

Burnet R. Maybank, III
Member
Admitted in SC

June 3, 2011

HAND DELIVERED

The Honorable Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29211

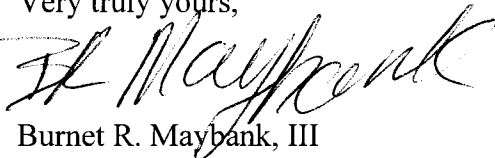
Re: Bodman v. State of South Carolina and the South Carolina
Department of Revenue

Dear Mr. Shearouse:

Enclosed for filing with the Court is an original and six copies of South Carolina
Manufacturer's Alliance Petition for Leave to Intervene with Proof of Service in the
above referenced matter along with my firm's check in the amount of \$25.00 for the
filing fee. Also enclosed is our Memorandum of Law in Support of South Carolina
Manufacturer's Alliance Petition for Leave to Intervene. Please return one clocked
copy to me via our courier.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

Very truly yours,



Burnet R. Maybank, III

BRM/jcb
Enclosures

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The Honorable Daniel E. Shearouse
June 3, 2011
Page 2

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Matthew Bodman,
..... Petitioner,

vs.

State of South Carolina and the South Carolina Department of Revenue,
..... Respondents.

PETITION FOR LEAVE TO INTERVENE

Pursuant to South Carolina Rules of Civil Procedure Rule 24(b), the South Carolina Manufacturer’s Alliance (the “SCMA”) files this motion seeking leave of the Court to intervene and participate as a Respondent in the within proceeding pursuant to Rule 24(a)(2) and (b)(2), SCRCP.

The SCMA is a non-profit, bipartisan organization which is 109 years old. It serves as the manufacturing industry’s trade organization in South Carolina. The goal of the organization is to be the voice of manufacturers to the state’s legislative and regulatory branches of government, as well as preserving and promoting South Carolina’s widely respected business climate. It also provides a variety of educational forms.

The Alliance seeks the Court’s permission to intervene in support of upholding the constitutionality of the sales tax provisions in S.C. Code Ann. §§ 12-36-2110 and 12-36-2120 (2000 & Supp. 2010). Certain of these statutory provisions are critical for job creation and economic development in South Carolina and are of vital interest to the members of the Alliance. Simply put, many of the members of the SCMA will not be able to compete in the worldwide economy without the sales tax exemptions afforded to manufacturers.

Accordingly, the Petitioners for Intervention respectfully request leave to intervene and fully participate as a party in this action so they may protect the interests of the members of the Alliance.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Mathew Bodman,
.....Petitioner,

vs.

State of South Carolina and the South Carolina Department of Revenue,
.....Respondents.

PROOF OF SERVICE

I certify that I served the South Carolina Manufacturer's Alliance's Petition for Leave to Intervene on the Petitioner and Respondents by depositing a copy of it in the United States Mail, postage prepaid, on June 3, 2011 addressed to their attorneys of record as follows:

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Association

THE STATE OF SOUTH CAROLINA
In the Original Jurisdiction
of the Supreme Court

Matthew Bodman

Petitioner,

v.

The State of South Carolina and the South Carolina Department of Revenue,

Respondent.

**MEMORANDUM OF LAW IN SUPPORT
OF SOUTH CAROLINA MANUFACTURER'S ALLIANCE
PETITION FOR LEAVE TO INTERVENE**

Intervention is permitted pursuant to Rule 24 of the South Carolina Rules of Civil Procedure either as a matter of right [S.C.R.C.P. 24(a)], or by permission of the Court [S.C.R.C.P. 24(b)]. In this proceeding, The South Carolina Manufacturer's Alliance (the "SCMA") Asserts that it has a right to intervene because it has a particular interest in upholding various sales tax exemptions granted to manufacturers. The SCMA's interest in this matter cannot be adequately represented by the Respondents.

South Carolina has the highest property taxes in the nation on manufacturers. (See TRAC Report.) The total tax burden on manufacturers with plants in this state is ameliorated in part by a number of sales tax exemptions granted specifically to manufacturers. These exemptions are detailed in Chapter 14 of the publication of the South Carolina Department of Revenue, *South Carolina Sales and Use Tax Manual* (2010 Ed.) (Attachment A).

