
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 #15-2

- SUBJECT:** Construction Material Exemption for Manufacturing and Distribution Facilities
(Sales and Use Taxes)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.
- REFERENCE:** S.C. Code Ann. Section 12-36-2120(67) (2014)
- AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2014)
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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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:

South Carolina provides an exemption from the sales and use tax for construction material used in the construction or expansion of certain manufacturing facilities or distribution facilities. The exemption requires the taxpayer to meet specific investment requirements.

The purpose of this advisory opinion is to address questions concerning this exemption and its investment and notification requirements.

Note: The exemption for taxpayers investing \$100 million over eighteen months that is discussed in this advisory opinion was phased in and qualifying purchases became fully exempt effective July 1, 2011. The exemption for taxpayers investing \$750 million, and creating 3,800 full-time new jobs, became effective November 1, 2009 and applies only to taxpayers who notify the Department prior to October 31, 2015 of their intent to utilize the exemption. Since the exemption for investing \$100 million over an eighteen-month period is fully implemented, the exemption for investing \$750 million and creating 3,800 full-time new jobs will not be discussed in this advisory opinion.

LAW:

Code Section 12-36-2120(67) exempts from the sales and use tax:

(67) Effective July 1, 2011, construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen-month period, ...

* * *

To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall make the required investment over the applicable time 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 investment requirement or, after the expiration of the applicable time period, that it has not met the investment requirement. The department may assess any tax due on construction materials purchased tax free pursuant to this subitem but due the State as a result of the taxpayer's failure to meet the 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 investment requirement.

As used in this subitem, "taxpayer" includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code[.]

QUESTIONS AND ANSWERS:

Property Eligible for the Exemption

1. Q. Is construction material used in the construction of a new or expanded single processing, recycling, compounding, mining or quarrying facility covered by the exemption in Code Section 12-36-2120(67)?

A. No. Only construction material used in the construction of a new or expanded distribution or manufacturing facility qualifies for the exemption in Code Section 12-36-2120(67).

However, certain purchases of construction material used in constructing a machine used in manufacturing, processing, mining, compounding, mining or quarrying tangible personal property for sale 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. What are examples of construction materials that qualify for the exemption when used in the construction of a manufacturing facility or a distribution facility that meet the requirements of Code Section 12-36-2120(67)?

A. Construction material includes any and all tangible personal property which becomes a part of real property. The following are examples of construction materials that qualify for the exemption **when used in the construction of a new or expanded manufacturing facility or a distribution facility meeting the requirements of Code Section 12-36-2120(67):**

- Air conditioning systems
- Bolts
- Brick
- Cement
- Doors and door frames
- Electric cable
- Electrical fixtures
- Elevators
- Fencing
- Floorings
- Gas meters
- Glass
- Gravel
- Heating systems
- Line
- Lumber
- Nails
- Paint
- Pipe
- Pipe fittings
- Plumbing fixtures
- Plumbing supplies
- Railroad rails
- Railroad track accessories
- Reinforcing steel
- Road building materials
- Roofing materials
- Sand
- Screws
- Sheet metal
- Slag
- Sprinkler systems
- Stone
- Structural steel
- Tanks

Telephone poles
Tile
Timber
Water meters
Well pumps
Window frames
Wire

3. Q. May a contractor purchase the construction material exempt from the sales and use tax if hired by the taxpayer who will make the investment and operate the manufacturing or distribution facility?
- A. Yes. The contractor building the manufacturing facility or distribution facility for the taxpayer who will make the investment and operate the manufacturing or distribution facility may purchase the construction material exempt from the sales and use tax, provided all the requirements of the exemption are met.

Notification Requirements

4. 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:

SCDOR
ATTN: Registration Section
PO Box 125
Columbia, S.C. 292141

The written notice should include the taxpayer's name, address, and retail license number or use tax registration number; location of records; beginning date of the investment period; a brief description of the qualifying investment; a brief description of the facility to be constructed; and the name of a person to contact with respect to the exemption and that person's telephone number.

