
State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #13-3

SUBJECT: Material Handling Systems and Material Handling Equipment
(Sales and Use Taxes)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Ruling #97-6 and all previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 12-36-2120(51) (Supp. 2012)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2012)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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:

Since 1996 South Carolina has exempted from the sales and use tax certain material handling systems and equipment used in the operation of a manufacturing facility or a distribution facility. The exemption requires the taxpayer to meet specific investment requirements.

The purpose of this advisory opinion is to revise SC Revenue Ruling #97-6 and to address and clarify additional questions that have arisen since the exemption was first enacted.

LAW:

Code Section 12-36-2120(51) exempts from the sales and use tax:

material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility¹ including, but not limited to, racks used in the operation of a distribution facility or a manufacturing facility and

¹ See SC Regulation 117-336 for a definition of the term "facility."

either used or not used to support a facility structure or part of it. To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall invest at least thirty-five million dollars in real or personal property in this State over the five-year period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the thirty-five million dollar investment requirement or, after the expiration of the five years, that it has not met the thirty-five million dollar investment requirement. The department may assess any tax due on material handling systems and material handling equipment purchased tax-free pursuant to this item but due the State as a result of the taxpayer's failure to meet the thirty-five million dollar investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the thirty-five million dollar investment requirement.

QUESTIONS AND ANSWERS:

Property Eligible for the Exemption

1. Q. Are material handling systems and material handling equipment used in the operation of processing, recycling, compounding, mining or quarrying facilities covered by the exemption in Code Section 12-36-2120(51)?

A. No. Only material handling systems and material handling equipment used in distribution or manufacturing facilities qualify for the exemption in Code Section 12-36-2120(51).

However, certain purchases of material handling equipment may qualify for the machine exemption provided for in Code Section 12-36-2120(17). For information on the machine exemption in Code Section 12-36-2120(17), see SC Regulation 117-302.5.

2. Q. Are replacement parts and repair parts for material handling systems and material handling equipment covered by the exemption?

A. Yes. Purchases of replacement parts and repair parts for material handling systems and material handling equipment that qualify for the exemption also qualify for the exemption.

3. Q. What are examples of material handling systems and material handling equipment that qualify for the exemption when used in the operation of a manufacturing facility or a distribution facility?

- A. The following are examples of material handling systems and material handling equipment that qualify for the exemption **when used in the operation of a manufacturing facility or a distribution facility**:

- Automated storage and retrieval systems
- Carts
- Conveyors
- Cranes
- Dollies
- Forklifts (including battery chargers designed for the forklift)²
- Hand trucks
- Hoppers
- Piping
- Pumps
- Racks
- Shelving
- Stackers
- Tanks

Note: The exemption in Code Section 12-36-2120(51) does not apply to any material handling systems or material handling equipment that is not used in the operation of a manufacturing facility or a distribution facility (*e.g.*, mail carts, shelving used in the office for books and records, office computers, copiers, and similar office equipment) and does not apply to any material handling systems or material handling equipment used in a manufacturing facility or distribution facility that does not meet all the requirements of the exemption.

4. Q. Are purchases of fuel or electricity exempt from the sales and use tax when used in operating material handling equipment and systems exempt under Code Section 12-36-2120(51)?

- A. No. The exemption in Code Section 12-36-2120(51) for material handling equipment and material handling systems does not include fuel or electricity.

However, certain purchases of material handling equipment may qualify for the machine exemption provided in Code Section 12-36-2120(17). Therefore, purchases of fuel and electricity used in operating material handling machines exempt as manufacturing machines under Code Section 12-36-2120(17) are exempt from the tax under Code Section 12-36-2120(9) (fuel) and Code Section 12-36-2120(19) (electricity). For information on the machine exemption in Code Section 12-36-2120(17), the fuel exemption in Code Section 12-36-2120(9), and the electricity exemption in Code Section 12-36-2120(19), see SC Regulation 117-302.

² The battery charger qualifies for the exemption since the forklift, and the battery charger designed for it, are two parts of a material handling “system.”

