8. SALES AND USE TAX SPECIFIC PROVISIONS

INTRODUCTION

This chapter discusses in more detail some of the most common sales and use tax exemptions available to manufacturers, processors, contractors, retailers, motion picture production companies, and other businesses considering locating, doing business, or expanding in South Carolina. In addition, this chapter also discusses other important sales and use tax issues for businesses considering doing business in South Carolina, such as the use of an exemption certificate to make purchases tax free, sales for resale, construction contracts, computer services and software, and our annual sales tax holiday weekend.

1. MANUFACTURERS, PROCESSORS, AND COMPOUNDERS

a. General Information

Manufacturers, processors, and compounders enjoy numerous exclusions and exemptions from sales and use tax under South Carolina Code §§12-36-2120 and 12-36-120. This section provides a more detailed discussion of the most common exemptions available to manufacturers, processors, and compounders, such as the sales tax exemption for machinery used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale; ingredient parts; electricity; fuel; packaging; and sales for resale.

NOTE: other exemptions discussed in this chapter and those listed in Chapter 7 above may also apply to your business. See also South Carolina Regulation 117-302, "Manufacturers, Processors, Compounders, Miners, and Quarries" for more information on available exclusions and exemptions.

b. Machines, Parts, and Attachments

General Information. Whether a machine is exempt from sales and use tax depends on the circumstances and use of the machine. For example, is a machine exempt from sales and use tax if it is a fixture to realty (but not a building), is owned by someone other than a manufacturer, has more than one use, or is used to abate pollution caused by a machine used in manufacturing? These questions are addressed below and examples are provided to assist in understanding South Carolina's machine exemption.

South Carolina Code §12-36-2120(17), commonly referred to as the machine exemption, exempts from sales and use tax purchases of machines used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale. The term "machines" includes the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which are necessary to the operation of the machines and are customarily so used or are necessary to comply with the order of an agency of the United States or of South Carolina for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by a machine used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale. This exemption does not include automobiles or trucks.

For South Carolina purposes, the applicability of this machine exemption depends on whether the machine or combination of mechanical powers, parts, attachments, and devices are integral and necessary to the manufacturing process. (**NOTE**: References to "manufacturing" include "processing," "compounding," "mining," and "quarrying.") In other words, a machine is exempt from the sales and use tax if it is an essential and indispensable component part of the manufacturing process and is used on an ongoing and continuous basis during the manufacturing process. The court in *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E. 2d 300 (1984) set forth a test for making this determination; two South Carolina court decisions in 2003 have followed and clarified this theory. Each is briefly discussed below.

- The *Hercules* case involved whether a facility that treated waste that was produced in connection with the manufacturing of textile products for sale was a machine. The Court held that the wastewater treatment facility was a machine and that its various parts and attachments (such as vats, basins, tanks, pumps, other mechanical devices, troughs, and pipes) are integral and necessary to the operation of the system as a whole.

  The following test was used by the Court in determining what is an exempt "machine." Are improvements, either fastened or loose:

  1. Used directly in manufacturing the products that the establishment intended to produce;
  2. A necessary and integral part of the manufacturing process;
  3. Used for the purpose of manufacturing the product it was intended to produce; and
  4. Not benefiting the land generally, and will not serve various users of the land.

The Court further defined the term "machine" to include "the concept of combination" (*i.e.,* combination of mechanical powers, parts, attachments and devices to perform some function and produce a certain effect or result integral and necessary to the manufacturing process) and held that the statute "does not require a machine to have moving parts if it is an integral part of the manufacturing process" and that the statute makes no distinction "as to whether a machine is a fixture or personal property."

- *Springs Industries, Inc., v. South Carolina Department of Revenue, South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (unpublished), certiorari denied, October 8, 2003*. *Springs* involved the applicability of the machine exemption to "machines used in manufacturing" at a textile plant, and to chemicals used at the plant's wastewater treatment facilities to purify manufacturing waste. The court held that machinery is exempt if it is integral and necessary to the manufacturing process and used on an ongoing and continuous basis during the manufacturing process.

- *Anonymous Corporation v. South Carolina Department of Revenue* (02-ALJ-17-0350-CC). This case involved whether buildings or parts of buildings could be exempt under the machine exemption. The Administrative Law Court held that building materials, such as: (a) paint and sealants, (b) foundations, (c) structural steel, (d) steel decking and checkers plates for buildings, (e) hangers and supports for process piping, and (f) architectural roofing and siding, were not exempt as a machine.

Based on the above, the machine exemption does not apply to everything that can be useful to a manufacturer. To aid in determining the application of the machine exemption in accordance with the above court decisions, the Department issued South Carolina Revenue Ruling #04-7 and the General Assembly approved an amendment of South Carolina Regulation 117-302.5. The following issues were addressed in the ruling and the regulation:

1. Chemicals, Greases, Oils, Lubricants and Coolants
2. Classification of Machines Used in Manufacturing, Maintenance, or Storage
3. Conveyances
4. Manufacturing Buildings
5. Administrative Machines, Furniture, Equipment and Supplies
6. Protective Clothing

Below is a brief summary of the machine exemption principles in South Carolina Code §12-36-2120(17), South Carolina Regulations 117-302.5 and 117-302.6, and South Carolina Revenue Ruling #04-7.

Machine Exemption – General Rule. A machine qualifies for the machine exemption under South Carolina Code §12-36-2120(17) if the machine meets the following three requirements:

1. The machine is used at a manufacturing facility whose purpose is manufacturing a product "for sale." It does not apply to machines used at a facility whose purpose may be retailing, wholesaling, or distributing. For example, machines used by an industrial baker manufacturing breads for sale may be purchased tax free; however, similar machines used by a local retail bakery may not be purchased tax free.
2. The machine is used in, and serves an essential and indispensable component part of, the manufacturing process and is used on an ongoing and continuous basis during the manufacturing process. **NOTE**: A machine "integral and necessary" to the manufacturer, such as a machine used solely for warehouse, distribution, or administrative purposes, is not tax exempt under the machine exemption since it is not "integral and necessary" to the manufacturing process.
3. The machine must be substantially used (not necessarily exclusively used) in manufacturing tangible personal property for sale (*i.e.,* more than one-third of a machine's use is for manufacturing.)

