
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC REVENUE RULING #04-14

SUBJECT: Property Exemption Under Code Section 12-37-220(C)
(Property 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 12-37-220(C)
S.C. Code Ann. Section 12-37-220(A)(7)
S.C. Code Ann. Section 12-37-220(B)(32)
S.C. Code Ann. Section 12-37-220(B)(34)

AUTHORITY: S. C. Code Ann. Section 12-4-320
S. C. Code Ann. Section 1-23-10(4)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Ruling is an advisory opinion; it does not have the force or effect of law and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Question:

1. Under Code Section 12-37-220(C), what requirements must a purchaser of a manufacturing facility, a research and development facility, or a corporate office facility, distribution facility, or corporate headquarters meet in order to be able to continue the time left on any exemption under Code Sections 12-37-220(A)(7), (B)(34), or (B)(32), respectively, for which the property qualified for originally?

2. Under Code Section 12-37-220(C), what requirements must a purchaser of a manufacturing facility, a research and development facility, or a corporate office facility, distribution facility, or corporate headquarters meet in order to receive a new five year exemption on all of the seller's property that originally qualified for an exemption under Code Sections 12-37-220(A)(7), (B)(34), or (B)(32), respectively?

Conclusion:

1. If a purchaser purchases a manufacturing facility, a research and development facility, or a corporate office facility, distribution facility, or corporate headquarters, the purchaser may claim the remaining time the seller had on its original exemption if:

- a) the purchaser is unrelated to the seller;
- b) the sale occurs in an arm's length transaction;
- c) the purchaser preserves the existing facility and the existing number of jobs at the facility; and,
- d) the purchaser obtains the approval of the governing body of the county for the exemption.

2. If a purchaser purchases a manufacturing facility, a research and development facility, or a corporate office facility, distribution facility, or corporate headquarters, the purchaser may qualify for a new five year exemption under Code Section 12-37-220(C) if the purchaser:

- a. meets the requirements of (a) through (d) above;
- b. invests an additional \$50,000 in a new facility or an addition to an existing facility; and,
- c. in the case of a corporate headquarters, corporate office facility, or distribution facility, also creates an additional 75 jobs at the facility.

Discussion:

The statutes

In 1995, a new subsection was added to the Code to address the sale of a facility that was the subject of certain exemptions. This code section, 12-37-220(C), provides that:

Upon approval by the governing body of the county, the five-year partial exemption allowed pursuant to subsection (A)(7), (B)(32), and (B)(34) is extended to an unrelated purchaser who acquires the facilities in an arms-length transaction and who preserves the existing facilities and existing number of jobs.

The partial exemption applies for the purchaser for five years if the purchaser otherwise meets the exemption requirements.

Code Section 12-37-220(A)(7) provides a 5 year exemption from county ad valorem property taxes for all new manufacturing establishments and additions to existing manufacturing establishments if the cost is \$50,000 or more. The exemption is available for five years if investments totaling \$50,000 or more are made at the facility.¹

Code Section 12-37-220(B)(32) provides a 5 year exemption from county ad valorem property taxes for all new corporate headquarters, corporate office facilities, distribution facilities and all additions to these facilities if the cost of the new construction or the addition is \$50,000 or more and 75 new full-time jobs (or 150 or more substantially equivalent jobs) are created.

Code Section 12-37-220(B)(34) provides a 5 year exemption from county ad valorem property taxes for all new enterprises engaged in research and development and all additions valued at \$50,000 or more. The exemption is available for five years if investments valued at \$50,000 or more are made at the facility. The facility or the addition must be devoted directly and primarily to research and development, in the experimental or laboratory sense, of new products, new uses for existing products, or improvement of existing products.

These exemptions apply for five years for the property placed in service at the new facility or addition if \$50,000 is invested and, if applicable, the 75 jobs are created. Note, if a taxpayer invests money in an addition to real property, the exemption is allowed to the extent the additional real property improvements increase the value of the property. See SC Revenue Ruling #89-3.

Applying for the Exemption

Code Section 12-4-710 provides in relevant part that “Except for the exemption provided by Section 12-37-220(A)(9), the department shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State....”