Note 1: The taxpayer shall also notify the Department in writing that it has met the investment requirement or, after the expiration of the applicable time period, that it has not met the investment requirement. The Department may assess any tax due on construction material purchased tax free but due the State as a result of the taxpayer's failure to meet the investment requirement. The running of the periods of limitations for assessment of taxes provided in Code 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 investment requirement.

Note 2: A taxpayer that qualifies for both the construction material exemption (\$100 million investment over an eighteen-month period) and the material handling systems and equipment exemption (\$35 million over a five-year period) may submit one notification for both exemptions to the above address. See SC Revenue Ruling #13-3 for information on the material handling exemption, including information to be included in the notice to the Department.¹

Exemption - Effective Dates, Usage, and Exemption Certificate

5. Q. When may the taxpayer first use the exemption?
- A. The exemption is available to the taxpayer for purchases of construction material made on or after the first day of the calendar month following the date the taxpayer notified the Department of its intent to invest \$100 million and to use the exemption.

For example, if the taxpayer notifies the Department on October 15th of its intent to invest \$100 million and to use the exemption in Code Section 12-36-2120(67), 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.

6. Q. Is the exemption limited to the specific manufacturing facility or distribution facility under construction?

A. Yes.

7. Q. Is the exemption for construction material only for the eighteen-month investment period?

A. No. The exemption is available to the taxpayer during the entire construction period for the new or expanded manufacturing or distribution facility.

For example, if the construction of a nuclear power plant takes eight years, the construction material exemption is valid for the entire eight years, provided the taxpayer meets all the requirements of the exemption. Once construction is completed, the exemption ends.

8. 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 construction material.

¹ SC Revenue Ruling #13-3 states that the notice for the material handling exemption should be mailed to the Department's "Office Operations Division." This division is now the "Taxpayer and Business Services Division" and the notice for both exemptions can be mailed to the above address.

9. 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.

10. Q. If a taxpayer who has met the requirements of the exemption and has been using the exemption in the construction of its manufacturing or distribution facility sells that facility before construction is completed, 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, a single member LLC that does not make a federal election to be taxed as a corporation is not considered for South Carolina tax purposes to be a separate entity from its single member. Therefore, in the case of a sale or transfer of a qualifying facility by the taxpayer to the 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

11. Q. Must the eighteen-month investment period begin on the same date the taxpayer begins to use the exemption?

A. No. The eighteen-month 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 \$100 million over an eighteen-month period, provided the taxpayer can document that any investment made prior to the notification is a part of an eighteen-month plan in which the taxpayer will invest at least \$100 million at a single manufacturing or distribution facility 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 2015 prior to notifying the Department of its intent to invest at least \$100 million. When this taxpayer notifies the Department in June 2015 of its intent to invest \$100 million and to use the exemption, the taxpayer may claim an eighteen-month investment period that begins on January 1, 2015 and ends on June 30, 2016. The taxpayer may begin using the exemption for purchases made on

or after July 1, 2015 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 it will use the exemption. However, it should be noted for purposes of this example, that while any purchases of construction material made prior to July 1, 2015 will not be exempt, such purchases of construction material made on or after January 1, 2015 and within the eighteen-month period will count toward the \$100 million investment requirement.

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 \$100 million over an eighteen-month 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 2015, but wants to begin purchasing and storing construction material in April 2015, the taxpayer can submit the notice to the Department in March 2015² with an investment period beginning date of October 1, 2015. This will allow the taxpayer to use the exemption beginning April 1, 2015 and to claim an eighteen-month investment period of October 1, 2015 through March 31, 2017.

12. Q. What expenditures meet the \$100 million investment requirement?

A. The \$100 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.

13. Q. Is it required that the investment in real and personal property be made at the same location where the construction material will be used to construct a manufacturing facility, a distribution facility, or a facility that serves both purposes?

²The taxpayer may submit the notice to the Department prior to March 2015 and still use the exemption beginning April 1, 2015 (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.

A. Yes. The investment must be made at the single site in South Carolina where the manufacturing facility, the distribution facility, or a facility that is a combination of both is constructed.

14. Q. Is a separate \$100 million investment required if a manufacturing or distribution facility will be constructed in phases?

