



SC REVENUE RULING #93-7

SUBJECT: Manufacturing Machinery and Equipment
(Fee in Lieu of Property Taxes)

TAX MANAGER: John P. McCormack

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

REFERENCE: S.C. Code Ann. Section 4-29-10 (1986)
S.C. Code Ann. Section 4-29-67 (Supp. 1992)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1992)
S.C. Code Ann. Section 4-29-67(P) (Supp. 1992)
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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.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:

May a "project", as that term is used in Code Section 4-29-67, be composed solely of machinery and equipment or must land and buildings be included in the project?

Facts:

A manufacturer has entered into an inducement agreement with a county as required under Code Section 4-29-67 for the payment of a fee in lieu of property taxes.

The manufacturer will spend well in excess of \$85,000,000 in the five year investment period. The investment will be in manufacturing machinery and equipment, with no anticipated expenditures for buildings or land. The machinery and equipment will be utilized in a building already owned by the manufacturer. The manufacturing machinery and equipment will be leased by the county to the manufacturer.

The question has arisen as to whether this transaction will qualify under the fee in lieu of property tax provisions of the code.

Discussion:

Chapter 29 of Title 4 establishes certain powers for counties so that they may enhance industrial development.

As part of this industrial development, the Legislature enacted Code Section 4-29-67 which allows a county to develop projects where title to the property is held by the county. The county then leases the property to an investor under a lease or lease purchase agreement. The investor agrees to make payments to the county in lieu of property taxes on the property that is a part of the project.

Code Section 4-29-67 reads in part:

(A) Notwithstanding the provisions of Section 4-29-60, in case of a financing agreement in the form of a lease or a lease purchase, for a project qualifying under subsection (B), the county and the investor may enter into an inducement agreement which provides for payment in lieu of taxes (fee) as provided in this section. (Emphasis added.)

The remaining portions of Code Section 4-29-67 provide for the provisions of such an agreement and certain procedures that must be followed in order for the project to qualify for the fee in lieu of property taxes. In addition, these sections, when referring to the property that will be leased to the investor by the county, never limit the property in the project to real property, personal property, or a combination of both.

Furthermore, Code Section 4-29-10 defines the term "project", as used in Code Section 4-29-67, to mean:

... any land and any buildings and other improvements on the land including, without limiting the generality of the foregoing, water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishing which are considered necessary, suitable, or useful by the following or any combination thereof: (a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products; (b) any commercial enterprise engaged in storing, warehousing, distributing, transporting, or selling products of agriculture, mining, or industry, or engaged in providing laundry services to hospitals, to convalescent homes, or to medical treatment facilities of any type, public or private, within or outside of the issuing county or incorporated municipality and within or outside of the State; (c) any enterprise for research in connection with any of the foregoing or for the purpose of developing new products or new processes or improving existing products or processes; (d) any enterprise engaged in commercial business, including, but not limited to, wholesale, retail, or other mercantile establishments; office buildings; computer centers; tourism, sports, and recreational facilities; convention and trade show facilities; and public lodging and restaurant facilities if the primary purpose is to provide service in connection with another facility qualifying under this subitem. and (e) any enlargement, improvement, or expansion of any existing facility in subitems (a), (b), (c), and (d) of this item. The term "project" does not include facilities for an enterprise primarily engaged in the sale or distribution to the public of electricity, gas, or telephone services. A project may be located in one or more

counties or incorporated municipalities. The term "project" also includes any structure, building, machinery, system, land, interest in land, water right, or other property necessary or desirable to provide facilities to be owned and operated by any person, firm, or corporation for the purpose of providing drinking water, water, or wastewater treatment services or facilities to any public body, agency, political subdivision, or special purpose district.

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231; Investors Premium Corp. v. South Carolina Tax Commission, 260 S.C. 13, 193 S.E.2d 642. Also, where the terms of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning. Mitchell v. Mitchell, 266 S.C. 196, 222 S.E.2d 217; Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323.

Based on the above, a project may be composed solely of machinery and equipment; solely of land and buildings; or a combination of both.

Conclusion:

A "project", as that term is used in Code Section 4-29-67, may be composed solely of machinery and equipment.

Note: In order to obtain the fee in lieu of provisions of Code Section 4-29-67, all requirements of Code Section 4-29-67 and any other applicable section in Chapter 29 of Title 4 must be met.

SOUTH CAROLINA TAX COMMISSION

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

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

s/James M. Waddell, Jr.
James. M. Waddell, Jr., Commissioner

Columbia, South Carolina
April 13, 1993