Intervention as a matter of right may occur ". . . (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless

the applicant's interest is adequately represented by existing parties." S.C.R.C.P. 24(a). This Court has generally applied a liberal interpretation to Rule 24(a) and permitted intervention by right in order to promote judicial economy. Berkeley Electrical Cooperative v. Town of Mount Pleasant, 302 S.C. 186, 394 S.E.2d 712 (1990). When evaluating the merits of parties seeking to intervene in actions this Court requires that the moving party (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. Berkeley Electrical Cooperative v. Town of Mount Pleasant, 302 S.C. 186, 394 S.E.2d 712 (1990) [*citing* Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525 (9th Cir. 1983)], Ex Parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661 (1993), In re Horry County State Bank, 361 S.C. 503, 604 S.E.2d 723 (S.C. App. 2004).

In this case, the SCMA has made a timely application for intervention. At this point in the proceedings the Petitioner has filed a complaint, this Court has granted original jurisdiction to hear the matter, and the Petitioner has filed a brief in support of his complaint. No other pleadings have been filed and one or both Respondents, have submitted a brief. Therefore, intervention at this juncture will not harm any party to the action, and this Court shall suffer no delay as a result of permitting the SCMA to intervene. The SCMA can adhere to the Scheduling Order filed in this case.

Addressing the second requirement of the intervention test, the SCMA has definite interests relating to this action. The issue raised by the Petitioner, which seeks to strike down the state's sales tax exemptions impacts each member of the SCMA. The SCMA has a definite interest in preserving the existing sales tax exemptions provided to its members.

The SCMA is further in a position where a denial of this request to intervene may impair or impede its interest. If the SCMA is not permitted to intervene in this action, it will have great difficulty asserting its position that the matter should be dismissed because the Petitioner does not

have standing or, if the Court determines that the Petitioner has standing and the merits of the Petition must be addressed, its position that the sales tax exemptions for manufacturers are valid and constitutional. Additionally, any ruling adverse to the SCMA may adversely affect the manner in which the specific sales tax exemptions granted to manufacturers are defended. These justifications have been cited by this Court in prior holdings as sufficient grounds to satisfy the third requirement of the intervention test. Berkley Electric Cooperative, Inc. v. Town of Mount Pleasant, 302 S.C. 186, 189, 394 S.E.2d. 712, 714 [*citing* Spring Construction Co., Inc. v. Harris, 614 F.2d 374 (4th Cir. 1980)].

Finally, the SCMA's position is not represented in this matter by the existing parties. It is clear from the Petitioner's complaint and brief that his interest in this matter is adverse to the SCMA's interest. The Respondents interests are far broader than the SCMA and they are not likely to assert the validity of the specific sales tax exemptions granted to manufacturers. Therefore, the SCMA cannot reasonably depend upon the Respondents to adequately represent the SCMA's position, assuming, the Respondents takes a position at all on these specific exemptions. Without allowing the SCMA to intervene, there is no assurance that its interests will be adequately represented in this matter.


This motion for leave to intervene is further supported by prior actions filed in the original jurisdiction of the Supreme Court. In Keyserling v. Beasley, 322, S.C. 83, 470 S.E.2d 100 (1990), this Court granted the motion of the President *Pro Tempore* to intervene in proceedings where the Lieutenant Governor, in his capacity as President of the Senate, was a named defendant in an action. In State v. Hodges, 349 S.C. 232, 562 S.E.2d 623 (2002), and in Sloan v. Wilkins, 362 S.C. 430, 608 S.E.2d 579 (2004), this Court again permitted the President *Pro Tempore* to intervene in the name of the Senate in an action where the Senate was not originally a party. Additionally, in both Drummond v. Beasley, 331 S.C. 559, 503 S.E.2d 455 (1998), and Williams v. Morris, 320 S.C. 196, 464 S.E.2d 97 (1995), the President *Pro Tempore* brought actions against parties on behalf of the Senate. This history demonstrates that the Court

has freely granted petitions to intervene in matters filed in the original jurisdiction of the Supreme Court.

In the alternative, permissive intervention is allowed pursuant to S.C.R.C.P. 24(b) if an applicant's claim or defense has a common question of law or fact with the main action. In this case, the SCMA's interest in protecting the sales tax exemptions granted to manufacturers is related to and part of the basis for the Petitioner's complaint. As such, this Court should exercise its discretion in favor of permitting the SCMA to intervene as a Respondent in this proceeding.