A machine meeting the above requirements may be exempt even if it does not have moving parts or is a fixture upon the real estate where it stands. However, buildings and parts of buildings, as well as other improvements which benefit the land generally and may serve other users of the land, are not exempt.

Machine - Replacement Parts and Attachments. Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of exempt machines are also exempt under the machine exemption in South Carolina Code §12-36-2120(17) if they are: (1) used on or in the operation of exempt machines, (2) manufactured for use on or in the operation of exempt machines, (3) integral and necessary to the operation of exempt machines, and (4) customarily so used.

This means the part or attachment must be: (a) purchased in the form in which it will be used by the manufacturer without any fabrication or alteration by him, except the usual and customary minor adjustments (except as otherwise provided), (b) a standard part or attachment that is customarily used in connection with the machine, and (c) the machine or machinery on which it is used would not do the work for which it was designed if the part or

attachment were not used. This exempts all parts and attachments without which the machine would do no work, and exempts parts and attachments designed to increase the efficiency of the machine. See South Carolina Regulation 117-302.5 for guidance in determining what qualifies as a part or attachment to a machine.

Examples of Exempt Machines or Machine Parts. Examples of exempt machines or parts of machines include the following:

- material handling or mechanical conveyor machines feeding the first processing machine; the machine that discharges the finished product from the last machine used in the process; material handling machinery used for transporting in process material from one process stage to another
- chemicals, including greases, oils, lubricants, and coolants, used in an exempt manufacturing machine that are essential to the functioning of the exempt machine during the manufacturing process
- tanks which are a part of the chain of processing operations (the exemption does not include storage tanks)
- transformers, capacitors, and voltage regulators used by manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding machinery
- machines used to condition air (including humidification systems) for quality control during the manufacturing process of tangible personal property made from natural fibers and synthetic materials
- recording instruments attached to manufacturing machines
- belting purchased for use on a particular machine used in manufacturing tangible personal property for sale
- materials used by manufacturers or contactors in building machines that will manufacture tangible personal property for sale

Examples of Non-Exempt Machines or Parts. Examples of taxable machines or parts include the following:

- material handling machinery and/or mechanical conveyors up to the point where the materials go into process

- chemicals used to clean either the manufacturing facility or non-exempt machines, such as storage tanks
- paint used on exempt manufacturing machines to prevent machine corrosion
- greases, oils (*e.g.,* motor oils, gear oils, or chain oils), lubricants, and coolants used in an exempt manufacturing machine when such items are not integral and necessary to the manufacturing process, such as those that are not essential in ensuring the functioning of the machine during the manufacturing process
- machines used for maintenance purposes (*i.e.,* machines used to maintain nonexempt machines that are not integral and necessary to the manufacturing process, or are not used on an ongoing, continuous basis to maintain exempt manufacturing machines that are integral and necessary to the manufacturing process), such as pressure washing machines and ultrasonic cleaning machines used to clean non-exempt machines or parts, such as storage tanks
- storage racks used to store raw materials or finished goods, or storage tanks used to store raw materials, gasses, or water
- warehouse machines used for warehouse purposes, such as loading and unloading, storing, or transporting raw materials or finished products
- storage tanks and piping leading to and from storage tanks and piping bringing gas or water into the plant
- power lines bringing electricity into the plant
- administrative machines, furniture, equipment and supplies such as office computers, paper, or items used for the personal comfort, convenience, or use of employees

Machine – A Structure versus a Building. South Carolina Code §12-36-2120(17) can apply to machines that are "structures". A structure that is a building is not a "machine," and the materials used to construct the building are not exempt from sales and use tax as a machine, part, or attachment used in manufacturing. See South Carolina Regulation 117-302.5 and South Carolina Revenue Ruling #04-7 for more details.

For additional information on when a structure qualifies as a machine, see (1) South Carolina Revenue Ruling #89-7 where the Department held that a settling basin for a wastewater treatment facility was one part of a single facility and that the facility was a "machine" and (2) South Carolina Private Letter Ruling #90-3 where the Department held that a gamma irradiator constitutes a machine.

Pollution Abatement Machines. South Carolina Code §12-36-2120(17) and South Carolina Regulation 117-302.6 classify pollution control machines as machines used in mining, quarrying, compounding, processing, or manufacturing of tangible personal property when installed and operated for compliance with an order of an agency of the United States or of this state to prevent or abate air, water, or noise pollution caused or threatened by the operation of other machines used in the mining, quarrying, compounding, processing, and manufacturing of tangible personal property for purposes of South Carolina Code §12-36-2120(17).

The application of this regulation was addressed in Commission Decision #92-19 where the Department reviewed whether certain items located at the taxpayer's electrical generating facility came within the machine exemption as defined by South Carolina Regulations 117-173 (recodified as 117-302.6) and 117-174.120 (recodified as 117-302.5). The Department held that stack liners and ash pond pipes and pumps were exempt from sales and use tax on the grounds that these items were "operated exclusively in the abatement of pollution caused by the production of electricity."

Additionally, the Department determined in South Carolina Private Letter Ruling #92-9 that certain parts, attachments, and components of a chimney stack used in the manufacture of electricity were "machines" required by state and federal law and were necessary and integral to the manufacture of electricity, and, therefore, were exempt from sales and use tax as provided under South Carolina Code §12-36-2120(17) and South Carolina Regulation 117-173 (recodified as 117-302.6). See also *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission,* 313 S.E.2d 300 (1984).

Machine Owned by Someone Other Than a Manufacturer. South Carolina Code §12-36-2120(17) does not require ownership of the machine by the manufacturer to qualify for the sales and use tax exemption. The use of a machine determines whether it is exempt from sales and use tax.

This issue was considered in *Hercules*. The Court reviewed whether the machine exemption applied to materials purchased to build a waste treatment facility that was owned by a South Carolina town and used substantially by a manufacturer in the manufacture of tangible personal property for sale. The Court determined that the machine exemption applied to the

materials used to construct that facility, without regard to the machine's ownership, since the facility satisfied a pollution control requirement and thereby allowed the manufacturer to remain in operation. See also *Southeastern-Kusan v. South Carolina Tax Commission,* 280 S.E. 2d 57 (1981).