A. The exemption applies to a new manufacturing or distribution facility or the expansion at an existing manufacturing or distribution facility. In each case, the taxpayer must make a capital investment of at least \$100 million at the site over an eighteen-month period.

Therefore, if a manufacturer has a new manufacturing facility constructed, the purchase of construction materials for that manufacturing facility will be exempt from the tax if the manufacturer makes a capital investment of at least \$100 million at the site over an eighteen-month period. The purchase of construction materials for a subsequent and distinct expansion (e.g., phase 2 - a new manufacturing building) of that same facility will also be exempt if the manufacturer makes a separate and distinct capital investment of at least \$100 million at the site over a separate and distinct eighteen-month period. The manufacturer must also comply with the notice requirements of this exemption for each phase in order for the purchases of construction material to be exempt.

The determination as to whether a second phase is a subsequent and distinct construction project requiring a separate and distinct capital investment of at least \$100 million at the site over a separate and distinct eighteen-month period or merely a separate phase of one single construction project is based on the facts and circumstances, including, but not limited to, the following:

(a) Number of contracts executed – one for all phases or separate contracts or contractors for each phase;

(b) Reasons for one or more phases;

(c) Factors for determining the start of the second phase or subsequent phases (*i.e.*, Is the start of Phase 2 dependent on various factors or will it start without delay when Phase 1 is complete? Is there a set time to start Phase 2 even if Phase 1 is not yet complete?); and

(d) Time period between the end of Phase 1 and the beginning of Phase 2.

15. Q. For purposes of determining whether a taxpayer has met the \$100 million capital investment requirement during the eighteen-month period, when is a capital investment considered to have been made?

A. A “capital investment” is made when real or personal property is acquired at the site or an interest in real or personal property is acquired for use at that site as part of the manufacturing or distribution facility.

With respect to the construction of the facility by a contractor hired by the taxpayer, an investment is made when the taxpayer has a binding obligation to pay the contractor for any completed work (not future work) at the site or for any construction material or other tangible personal property (*e.g.*, machines) purchased by the contractor that is located at the site (acquired) within the eighteen-month investment period. It is not necessary that the construction of the manufacturing or distribution facility (or expansion) be completed in order for an investment to have been considered made by the taxpayer. Points in the construction process when the taxpayer becomes obligated to pay the contractor a “progress payment” for work completed, or for purchases of construction material or other tangible personal property (*e.g.*, machines) that is located at the site (acquired), constitute an investment.

With respect to purchases of tangible personal property by the taxpayer, a “capital investment” is made when payment (including a binding obligation to pay) is made for personal property that has been acquired by, and is in possession of, the taxpayer for use at that site as part of the manufacturing or distribution facility. It is not necessary that such tangible personal property be located at the site within the eighteen-month period. Such property must be in the possession of the taxpayer for future first use at the site on or before construction of the new or expanded facility is completed and the facility or expansion is operational.

However, two important points should be noted:

(a) The tangible personal property purchased for use at the site must eventually be used at the site in order for its purchase to be considered a part of the “capital investment” made during the eighteen-month period since the exemption requires an investment “at a single site in the State.”

(b) The manufacturing or distribution facility must eventually become operational in order for the exemption to apply since the exemption is for the construction of a new or expanded “manufacturing or distribution facility.”

16. 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 at the single manufacturing or distribution facility in South Carolina included in determining if the taxpayer has met the \$100 million investment requirement under the exemption for construction material in Code Section 12-36-2120(67)?

A. Yes. The exemption for construction material, unlike the exemption for material handling systems and equipment, defines 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)). Therefore, the investments at the site by any person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code may be included in determining if the taxpayer has met the \$100 million requirement under the exemption for construction material in Code Section 12-36-2120(67).

Records

17. Q. What records must taxpayers keep with respect to this exemption?
- A. Taxpayers must be able to substantiate that they have met the \$100 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.
18. Q. How long must a taxpayer maintain records supporting its 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 it can discontinue maintaining the records.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III

Rick Reames III, Director

February 18 _____, 2015
Columbia, South Carolina