



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #89-7

**SUBJECT:** Settling Basins - Machine Exemption  
(Sales and Use Tax)

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

**REFERENCE:** S.C. Code Ann. Section 12-35-550(17) (1976)

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

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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

Are sales/purchases of materials used to construct a settling basin for a waste water treatment facility, by a manufacturer, exempt from the sales and use tax, pursuant to Code Section 12-35-550(17)?

Facts:

A taxpayer is a manufacturer of tangible personal property, whose plant includes a waste water treatment facility. Such facility includes a settling basin, constructed of concrete and steel, as well as, pipes, pumps, tanks and other mechanical devices used to treat the waste water. The treatment facility has been constructed to comply with an order, by the South Carolina Department of Health and Environmental Control ("DHEC"), to prevent or abate the pollution of water.

Code Section 12-35-550(17) exempts from the sales and use tax:

The gross proceeds of the sale of...machines used in...manufacturing of tangible personal property ...provided, that the term "machines", as used in this article, shall include the parts of such machines [and] attachments...which are necessary to the operation of such machines...

Furthermore, Regulation 117-173 reads:

Section 1. Purpose, Section 12-35-550(17) of the 1976 Code 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 the air or water beyond regulated levels and in compliance with orders of agencies of the United States or of this State to abate or prevent the pollution of the air or water 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 of the air or water caused or threatened by the operation of other machines used in the mining, quarrying, compounding, processing or manufacturing of tangible personal property.

Section 2. The term "machine" as defined in Section 12-35-550(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 of the air or water that is caused or threatened by any machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property.

Section 3. Proof of the necessity of such machines. Any person engaged in the business of mining, quarrying, compounding, processing and manufacturing of tangible personal property shall furnish the Commission a certified statement from the ordering agency that any machine for which the exemption is claimed is necessary to prevent or abate water or air pollution caused or threatened by the operation of other machines that are used in the mining, quarrying, compounding, processing or manufacturing or tangible personal property.

Section 4. 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.

Section 5. This regulation shall be effective upon filing in the office of the Secretary of State.

Filed and recorded with the Secretary of State this 5th day of April, 1973.

## Discussion:

The issue is whether a settling basins are part of a machine used in manufacturing tangible personal property.

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

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

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

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

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

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

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

Our court also held that the above rationale would not apply to buildings in that "[t]he concrete vats and basins..., unlike buildings, have utterly no use apart from the machine of which they are an integral part."

In reviewing the Commission Regulations, the court held that Regulation 117-174.123 "clearly provides Hercules was entitled to purchase the materials used to construct the facility free of sales or use tax". That regulation reads:

Manufacturers or compounders 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 or compounders 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.

It is well to note that the court further held Regulation 117-174.45 applies to "materials used to improve real property" and was, therefore, not applicable to materials used to construct a machine.

Conclusion:

A settling basin for a waste water treatment facility is one part of a single entity, a machine (the waste water treatment facility). Therefore, sales/purchases of materials, such as concrete and steel, by a manufacturer to construct a settling basin for a waste water treatment facility, are exempt from the sales and use tax, pursuant to Code Section 12-35-550(17).

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

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S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

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A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

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T. R. McConnell, Commissioner

Columbia, South Carolina  
April 7, 1989