Code Section 12-4-720 provides in relevant part,

(A) Applications for property exemptions, other than the exemption provided by Section 12-37-220(A)(9), must be filed as follows:

(1) Except as otherwise provided any property owner whose property may qualify for property exemption shall file an application for exemption with the department within the period provided in Section 12-54-85(F) for claims for

¹ Section 3(g) of Article X of the South Carolina Constitution also contains this exemption.

refund. This item does not relieve the taxpayer of any responsibility to file timely and accurate property tax returns.

In order to qualify for the exemption under Code Section 12-37-220(C), the purchaser of the facility must apply to the South Carolina Department of Revenue (“Department”) in a timely manner. The taxpayer should use Form PT-444 to apply.

Requirements for the Purchaser to Continue the Seller’s Exemption

There are four requirements in order for the purchaser to be able to continue to use the remaining time that the seller had on its exemption. In order to continue the exemption, the purchaser must: a) get the approval of the governing body of the county to the extension of the exemption to the purchaser; b) be unrelated to the seller; c) purchase the facility that is the subject of the exemption in an arm’s length transaction; and, d) maintain the existing facility and the existing number of jobs at the facility. If the purchaser meets these four requirements, it is entitled to any *remaining time* that is left on any exemption under Code Section 12-37-220(A)(7), (B)(32), or (B)(34) that the seller had for property at the facility. For example, if the seller had obtained a five year exemption from county ad valorem taxes under Code Section 12-37-220(A)(7), and sold the facility in year two, the purchaser would be able to use the exemption for all of the property located at the facility that had the original exemption for the remaining three years if it meets the four requirements discussed herein.

Approval of the governing body of the county

The first requirement a purchaser must meet in order to obtain the exemption described in Code Section 12-37-220(C) is that the governing body of the county approve of extending the exemption to the purchaser of the facility. The purchaser is required to obtain the approval of the governing body of the county prior to applying for the exemption. When the purchaser has obtained the approval, the purchaser should attach a copy of the county approval to the PT-444.

Purchase Must be Made by an Unrelated Party

The second requirement of the statute is that the purchase must be made by a purchaser that is unrelated to the seller. The term “unrelated” is not defined in the statute and the dictionary also does not define the term. In other tax statutes that address related party issues, the statutes make reference to Internal Revenue Code provisions that address related parties and issues concerning related parties. While there are several different Internal Revenue Code (“IRC”) sections that address related parties or controlled parties (for example, Sections 318, 267, 482, 1563), the one that is used most often in the South Carolina tax statutes is IRC Section 267. IRC Section 267 addresses the disallowance of losses, and the matching of deductions with income in the case of expenses and interest, between related parties. The South Carolina tax statutes that cite IRC section 267 use it primarily to identify relationships that create related party status, usually limiting the use of

a credit or benefit in some way. (See, Code Sections 12-6-3360, 12-6-3515, and 12-44-110(3)). Under IRC Section 267, related parties include brothers and sisters, spouses, an individual and a corporation in which the individual owns 50% or more of the stock, corporations that are part of a controlled group, and a partnership and corporation if the same person owns more than 50% of the stock of the corporation and 50% of the capital or profits interest of the partnership. For a complete list of disqualifying relationships, IRC Section 267 should be reviewed. The Department will consider any person who is unrelated to the seller under the principles of IRC section 267 to be an unrelated purchaser for purposes of Code Section 12-37-220(C). The purchaser should include information about any relationship between the purchaser and seller with the PT-444 that it files with the Department.

Purchase of the Facility Must Occur in an Arm's Length Transaction

The purchase must also occur through an arm's length transaction. The term "arm's length transaction" is also not defined in the statute. However, "arm's length transaction" is a common phrase and is defined by *Blacks' Law Dictionary* at p.109 (6th ed. 1990) as "A transaction in good faith in the ordinary course of business by parties with independent interests" or as "the standard under which unrelated parties, each acting in his or her own best interest, would carry out a particular transaction." A transaction is generally considered to be arm's length if the purchaser pays fair market value for the assets. The purchaser should provide evidence that the facility was purchased in an arm's length sale, such as proof that the transaction occurred at fair market value, with the PT-444 that it files with the Department.

