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State of South Carolina  
**Department of Revenue**  
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

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SC REVENUE RULING #96-6

**SUBJECT:** Meaning of Terms Capital Construction, School, and Operations for Purposes of Code Section 12-37-251 (Property Tax)

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

**SUPERSEDES:** SC Information Letters #95-22, 95-23, and all previous documents and any oral directives in conflict herewith.

**REFERENCES:** S. C. Code Ann. Section 12-37-251 (Supp. 1995)  
S. C. Code Ann. Section 59-21-310 (1976)  
S. C. Code Ann. Section 11-35-310 (1976)  
S. C. Code Ann. Section 59-1-160 (1976)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 1995)  
SC Revenue Procedure #94-1

**SCOPE:** A Revenue Ruling is the Department of Revenue's **official advisory opinion** of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Questions:

1. What does the term "capital construction" mean for purposes of the property tax exemption provided in Code Section 12-37-251(A)?
2. What does the term "school" mean for purposes of the property tax exemption provided in Code Section 12-37-251(A)?
3. What does the term "operations" mean for purposes of the property tax exemption provided in Code Section 12-37-251(A)?

## Conclusions:

1. The term "capital construction" as used in Code Section 12-37-251(A) means the building, remodeling, improving or demolishing of a school building or facility or the cost of acquiring land to construct a school building or facility. The term also includes fixtures permanently affixed to the building, such as central heating, built-in refrigeration, central air-conditioning, elevators, lighting fixtures, plumbing, and other improvements. The term does not include ordinary repairs that are to maintain a building in operating condition, and do not increase the useful life of the building, such as patching a roof or painting one classroom.
2. The term "school" as used in Code Section 12-37-251(A) means a school district's provision of free education to students in kindergarten through grade 12, including district and area vocational schools. The term does not include colleges, junior colleges, or public libraries.
3. The term "operations" as used in Code Section 12-37-251(A) means school district operations of kindergarten through grade 12. Operations include payments pursuant to lease-purchase agreements that are not for capital construction. The term does not include expenditures for bonded indebtedness and payments pursuant to lease-purchase agreements for capital construction.

## Discussion:

Act No.145, Section 119, dealing with property tax relief, became effective June 29, 1995. Code Section 12-37-251 was added as part of this Act.

Code Section 12-37-251(A) provides a property tax exemption for certain property owners and reads:

Property classified pursuant to Section 12-43-220(c) is exempt from property taxes levied for other than bonded indebtedness and payments pursuant to lease-purchase agreements for **capital construction**. The exemption applies against millage imposed for **school operations** and the amount of fair market value of the homestead that is exempt from such millage must be set by the Department of Revenue and Taxation based on the amount available in the State Property Tax Relief Fund. [emphasis added]

The question has arisen as to what the terms "capital construction," "school," and "operations," means for purposes of this exemption.

## **WHAT IS "CAPITAL CONSTRUCTION?"**

The term "capital construction" is not defined in the South Carolina Code. Other terms, such as capital improvement, capital outlay, and construction, are defined in the code and suggest the legislative intent of the term "capital construction" used in Code Section 12-37-251.

Code Section 59-21-310, dealing with school facilities and State Aid for Schools, defines the term "capital improvement" as:

"...the cost of constructing, improving, equipping, renovating and repairing school buildings or other school facilities or the cost of the acquisition of land whereon to construct or establish school facilities;...."

This definition of "capital improvement" is also used in Code Section 59-71-20, dealing with school bonds, and the definition of "capital outlay" contained in Code Section 59-20-20 of the Education Finance Act of 1977 is almost identical to the above definition of "capital improvement." It is reasonable to conclude from these statutory definitions of capital improvement and capital outlay that the construction of school buildings or facilities is a capital improvement.

The term "construction" is defined in Code Sections 11-35-310(7) and 11-35-2910(2). Code Sections 11-35-310(7) and 11-35-2910(2) of the South Carolina Consolidated Procurement Code define the term "construction" as:

"...the process of building, altering, repairing, remodeling, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property."