Machine Used Substantially in Manufacturing (Dual Usage Machine). South Carolina Code §12-36-2120(17) requires "substantial," but not "exclusive," use of the machine in the manufacture of tangible personal property for sale in order for the machine exemption to apply.

For example, the purchase of a forklift that is used substantially to move materials from one stage of the production process to another (an exempt purpose) and also used to load trucks (a non-exempt purpose) is allowed the machine exemption from sales and use tax. In addition, purchases of parts for the forklift are also exempt from tax.

Further, this principle was reviewed in *Hercules* where the Court determined that a municipally owned waste treatment facility was a machine used substantially in the manufacture of tangible personal property for sale. At this facility, approximately 35% of the waste treated was from a manufacturing plant and the rest was from ordinary municipal sources. The Court concluded that the machine exemption does not provide that the manufacturing use has to be exclusive nor does it require that the manufacturing use be the primary use to which the facility is devoted. In accordance with South Carolina Regulation 117-302.5, more than one-third of a machine's use in manufacturing is substantial.

Machine Used in Research and Development. See Section 7 below in this Chapter.

Machine Used in Recycling. See Section 3 below in this Chapter.

c. Tangible Personal Property that is an "Ingredient or Component Part" or "Used Directly" in the Process

South Carolina Code §12-36-120(2) does not tax the sale of tangible personal property to a manufacturer or compounder that is an ingredient or component part of the tangible personal property or products manufactured or compounded for sale.

Further, South Carolina Code §12-36-120(3) does not tax the sale of tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale. South Carolina Regulation 117-302.1 provides, in part, that something is "used directly" if the

materials or products so used come in direct contact with and contribute to bring about some chemical or physical change in the ingredient or component properties during the period in which the fabricating, converting, or processing takes place.

South Carolina Regulation 117-302.1 also provides that the sales tax does not apply to the sale of (1) acetylene, oxygen, and other gases sold to manufacturers or compounders that enter into and become an ingredient or component part of the tangible personal property or products which it manufactures or compounds for sale, or which are used directly in fabricating, converting, or processing the materials or products being manufactured or compounded for sale, or (2) plates attached by the manufacturer to its product for identification purposes and which become a part of the product.

d. Electricity

South Carolina Code §12-36-2120(19) exempts from sales and use tax the sale of electricity used by manufacturers, processors, miners, quarriers, or cotton gins to manufacture, mine, or quarry tangible personal property for sale.

South Carolina Regulation 117-302.4 further provides that this exemption applies to electricity to provide lighting necessary for the operation of such machines and to electricity used to control plant atmosphere as to temperature and/or moisture content in the quality control of tangible personal property being manufactured or processed for sale.

This exemption does not apply to sales of electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, housekeeping equipment and machinery, machines used in manufacturing tangible personal property not for sale, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters, and waste house lights.

e. Coal, Coke, and Other Fuel

South Carolina Code §12-36-2120(9) exempts from sales and use tax the sale of coal, coke, or other fuel sold to manufacturers and electric power companies for the generation of heat or power used in manufacturing tangible personal property for sale or the generating of electric power or energy for use. The statute further exempts coal, coke or other fuel sold to manufacturers for the production of by-products or for the generation of electric power or energy for use in manufacturing tangible personal property for sale. For purposes of this exemption, mining and quarrying are considered to be manufacturing.

This exemption applies to fuel used to control plant atmosphere as to temperature and/or moisture content in the quality control of tangible personal property being manufactured or processed for sale.

South Carolina Code §12-36-2120(9) also exempts the sale of fuel for (1) the generation of motive power for test flights of aircraft by the manufacturer of the aircraft; and (2) the transportation of an aircraft prior to its completion from one facility of the manufacturer of the aircraft to another facility of the manufacturer of the aircraft, not including the transportation of major component parts for construction or assembly, or the transportation of personnel. These exemptions only apply when the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility over a seven-year period and creates at least three thousand eight hundred full-time new jobs at the single manufacturing facility during that seven-year period. The taxpayer must notify the Department in writing before the first month it uses these exemptions. **The exemption for certain aircraft fuel became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.**

f. Packaging

South Carolina Code §12-36-120(4) does not tax purchases of materials, containers, cores, labels, sacks, or bags that are used incident to the sale and delivery of tangible personal property. South Carolina Regulation 117-302.2 provides definitions of the terms “materials,” “containers,” and “cores.”

“Materials” include wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and pallets used in packaging tangible personal property incident to its sales and delivery and used by manufacturers, processors, or compounders in shipping tangible personal property.

“Containers” include paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

“Cores” include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

This sales and use tax exclusion applies to labels affixed to manufactured articles to identify such products only when such labels are passed on to the ultimate consumer of such products, and to excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. This exclusion does not apply to address stickers and shipping tags, and materials used to preserve property during shipment, such as dry ice and rust preventives.

In addition, South Carolina Code §12-36-2120(14) exempts from sales and use tax the sale of wrapping paper, wrapping twine, paper bags, and containers used incident to the sale and delivery of tangible personal property.

g. Sale for Resale or Wholesale Sales

Sales by manufacturers and compounders of tangible personal property are not taxable if the property is sold for resale (*e.g.,* a wholesale sale) under South Carolina Code §12-36-120(1). Further, a manufacturer is considered to be making a wholesale sale and not liable for South Carolina sales and use tax when the manufacturer, at the request of a retailer, drop ships its product in South Carolina to a retailer's customer and bills the retailer for the product. See South Carolina Revenue Ruling #98-8 for further information on drop shipments.

