

SC REVENUE RULING #04-7

- SUBJECT:** Sales and Use Tax Machine Exemption
Springs Industries, Inc. v. SCDOR (99-ALJ-17-0153-CC)
Anonymous Taxpayer v. SCDOR (02-ALJ-17-0350-CC)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** S.C. Revenue Ruling #91-13, S.C. Private Letter Ruling #94-7, and all previous advisory opinions and any oral directives in conflict herewith. See Note on Page 14.
- MODIFIES:** S.C. Revenue Ruling #91-8. See Note on Page 14.
- REFERENCES:** S. C. Code Ann. Section 12-36-2120(17) (Supp. 2003)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2003)
SC Revenue Procedure #03-1
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. A Revenue Ruling is an advisory opinion; it does not have the force or effect of law and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

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Introduction:

Many states, including South Carolina, offer manufacturers a sales and use tax exemption on the purchase of machinery and equipment used in manufacturing. Exemptions of this type are aimed at encouraging businesses to locate new facilities or expand existing facilities within their borders. Such exemptions are also meant to reduce pyramiding of taxes, or to reduce multiple taxation on the sale of goods to the ultimate consumer.

During 2003, South Carolina courts decided two cases which clarify what qualifies as “machines used in manufacturing” for purposes of the South Carolina sales and use tax machine exemption in Code Section 12-36-2120(17). These cases are *Springs Industries, Inc. v. SCDOR*¹ (99-ALJ-17-0153-CC) and *Anonymous Taxpayer v. SCDOR* (02-ALJ-17-0350-CC). In *Springs Industries* the Administrative Law Judge Division (“ALJD”) found in favor of the taxpayer on most issues. The *Springs Industries* case was appealed by the Department to Circuit Court and the South Carolina Court of Appeals. The South Carolina Supreme Court denied certiorari and the Circuit Court and Court of Appeals (in an unpublished opinion) affirmed the ALJD decision. In *Anonymous Taxpayer*, the ALJD found in favor of the Department. The *Anonymous Taxpayer* decision was not appealed.

Hercules Contractors and Engineers Inc. v. S.C. Tax Commission

The basis for the court’s decision in both of the cases was the determination in *Hercules Contractors and Engineers Inc. v. S.C. Tax Commission*, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984). In *Hercules* the Court held that a waste water treatment facility was a machine and that “[i]ts various parts and attachments are integral and necessary to the operation of the system as a whole.”

The Court further defined the term “machine” to include “the concept of combination” 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.”

¹The Administrative Law Judge Division (“ALJD”) captioned this case “Anonymous Taxpayer v. SCDOR” to satisfy the confidentiality provisions of the South Carolina Code. Thus, the caption of the attached decision will also read “*Anonymous Taxpayer v. SCDOR*.” SCDOR has obtained permission from Springs Industries to formally identify this ALJD decision as the *Springs* decision.

In determining what is machinery and equipment for purposes of the exemption, the Court held that the “improvements, whether fast or loose, must be (1) ... used directly in manufacturing the products that the establishment is intended to produce; (2) ... necessary and integral parts of the manufacturing process; and (3) ... used solely for effectuating that purpose.” In addition, “improvements which benefit the land generally and may serve various users of the land are subject to taxation.” Based on these guidelines, the Court held that buildings, such as those which house textile mills and nuclear reactors, do not come within the exemption.

The Court further held that the statute “does not require a machine to have moving parts if it is an integral part of the manufacturing process and, using the example of a butter churn, held that “no logical distinction exists between the moving parts of a machine and those which are static.”

Finally, the Court held that in order for a machine to be exempted from the tax the machine must be substantially “used in manufacturing ... tangible personal property for sale.” The statute does not require that the machine be used exclusively in manufacturing; however, incidental manufacturing use will not qualify for the exemption.

Springs Industries, Inc. v. SCDOR

Previously, the Department adhered to the “Production Line Theory” in determining what machinery was used in manufacturing. Under this theory, items were found to be exempt only if “used directly” in the manufacturing process. Based upon the recent court decisions, the “Production Line Theory” will no longer be used. Instead, the court mandated machinery is exempt if such machinery is “integral and necessary” to the manufacturing process. This change is generally less restrictive than the Department’s prior interpretation. As such, some machines that the Department would previously have held subject to the tax are exempt. However, it is important to note that the determination hinges on whether a machine is integral and necessary to the manufacturing process, not whether it is integral and necessary to the manufacturer. As such, machines used for warehouse, distribution, or administrative purposes do not come within the machine exemption.

More specifically, the *Springs* case, in addition to several other issues, dealt with the application of the machine exemption to chemicals as parts, classification of machines as maintenance or manufacturing machines, classification of machines as storage or manufacturing machines, and conveyances (material handling machines).