Notification Requirements

5. Q. When and how must a taxpayer notify the Department of the taxpayer's intent to start using the exemption?
- A. The taxpayer must notify the Department before the first month the taxpayer will use the exemption. The notification must be **in writing** and mailed to:

S.C. Department of Revenue
Office Operations Division
License and Registration Unit
P.O. Box 125
Columbia, S.C. 29214-0140

The written notice should include the taxpayer's name, address, retail license number or use tax registration number, the location of records, the beginning date of the investment period, a brief description of the qualifying investment, a brief description of property claimed to be exempt from tax and where it will be used, and the name of a person to contact with respect to the exemption and that person's telephone number.

Exemption - Effective Dates, Usage, and Exemption Certificate

6. Q. When may the taxpayer first use the exemption?
- A. The exemption is available to the taxpayer for purchases of material handling systems and equipment made on or after the first day of the calendar month following the date the taxpayer notified the Department of its intent to invest \$35 million and to use the exemption.

For example, if the taxpayer notifies the Department on October 15th of its intent to invest \$35 million and to use the exemption in Code Section 12-36-2120(51), the taxpayer may use the exemption for purchases made on or after November 1st. Any purchases made prior to November 1st are not eligible for the exemption.

7. Q. Is the exemption limited to one specific manufacturing facility or distribution facility?
- A. No. If the taxpayer meets all the requirements of the exemption, then the exemption is available for any and all manufacturing facilities and distribution facilities of the taxpayer located in the state.

For example, if a manufacturer with three manufacturing facilities that have been in operation in South Carolina for decades decides to build a fourth manufacturing facility in which it will invest over \$35 million³, the taxpayer (*i.e.*, a single, legal entity) may use the

³ For purposes of simplicity, the taxpayer in this example will invest \$35 million at the new facility. However, as noted in the answer to Question #14, the \$35 million investment may be made anywhere in South Carolina.

material handling exemption at all four manufacturing facilities, but only for purchases of material handling systems and equipment made on or after the first day of the calendar month following the date the taxpayer notified the Department of its intent to invest \$35 million and to use the exemption. The taxpayer must meet all the requirements of the exemption and all four manufacturing facilities must be owned by the same taxpayer. In addition, if the taxpayer meets all the requirements of the exemption in constructing its fourth manufacturing facility, the exemption would also apply to all future manufacturing or distribution facilities owned by the taxpayer in South Carolina regardless of the amount of any future investment in South Carolina.

8. Q. Is the exemption for material handling systems and equipment only for the five-year investment period?
 - A. No. The exemption is available to the taxpayer as long as the taxpayer is operating manufacturing facilities, distribution facilities or both in South Carolina, provided Code Section 12-36-2120(51) remains in effect.
9. Q. What must the taxpayer present to suppliers to make tax-exempt purchases under the exemption?
 - A. The Department will issue an exemption certificate to the taxpayer. This certificate is to be presented to suppliers to make tax-exempt purchases of material handling systems and material handling equipment.
10. Q. Who will be held liable for any taxes due if the certificate is used to make purchases that do not come within the exemption - the supplier or the purchaser?
 - A. If the certificate is used to make purchases tax-free that are not exempt, then the purchaser will be held liable for any taxes due.
11. Q. If a taxpayer who has met the requirements of the exemption and has been using the exemption at its manufacturing or distribution facility sells that facility, may the new owner continue to use the exemption of the seller?
 - A. No. Each taxpayer (*i.e.*, each separate legal entity) must meet the requirements of the exemption on its own. The new owner would need to notify the Department of its intent to use the exemption and would need to meet the investment requirements of the exemption on its own.

Note: South Carolina follows the federal tax treatment of limited liability companies. Based upon the federal rules and Code Section 12-2-25, if a single member LLC does not make a federal election to be taxed as a corporation, it will be disregarded. Therefore, in the case of a sale or transfer of a qualifying facility by a taxpayer to a single member LLC of which the taxpayer is the single member, the exemption of the taxpayer will still be applicable since the facility is considered to be owned by the same taxpayer for South Carolina tax purposes.

Investment Requirements

12. Q. Must the five-year investment period begin on the same date the taxpayer begins to use the exemption?

A. No. The five year investment period begins on the date provided by the taxpayer in its notification to the Department and does not need to be the same date the taxpayer may first use the exemption.

Investment Prior to Notification: The investment period may begin on a date prior to the date the taxpayer notifies the Department of its intent to invest \$35 million over a five year period, provided the taxpayer can document that any investment made prior to the notification is a part of a five year plan in which the taxpayer “shall invest” at least \$35 million in the State of South Carolina.