Preservation of the Existing Number of Jobs and the Existing Facility

The statute requires that the purchaser preserve the existing number of jobs and the existing facility. In order to meet this requirement of the exemption, the purchaser must retain the same number of jobs that the seller had at the facility prior to the date of the sale.² In meeting this requirement, all circumstances will be examined to make sure that jobs were

² To the extent that the facility had been closed and there are no jobs at the facility at the time the facility is acquired by the purchaser, the exemption under Code Section 12-37-220(C) is not available although the facility may be able to qualify for the exemptions under Code Sections 12-37-220(A)(7), 12-37-220(A)(32), and 12-37-220(A)(34) as a new facility if it otherwise meets the requirements of the statute. In certain instances, a facility that has been closed for a certain period of time will be considered a new facility. Things that will be considered in determining whether a new facility exists include: 1) a change in ownership; 2) a change in product; 3) substantial investment of new capital; 4) whether there is a cessation of the former business; and, 5) a change in the product market. See, SC PLR #87-11 citing *Cummins Engine Company, Inc. v. Thomas*, 267 S.C. 521, 230 S.E. 2d 217 (1976); *Arkwright Mills v. Murphy*, 219 S.C. 438, 65 S.E. 2d 665 (1951); *Chronicle Publishers, Inc. v. South Carolina Tax Commission*, 244 S.C. 192, 136 S.E. 2d 261 (1964).

not eliminated prior to the sale of the facility in order to enable the purchaser to meet this requirement. In addition to preserving the existing number of jobs, the purchaser must also preserve the existing facility.³

In submitting the request for the exemption, the purchaser should provide substantiation that it has retained the jobs that the purchaser had prior to the sale and that it has preserved the existing facility.

Qualifying for a New Five Year Exemption

In order to obtain a full new five year exemption, the purchaser must meet all the requirements discussed above (approval of the governing body of the county, unrelated purchaser, an arm's length transaction, and retain the existing facility and jobs) and in addition, must meet an additional requirement. The further requirement is that the purchaser must otherwise meet the exemption requirements.

The exemption requirements that must otherwise be met are the requirements of Code Sections 12-37-220(A)(7), 12-37-220(B)(32) or 12-37-220(B)(34), respectively. The purchaser must meet the requirements for the type of facility that it is purchasing. In the case of the exemption allowed under Code Section 12-37-220(A)(7), the purchaser must operate a manufacturing facility and must invest an additional \$50,000 in an addition to the facility. For the exemption allowed under Code Section 12-37-220(B)(32), the purchaser must operate a corporate office facility, a distribution facility, or a corporate headquarters, must invest \$50,000 in an addition to the facility, and must create an additional 75 new full-time jobs (or 150 or more substantially equivalent jobs) at the facility in addition to the existing jobs at the facility. For the exemption allowed under Code Section 12-37-220(B)(34), the purchaser must operate a research and development facility and must invest an additional \$50,000 in an addition to the facility.

If the purchaser can meet the additional requirements for the exemption that it would otherwise qualify for, then the purchaser will receive a new full five year exemption from the county portion of ad valorem taxes for all the property located at the facility that is purchased in the sale that was the subject of the original exemption⁴.

If the purchaser is seeking a new full five year exemption, the purchaser should provide information as to how much it has invested in property to substantiate that it has invested an additional \$50,000 in property at the applicable facility in an addition to the facility. In the case of a corporate headquarters, corporate office facility, or distribution facility, the purchaser must also provide substantiation that it has created an additional 75 jobs at the facility in addition to maintaining any pre-existing jobs that the seller had at the facility.

³ SC Property Tax Regulation 117-124.22 provides a definition of "facility."

⁴ Any part of the property sold to the purchaser that was not subject to the original exemption is not eligible for a new five year exemption.

With regard to any exemption request under Code Section 12-37-220(C), the Department may make further inquiries and audit the purchasers, books, records and returns, to determine if the purchaser's representations are accurate.

For questions concerning this revenue ruling, contact Jerilynn VanStory at (803)898-5151. For questions concerning the exemptions allowed under Code Sections 12-37-220(A)(7), (B)(32), and (B)(34), please contact Ralph Coleman at (803)898-5472. For general questions about other property tax exemptions please call Adriane Shealy at (803)898-5480.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

September 28, 2004
Columbia, South Carolina