#### SC REVENUE RULING #05-20

SUBJECT:	Reporting and Taxation of Property Owned by a Manufacturer (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:	<ul> <li>S. C. Code Ann. Section 12-37-610(Supp. 2004)</li> <li>S. C. Code Ann. Section 12-37-715(2000)</li> <li>S. C. Code Ann. Section 12-37-900(2000)</li> <li>S. C. Code Ann. Section 12-37-905(2000)</li> <li>S. C. Code Ann. Section 12-37-970(2000)</li> <li>S. C. Code Ann. Section 12-45-70(2000)</li> </ul>
AUTHORITY:	S. C. Code Ann. Section 12-4-320(2000) S. C. Code Ann. Section 1-23-10(4)(Supp. 2004) SC Revenue Procedure #05-2
SCOPE:	The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

## **INTRODUCTION:**

The South Carolina Code of Laws ("Code") includes a number of different statutes which address the filing of property tax returns and paying of property taxes. As a general rule, property taxes are paid in arrears.<sup>1</sup> The reporting of property subject to property taxes occurs as of a certain date; however, the last day to actually pay the property taxes associated with the listed property generally occurs later. Often that date is a year or more after the year in which the taxpayer must report the property. When the property

<sup>&</sup>lt;sup>1</sup> One exception to this rule is motor vehicles and similar property assessed by the county auditor.

tax return must be filed and which property must be reported, varies based on the type of business that is involved, the type of property involved, and whether the property is assessed by the county auditor or assessor or the Department of Revenue ("Department"). This document addresses the rules regarding the filing of property tax returns and the paying of property taxes by manufacturers, including how returns are filed for short taxable years of manufacturers, what happens when a manufacturer begins business in this State or places new property in service in this State, and who lists the property for taxation and is liable for the property taxes when there is a sale of the property.

# LAW AND DISCUSSION

## General Laws Regarding Filing of Property Tax Returns for Manufacturers

Code Section 12-37-610 provides that:

Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor or committee or may have the care of as guardian, executor, trustee or committee.

Code Section 12-37-900 provides in relevant part that:

Every person required by law to list property shall, annually, between the first day of January and the first day of March, make out and deliver to the auditor of the county in which the property is by law to be returned for taxation a statement, verified by his oath, of all the real estate which has been sold or transferred since the last listing of property for which he was responsible and to whom, and of all real and personal property possessed by him, or under his control, on the thirty-first day of December next preceding, either as owner, agent, parent, husband, guardian, executor, administrator, trustee, receiver, officer, partner, factor or holder with the value thereof, on such thirty-first day of December, at the place of return...<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> Code Section 12-37-905 also addresses the filing of property tax returns and the reporting of property, however, it concerns taxpayers who are required to make a property tax return with the county auditor. Except for property not used in its business and motor vehicles licensed for use on the public highways, manufacturers do not report their property to the county auditor.

Code Section 12-37-970 provides as follows:

The assessment for property taxation of merchants' inventories, equipment, furniture and fixtures, and manufacturers' real and tangible personal property, and the machinery, equipment, furniture and fixtures of all other taxpayers required to file returns with the South Carolina Department of Revenue for purposes of assessment for property taxation, must be determined by the department from property tax returns submitted by the taxpayers to the department on or before the last day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes in accordance with Chapter  $7^3$  [sic] of this title. The department by regulation shall prescribe the form of return required by this section, the information to be contained in it, and the manner in which the return must be submitted. Every taxpayer required to make a return to the department of property for assessment for property taxation must make the return to the department not less than once each calendar year. Whenever by a change of accounting period, or otherwise, more than one accounting period ends within any one calendar year, the taxpayer must make one such return within the prescribed time for filing following the end of each of the accounting periods and the department shall determine the assessment from the return setting forth the greatest value.