For the above articulated reasons, the SCMA respectfully requests that it be permitted to intervene in this proceeding.

Respectfully submitted,

BY: 
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June 3, 2011

South Carolina
Sales and Use Tax Manual
2010 Edition



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Post Office Box 125
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www.sctax.org

The Honorable Nikki R. Haley, Governor
James F. Etter, Director

14

*Manufacturers,
Processors,
and
Compounders*

Chapter 14

Manufacturers, Processors, and Compounders

A. General Information

Manufacturers, processors, and compounders are eligible for numerous exclusions and exemptions from sales and use tax.¹ This chapter 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, compounding, mining, or quarrying tangible personal property for sale;² ingredient parts;³ electricity;⁴ fuel;⁵ packaging;⁶ and sales for resale.⁷

B. Machines, Parts, and Attachments

General Information. The “machine exemption”⁸ exempts from sales and use tax purchases of machines used in manufacturing, processing, 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.

The applicability of this machine exemption depends on whether the machine is integral and necessary to the manufacturing process⁹ - *i.e.*, is the machine an essential and indispensable component part of the manufacturing process and is it 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 determining if a machine is integral and necessary to the manufacturing process; two South Carolina court decisions in 2003 have followed and clarified this theory. Each is briefly discussed below.

¹ South Carolina Code §§12-36-2120 and 12-36-120 and SC Regulation 117-302.

² South Carolina Code §12-36-2120(17).

³ South Carolina Code §12-36-120(2).

⁴ South Carolina Code §12-36-2120(19).

⁵ South Carolina Code §12-36-2120(9).

⁶ South Carolina Code §§12-36-2120(14) and 12-36-120(4).

⁷ South Carolina Code §12-36-120(1).

⁸ South Carolina Code §12-36-2120(17).

⁹ References to “manufacturing” include “processing,” “compounding,” “mining,” and “quarrying.”

Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission, 313 S.E. 2d 300 (1984). *Hercules* involved whether a facility that treated waste on plant property that was produced in connection with the manufacture 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. 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 in 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 paint and sealants, foundations, structural steel, steel decking and checkers plates for buildings, hangers and supports for process piping, and architectural roofing and siding, purchased to construct a manufacturing facility were not exempt as a machine.

The machine exemption does not apply to everything that can be useful to a manufacturer. The applicability of the machine exemption depends on whether the machine is integral and necessary to the manufacturing process.

C. Machine Exemption – General Rule

A machine qualifies for the machine exemption if the machine meets the following three requirements:¹⁰

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 exempt; however, similar machines used by a local retail bakery are not exempt.
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 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.¹¹

D. Machines - 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 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.

¹⁰ SC Regulation 117-302.5.

¹¹ SC Regulation 117-302.5.

In order to be exempt, a part or attachment must be purchased in the form in which it will be used by the manufacturer without any fabrication or alteration by the manufacturer, except the usual and customary minor adjustment. It must be 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 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.¹²

E. 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 contractors in building machines that will manufacture tangible personal property for sale

¹² See SC Regulation 117-302.5 for guidance in determining what qualifies as a part or attachment to a machine.

F. 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 non-exempt machines, such as storage tanks, or the manufacturing facility
- 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

G. Machines – A Structure versus A Building

The machine exemption can apply to a machine that is a “structure.” However, 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.¹³

¹³ See SC Regulation 117-302.5 and South Carolina Revenue Ruling #04-7 for more details.

The Department held that (1) a settling basin for a wastewater treatment facility was one part of a single entity and that the facility was a “machine”¹⁴ and (2) a gamma irradiator constitutes a machine.¹⁵

See Section S of this chapter for information on an exemption for the sale of construction material used in constructing a manufacturing facility meeting certain investment and job requirements.

H. Pollution Abatement Machines¹⁶

Pollution control machines qualify for the machine exemption 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 exempt machines used in the mining, quarrying, compounding, processing, and manufacturing of tangible personal property for sale.¹⁷

Examples of prior Department determinations illustrate the application of the machine exemption to pollution abatement machines:

1. The Department held that stack liners and ash pond pipes and pumps located at a taxpayer’s electrical generating facility were exempt from sales and use tax as pollution abatement machines on the grounds that these items were “operated exclusively in the abatement of pollution caused by the production of electricity.”¹⁸
2. The Department determined 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.¹⁹

I. Machines Owned by Someone Other Than a Manufacturer

Ownership of the machine by the manufacturer is not required to qualify for the machine exemption. The use of a machine determines whether it is exempt from sales and use tax.²⁰

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

¹⁴ South Carolina Revenue Ruling #89-7.