A resale certificate, Form ST-8A, can be used by retailers to purchase tangible personal property for resale. It is not necessary that a resale certificate be obtained for each purchase; the seller must maintain only one resale certificate per customer. By accepting the resale certificate and having it on file, the seller is relieved of the tax liability provided (1) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed, (2) the seller did not fraudulently fail to collect or remit the tax, or both, and (3) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale. It is not required that Form ST-8A be used. A letter from the purchaser to the seller or a resale certificate from another state is acceptable provided it contains the same information requested on Form ST-8A. In addition, the "Uniform Sales and Use Tax Certificate" published by the Multistate Tax Commission ("MTC") may be used by a purchaser for the purpose of purchasing tangible personal property that will be resold, leased, or rented in the normal course of the purchaser's retail business. See South Carolina Revenue Procedure #08-2 for further information on the acceptance of a resale certificate, Form ST-8A, and the liability for the tax.

2. DIRECT PAY AND EXEMPTION CERTIFICATES

Manufacturers and other taxpayers may operate a business of the nature that makes it impractical to account for sales and use taxes at the time of purchase. In such cases, South Carolina Code §12-36-2510 provides that the Department may issue a certificate to authorize taxpayers to make some or all purchases at wholesale or tax free. The holder of a certificate, not the retailer, is liable for any sales and use taxes which may be due on the items purchased with the certificate.

The Department issues two types of certificates: (1) the "direct pay" certificate and (2) the "limited exemption" certificate. Each is briefly discussed below:

- **Direct Pay Certificate**. This certificate enables the taxpayer issued the certificate to purchase all items free of the sales and use tax and to remit the tax due on items subject to sales and use tax. The direct pay certificate is also referred to as a "Number 19."

  Further, South Carolina Code §12-36-2570(E) allows the Department to enter into a written agreement with a taxpayer having a direct pay certificate to allow the taxpayer to remit the sales and use tax on statistical factors set forth in a memorandum of understanding. This method only applies to purchases of routine expense items by the taxpayer for its use, storage, or consumption, and not to purchases by the taxpayer for resale (which are exempt).

- **Limited Exemption Certificate**. This certificate enables the taxpayer issued the exemption certificate to purchase only those items specifically indicated on the certificate free of sales and use tax. For example, the certificate may show that only machinery and electricity may be purchased tax free. The sales and use tax must be paid on all other purchases at the time of sale. The limited exemption certificate is also referred to as a "special" exemption certificate.

To request a certificate, the taxpayer must submit an application on Form ST-10, "Application for Certificate." Usually, a visit will be made to the taxpayer's business to determine if a certificate should be issued. Once approved, the Department will issue the taxpayer an exemption certificate on Form ST-9. The taxpayer should provide a copy of the certificate to the retailer; however, it is not necessary to provide a copy each time a purchase is made.

3. MACHINES USED IN RECYCLING

South Carolina Code §12-36-2120(17) exempts machines used in recycling tangible personal property for sale. "Recycling" is defined to mean any process by which materials which would

otherwise become solid waste are collected, separated, or processed and reused, or returned to use in the form of raw materials or products, including composting, for sale.

4. MATERIAL HANDLING SYSTEMS AND EQUIPMENT

South Carolina Code §12-36-2120(51) exempts from sales and use tax material handling systems and material handling equipment used in the operation of a distribution or manufacturing facility including, but not limited to, racks, whether or not the racks are used to support a facility structure or part of the facility. An investment of $35 million in real or personal property in South Carolina over a 5 year period is required to qualify for this exemption.

To qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption. This notification must provide the date the taxpayer intends for the 5 year investment time period to begin.

In addition, the taxpayer must notify the Department in writing when the $35 million investment requirement has been met. If the investment requirement has not been met at the end of the 5 year investment period, the taxpayer must notify the Department in writing. The running of the period of limitations for assessment of taxes is suspended beginning with the notice to the Department that the exemption will be used and ending with the notice that the investment requirement has or has not been met.

See South Carolina Revenue Ruling #13-3 for answers to commonly asked questions on the material handling systems exemption. This advisory opinion concluded, in part:

- Only material handling systems and material handling equipment used in distribution or manufacturing facilities qualify for the exemption.
- Purchases of replacement and repair parts qualify for the exemption.
- The investment may be made anywhere in South Carolina and the investment does not have to be made at the same location where the exemption is taken.
- The investment is limited to real or personal property in South Carolina. Expenditures for wages, employee benefits, taxes, raw materials, and inventory do not meet the investment requirement.

5. CONSTRUCTION CONTRACTOR

a. General Information

South Carolina Code §12-36-110 provides that a construction contractor is the user or consumer of everything he buys. A "construction contractor" is a person or business making repairs, alterations, or additions to real property. See South Carolina Regulation 117-314.2.

In general, purchases by construction contractors are retail purchases and are subject to South Carolina sales or use tax. South Carolina Code §12-36-1310(A) provides that if a contractor buys building materials in another state and brings them into South Carolina for use on a construction contract in South Carolina, then the contractor is liable for South Carolina use tax. A credit is allowed against South Carolina use tax for the total taxes (state and local) due and paid in another state pursuant to South Carolina Code §12-36-1310(C).

The following are examples of transactions where the contractor is not subject to South Carolina sales and use tax:

1. The contractor buys property from a South Carolina supplier and the supplier delivers the property to the contractor (or to an agent or donee of the contractor) outside South Carolina. See South Carolina Code §12-36-120(36).

2. The contractor purchases tangible personal property in South Carolina for use on contracts outside South Carolina. To come within this exclusion, the contractor must perform some work on the property in South Carolina and the property must not be brought back into South Carolina. See South Carolina Code §12-36-110(2).

b. Construction Contracts with Manufacturers

Unlike most purchases by construction contractors, the purchase of materials that are components of machines which are used in manufacturing tangible personal property for sale may be purchased tax free. See South Carolina Regulation 117-302.5. Often, a construction contractor will have a contract with a manufacturer, processor, or compounder who has an exemption certificate and is entitled to the exemption for machines, parts, and attachments.

Since construction contractors usually cannot make tax free purchases, the Department has developed several methods by which a contractor may purchase tax free all items to be used in building machines, parts, and attachments for manufacturers who are exempt from tax. These methods are:

- Manufacturer Letter to Contractor's Suppliers – The manufacturer furnishes documentation, in the form of a letter, to the contractor's suppliers establishing that the item is not subject to the tax. The contractor does not use the manufacturer's exemption certificate.