When property required to be returned as herein provided is sold after the end of the seller's accounting year and before January first next ensuing and when the purchaser's accounting year ends after the seller's and before January first next ensuing, the property must be returned by the seller as of the end of his accounting period. The purchaser is not required to list and return the property as of the close of his accounting period during the calendar year of sale. The seller and the purchaser are jointly and singularly liable for the tax that is due and payable by reason of this provision. The provision of this section does not apply to motor vehicles licensed for use on public highways.

When property required to be returned as provided in this section is sold before the end of the seller's accounting year and before January first next ensuing and when the purchaser's accounting year ends before the date of the purchase and before January first next ensuing, the property must be listed and returned by the taxpayer holding title as of December thirty-first and is liable for the tax for the ensuing year. [sic]

<sup>&</sup>lt;sup>3</sup> Chapter 7 has been recodified in current Chapter 6.

The Department of Revenue shall forward the assessments prepared as a result of the returns submitted pursuant to this section to the appropriate local taxing authorities no later than August fifteenth of the applicable tax year.

Code Section 12-37-715 provides that "Notwithstanding any other provision of law, no personal property may be taxed more than once in any tax year."

Code Section 12-45-70 provides in relevant part that "all taxes are due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year...."

## Property Tax - Manufacturers in General

For property tax purposes, manufacturers are treated differently than individuals, merchants and other businesses.

First, under Code Section 12-4-540, most of a manufacturer's property is assessed by the Department. The real and personal property of individuals is assessed by the county assessor or auditor, respectively. The personal property of merchants is assessed by the Department while the real property of merchants is assessed by the county assessor.

Second, unless exempted or specifically changed by statute, manufacturers are assessed at 10 1/2% on both their real and personal property. By contrast, merchants and individuals are assessed at varying rates on their real and personal property, though business personal property, including merchant's business personal property is assessed at 10 1/2%.

Third, manufacturers' tangible personal property depreciates based on a statutory set schedule that is set forth in Code Section 12-37-930, subject to a 10% residual. By contrast, merchants depreciate their tangible personal property based on income tax depreciation, subject to a 10% residual. As a general rule, individuals not in business value their taxable personal property based on guide books published by the Department.

Lastly, manufacturers may adopt an accounting year that is different from the calendar year and the adoption of an accounting year other than a calendar year may impact the time period for reporting a manufacturer's property for taxation.<sup>4</sup> The property tax laws in many instances are geared towards calendar year taxpayers making it difficult to determine when a manufacturer who uses an accounting year other than a calendar year must file its property tax return and pay its property tax.

<sup>&</sup>lt;sup>4</sup> Merchants may also adopt a tax year for income tax purposes other than a calendar year. However, this generally only has an effect on the returns they must file for their tangible personal property under Code Section 12-37-970. While personal property filings by merchants are not specifically addressed in this document, the same principles that are discussed in this document apply to the tangible personal property tax filings of merchants required to report property to the Department.

## General Concepts Related to Property Taxes for Manufacturers for this Document

The statutes relating to property tax can often be confusing and may refer to terms that may have several different meanings depending on the context used. For example, a statute may refer to the "tax year" and it may mean either the taxpayer's income tax year which can be either or a fiscal or a calendar year or it may refer to the property tax year as defined below. The term "assess" usually means to determine the taxable value of the property by applying the South Carolina assessment ratio to the fair market value of the taxpayer's property. However, in certain other statutory contexts the term "assess" means to determine the amount of taxes owed by a taxpayer by applying the millage rate to the assessed (taxable) value of the taxpayer's property. For purposes of this document, the following terms are defined as follows:

Accounting Year:	This is the year regularly employed by a manufacturer for income tax accounting purposes. It is either a calendar year or a fiscal year chosen by the manufacturer. It is also referred to as the accounting period. See Code Section 12-37-970.
Property Tax Year:	This is the calendar year in which the auditor records the assessed value of the property on the county tax books and in which the county bills the taxpayer for taxes due. See Code Section 12-37-610, 12-39-140 and 12-39-150.
Return Due Date:	The final day for filing a manufacturer's property tax return. See Code Section 12-37-970.
Billing Date:	This is the time frame during which the county, after receiving information from the Department concerning the manufacturer's return, will bill the manufacturer for the property tax due (based on the millage established by the county and the assessed value of the property). The bill for the taxes is usually sent to the manufacturer sometime between September and November of the property tax year.
Final Payment Date:	Property taxes must be paid between September 30 <sup>th</sup> of the property tax year and January 15 <sup>th</sup> of the calendar year following the property tax year. As such, the last day for paying property taxes without penalty is the January 15 <sup>th</sup> of the calendar year following the property tax year. See 12-45-180.
Assess:	To determine the taxable value of property by applying an assessment ratio to the fair market value of the property. See Code Sections12-39-150 and 12-43-220.

Assessment Date: The date that the county auditor records the assessed value of the property on the county duplicate list as described in Code Section 12-39-140 and 12-39-150. This date is no later than September 30<sup>th</sup> of the property tax year.

## Filing of a Property Tax Return by Manufacturers

Ordinarily, related statutes should be construed to give full force and effect to each statute and to the extent possible similar statutory provisions should be harmonized and reconciled. When two statutes are capable of coexistence, absent a clear legislative intent to the contrary, each must be regarded as effective, and in interpreting related and co-existing statutes, the statutes must be harmonized unless they are irreconcilable and in hopeless conflict. 73 Am. Jur. *Statutes* §168 (2001). Thus, Code Sections 12-37-610, 12-37-900, and 12-37-970 should be read together and each given effect as much as possible. However, where the provisions of these statutes are in direct conflict, other rules of statutory construction must be applied to determine which statutory provision controls.

In *Wilder v. South Carolina State Highway Dept.*, 228 S.C. 448, 454, 90 S.E. 2d 635, 638 (1955), the South Carolina Supreme Court stated that "where there is a statute dealing with a subject in general terms and another statute dealing with a part of the same subject in a more minute and definite way, the special statute will be considered as an exception to, or qualification of, the general statute and given effect." In this instance, there are two statutes that address when the filing of property tax returns must occur.

Code Section 12-37-900 is a general provision concerning property tax returns. It requires the filing of a property tax return on or before March  $1^{st}$  for property held as of the preceding December  $31^{st}$ .

Code Section 12-37-970 is a specific provision that addresses property tax returns of manufacturers.<sup>5</sup> As a general rule, it requires that a manufacturer's property taxes be determined from returns filed on or before the last day of the fourth month after the close of the accounting year regularly employed by the taxpayer for income tax purposes in accordance with the income tax provisions of the South Carolina Code. Under this provision, the manufacturer's property tax return is usually due four months after the last day of its accounting year. The provisions in Code Section 12-37-970 that are specific to taxpayers that are manufacturers take precedence over the general rules contained in Code Section 12-37-900 to the extent that the two provisions cannot be harmonized. See

<sup>&</sup>lt;sup>5</sup> Code Section 12-37-905 is a third statute that discusses the date for filing returns with a county auditor. However, as noted, it is not relevant to this discussion since manufacturers generally do not file returns with the county auditors, except for property that is not used in the business and motor vehicles licensed for use on the public highways.

S.C. Atty. Gen. Op. No. 2509 (September 12, 1968), which concludes that Code Section 12-37-970 controls in determining when a manufacturer is required to file a property tax return.

Under Code Section 12-37-970, if the taxpayer is engaged in the business of manufacturing, absent a change in the manufacturer's accounting year or the other situations described in this document, the manufacturer must file property tax returns for its real and tangible personal property by the end of the fourth month after the close of its accounting year.

The following chart provides guidance to manufacturers on when to file their property tax return with the Department.