Anonymous Taxpayer v. SCDOR (02-ALJ-17-0350-CC)

The case of *Anonymous Taxpayer v. SCDOR* (02-ALJ-17-0350-CC) dealt with the issue of whether buildings or parts of buildings could be exempt under the machine exemption. Considering the principles previously held in *Hercules Contractors and Engineers Inc. v. S.C. Tax Commission*, the court held that the buildings in question did not function as machines and were not exempt under the machine exemption. Although the decision in this case is consistent with how the Department has historically viewed the exemption of buildings, it is significant in that it utilizes the “integral and necessary” methodology to show that the exemption after *Springs* is limited to “machines” which are integral and necessary to the manufacturing process and does not encompass all items useful to a manufacturer.

More specifically, the case of *Anonymous Taxpayer v. SCDOR* (02-ALJ-17-0350-CC), in addition to several other issues, dealt with the application of the machine exemption to buildings used by manufacturers, paint and sealants, foundations, structural steel, steel decking and checker plates for buildings, hangers and supports for process piping, and architectural roofing and siding.

Issues Addressed In This Advisory Opinion:

This document is meant to aid in deciphering the machine exemption in accordance with these court decisions and to relay general principals outlined by the courts. Based on these cases, it must be determined what machines, or combination of machines, machine parts, and attachments, are integral and necessary to the manufacturing process and therefore exempt from the sales and use tax. Machines, or combination of machines, machine parts, and attachments, used for warehouse, distribution, or administrative purposes are not integral and necessary to the manufacturing process and therefore do not come within the machine exemption.

Following this introduction is an outline to further assist in understanding the breadth of the machine exemption under the law as determined by these cases. This outline provides examples of machines that are and are not integral and necessary to the manufacturing process. Note the ALJD decisions provide a more detailed explanation of the items in contest and the reasons for the ALJD's decision with regard to each item.

This document addresses the following issues that have arisen as a result of the cases of *Springs Industries, Inc. v. SCDOR* (99-ALJ-17-0153-CC) and *Anonymous Taxpayer v. SCDOR* (02-ALJ-17-0350-CC) and subsequent questions raised by Department employees and taxpayers:

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

However, it should be noted that, while not discussed in this document, the sales or purchase of machines that were previously held exempt by regulation or past Department policy prior to these cases are still exempt now. SC Regulations 117-302.5 and 117-302.6, which concern the sales and use tax machine exemption, are attached. These regulations contain examples of items previously exempted from the tax under the machine exemption.

Department Guidance:

A “machine used in manufacturing ... tangible personal property for sale” is exempt from the sales and use tax. For purposes of this opinion, manufacturing includes processing, compounding, mining and quarrying.

In reviewing the above referenced cases in conjunction with prior court cases, regulations, Commission Decisions, and Department advisory opinions, it is the opinion of the Department that a machine qualifies for the exemption under Code Section 12-36-2120(17) if the machine is integral and necessary to the manufacturing process and the product being manufactured is being manufactured “for sale.” A machine, which includes every mechanical device or combination of mechanical powers, parts, attachments and devices to perform some function and produce a certain effect or result, is integral and necessary to the manufacturing process if it meets all of the following:

1. The machine is used at a manufacturing facility. This exemption only applies to machines used at a facility whose purpose is that of manufacturing a product “for sale.” It does not apply to machines used at a facility whose purpose is retailing, wholesaling, distributing, or some other non-manufacturing purposes. For example, machines used by a large industrial baker in manufacturing breads, cakes, and pies for sale may be purchased tax free; however, similar machines used by a “Ma & Pa” bakery on Main Street may not be purchased tax free since they are used at a facility whose purpose is retailing.
2. The machine is used in, and serves as an essential and indispensable component part of the manufacturing process, and is used on an ongoing and continuous basis during the manufacturing process. A machine is not a part of the manufacturing process merely because it is integral and necessary to the manufacturer. For example, machines used for warehouse, distribution, or administrative purposes are integral and necessary to the manufacturer, but not part of the manufacturing process.
3. The machine must be substantially “used in manufacturing ... tangible personal property for sale.” The statute does not require that the machine be used exclusively in manufacturing; however, incidental manufacturing use will not qualify for the exemption. In the Department’s opinion, more than one-third of a machine’s use in manufacturing is substantial. See *Hercules Contractors and Engineers Inc. v. S.C. Tax Commission* where the Court held 35% to be substantial.

Machines that meet the above requirements do not lose the exemption because they do not have moving parts or because they are fixtures upon the real estate where they stand. However, buildings and parts of buildings, as well as other improvements which benefit the land generally and may serve other users of the land, do not come within the exemption.

1. CHEMICALS, GREASES, OILS, LUBRICANTS AND COOLANTS AS PARTS

In *Springs Industries, Inc. v. SCDOR*, 99-ALJ-17-0153-CC, the court concluded that certain chemicals were integral and necessary to the functioning of the screen washing machinery and were integral, necessary, and indispensable to the manufacturing process and therefore were exempt under Section 12-36-2120(17) as a part of the screen washing machine. In addition, under the same analysis, the court held that size box cleaners were exempt under Section 12-36-2120(17) as a part of the size box. See Section “B” of the court’s decision.