It is necessary to distinguish costs of construction and costs of routine repair and maintenance. The federal income tax code and regulations provide an explanation of what is a "capital expenditure" and a "repair." A capital expenditure is characterized in US Treasury Regulation 1.263(a)-1(b) as an amount spent for new buildings, permanent improvements or betterments which increase the value of any property, or restoration of property. Excluded from this classification is an incidental or routine repair. Incidental or routine repairs are characterized in US Treasury Regulation 1.162-4 as repairs that do not "materially add to the value of the property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition."

As discussed above, the definitions of the terms "capital improvement," "capital outlay," and "construction" all refer to real property - land or buildings. The terms do not apply to personal property, such as computers or office machinery. Therefore, for purposes of Code Section 12-37-251, "capital construction" means the building, remodeling, improving or demolishing of a school building or facility or the cost of acquiring land to construct a school building or facility. The term "capital construction" also includes fixtures permanently affixed to the building, such as central heating, built-in refrigeration in the cafeteria, central air-conditioning, elevators, lighting fixtures, plumbing, and other improvements. Routine repairs that are to maintain a building in operating condition, and do not increase the useful life of the building are not included in the meaning of "capital construction." Several examples help to distinguish a capital construction expenditure from a repair:

Example 1: A school spends \$300 for painting three classrooms. The cost of painting the classrooms is routine maintenance. But where painting is done as part of or incidental to a general reconditioning and overhauling project of the school, it is a capital expenditure.

Example 2: A school patches the roof over one classroom that suffered wind damage. The cost of patching the roof is a routine repair anticipated in attaining expected life. The cost of a new roof for the entire building is a capital expenditure since it adds to the value of the building and likely prolongs its life.

Example 3: A school pays \$100 to a plumber to unclog a drain in one restroom. Plumbers' and electricians' bills for servicing previously existing assets are routine repairs, clearly for the purpose of keeping the property in efficient operating condition and do not add to its value or prolong its life.

## WHAT IS A "SCHOOL?"

The property tax exemption provided in Code Section 12-37-251(A) applies against millage imposed for school operations. Questions have arisen as to whether counties should include millage for technical schools and public libraries in their school levies.

Code Section 12-37-251(F) provides insight into the legislative intent of the meaning of the term "school." This subsection sets forth contingencies that must be met before the homestead exemption from property taxes imposed for school operations will occur. It states:

The exemption allowed by this section is conditional on full funding of the Education Finance Act and on appropriation by the General Assembly each year reimbursing **school districts** an amount equal to the Department of Revenue and Taxation's estimate of total school tax revenue loss resulting from the exemption in the next fiscal year. [emphasis added]

Since total school revenues lost as a result of the exemption are to be reimbursed to the school districts, the Department believes "school" must relate to "school districts".

Whether a particular millage levy is related to a school district is determined in view of Code Section 59-1-160 where school district is defined as:

... any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complete tax unit.

Accordingly, the term "school" as used in Code Section 12-37-251 means a school district's provision of free education to students in kindergarten through grade 12, including district and area vocational schools. The term does not include colleges, junior colleges, or public libraries.

### **WHAT IS "OPERATIONS?"**

Since the property tax exemption applies to millage imposed for school operations, the question also has arisen as to what is meant by the term "operations." It was determined above that the term "school" must relate to "school districts" since total school revenues lost as a result of the exemption are to be reimbursed to the school districts.

In reading each sentence of Code Section 12-37-251(A) together, the Department concludes that the term "operations" does not include expenditures for bonded indebtedness and payments pursuant to lease-purchase agreements for capital construction.

Therefore, the exemption applies against millage imposed for school district operations of kindergarten through grade 12. Operations include payments pursuant to lease-purchase agreements that are not for capital construction.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

Columbia, South Carolina  
June 12, 1996