Manufacturer's	For Property Owned as of	Return Due Date
Accounting Year		
January 1 – December 31	December 31	April 30
February 1 – January 31	January 31	May 31
March 1 – February 28/29	February 28/29	June 30
April 1 – March 31	March 31	July 31
May 1 – April 30	April 30	August 31
June 1 – May 31	May 31	September 30
July 1 – June 30	June 30	October 31
August 1 – July 31	July 31	November 30
September 1 – August 31	August 31	December 31
October 1 – September 30	September 30	January 31
November 1 – October 31	October 31	February 28/29
December 1 – November 30	November 30	March 31

## Payment of Property Taxes by Manufacturers

For the purpose of paying property taxes, all manufacturers are treated alike without regard to when their accounting year ends. All of a manufacturer's real and tangible personal property (other than motor vehicles licensed for use on the public highways) is assessed by September 30<sup>th</sup> of the property tax year (this is the calendar year after the calendar year in which the manufacturer's accounting year ends) and the manufacturer is generally billed for the taxes due sometime between September and November of the property tax year. Code Section 12-45-70 requires that all property taxes be paid between September 30<sup>th</sup> of the tax year in which the taxes are assessed and January 15<sup>th</sup> of the following year

Manufacturer Accounting	Property Tax Year	Return Due Date	Estimated County Billing Dates for	Final Tax Payment Date
Year Ending		Date	Taxes	I ayment Date
12/31/2004	2005	04/30/2005	Fall 2005	01/15/2006
01/31/2005	2006	05/31/2005	Fall 2006	01/15/2007
02/28/2005	2006	06/30/2005	Fall 2006	01/15/2007
03/31/2005	2006	07/31/2005	Fall 2006	01/15/2007
04/30/2005	2006	08/31/2005	Fall 2006	01/15/2007
05/31/2005	2006	09/30/2005	Fall 2006	01/15/2007
06/30/2005	2006	10/31/2005	Fall 2006	01/15/2007
07/31/2005	2006	11/30/2005	Fall 2006	01/15/2007
08/31/2005	2006	12/31/2005	Fall 2006	01/15/2007
09/30/2005	2006	01/31/2006	Fall 2006	01/15/2007
10/31/2005	2006	02/28/2006	Fall 2006	01/15/2007
11/30/2005	2006	03/31/2006	Fall 2006	01/15/2007

The following chart, using accounting years ending from December 2004 through November 2005 as examples, will help explain when payment must be made for taxes.

### Change in Accounting Tax Year of Manufacturer

The first paragraph of Code Section 12-37-970 provides that if, as a result of a change in accounting year or for some other reason, a manufacturer that is subject to Code Section 12-37-970 has more than one accounting year that ends in the same calendar year, the manufacturer must file a return by the fourth month following the close of each accounting year. As provided in Code Section 12-37-970, the Department will use the return that sets forth the greatest value to compute the taxes owed. Code Section 12-37-970. This provision assures that a manufacturer pays property taxes at least once for each property tax year, but also assures that the property is not taxed twice for any given property tax year in accordance with Code Section 12-37-715.

For example, assume that a manufacturer has an accounting year that begins July 1, 2003 and ends June 30, 2004. The manufacturer undergoes an accounting year change and changes its accounting year from one that ends June 30<sup>th</sup> to one that ends December 31<sup>st</sup>. For the 2005 property tax year, the manufacturer must file two returns with the Department. The first return, for the accounting year beginning July 1, 2003 and ending June 30, 2004, is due by October 31, 2004. The return for the accounting year beginning July 1, 2003 and ending July 1, 2004 and ending December 31, 2004, is due by April 30, 2005. The Department will use the return that has the greater value for the assets for purposes of determining the tax due for the 2005 property tax year.