For example, a taxpayer with plans to build a large distribution facility in South Carolina, purchases \$1 million in realty for the distribution facility over a six month period beginning in January 2013 prior to notifying the Department of its intent to invest at least \$35 million. When this taxpayer notifies the Department in June 2013 of its intent to invest \$35 million and to use the exemption, the taxpayer may claim a five year investment period that begins on January 1, 2013 and ends on December 31, 2017. The taxpayer may begin using the exemption for purchases made on or after July 1, 2013 since the taxpayer cannot start using the exemption until the first day of the month following the month in which the taxpayer notifies the Department that he will use the exemption.

Investment After Notification: The investment period may also begin on a date after the date the taxpayer notifies the Department of its intent to invest \$35 million over a five year period.

For example, a taxpayer who has been operating within South Carolina for decades decides to build a distribution facility on land it has also owned for decades. If the taxpayer plans to begin construction in October, 2013, but wants to begin purchasing and storing material handling systems and equipment in April 2013, the taxpayer can submit the notice to the Department in March 2013⁴ with an investment period beginning date of October 1, 2013. This will allow the taxpayer to use the exemption beginning April 1, 2013 and to claim a five year investment period of October 1, 2013 through September 30, 2018.

⁴ The taxpayer may submit the notice to the Department prior to March 2013 and still use the exemption beginning April 1, 2013 (or sooner depending on when the notice is submitted to the Department). See Question No. 6 for information on when a taxpayer may begin using the exemption.

13 Q. What expenditures meet the \$35 million investment requirement?

A. The \$35 million investment is limited to real or personal property in South Carolina. This includes expenditures for:

- buildings
- equipment
- fixtures
- furniture
- infrastructure development (roads, water, sewer, etc)
- land
- machinery
- office equipment (computers, copiers, and similar office equipment)
- site preparation

Expenditures by the taxpayer for employee wages, employee benefits, taxes, raw material and inventory are examples of expenditures that do **not** meet the investment requirement.

14. Q. Is it required that the investment in real and personal property be made at the same location where the material handling systems and material handling equipment will be used?

A. No. The investment may be made anywhere in South Carolina.

15. Q. If the taxpayer that will be operating the manufacturing facility or distribution facility has related entities (*e.g.*, subsidiary corporations), are investments by these related entities of the taxpayer in South Carolina included in determining if the taxpayer has met the \$35 million investment requirement under the exemption for material handling systems and equipment in Code Section 12-36-2120(51)?

A. No. While other sales and use tax exemptions that require a certain amount of investment define the term “taxpayer” to include “a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code” (*e.g.*, Code Section 12-36-2120(9)(e) &(f) and Code Section 12-36-2120(67)), the exemption for material handling systems and equipment in Code Section 12-36-2120(51) does not include such a definition. Therefore, the investments by related entities of the taxpayer may not be included in determining if the taxpayer has met the \$35 million requirement under the exemption for material handling systems and equipment in Code Section 12-36-2120(51).

Note: South Carolina follows the federal tax treatment of limited liability companies. Based upon the federal rules and Code Section 12-2-25, if a single member LLC does not make a federal election to be taxed as a corporation, it will be disregarded. Therefore, in the case of investments made by a disregarded single member LLC of which the taxpayer is the single member, the investments of both the taxpayer and the single member LLC will be included in determining if the taxpayer has met the \$35 million investment requirement under the exemption since the both investments are considered to have been made by the same taxpayer for South Carolina tax purposes.

Records

16. Q. What records must taxpayers keep with respect to this exemption?
- A. Taxpayers must be able to substantiate that they have met the \$35 million investment requirement. Like other records maintained for tax purposes, the records must be readily available for inspection by the Department. Examples of records that must be maintained are real estate closing documents, building contracts, and purchase invoices with evidence of payment.
17. Q. How long must taxpayers maintain records supporting their investment in South Carolina?
- A. Records substantiating that a taxpayer has met the investment requirement must be maintained for as long as the taxpayer continues to take the exemption, plus three years, unless the Department otherwise advises the taxpayer that they can discontinue maintaining the records.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/William M. Blume, Jr.
William M. Blume, Jr., Director

May 21, 2013
Columbia, South Carolina