- Agency Agreement – The contractor enters into a limited agency agreement with the manufacturer and the contractor is allowed to use the manufacturer's exemption certificate. As an agent, the contractor is legally acting for the manufacturer. The manufacturer is liable for any taxes due, so it is important for the agreement to be in writing and clearly state what the contractor can and cannot buy with the certificate. This is usually used for large projects.

- Department Special Agreement – The Department executes a special agreement with the manufacturer whereby the manufacturer will accept liability and responsibility for payment of all the sales and use tax due on the project. This is only available for large projects and the use of this method is at the sole discretion of the Department. This is referred to as a "Special 19 Agreement."

- Single Sale Exemption Certificate – The contractor completes Form ST-8 and extends it to the supplier indicating the purchase is exempt under South Carolina Code §12-36-2120(17). A certificate must be extended for each purchase. The contractor assumes full liability for the tax if it is determined that the purchase was used for a non-exempt purpose.

c. Light Construction Equipment

South Carolina Code §12-36-2110(A)(7) provides a maximum tax of $300 on purchases of light construction equipment used for construction purposes (*i.e.,* building or making additions to real property.) The equipment must be self-propelled with a maximum of 160 net engine horsepower. Form ST-405 may be completed by the purchaser and given to the retailer in order to limit the tax to $300. The local option sales and use taxes collected by the Department do not apply to sales subject to the $300 maximum tax.

If light construction equipment is leased, it is subject to the $300 maximum tax if the lease is in writing, has a stated term, and remains in force for a period in excess of 90 continuous days. The taxpayer may pay the total tax due at the time the lease is executed or with each lease payment until the $300 is paid.

In South Carolina Technical Advice Memorandum #89-13, the Department concluded that the $300 maximum tax does not apply to equipment used to maintain or repair property, such as tractors, loaders, and other self-propelled equipment used to maintain golf courses, parks, and campgrounds.

d. Construction Material Used to Construct a Single Manufacturing and Distribution Facility

South Carolina Code §12-36-2120(67) exempts from sales and use tax construction materials used in the construction of a single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least $100 million in real and personal property at a single site in the state over an 18 month period.

To qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption. This notification must provide the date the taxpayer intends for the 18 month investment time period to begin.

In addition, the taxpayer must notify the Department in writing when the $100 million investment requirement has been met. If the investment requirement has not been met at the end of the 18 month investment period, the taxpayer must notify the Department in writing. The running of the period of limitations for assessment of taxes is suspended for the time period beginning with notice to the Department before the exemption is used and ending with notice that the investment requirement has or has not been met. See SC Revenue Ruling #15-2.

South Carolina Code §12-36-2120(67) also fully exempts the sale of construction material used in the construction of a new or expanded single manufacturing facility where the taxpayer invests at least $750 million dollars in real or personal property or both comprising or located at the facility over a 7 year period and creates at least 3800 full-time new jobs at the facility during that 7 year period. **This exemption for taxpayers making the $750 million investment and creating at least 3800 full-time new jobs became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.**

6. CONTRACTS WITH THE FEDERAL GOVERNMENT

South Carolina Code §12-36-2120(29) exempts from sales and use tax tangible personal property purchased by a person under written contract with the federal government that

- Becomes part of real or personal property owned by the federal government or
- Transfers to the federal government, pursuant to a written contract.

The exemption does not apply to purchases of items which do not transfer to the federal government, such as tools. Purchases made by contractors under contracts with state, county, and municipal governments are not exempt from sales and use tax. Further, South Carolina Regulation 117-314.11 (see also South Carolina Revenue Ruling #04-9) provides that purchases by a construction subcontractor for use in a federal government construction project in South Carolina are exempt if: (a) the subcontractor has a written contract with the general construction contractor that in turn has a written contract for the project with the federal government, and (b) the subcontractor is an agent for the general contractor. In addition, purchases by a subcontractor of the subcontractor for use in a federal government construction project in South Carolina are not subject to the sales and use tax if the general contractor that has the written contract with the federal government has specifically granted his agent the authority to appoint a subagent that can bind the general contractor. The agency agreements with the subcontractors (as agents or subagents) must be in writing to meet the exemption requirement. See South Carolina Regulation 117-314.11 (see also South Carolina Revenue Ruling #04-9) for the conditions that must be met for a subcontractor to be an agent for a general contractor.

7. RESEARCH AND DEVELOPMENT MACHINERY

South Carolina Code §12-36-2120(56) provides an exemption from sales or use tax for machines used in research and development (*i.e.*, machines used directly and primarily in research and development, in the experimental or laboratory sense, of new products, new uses for existing products, or improvement of existing products). South Carolina Revenue Ruling #08-3 provides that for a machine to qualify for this exemption more than 50% of its total use must be for direct use in research and development, as defined in the exemption.

"Machines" includes machines and parts of machines, attachments, and replacements used or manufactured for use on or in the operation of the machines, which are necessary to the operation of the machines, and are customarily so used. (See Business Property Tax, Chapter 4, Section 5 which addresses a property tax exemption for facilities engaged in research and development.)

8. TECHNOLOGY INTENSIVE FACILITY

South Carolina Code §12-36-2120(65)(a) exempts computer equipment used in connection with a technology intensive facility from the sales and use tax. South Carolina Code §12-36-2120(66) exempts electricity used by a technology intensive facility that qualifies for the exemption in South Carolina Code §12-36-2120(65), and equipment and raw materials including, fuel used by such facility to generate, transform, transmit, distribute, or manage electricity for use in the facility.