## Manufacturer's First Year in Business in this State

Code Section 12-37-970 has no provision specifically directed at a manufacturer's first year of business in this State, as it does for a manufacturer that changes its accounting vear during a calendar year.<sup>6</sup> However, Code Section 12-37-970 provides that every taxpayer required to make a property tax return to the Department must do so not less than once each calendar year. The longstanding administrative policy of the Department has been to interpret this provision as requiring a property tax return for each property (calendar) year a manufacturer is in business in this State. A manufacturer who started business in this State after the close of its accounting year, but before December 31<sup>st</sup>, would not have any property tax liability for the following property tax year if its only property tax responsibilities were expressed in the first sentence of Code Section 12-37-970. This apparent gap is corrected by the provision of Code Section 12-37-970 that requires a return for each property tax year, read in conjunction with Code Section 12-37-900. Read together, they require a new manufacturer to list property it holds as of December 31<sup>st</sup> for taxation. Therefore, a new manufacturer that has never filed a return before in this State is required to file a property tax return for assets that it owns as of December 31<sup>st</sup>.

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. *Marchant v. Hamilton*, 279 S.C. 497, 309 S.E.2d 781(1983). When as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. <u>Ryder Truck Lines, Inc. v. South Carolina Tax</u> *Commission*, 248 S.C. 148, 149 S.E.2d 435 (1966); *Etiwan Fertilizer Company v. South Carolina Tax Commission*, 217 S.C. 354, 60 S.E.2d 682 (1950). However, while such a manufacturer must report assets it owns as of December 31<sup>st</sup> of the calendar year it begins business in this State, the Department has allowed the manufacturer to file this return with the Department by April 30<sup>th</sup> of the next calendar year.

Scenario #1

Manufacturer Begins Business in State:	May 30, 2004
Manufacturer's Accounting Year Ends:	June 30, 2004

Under Scenario 1, the manufacturer is required to file its property tax return based on the assets it holds in this State on June 30, 2004. The manufacturer's return must be filed by September 30, 2004. The property taxes for the property that are reported in the September 30, 2004 return will be due by January 15, 2006. Because the new manufacturer will make a return for the 2005 property tax year, no additional return is required for that year.

<sup>&</sup>lt;sup>6</sup> If the manufacturer is purchasing the assets of an existing South Carolina business, see the discussion below concerning Sale of a Manufacturer's Assets During the Calendar Year.

#### Scenario #2

Manufacturer's Accounting Year Ends: June 30, 2004 Manufacturer Begins Business in this State: September 30, 2004

Under Scenario 2, the manufacturer is required to file its property tax return based on assets that it holds in this State as of December 31, 2004. Since the manufacturer is required to file a return for each property tax year that it is in operation in this State, -the manufacturer must file a return for property it owns in this State as of the last day of the calendar year in which it begins business in this State, *i.e.*, December 31, 2004. This return must be filed by April 30, 2005. The property taxes for the property that are reported on the April 30, 2005 return will be due by January 15, 2006.

## <u>Manufacturer Places Assets in Service after the End of its Accounting Year</u> but Before January 1<sup>st</sup> of the Next Calendar Year

The statute again has no specific provision relating to how an existing manufacturer who files a return based on its accounting year is to report property that is placed in service after the end of its accounting year. Code Section 12-37-970 provides that every taxpayer required to make a return to the Department for assessment for taxation must make the return to the Department not less than once each calendar year. In this case, however, the manufacturer has already filed a return based on its accounting year reporting all property that it owned as of the close of its accounting year. In such instances, the Department has not required a manufacturer to file a second return reporting property placed in service subsequent to the close of its accounting year but before December 31<sup>st</sup> of the calendar year. This position is consistent with South Carolina Attorney General Opinion 2509 (September 12, 1968), which found that a taxpayer that lists its property as of the close of its accounting property tax year is not required to list and to pay property tax on property placed in service after the close of its accounting year but before December 31<sup>st</sup> of that year, but instead is required to list that property at the close of its next accounting year if it owns the property at that time.

Scenario:

Manufacturer's Accounting Year Ends:	June 30, 2004
Manufacturer Places Additional	
Property in Service in this State:	September 30, 2004

Under this scenario, the manufacturer is required to report all property that it holds as of June 30, 2004 on its 2005 property tax return which is due by October 31, 2004. The property taxes for the property that is reported on the October 31, 2004 return will be due by January 15, 2006. The manufacturer is not required to file a second property tax return for the assets it placed in service on September 30, 2004. These assets will be reported, along with the manufacturer's other assets, on the manufacturer's property tax return for its year ending June 30, 2005. This return must be filed by October 31, 2005. The property taxes for the property that are reported on the October 31, 2005 return will be due by January 15, 2007.