Therefore, 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 are integral, necessary, and indispensable to the manufacturing process and are exempt as part of the machine.

Based on the above, the Department has identified the following situations in which chemicals, greases, oils, lubricants, and coolants will be exempt as part of an exempt machine:

- Chemicals, greases, oils (motor oils, gear oils, chain oils), lubricants, and coolants used in an exempt manufacturing machine when such items are integral and necessary to the manufacturing process, such as those that are essential in ensuring the functioning of the machine during the manufacturing process, and the use of such items is an ongoing, continuous activity.
- Chemicals used in an exempt pollution control machine to abate or prevent pollution when such chemicals are integral and necessary to the manufacturing process, such as the treating of wastewater or otherwise preventing or abating pollution, and the use of such chemicals is an ongoing, continuous activity.
- Chemicals used to clean the exterior or interior of an exempt manufacturing machine when the cleaning is integral and necessary to the manufacturing process, such as those that are essential in ensuring the quality of the product is maintained, and the use of such chemicals is an ongoing, continuous activity.
- Chemicals used to prevent corrosion in an exempt manufacturing machine, such as an exempt boiler, when such chemicals are integral and necessary to the manufacturing process, such as those that are essential in ensuring the functioning of the machine during the manufacturing process, and the use of such chemicals is an ongoing, continuous activity.

Situations in which the chemicals would not qualify as part under the machine exemption and would therefore be subject to the sales and use tax include:

- Chemicals used to clean non-exempt machines, such as storage tanks.
- Chemicals used to clean floors, walls, and other parts of the manufacturing facility.
- Paint used on exempt manufacturing machines to prevent corrosion of the machines is not exempt from the tax as a machine used in manufacturing tangible personal property for sale. (Note: This is different from the chemicals used to prevent corrosion in exempt machines, such as exempt boilers, since the painting of the machine is not an ongoing, continuous activity. It is a maintenance activity. The chemicals, unlike the paint, are integral and necessary to the operation of the machines since they are essential in ensuring the functioning of the machine during the manufacturing process and are used on an ongoing, continuous basis.) See *Anonymous Corporation v. SCDOR*.

- Chemicals, greases, oils (motor oils, gear oils, 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. For example, grease used on a part that has been removed from an exempt manufacturing machine when such grease has been placed on the part to protect it while it is in storage and not being used is subject to the tax since the grease is not integral and necessary to the functioning of the part or the machine during the manufacturing process.

2. CLASSIFICATION OF MACHINES USED IN MANUFACTURING, MAINTENANCE OR STORAGE

A. Manufacturing:

In *Springs Industries, Inc. v. SCDOR*, 99-ALJ-17-0153-CC, the court held that the washing of a textile print screen was done specifically for the purpose of manufacturing a final product, that without washing the print screen would be rendered useless thereby preventing further manufacturing of the final product, and that the print screens could not be continually used without the screen washing machine. In addition, the print screen washing machine was located close to the production line machinery. As such, the court further held that the print screen washing machine was integral and necessary to the manufacturing process, was not a maintenance or repair machine, and was, therefore, exempt under Section 12-36-2120(17). See Section “B” of the court’s decision.

Therefore, machines and machine parts used in manufacturing are exempt machines provided that they are integral and necessary to the manufacturing process, are used as a function of the manufacturing process, and the process is an ongoing, continuous activity.

In addition to print screen machines described above and machines previously held as exempt by regulation (see attached), the following machines are considered exempt as manufacturing machines.

- Buffing machines used to buff the cot of an exempt textile spinning machine when such machines are an integral and necessary part of the manufacturing process and the buffing is required to maintain the yarn quality at a consistent level and is an ongoing, continuous activity. See *Springs Industries, Inc. v. SCDOR*.
- Traveling water screens used to filter water from a river, lake, or other water source at a water treatment plant processing water for sale.
- Quality control machines used in a lab at a manufacturing facility to test sample products being manufactured for sale on an ongoing and continuous basis.
- Pressure washing machines and ultrasonic cleaning machines used to clean exempt manufacturing machines or parts when the cleaning of the exempt manufacturing machine or part is integral and necessary to the manufacturing process and essential in

ensuring the functioning of the exempt machine or part during the manufacturing process or essential in ensuring the quality of the product is maintained, and the cleaning is an ongoing, continuous.

- Machines or machine parts used in removing sawdust from saws in a sawmill that are attached to the sawing mechanism. Machines used in removing sawdust from saws in a sawmill that are not attached to the sawing mechanism but only if the removal of sawdust is integral and necessary to the manufacturing process, such as those that are essential in ensuring the quality of the product is maintained, and the removal of the sawdust is an ongoing, continuous activity.²

Note: See section below for a discussion of “Conveyances” that may be exempt from the sales and use tax as machines used in manufacturing tangible personal property for sale.