In order to qualify for these exemptions, the taxpayer must:

1. Invest at least $300 million in real or personal property, or both, at the facility over a 5 year period;

2. Create at least 100 new jobs at the facility during that 5 year period, and the average cash compensation of at least 100 of the new jobs is 150% of the per capita income of the state according to the most recently published data available at the time the facility's construction starts; and

3. Spend at least 60% of the $300 million on computer equipment.

The terms "technology facility" and "computer equipment" are defined as:

1. "Technology intensive facility" - a facility at which a firm engages in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge. It includes North American Industrial Classification Systems ("NAICS") Manual codes 5114 (database and directory publishers), 5112 (software publishers), 54151 (computer systems design and related services), 541511 (custom computer programming services), 541512 (computer design services), 541710 (scientific research and development services), 541711 (research and development in biotechnology), 541712 (research and development in physical, engineering, and life sciences (except biotechnology), 518210 (data processing hosting and related services), 9271 (space research and technology), or a facility primarily used for one or more activities listed under the 2002 version of the NAICS codes 51811 (internet service providers and web search portals.) See South Carolina Code §12-6-3360(M)(14)(b).

2. "Computer equipment" - original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to

store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.

These exemptions have certain notification requirements to be followed by the taxpayer. The exemptions apply from the start of the investment in, or construction of, the facility. Once the Department certifies that the taxpayer has met the investment and job requirements, all subsequent purchases of, or investments in, computer equipment, including to replace originally deployed computer equipment or to implement future expansions, qualify for the exemption, regardless of when the taxpayer makes the investments.

9. QUALIFIED RECYCLING FACILITY

South Carolina Code §12-36-2120(50) provides an exemption from sales and use tax for

- Recycling property used at the facility
- Electricity, natural gas, propane or fuels of any type, oxygen, hydrogen, nitrogen or gases of any type, and fluids and lubricants used by the facility
- Tangible personal property which becomes, or will become, an ingredient or component part of products manufactured for sale by the facility
- Tangible personal property of, or for, the facility which is, or will be used: (1) for the handling or transfer of post-consumer waste material, (2) in, or for, the manufacturing process, or (3) in, or for, the handling or transfer of manufactured products
- Machinery and equipment foundations used, or to be used, by the facility.

The requirements to qualify for this exemption include a minimum level of investment for the recycling facility of at least $300 million by the end of the fifth calendar year after the year in which the taxpayer begins construction or operation of the facility.

Further, the facility must manufacture products for sale composed of at least 50% post-consumer waste material by weight or volume. The definitions of the terms “recycling property,” “qualified recycling facility,” and “post-consumer waste material” are defined in South Carolina Code §12-6-3460.

10. CLEAN ROOM ENVIRONMENT

South Carolina Code §12-36-2120(54) exempts from sales and use tax the sale of clothing and other attire required for working in a Class 100 or better clean room environment, as defined in Federal Standard 209E.

11. SALE OF BUSINESS

South Carolina Code §12-36-2120(42) exempts from sales and use tax the sale of depreciable assets used in the operation of a business pursuant to the sale of the business. This exemption only applies where the entire business is sold by the owner pursuant to a written contract and the purchaser continues its operation. Purchases of real property, inventory for resale, and intangibles are always exempt.

Under South Carolina Revenue Advisory Bulletin #01-1, the sale of a business will qualify as the sale of the entire business when:

1. The taxpayer sells all the assets of the legal entity (other than a single member limited liability company or a grantor trust which is ignored for tax purposes), or

2. The taxpayer sells all of the assets of a "discrete business enterprise" that is contained within the legal entity.

The Department further determined that whether a taxpayer has sold a discrete business enterprise is determined under the principles relating to a unitary business as set forth in the case law of the South Carolina courts and the United States Supreme Court. If the business being sold is not unitary with other businesses of the taxpayer, the taxpayer will be considered to have sold a discrete business enterprise and will qualify for the exemption.

12. COMPUTER SERVICES AND SOFTWARE

South Carolina Code §12-36-910(C) provides that sales and use tax does not apply to data processing. As used in the statute, "data processing" means the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers.

The term also means the electronic transfer of, or access to, that information. Examples of data processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.

The applicability of sales and use tax to the sale or purchase of computer software depends upon the form of the software sold. Computer software sold and delivered to a purchaser in a tangible form, such as magnetic tape, diskette, or flash drive is subject to sales and use tax. See *Citizens and Southern Systems, Inc. v. South Carolina Tax Commission,* 280 S.C. 138(1984). In South Carolina Revenue Rulings #96-3 and #12-1, the Department concluded that computer software sold and delivered by electronic means is not subject to sales and use tax since it does not meet the definition of tangible personal property. See South Carolina Revenue Rulings #12-1, #11-1 and #03-5 for more information on the taxation of computer software, hardware, and maintenance contracts.

13. REPAIRING AND RECONDITIONING

South Carolina Code §12-36-2120(52) exempts from sales and use tax parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft. This exemption does not extend to tools and other equipment not attached to the aircraft or that do not become a part of the aircraft. **Note: This exemption became effective January 1, 2016. Previously, this exemption was limited to persons engaged in the business of repairing or reconditioning aircraft owned by, or leased to, the federal government or commercial air carriers.**

14. GOODS SHIPPED FROM SOUTH CAROLINA

South Carolina Code §12-36-2120(36) provides that when tangible personal property is sold within South Carolina and the seller is obligated by contract to deliver it to the buyer or to an agent of the buyer at a point outside of South Carolina or to deliver it to a carrier or to the mails for transportation to the buyer or to an agent of the buyer at a point outside this state, the sales and use tax does not apply provided the property is not returned to a point within South Carolina. The most acceptable proof of transportation outside South Carolina is: (1) a way-bill or bill of lading made to the seller's order and calling for delivery, (2) an insurance receipt or registry issued by the U.S. Postal Department, or a Postal Department Form 3817, or (3) a trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside this state who received the goods delivered. The tax applies when tangible personal property pursuant to a sale is delivered in South Carolina to the buyer or to an agent other than a carrier even though the buyer may subsequently transport the property out of South Carolina.

15. INTERSTATE AND INTERNATIONAL COMMERCE

South Carolina Code §§12-36-2120(13), (20), (21), and (40) exempt from sales and use tax railroad cars, locomotives and their parts; vessels and barges of more than 50 tons burden;

shipping containers and chassis, including all parts and components sold to international shipping lines which have a contractual relationship with the South Carolina State Ports Authority and are used for the import or export of goods to or from this state; and fuel, lubricants, and supplies for use or consumption aboard ships in intercoastal trade or foreign commerce.