### Sales of a Manufacturer's Assets During the Calendar Year

Questions often arise as to who must file returns and who must pay the property taxes due when there is a sale of the assets of a manufacturer during the year. The following six scenarios should help explain the seller's and purchaser's responsibilities in most situations when such sales occur. Other more complicated scenarios involving multiple sales of assets can only be reviewed on a case-by-case basis using these scenarios for guidance. The statutory authority for determining the seller's and purchaser's responsibilities in each of these scenarios can be found in paragraphs one, two or three of Code Section 12-37-970.

The scenarios are as follows:

- (Scenario 1) the seller's accounting year ends, the sale occurs, the purchaser's accounting year ends.
- (Scenario 2) the seller's accounting year ends, the purchaser's accounting year ends, the sale occurs.
- (Scenario 3) the purchaser's accounting year ends, the sale occurs, the seller's accounting year ends.
- (Scenario 4) the sale occurs, the seller's accounting year ends, the purchaser's accounting year ends.
- (Scenario 5) the sale occurs, the purchaser's accounting year ends, the seller's accounting year ends.
- (Scenario 6) the purchaser's accounting year ends, the seller's accounting year ends, the sale occurs.

#### Scenario #1:

Seller's Accounting Year Ends:	March 31, 2004
Sale Occurs:	June 30, 2004
Purchaser's Accounting Year Ends:	September 30, 2004

Code Section 12-37-970, paragraph two provides that when a manufacturer's property is sold after the end of the seller's accounting year and before January first of the next calendar year and when the purchaser's accounting year ends after the seller's and before January first of the next calendar year, the property must be returned by the seller as of the end of its accounting year. The purchaser is not required to list and return the property as of the close of its accounting year during the calendar year of sale. The seller and the purchaser are jointly and severally liable for the tax that is due and payable by reason of this provision. Under this provision, the seller and the purchaser have the following responsibilities.

<u>Seller's Responsibilities</u>: The seller is liable for the property taxes on the sold property for the 2005 property tax year. The seller must report the sold property on its 2005 property tax return – the return for its accounting year ending on March 31, 2004 which has to be filed by July 31, 2004. The seller will not be assessed on this property until September of 2005 and taxes with respect to such property will be due by January 15, 2006.

<u>Purchaser's Responsibilities</u>: The purchaser is not required to report the purchased property on its 2005 property tax return; however, the purchaser is jointly responsible with the seller for the taxes due on such property for the 2005 property tax year.

The purchaser is liable for the property taxes on the purchased property for the 2006 property tax year. The purchaser must report the purchased property on its 2006 property tax return – the return for its accounting year ending on September 30, 2005 which must be filed by January 31, 2006. Payment for taxes on that property will be due by January 15, 2007.

#### Scenario #2:

Seller's Accounting Year Ends:	March 31, 2004
Purchaser's Accounting Year Ends:	September 30, 2004
Sale Occurs:	December 31, 2004

Code Section 12-37-970, paragraph two provides that when a manufacturer's property is sold after the end of the seller's accounting year and before January first of the next calendar year and when the purchaser's accounting year ends after the seller's and before January first of the next calendar year, the property must be returned by the seller as of the end of his accounting year. The purchaser is not required to list and return the property as of the close of his accounting year during the calendar year of sale. The seller and the purchaser are jointly and severally liable for the tax that is due and payable by reason of this provision. Under this provision, the seller and the purchaser have the following responsibilities.

<u>Seller's Responsibilities</u>: The seller is liable for the property taxes on the sold property for the 2005 property tax year. The seller must report the sold property on its 2005 property tax return – the return for its accounting year ending on March 31, 2004 which must be filed by July 31, 2004. The seller will be assessed on this property in September of 2005 and taxes with respect to such property will be due by January 15, 2006.