B. Maintenance:

Maintenance machines used at a manufacturing facility are not exempt from the tax as a machine used in manufacturing tangible personal property for sale. In listing examples of machines that do not qualify for the machine exemption, Regulation 117-302.5 states that the exemption does not apply to maintenance machines.

In *Springs Industries, Inc. v. SCDOR*, 99-ALJ-17-0153-CC, the court was asked to determine whether a machine was used in manufacturing or used for maintenance. In that case, the court held that the washing of a textile print screen was done specifically for the purpose of manufacturing a final product. Without the washing of the print screen it would be rendered useless thereby preventing further manufacturing of the final product, and that the print screens could not be continually used without the screen washing machine. In addition, the print screen washing machine was located close to the production line machinery and used on an ongoing and continuous basis. As such, the court further held that the print screen washing machine was integral and necessary to the manufacturing process, was not a maintenance or repair machine, and was, therefore, exempt under Section 12-36-2120(17).

Therefore, machines that are used to maintain non-exempt machines (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 (machines that are integral and necessary to the manufacturing process) are maintenance machines and are not exempt from the tax as machines used in manufacturing tangible personal property for sale.

The Department has identified the following machines to be maintenance machines under Regulation 117-302.5 and therefore subject to the sales and use tax:

- Pressure washing machines and ultrasonic cleaning machines used to clean non-exempt machines or parts, such as storage tanks.

² As stated in the section on “Maintenance,” machines used in removing sawdust from the floor of a sawmill are not exempt.

- Machines used to clean floors and other parts of realty (e.g., machines used in removing sawdust from the floor of a sawmill).
- Machines, such as maintenance machines, which are not integral and necessary to the manufacturing process.
- Machines, such as pressure washing machines and ultrasonic cleaning machines, used to clean exempt manufacturing machines or parts when the cleaning of the exempt manufacturing machine or part is not integral and necessary to the manufacturing process, such as those that are not essential in ensuring the functioning of the exempt machine or part during the manufacturing process or those that are not essential in ensuring the quality of the product is maintained. In addition, if the cleaning is not an ongoing, continuous activity, then the machines are not integral and necessary to the manufacturing process.

C. Storage:

In *Springs Industries, Inc. v. SCDOR*, 99-ALJ-17-0153-CC, the court held that beam racks that hold yarn after it has completed a certain level of processing were not exempt manufacturing machines. The court determined that storage racks were not an integral and necessary part of manufacturing. In a later decision the Court reached a similar conclusion for movable storage racks used in a warehouse where the finished product is stored while it cures (the product cannot be shipped until it has cured the required amount of time). In *Anonymous Corporation v. SCDOR*, 02-ALJ-17-0350-CC, the court held that movable racks used to store fiber in a curing warehouse were not used in the manufacturing of tangible personal property, were not integral and necessary to the manufacturing process, and were used solely for storage purposes. The court held that such racks were not exempt under Section 12-36-2120(17).

In addition to the beam racks used to hold yarn and the movable racks used to store fiber in a curing warehouse, as described above, the Department has identified the following machines to be storage and therefore taxable:

- Racks used to store raw materials or finished goods.
- Storage tanks used to store raw materials, gasses, or water.
- Racks and tanks used to store a finished product while it cures.

Note: As stated below under “Conveyances,” warehouse machines (e.g., forklifts) that, in addition to being used in loading, unloading, storing, and transporting raw materials from the warehouse to the manufacturing area, or transporting finished products from the manufacturing area to the warehouse, are also used substantially³ to feed raw material into or onto the first

³ In *Hercules Contractors and Engineers, Inc. v. S.C. Tax Commission*, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984), the court held that a wastewater treatment machine in which 35% of the water treated was wastewater from machines manufacturing tangible personal property for sale was substantially used itself in manufacturing tangible personal property for sale and was exempt.

processing machine in the manufacturing process area are exempt as machines used in manufacturing.

3. CONVEYANCES (MATERIAL HANDLING MACHINES):

In *Springs Industries, Inc. v. SCDOR*, 99-ALJ-17-0153-CC, a mezzanine lift designed to carry drums of textile dye to a higher level so that the dye can be gravity fed into the apparatus for the dyeing of cloth is exempt from the tax as a machine used in manufacturing tangible personal property for sale. The court held that the mezzanine lift was integral and necessary to the manufacturing process.

In addition to the mezzanine lift described above and machines previously held as exempt by regulation (see attached), the Department has identified the following conveyances to be exempt.

- Wheeled conveyances known as “print screen truck” used by a textile manufacturer in the movement of print screens from a holding area to the exempt print machines, to the print screen washing machine, and back to the holding area racks after the style or pattern is changed and the print screen is washed. See *Springs Industries, Inc. v. SCDOR*, 99-ALJ-17-0153-CC.
- Warehouse machines (e.g., forklifts) that, in addition to being used in loading, unloading, storing, and transporting raw materials from the warehouse to the manufacturing area, or transporting finished products from the manufacturing area to the warehouse, are also used substantially⁴ to feed raw material into or onto the first processing machine in the manufacturing process area.