South Carolina Regulation 117-321.1 provides that the exemption in South Carolina Code §12-36-2120(13) for supplies used or consumed aboard ships in intercoastal trade of foreign commerce does not apply to: (1) sales of materials used in fulfilling a contract for the painting, repair, or reconditioning of vessels, barges, ships, or other watercraft, and (2) sales of fishing craft, tugs, vessels, or other watercraft not used in trade or commerce between South Carolina ports and ports of other states or foreign countries.

Ship chandlers sell marine supplies to operators of all kinds of watercraft and to others. South Carolina Regulation 117-309.7 provides that sales by ship chandlers of fuel, lubricants, and supplies for use aboard ships plying on the high seas engaged in trade or commerce between South Carolina ports and ports of other states and foreign countries are not subject to the tax. All other sales made by ship chandlers, not for resale, are taxable except for tangible personal property delivered to a ship from a bonded warehouse in the custody and under the supervision of United States Customs officials, who deliver such properties aboard ships to a locked compartment on which a custom seal is placed, which seal by federal rule cannot be broken until the vessel has passed the 12-mile limit.

16. BROADCAST EQUIPMENT

South Carolina Code §12-36-2120(26) exempts from sales and use tax the sale of all supplies, technical equipment, machinery, and electricity to radio, television, and cable television systems for use in producing, broadcasting, or distributing programs. For the purpose of this exemption, radio stations, television stations, and cable television systems are deemed to be manufacturers. See South Carolina Regulation 117-328.

For a discussion concerning the taxation of software used by television and radio stations for broadcasting, see South Carolina Private Letter Ruling #12-1.

17. MOTION PICTURE INDUSTRY

South Carolina Code Title 12, Chapters 36 and 62 contain two film industry sales and use tax incentives designed to promote South Carolina as a filming location. The incentive available in Chapter 62 is a sales and use tax exemption for all qualifying tangible personal property used in

connection with the South Carolina filming by a "motion picture production company" that is approved by the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism ("Film Commission"). The other incentive is a sales and use tax exemption for certain supplies, machinery, and electricity used by a "motion picture company" for use in filming or producing motion pictures in South Carolina. Since the qualifying requirements and approval process of each incentive differs, the applicable South Carolina law should be carefully reviewed.

A general overview of each incentive is provided below.

a. "Motion Picture Production Company" Comprehensive Exemption

To qualify for the sales and use tax exemption provided in South Carolina Code §12-62-30 on funds expended in South Carolina in connection with the filming or production of motion pictures in South Carolina, a motion picture production company must meet the following criteria:

1. The company must be a "motion picture production company" (herein referred to as "Company") as defined in South Carolina Code §12-62-20(4). The Company must be engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. It cannot be a Company owned, affiliated, or controlled, in whole or in part, by a Company or person that is in default on a loan made by the state or a loan guaranteed by the state.

   A "motion picture" is defined in South Carolina Code §12-62-20(3) as a feature-length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. It does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that Company with respect to any performer portrayed in that single media or multimedia program.

2. The Company must intend to spend $250,000 or more in the aggregate in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12-month period.

3. The Company must complete an application and obtain approval as a certified motion picture production company from the Film Commission. An estimate of the total expenditures expected to be made in South Carolina in connection with the filming or production must be filed with the Film Commission before South Carolina filming begins.

   The application and certification procedures can be obtained from the Film Commission at 803-737-0498. There is no application fee.

Important points to remember concerning this exemption are listed below.

- Once the Film Commission notifies the Department of Revenue that the Company is approved and meets the qualifying requirements, the Department of Revenue will issue Company a Form ST-433, "Motion Picture Production Company Sales and Use Tax Exemption Certificate." The Company should provide a copy of the exemption certificate to the retailer to purchase items used in connection with the South Carolina filming free of sales and use tax.

- This exemption applies to the 6% state sales and use taxes, the 7% state sales tax on accommodations, the 6% sales tax on additional guest charges, the 5% rental surcharge, the 11% sales and use tax on 900/976 telephone numbers, and any local sales and use taxes collected by the Department of Revenue on behalf of a local jurisdiction.

- The exemption expires on the date filming or production ends.

- An approved Company that fails to spend $250,000 within a consecutive 12 month period is liable for the sales and use taxes that would have been paid had the approval not been granted. **NOTE**: Such a Company may be eligible for the more restrictive sales and use tax exemption applicable to supplies and equipment discussed in item (b) below.

- This incentive does not apply to the production of television coverage of news and athletic events.

For more information on this incentive, see South Carolina Revenue Ruling #08-12.

b. "Motion Picture Production Company" Limited Exemption for Supplies and Equipment

South Carolina Code §12-36-2120(43) exempts from sales and use tax supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures in South Carolina.

The terms "motion picture company" and "motion picture" defined in Chapter 36 of Title 12 differ from the terms "motion picture production company" and "motion picture" defined in Chapter 62 of Title 12, as discussed above in item (a). The definitions applicable to this exemption are:

1. "Motion picture company" is a company generally engaged in the business of filming or producing motion pictures.
2. "Motion picture" is any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media.

Important points to remember concerning this exemption are listed below.

- To receive an exemption certificate for this limited exemption, the motion picture company must apply to the Department of Revenue on Form ST-10, "Application for Certificate." There is no application fee. Usually, a visit will be made to the motion picture company's site to determine if a certificate should be issued.
- Once approved, the Department of Revenue will issue the motion picture company an exemption certificate on Form ST-9. A copy of this certificate should be given to the retailer upon purchase of the exempt item.
- The exemption applies to all state sales and use taxes and all local sales and use taxes collected by the Department of Revenue on behalf of a local jurisdiction.
- An application or approval from the Film Commission is not needed for this exemption.

c. Other Incentives

See Business Income Tax, Chapter 2, Sections 24 - 27 for more information on income tax credits for investments in a motion picture project or motion picture production facility, an income tax credit for commercial productions, and rebates for a motion picture production company.

18. AUDIOVISUAL MASTER

South Carolina Code §12-36-2120(55) exempts from sales and use tax audiovisual masters made or used by a production company in making visual and audio images for a first generation reproduction. The term "audiovisual master" is defined as an audio or video film, tape, or disk, or another audio or video storage device from which all other copies are made. The term "production company" is defined as a person or entity engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.