<u>Purchaser's Responsibilities</u>: The purchaser is not required to report the purchased property on its 2005 property tax return; however, the purchaser is jointly responsible with the seller for the taxes due on such property for the 2005 property tax year.

The purchaser is liable for the property taxes on the purchased property for the 2006 property tax year. The purchaser must report the purchased property on its 2006 property tax return – the return for its accounting year ending on September 30, 2005 which must be filed by January 31, 2006. Payment for taxes on that property will be due by January 15, 2007.

Scenario #3:

Purchaser's Accounting Year Ends:	April 30, 2004
Sale Occurs:	September 30, 2004
Seller's Accounting Year Ends:	November 30, 2004

Under Code Section 12-37-970, paragraph 3, when property required to be returned under this section is sold before the end of the seller's accounting year and before the next January first and the purchaser's accounting year ends before the date of the purchase and before the next January first, the property must be listed and returned by the taxpayer holding title as of December thirtyfirst and that person is liable for the tax for the ensuing year. [Emphasis added] Further, Code Section 12-37-970, paragraph one provides that every taxpayer required to make a return to the Department for assessment for taxation must make the return to the Department not less than once each calendar year. Reading the provisions of Code Section 12-37-970 together and consistent with Code Section 12-37-900, the Department's long standing administrative policy has been to interpret the law as requiring that the manufacturer holding title as of December 31<sup>st</sup> of the calendar year of sale to file a property tax return reporting the property that is the subject of the sale. If the purchaser is the party holding title on December 31<sup>st</sup>, this would require that the purchaser file a second return reporting the purchased property as of December 31<sup>st</sup>. The manufacturer who must report the property is also liable for the tax on the property for the ensuing property tax year. This assures that the property is taxed for the ensuing property tax year. Consistent with Code Section 12-37-970, the manufacturer who is responsible for filing the return must file the return with the Department by April 30<sup>th</sup> of the next calendar year. Under scenario #3, the seller and the purchaser have the following responsibilities under the statute.

<u>Seller's Responsibilities</u>: For the 2005 property tax year, none with respect to the property sold.

<u>Purchaser's Responsibilities</u>: The purchaser must file a return for all property it owns as of April 30, 2004. This return is due by August 31, 2004. The purchaser is liable for the property taxes on this property for the 2005 property tax year. The purchaser must report the purchased property on a separate return provided it owns the property as of December  $31^{st}$  and it has already filed a return for its existing property on its return for its accounting year ending April

30, 2004.<sup>7</sup> The return for the purchased property will be due on April 30, 2005 and the purchaser will be responsible for the 2005 property tax year taxes for that property. The purchaser will be assessed on all its property reported on both returns in September of 2005 and the taxes for the reported property will be due by January 15, 2006. The purchaser will also file a return on August 31, 2005 for all property that it owns as of April 30, 2005.

#### Scenario #4:

Sale Occurs:	March 31, 2004
Seller's Accounting Year Ends:	June 30, 2004
Purchaser's Accounting Year Ends:	December 31, 2004

Under the general rule of Code Section 12-37-970, paragraph one, a manufacturer must report property based on property it holds as of the end of the close of its accounting year. In this instance, the seller does not own the property as of the end of the close of its accounting year, but the purchaser does own the property as of the end of its accounting year. So the purchaser and the seller have the following responsibilities with respect to the property.

<u>Seller's Responsibilities</u>: For the 2005 property tax year, none with respect to the property sold.

<u>Purchaser's Responsibilities</u>: The purchaser is liable for the property taxes on the purchased property for the 2005 property tax year since it owns the purchased property as of the end of its accounting year, December 31, 2004. The purchaser must report the purchased property on its 2005 property tax return which is due April 30, 2005. The purchaser will be assessed on this property in September of 2005 and taxes on the property must be paid by January 15, 2006. The purchaser will continue to file returns and pay the property taxes on the purchased property until the property is sold again.