Regulation 117-302.5 (approved February 29, 2004 and effective March 26, 2004) states that conveyors are subject to the tax up to the point where the materials go into the process. The last machine to come within the exemption is that machine which discharges the finished product from the last machine used in the process. Under this rule, it is the Department’s opinion that the following conveyors are subject to the tax.

- Conveyors used solely by the taxpayer in the warehousing of raw materials and finished goods.
- Conveyors which are not integral and necessary to the manufacturing process.
- Piping leading to and from storage tanks.⁵
- Piping, pumps, and well connections installed for use by a manufacturer to supply the manufacturing plant with water necessary for the manufacture of tangible personal property.⁶

⁴ See Footnote #3.

⁵ In listing examples of machines that do not qualify for the machine exemption, Regulation 117-302.5 states that the exemption does not apply to storage tanks and piping leading to and from storage tanks.

- Warehouse machines that are used for warehouse purposes, such as loading, unloading, storing, transporting raw materials from the warehouse to the manufacturing area, or transporting finished products from the manufacturing area to the warehouse.

4. BUILDINGS USED BY MANUFACTURERS:

A building which houses a manufacturing process **is not** exempt from the tax as a machine, or a part or attachment to a machine, used in manufacturing tangible personal property for sale. In *Anonymous Corporation v. SCDOR*, 02-ALJ-17-0350-CC, the court held, citing *Hercules Contractors and Engineers, Inc. v. S.C. Tax Commission*, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984), that “the Court of Appeals explicitly provided that buildings are not exempt from the sales and use tax.” As such, if the structure in question is a building, it is not a machine and the materials used to construct the building are not exempt from the tax as a machine, or a part or attachment to a machine, used in manufacturing tangible personal property for sale.

A. Paint or Sealant on Floor, Walls, and Other Parts of a Manufacturing Building

Paint or sealant used to seal the floor or walls of the manufacturing area of a building to provide chemical resistance in the event of a spill **is not** exempt from the tax as a machine, or a part or attachment to a machine, used in manufacturing tangible personal property for sale. *Anonymous Corporation v. SCDOR*, 02-ALJ-17-0350-CC. The court held that such paint or sealant was not integral or necessary to the plant system as a whole and when applied to the floors, that the paint and sealant became part of the building and were, therefore, not used in the manufacturing process and did not qualify for the exemption as a machine or machine part or attachment used in manufacturing tangible personal property for sale under Section 12-36-2120(17).

In the same case paint used on the floor of the textile manufacturing area of a building to facilitate the threading of warping machines so that employees can more easily see the thread was found to be taxable.

Paint used on exempt manufacturing machines to prevent corrosion of the machines **is not** exempt from the tax as a machine used in manufacturing tangible personal property for sale. See also *Anonymous Corporation v. SCDOR*, 02-ALJ-17-0350-CC.

Note: As stated above, the paint is not integral and necessary to the operation of the manufacturing machines. This is different from the chemicals used to prevent corrosion in exempt machines, such as exempt boilers. Such chemicals, unlike the paint, are exempt when such chemicals are integral and necessary to the functioning of the exempt machine during the manufacturing process and the use of these chemicals to prevent corrosion is an ongoing, continuous activity. Paint is not integral and necessary to the functioning of the machine “during the manufacturing process” and painting the machine is not an ongoing continuous activity.

⁶ In listing examples of machines that do not qualify for the machine exemption, Regulation 117-302.5 states that the exemption does not apply to piping, pumps, and well connections installed for use by a paper manufacturer to supply the manufacturing plant with water necessary for the manufacture of paper.

B. Foundations

Foundations (consisting of pilings, pile caps, elevated slab, and slab on grade) of a building in which exempt manufacturing machines are housed **are not** exempt from the tax as a machine, or a part or attachment to a machine, used in manufacturing tangible personal property for sale. In *Anonymous Corporation v. SCDOR*, 02-ALJ-17-0350-CC, the court stated:

Concrete foundations of building in which manufacturing machines are housed are not exempt under the machine exemption. They are not machines, parts or attachments to exempt machines, nor are they used in the manufacturing process. Rather, they are part of the structure of the building; they are the building foundations. Taxpayer argues they are exempt because they support the processing equipment. However, the testimony of the Department's engineers was that the piling, pile caps, elevated slabs, and slab on grade were typical for manufacturing buildings constructed in coastal areas. Such testimony is persuasive to the court and further supports the court's conclusion that they are part of the building structure and do not qualify for the sales tax exemption.

Likewise, concrete foundations supporting nonexempt machines in the tank farm are not machines, are not parts or attachments to machines, nor are they used in the manufacturing process. As such, they do not qualify for the machine exemption. They are integral and necessary for the proper construction of the building, but they are not integral to the plant manufacturing process or system as a whole.

