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SC REVENUE RULING #91-6

SUBJECT: Manufacturing Machinery and Equipment
(Property Taxes)

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

REFERENCE: S.C. Code Ann. Section 12-37-930 (Supp. 1990)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

What are the guidelines for determining whether a structure used in a manufacturing business is machinery or equipment for property tax purposes?

Facts:

Some machines and equipment used in manufacturing businesses are complex, large, fixed and immovable. Such machines and equipment are not built in a factory and shipped to the manufacturing site as a single unit, but are constructed on site using concrete, reinforced steel, and other materials to create a "structure".

The court in Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission, 280 S.C. 426, 313 S.E. 2d 300, (1984 App.) (writ of certiorari was denied on May 17, 1984) held:

We find no judicial interpretation of a statute similar to that of South Carolina which makes a distinction as to whether a machine is a fixture or personal property. Many, if not most, of the larger machines used in manufacturing are at the same time fixtures upon the real estate where they stand.

Guidance has been requested in determining when a "structure" used in a manufacturing business is machinery or equipment for property tax purposes. This determination is important because Code Section 12-37-930 provides that all property is valued at fair market value, generally through an appraisal. However, that section also provides that the fair market value of machinery and equipment used in a manufacturing business is determined by reducing original cost by a statutory depreciation schedule.

Examples of structures that have presented taxing authorities and the courts with this dilemma include: slag pits with concrete walls, concrete vats and basins, and blast furnace stock bins.

For purposes of this ruling, the term "structure" means property which is large, fixed and immovable and appears to be an improvement or addition to real property, but may constitute machinery or equipment used in a manufacturing business.

Discussion:

In Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission, 280 S.C. 426, 313 S.E. 2d 300, (1984 App.) (writ of certiorari was denied on May 17, 1984), the court reviewed the tax exempt status of a waste water facility at a textile plant near Society Hill, South Carolina. The facility was "situated in an uncovered area on plant property and [consisted] of various vats, basins, tanks, pumps and other mechanical devices, as well as troughs and pipes which carry the waste from one part of the facility to another".

The court concluded that "this facility operates as one single entity, and that entity is a 'machine'." The court cited Commonwealth v. Philadelphia Electric, 472 PA. 530, 372 A.2d 815 (1977), (a Pennsylvania Supreme Court property tax decision which concerned the "problem of the connection of a manufacturing machine with the land upon which it sits") which held:

Under our case law, the large, fixed, and immovable nature of the property in question is not dispositive. We have long rejected tests such as "physical attachment" or "applies force or involves the quality of motion" as doctrines not adapted "to the business and improvements of the age."... Thus, this court has held that such fixed and immovable items as ore yards, blast furnace stock bins, and slag pits ... and oil refinery tanks ... are machinery and equipment and not taxable as realty. (Citations omitted.)

The test for determining what is machinery and equipment, first formulated in [In re Borough of Alocippa] Jones & Laughlin, 405 Pa. [421] at 431, 175 A.2d [856] at 861, provides:

"[I]mprovements, whether fast or loose, which (1) are used directly in manufacturing the products that the establishment is intended to produce; (2) are necessary and integral parts of the manufacturing process; and (3) are used solely for effectuating that purpose are excluded from real estate assessment and taxation. On the other hand, improvements which benefit the land generally and may serve various users of the land are subject to taxation."

Our court, therefore, concluded that "a particular 'structure' may or may not constitute a machine for tax purposes, depending not upon its form but upon its use." The court in Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission, supra, further cited Gulf Oil Corporation v. City of Philadelphia 357 Pa. 101, 53 A.2d 250 (1947) "to show that no logical distinction exists between the moving parts of a machine and those which are static". The court, in Gulf Oil, using the example of a butter churn, held:

If for purposes of taxation static machinery must be separated from machinery that moves, it would be necessary, for example, in assessing butter manufactories to separate the blades which beat the cream, from the barrel which contains it.

Our court also held that the above rationale would not apply to buildings in that "[t]he concrete vats and basins ..., unlike buildings, have utterly no use apart from the machine of which they are an intergral part". Specifically, the court held that buildings which house textile mills and nuclear reactors were not tax exempt machines, as such structures do benefit the land generally and will serve various users of the land.

In summary, the South Carolina Supreme Court, in Hercules, has established guidelines for determining whether a structure is a machine used in manufacturing. A structure may be classified as a machine if it is:

1. used directly in manufacturing;
2. a necessary and integral part of the manufacturing process;
3. used solely for the purpose of manufacturing the products it was intended to produce; and,
4. does not benefit the land generally, and will not serve various users of the land.

Conclusion:

The guidelines for determining whether a structure is machine or equipment for property tax purposes can be found in the court's ruling in Hercules. Therefore, the guidelines to be used in determining whether a structure is machinery or equipment used in a manufacturing business are:

Whether the structure is:

1. used directly in manufacturing;
2. a necessary and integral part of the manufacturing process;
3. used solely for the purpose of manufacturing the products it was intended to produce; and,

4. does not benefit the land generally, and will not serve various users of the land.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.
S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson, Jr.
A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell
T. R. McConnell, Commissioner

Columbia, South Carolina
April 18, _____, 1991