#### Scenario #5:

Sale Occurs:	March 31, 2004
Purchaser's Accounting Year Ends:	June 30, 2004
Seller's Accounting Year Ends:	December 31, 2004

Under the general rule of Code Section 12-37-970, paragraph one, a manufacturer must report property based on property it holds as of the end of the close of its accounting year. In this instance, the seller does not own the

<sup>&</sup>lt;sup>7</sup> As noted above, this document does not adderess multiple sale scenarios, so if the purchaser sells some or all of the property purchased before December 31<sup>st</sup> of the calendar year of sale, it may have to be reported by the new purchaser depending on the facts of the situation.

property as of the end of the close of its accounting year, but the purchaser does own the property as of the end of its accounting year. So the purchaser and the seller have the following responsibilities with respect to the property.

<u>Seller's Responsibilities</u>: For the 2005 property tax year, none with respect to the property sold.

<u>Purchaser's Responsibilities</u>: The purchaser is liable for the property taxes on the purchased property for the 2005 property tax year since it owns the property at the close of its accounting year, June 30, 2004. The purchaser must report the purchased property on its 2005 property tax return which is due on October 30, 2004. The purchaser will be assessed on this property in September of 2005 and taxes on the purchased property must be paid by January 15, 2006. The purchaser will continue to file returns and pay the property taxes on the property until the purchased property is sold again.

#### Scenario #6

Purchaser's Accounting Year Ends:	March 31, 2004
Seller's Accounting Year Ends:	June 30, 2004
Sale Occurs:	December 31, 2004

Under the general rule of Code Section 12-37-970, paragraph one, a manufacturer must report property based on property it holds as of the end of the close of its accounting year. In this instance, the seller owns the property as of the end of the close of its accounting year. Therefore, the seller will report the property on its property tax return for the 2005 property tax year. The purchaser and the seller have the following responsibilities with respect to the property.

<u>Seller's responsibilities</u> – The seller is liable for the property taxes on the sold property for the 2005 property tax year since the seller owns the sold property as of the end its accounting year, June 30, 2004. This return is due October 30, 2004. The seller will be assessed on this property in September of 2005 and taxes on the property must be paid by January 15, 2006.

<u>Purchaser's responsibilities</u> – None with respect to the property purchased for the 2005 property tax year. For the 2006 property tax year, the purchaser must report the purchased property on its return for its accounting year ending March 31, 2005 which is due on July 31, 2005. The purchaser must pay the property taxes for the 2006 property tax year on the purchased property. The purchaser will continue to file returns and pay the property tax on the purchased property until the property is sold again

## **SUMMARY:**

The statutes regarding the filing of property tax returns and the payment of property taxes are generally designed to assure that property in this State gets taxed for each property tax year, but does not get taxed more than once for any given property tax year. The rules are also designed to minimize the administrative burden on manufacturer's by requiring that they file a return only once for each property tax year, except in very limited instances. To this end, the laws have provided for only one party to the transaction to file a return for property that has been sold during the calendar year. These rules, that are discussed in detail above, can be summarized as follows:

For the calendar year of sale, if the seller owns the property as of the close of its accounting year, the seller reports the property for the next property tax year and is liable for the property taxes on the sold property (in some instances, the purchaser is jointly liable for the taxes on that property).

For the calendar year of sale, if the seller does not own the property as of the close of its accounting year but the purchaser does own such property as of the end of its accounting year, the purchaser reports the property for taxation and is liable for the taxes on that property for the next property tax year.

For the calendar year of sale, if neither the seller or the purchaser own the property as of the end of their accounting years for the calendar year of sale, then the manufacturer that owns the property on December 31<sup>st</sup> of that year, must report the property and is liable for property taxes on that property for the next property tax year.

For questions about this document, please contact Jerilynn VanStory at (803)898-5151.

### SOUTH CAROLINA DEPARTMENT OF REVENUE

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

December 30, 2005 Columbia, South Carolina