C. Structural Steel, Steel Decking, and Checker Plate for Buildings

Structural steel, steel decking, and checker plate of a building in which exempt manufacturing machines are housed **is not** exempt from the tax as a machine, or a part or attachment to a machine, used in manufacturing tangible personal property for sale. In *Anonymous Corporation v. SCDOR*, 02-ALJ-17-0350-CC, the court stated:

Structural steel, steel decking, and checker plate are not exempt under the machine exemption because they are part of the building; they are not parts or attachments to an exempt machine. Further, they are not used in the manufacturing process. Taxpayer argues they support and hold the processing equipment in place. However, the structural steel, steel decking, and checker plate used in the ... buildings are typical of that used in the construction of other manufacturing facilities and are not exempt from sales tax.

Therefore, structural steel, steel decking, and checker plate of a building in which exempt manufacturing machines are housed are not exempt from the tax as a machine, or a part or attachment to a machine, used in manufacturing tangible personal property for sale.

D. Hangers and Supports for Process Piping

Hangers and supports used in a manufacturing building to route exempt process piping from one area of the manufacturing process to another area of the manufacturing process via pipe racks and cable trays **are not** exempt from the tax as a machine, or a part or attachment to a machine, used in manufacturing tangible personal property for sale. In *Anonymous Corporation v. SCDOR*, 02-ALJ-17-0350-CC, the court stated:

Hangers and supports route the process piping from one area to another via pipe racks and cable trays. It is the conclusion of this court that the hangers and supports are not exempt because they are parts of the buildings and are not integral and necessary in the manufacturing process as a whole. As such, they are not machines or parts of machines. They are typical of that used in the construction of manufacturing facilities.

Therefore, hangers and supports used in a manufacturing building to route exempt process piping from one area of the manufacturing process to another area of the manufacturing process via pipe racks and cable trays are not exempt from the tax as machines, or parts or attachments to machines, used in manufacturing tangible personal property for sale.

E. Architectural Roofing and Siding Enclosing a Manufacturing Building

Architectural roofing and siding enclosing a manufacturing building housing exempt manufacturing machines **is not** exempt from the tax as a machine, or a part or attachment to a machine, used in manufacturing tangible personal property for sale. In *Anonymous Corporation v. SCDOR*, 02-ALJ-17-0350-CC, the court held that the roofing material (a rubber membrane) and the siding (a multi-layer material composed of steel and rigid foam for insulation) were parts of the building which assisted in forming an enclosure for the protection of the equipment along with its insulation component which assisted with climate control. The court held that neither the roof nor the siding was integral and necessary to the plant system as a whole. The court further held the roof and the siding are not machines, machine parts, or attachments and are not used in the manufacturing process.

Therefore, architectural roofing and siding enclosing a manufacturing building housing exempt manufacturing machines are not exempt from the tax as machines, or parts or attachments to machines, used in manufacturing tangible personal property for sale.

5. ADMINISTRATIVE MACHINES, FURNITURE, EQUIPMENT AND SUPPLIES:

In *Springs Industries, Inc. v. SCDOR*, 99-ALJ-17-0153-CC, the court held that beam racks were used by the taxpayer for storage purposes only and were not an integral and necessary part of the manufacturing process and were not exempt under Section 12-36-2120(17). As such, while integral and necessary to the manufacturer, the beam racks used by the taxpayer for storage purposes were not an integral and necessary part of the manufacturing process. This same principal applies to administrative machines, furniture, equipment, and supplies.

Therefore, administrative machines, furniture, equipment, and supplies, such as office computers used for word processing, recordkeeping, employee payroll, customer billing, purchasing, accounting, and similar purposes, office furniture, office supplies, such as pens, pencils, paper, and similar items, educational material, or items used for the personal comfort, convenience, or use of employees, **are not** machines used in the process of manufacturing tangible personal property for sale and are not exempt from the tax.

6. PROTECTIVE CLOTHING

Protective clothing worn by an employee working in the area in which the manufacturing process occurs does not qualify as a machine and **is not** exempt from the tax as a machine used in manufacturing tangible personal property for sale under Section 12-36-2120(17). However, “clothing and other attire required for working in a Class 100 or better as defined in Federal Standard 209E clean room environment” is exempt under the provisions of Section 12-36-2120(54).

Note: Based on the *Springs Industries, Inc. v. SCDOR*, (99-ALJ-17-0153-CC), S.C. Revenue Ruling #91-13 concerning machine shops at a manufacturing facility is rescinded, S.C. Private Letter Ruling #94-7 concerning greases and oils used in or on exempt manufacturing machines is rescinded, and S.C. Revenue Ruling #91-8 concerning a water treatment plant is modified with respect to the issue of the traveling water screen.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank III, Director

April 20, 2004
Columbia, South Carolina

Attachment - Law and Regulations:

Code Section 12-36-2120(17) exempts from the sales and use tax:

machines used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale. "Machines" include the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which (a) are necessary to the operation of the machines and are customarily so used, or (b) are necessary to comply with the order of an agency of the United States or of this State for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by any machine used as provided in this section. This exemption does not include automobiles or trucks. As used in this item "recycling" means a process by which materials that otherwise would 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.