19. CONTRACTING WITH COMMERCIAL PRINTERS

South Carolina Code §12-36-75 provides that certain activities of a person contracting with a commercial printer for printing do not require a person to register as a retailer with the Department or require a person to collect or remit South Carolina sales and use taxes.

The statute provides that the following activities of a person will not by themselves create sales and use tax nexus with South Carolina:

1. The ownership or leasing of tangible or intangible property used in printing contracts at the printer's South Carolina location.

2. The sale by the person contracting with the printer of property printed at and shipped or distributed from the printer's South Carolina location.

3. Activities performed pursuant or incident to a printing contract by, or on behalf of, a person at the South Carolina premises of the commercial printer.

4. Activities performed pursuant or incident to a printing contract by the commercial printer in South Carolina for or on behalf of a person.

Further, the commercial printer will not be treated as a representative, agent, salesman, canvasser, or solicitor for the person contracting with the printer by reason of a printing contract.

20. DIRECT MAIL ADVERTISING

South Carolina Code §12-36-2120(58) exempts from sales and use tax "cooperative direct mail promotional advertising materials," and promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or nonprofit convention and visitor bureaus, delivered by means of interstate carrier, a mailing house, or a United States Post Office to South Carolina residents free of charge, from locations inside and outside South Carolina.

For purposes of this exemption, "cooperative direct mail promotional advertising materials" means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material.

21. SALES TAX HOLIDAY

a. Back to School Holiday

South Carolina Code §12-36-2120(57) provides for an annual three day "sales tax holiday" beginning 12:01 a.m. on the first Friday in August and ending at midnight the following Sunday.

This sales tax exemption applies to sales of (1) clothing, clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags; (2) footwear; (3) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, book bags, lunchboxes, and calculators; (4) computers, printers and printer supplies, and computer software; and (5) bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs, pillows, and pillow cases.

This sales tax exemption does <u>not</u> apply to (1) a sale or lease of an item for use in a trade or business; (2) sales of jewelry, cosmetics, eyewear, wallets, watches, and furniture; (3) a sale of an item placed on layaway or similar deferred payment and delivery plan however described; or (4) rental of clothing or footwear.

Before July tenth of each year, the Department is required to publish a list of items qualifying for the exemption. See South Carolina Revenue Ruling #10-7 for a list of examples of items that are exempt from sales and use tax during the sales tax holiday and South Carolina Revenue Ruling #10-8 for answers to commonly asked questions about the sales tax holiday.

22. COMPUTER EQUIPMENT

South Carolina Code §12-36-2120(65)(b) exempts computer equipment used in connection with a manufacturing facility where the taxpayer invests at least $750 million dollars in real or personal property or both comprising or located at the facility over a 7 year period; and creates at least 3800 new jobs at the facility during that 7 year period. **NOTE**: **This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.**

For this exemption, computer equipment is defined to mean "original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research."

The exemption applies from the start of the investment in, or construction of, the facility. The exemption also sets forth certain notification requirements to be followed by the taxpayer.

In addition, once the Department certifies that the taxpayer has met the investment and job requirements, all subsequent purchases of or investments in computer equipment, including to replace originally deployed computer equipment or to implement future expansions, shall qualify for the exemption, regardless of when the taxpayer makes the investments. The Department may assess any tax due as a result of the taxpayer's subsequent failure to meet the investment and job requirements after being granted the exemption.

23. DATACENTER EXEMPTION

South Carolina Code §12-36-2120(79) exempts from sales and use tax (a) computers, computer equipment and computer software used within a qualifying data- center, and (b) electricity used by a qualifying datacenter and "eligible business property" located and used at the qualifying datacenter. Electricity used for purposes unrelated to the datacenter, such as electricity used in administrative offices, parking lots, cafeterias, maintenance shops and similar activities is not exempt.

For purposes of the exemption:

"Computer" is defined as an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of interactions.

"Computer equipment" is defined as computer hardware and components (including servers, routers, power units, network devices, hard drives, processors, motherboards, cooling systems, etc.) the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.

"Computer software" is defined as a set code of instructions designed to cause a computer or automatic data processing equipment to perform a task.

"Datacenter" is defined as a new or existing facility at a single location in South Carolina that provides infrastructure for hosting or data processing services and that has the power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility.

"Eligible business property" is defined as property used for the generation, transformation, transmission, distribution, or management of electricity, including exterior substations, and other business personal property used for these purposes.

In order to qualify for the exemption, the datacenter facility must be certified by the South Carolina Department of Commerce and the following requirements must be met:

1. The taxpayer must invest at least $50 million in real and/or personal property over a 5 year period. If two or more taxpayers are investing, the requirement is $75 million.

2. The taxpayer must create and maintain at least 25 full-time jobs at the facility with a cash compensation of 150% of the per capita income of the state or the county in which the facility is located, whichever is lower. The per capita income must be the most recently published data available at the time the facility is certified by Commerce. The jobs must be created within the 5 year period.

The taxpayer must maintain the jobs for 3 consecutive years after the datacenter has been certified as having met the investment and job requirements.

The exemption is available to the taxpayer once both the Department and the Department of Commerce have been notified of taxpayer's intent to make the required investment and create and maintain the required number of jobs and the datacenter has been certified by the Department of Commerce. The taxpayer is required to send a notice to the Department once it has met the minimum job and capital requirements, or at the end of the 5 year investment period if it has not met the requirements, If the taxpayer fails to make the minimum investment or minimum job requirement, the Department may collect the applicable taxes. If the taxpayer meets the capital and job requirements but fails to maintain the jobs for the 3 year period, the taxpayer is not allowed the exemption for computers, computer equipment, and hardware and software purchases until it meets the qualifying jobs requirements. The taxpayer is allowed the exemption for electricity, but the exemption only applies to the percentage of the sales price calculated by dividing the number of qualifying jobs by 25. See South Carolina Revenue Ruling #13-5 for answers to commonly asked questions on the datacenter exemption.