., manufacturing machine waste, sanitary, contamination well, etc.).
 - b) The average actual wastewater flow (in MGD) from all sources sent to and processed by the governmental wastewater treatment facility for the last three years. (Note: This flow is the actual flow, not the amount they are permitted to send.)
 - c) The average actual wastewater flow (in MGD) from each source identified in 4(a) above (e.g., manufacturing machine waste, sanitary, contamination well, etc.) that is sent to and processed by the governmental wastewater treatment facility for the last three years.
- If the manufacturing plant cannot separately identify the amount of sanitary wastewater requested in this item, please provide the total number of employees at the plant for each year, the number (if any) of showers (emergency or otherwise) for the employees, and information as to whether or not the plant has a kitchen, cafeteria, or food preparation area with sinks.
- d) A brief statement as to the type of business that the manufacturing facility is engaged in and the product being produced.
 - e) The name and telephone number of an employee or representative of the manufacturer who the Department may contact in order to discuss and verify the information provided.
5. Any additional information (including information as set forth item 4 above on additional manufacturers) deemed necessary by the Department (e.g., preliminary engineering reports submitted to the Department of Health and Environmental Control (“DHEC”); orders, letters and other information received from DHEC; etc.).

(B) In order for the Department to determine if an exemption certificate or refund is warranted, the Department may contact the manufacturers listed in 3(d) to verify the information provided in subsection (A) above.

¹ “MGD” means “million gallons per day.”

Note: Code Section 12-54-240 makes it unlawful to divulge or make known any particulars set forth in a sales and use tax return. As such, the governmental entity or contractor should grant the Department, in writing, the authority to advise the manufacturers listed 3(d) above that the Department is reviewing an exemption or refund request of either the governmental entity or contractor. The Department will only advise a manufacturer of who is requesting an exemption or refund and the need to obtain certain information in order to verify the request.

(C) Under its procedures, the Department may audit, conduct a site visit, or otherwise obtain information with respect to the application or refund request before issuing or denying any exemption certificate or refund.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank
Burnet R. Maybank III, Director

June 16 _____, 2005
Columbia, South Carolina