SC Regulation 117-302.5 concerns the above cited exemption and reads:

Machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale, and the replacement parts and attachments to such machines, are exempt from the sales and use tax under Code Section 12-36-2120(17).

Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of machines are also exempt, provided the parts, attachments or replacements are used on or in the operation of such machines, manufactured for use on or in the operation of such machines, necessary to the operation of such machines, and must be customarily so used. These restrictions are interpreted to mean that the part or attachment must be 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 adjustment, (except as stated below) and that it is a standard part or attachment customarily used and, further, that the machine or machinery on which it is used would not do the work for which it was designed if it were not used. This, of course, exempts all parts and attachments without which the machine would do no work, and, in addition, it exempts parts and attachments designed to increase the efficiency of the machine.

The general rule with reference to material handling machinery and/or mechanical conveyors is that such machinery is subject to the tax up to the point where the materials go into process. The machine feeding the first processing machine(s) is exempt. The last machine to come within the exemption is that machine which 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 comes within the exemption. Warehouse machinery used only for warehouse purposes, loading and unloading, storing, transporting raw materials and finished products, etc., is subject to the tax, unless exempt under the provisions of Code Section 12-36-2120(51). If material handling machinery is customarily used for a dual purpose, that is partly for an exempt purpose and partly for a taxable purpose, and is not otherwise exempt under the provisions of Code Section 12-36-2120(51), the machinery may be purchased free of the

tax under the machine exemption (Code Section 12-36-2120(17)) provided the exempt use represents a substantial portion of its use.

Manufacturers, processors, compounders, miners or quarriers are entitled to purchase at wholesale, free of the sales or use tax, materials used by them in the building of machines for the purpose of manufacturing or compounding tangible personal property for sale. It should be noted that only those materials are exempt to manufacturers, processors, compounders, miners or quarriers which are used by them in building machines for the purpose of manufacturing or compounding tangible personal property for sale. This ruling would not be for application in the case of the use of property in the nature of building materials from which there is erected a "structure," which upon completion might be used for producing tangible personal property for sale.

Electricity is tangible personal property and is characterized as such in the law. Therefore, its production is considered as manufacturing and all machinery used for the generation, such as boilers, engines, condensers, generators, and transformers and their attachments, are exempt. Electrical equipment used as direct controls of machinery used in manufacturing is considered as part of manufacturing machinery and as such is exempt. All wires, fixtures, etc., used in lighting are taxable.

Materials or equipment which might constitute a machine or machinery when not used for processing or manufacturing are not exempted.

This exemption applies to:

- (a) trucks too large to be lawfully used upon the highways of this state, when used in quarry pits for transporting rock or granite from the blasting site to the crushing machine.
- (b) sand handling and sand condition machines used by manufacturers or processors for conditioning and transporting, while in process, and for use in mold making.
- (c) tanks which are a part of the chain of processing operations.
- (d) patterns which become parts or attachments for molding machines when purchased by a manufacturer for his use.
- (e) mechanically operated devices used in making molds from sand for use in manufacturing tangible personal property for sale.
- (f) machines used in measuring, or weighing, and packaging by manufacturers, compounders and processors when such machines are a part of the "production line" machinery and are used to put the product in condition for sale on the open market for the purpose for which it was produced.
- (g) machines used in weighing and sacking cement and lime when used by the manufacturer.

- (h) machines used to measure and sack corn meal when used by the manufacturer.
- (i) machines used by soft drink bottlers for measuring and bottling their product.
- (j) transformers used in manufacturing and processing tangible personal property for sale, used by producers or distributors of electricity which process the electricity, and all transformers used by other manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding machinery. Capacitors and voltage regulators are similar to and have the same exemption as transformers.
- (k) machines used by cotton ginner in their processing operations.
- (l) pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in processing milk for sale. The machine exemption does not extend to cover milking machines.
- (m) boiler tubes used in repairing boilers used to furnish heat or power used in manufacturing tangible personal property for sale.
- (n) machines used by persons in the business of producing scrap iron and other metals from junk for resale to steel mills and/or foundries, such as hydraulic baling presses (to compress sheet steel into bales), cranes (to feed scrap metals to baling press), and alligator shears (to cut scrap steel to predetermined sizes).
- (o) machines used by dental laboratories in manufacturing for sale plates, bridgework, artificial teeth and other prosthetic devices.
- (p) machines used in processing and manufacturing by electric power companies including all producing stationary machines in an electric power generating house, stationary, processing machines located in substation houses and transformers, pole or otherwise.
- (q) starters, switches, circuit breakers and other electrical equipment which are parts of, or attachments of machines, come within the machine exemption. In order to be exempt this equipment must be either attached directly to the machine or be immediately adjacent thereto. Switchboards and control boards and cabinets controlling the general electrical supply system are not considered to be parts or attachments of machines used in manufacturing. (Note, however, that, switchboards, automatic or manually operated, which serve to operate exempt machinery may be classified a part or attachment thereto, provided, same are attached thereto or located within the same structure or compound.) The general rule is that power distribution machinery for operating machines used in processing and manufacturing tangible personal property which starts at the main switch within the factory building or compound is exempt.
- (r) machines used directly in the wood preserving process by persons engaged in the business of treating lumber or lumber products (wood preserving) which they own and treat for sale.

- (s) gas pressure regulators located in the lead off from the gas main.
- (t) machines used directly in the meatpacking process by meatpackers whose activities include the curing of meats and the production of animal by-products such as lard, sausages, or tankage.
- (u) machines used directly by ice manufacturers in manufacturing or compounding ice for sale.
- (v) 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. This exemption applies to the pipes and duct used to distribute the processed air to the production areas within the plant.
- (w) recording instruments attached to manufacturing machines.
- (x) machines used directly by a manufacturer in the tire recapping process.
- (y) machines used by municipalities in processing or compounding water for sale.
- (z) belting purchased for use on a particular machine used in manufacturing tangible personal property for sale even though such belting may not be purchased to the exact length required.
- (aa) machines manufactured for and customarily used in removing sawdust from saws in sawmills manufacturing lumber for sale when such machines are attached to or a part of the sawing mechanism and machines manufactured for and customarily used to remove waste material from planners, edgers, and other manufacturing machines used in sawmills manufacturing lumber for sale when such machines are attached to or a part of the planner, edger, or other manufacturing machine. Note, however, the removal or disposal of waste materials is not of itself a manufacturing process on which a claim for exemption could be based. The waste removal machinery must be an attachment of an exempt machine to come within the exemption.
- (bb) machines purchased by persons in the business of collecting old and used paper (waste paper) for the purpose of grading, sorting and packaging the same for sale or resale to paper mills.
- (cc) insulation for pipe coverings, tank coverings, and boiler insulation purchased by a paper manufacturer from the vendor in its final prefabricated form for a specific insulation job, provided it does not have to be cut and fitted at the paper mill. Certain fabrication is permissible around valve openings, pipe openings at pipe joints, etc. Note, where insulation is purchased in blocks, such blocks are to be considered as taxable, except as noted above with respect to the purchase of material in building a machine used in manufacturing, processing, or compounding tangible personal property for sale.

This exemption does not apply to:

- (a) warehouse machines used only for warehouse purposes, such as loading and unloading, storing, or transporting raw materials or finished products.
- (b) storage tanks and piping leading to and from storage tanks and piping bringing gas or water into the plant.
- (c) power lines bringing electricity into the plant.
- (d) dippers used for measuring purposes in a textile bleachery, dye or finishing plant.
- (e) machines used for maintenance purposes.
- (f) pipe, valves, fittings, etc., regardless of size, which are purchased by paper manufacturers specifically for use in drinking water lines, fire protection lines, or for transmission of water from source to water treatment plant, or from water treatment plant itself.
- (g) piping furnished and installed along with pump houses and well connections by a contractor when intended for use by a paper manufacturer to supply his plant with the water necessary to the manufacturer of paper.

SC Regulation 117-302.6 concerns the application of the machine exemption to pollution control machines, and reads:

Code Section 12-36-2120(17) exempts from the sales or use tax the gross proceeds of the sale of machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property and the term "machine" includes parts of such machines, attachments and replacements therefor which are used or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and which are customarily so used ..." Frequently, these machines cannot be operated when the same pollute beyond regulated levels and in compliance with orders of agencies of the United States or of this state to abate or prevent pollution caused or threatened by the operation of such machines it is necessary to install other machines that are designed and operated exclusively for the purpose of abating or preventing this pollution. The purpose of this regulation is to classify the machines, their parts or attachments, as machines used in mining, quarrying, compounding, processing or manufacturing of tangible personal property when the same are installed and operated for compliance with an order of an agency of the United States or of this state to prevent or abate pollution caused or threatened by the operation of other machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property.

The term "machine" as defined in Section 12-36-2120(17) shall include machines, their parts and attachments, when the same are necessary to comply with the order of an agency of the United States or of this state for the prevention or abatement of pollution that is caused or threatened by any machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property.

Any person engaged in the business of mining, quarrying, compounding, processing and manufacturing of tangible personal property shall furnish the department a certified statement from the ordering agency that any machine for which the exemption is claimed is necessary to prevent or abate pollution caused or threatened by the operation of other machines that are used in the mining, quarrying, compounding, processing or manufacturing of tangible personal property.

The order referred to herein must be issued by the agency of the United States or of this state that is primarily charged with the duty of preventing or abating the pollution.