¹⁵ South Carolina Private Letter Ruling #90-3.

¹⁶ South Carolina Code §12-36-2120(17) and SC Regulation 117-302.6

¹⁷ South Carolina Code §12-36-2120(17).

¹⁸ South Carolina Commission Decision #92-19.

¹⁹ South Carolina Private Letter Ruling #92-9. See also *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E.2d 300 (1984).

²⁰ South Carolina Code §12-36-2120(17).

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.²¹

J. Machines Used Substantially in Manufacturing (Dual Usage Machines)

“Substantial” use, but not “exclusive” use, of a machine in the manufacture of tangible personal property for sale is required in order for the machine exemption to apply. Several examples illustrating this principle are provided below.

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 a regulation approved by the General Assembly, more than one-third of a machine's use in manufacturing is substantial.²²

K. Tangible Personal Property that is an “Ingredient or Component Part” or “Used Directly” in the Process

South Carolina 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.²³

Further, South Carolina does not tax the sale of tangible personal property “used directly” in manufacturing, compounding, or processing tangible personal property for sale.²⁴ An item 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.²⁵

²¹ See also *Southeastern-Kusan v. South Carolina Tax Commission*, 280 S.E. 2d 57 (1981).

²² SC Regulation 117-302.5. See also *Anonymous Corporation v. South Carolina Department of Revenue* (06-CP-40-0103), Court of Common Pleas for the Fifth Judicial Circuit (2008).

²³ South Carolina Code §12-36-120(2).

²⁴ South Carolina Code §12-36-120(3).

²⁵ SC Regulation 117-302.1.

Examples²⁶ of these exclusions from the tax are:

- (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 he 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 his product for identification purposes and which become a part of the product.

L. Electricity

The sale of electricity used by manufacturers, processors, miners, quarriers, or cotton gins to manufacture, mine, or quarry tangible personal property for sale is exempt from the tax.²⁷

This exemption applies to electricity that provides lighting necessary for the operation of machines used in manufacturing tangible personal property for sale 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.²⁸

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.²⁹

M. Coal, Coke, and Other Fuel

The sale of coal, coke, or other fuel 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 is exempt from the tax.³⁰ For purposes of this exemption, mining and quarrying are considered to be manufacturing.

The sale of coal, coke or other fuel 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 is also exempt.³¹

²⁶ SC Regulation 117-302.1.

²⁷ South Carolina Code §12-36-2120(19).

²⁸ SC Regulation 117-302.4.

²⁹ SC Regulation 117-302.4.

³⁰ South Carolina Code §12-36-2120(9).

³¹ SC Regulation 117-302.3.

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.

N. Fuel Used by Aircraft Manufacturer

Sales of fuel that will be used for test flights of aircraft by the manufacturer of the aircraft, or used in the transportation of an aircraft prior to its completion from one facility of the manufacturer to another facility of the manufacturer, are exempt from the tax if certain requirements are met.³² The exemption does not apply to fuel used for the transportation of major component parts for construction or assembly or fuel used for the transportation of personnel.

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a seven year period, invest at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and create at least three thousand eight hundred full-time new jobs at the single manufacturing facility.

The exemption only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.³³

O. Packaging

The sale of materials, containers, cores, labels, sacks, or bags that are used incident to the sale and delivery of tangible personal property are not subject to the tax.³⁴ The terms “materials,” “containers,” and “cores” are defined as follows:³⁵

“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.

³² South Carolina Code §12-36-2120(9)(e) and (f).

³³ Act No. 124 of 2009, Section 2B.

³⁴ South Carolina Code §§12-36-120(4) and 12-36-2120(14).

³⁵ SC Regulation 117-302.2.

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.

P. Sales 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).³⁶ 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 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. Sales to users or consumers are taxable. 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.³⁷

Q. Material Handling Systems and Equipment

Sales of material handling systems and equipment for use in the operation of a manufacturing facility³⁸ are exempt from the tax if certain requirements are met.³⁹ This exemption includes, but is not limited to, racks used in the operation of a manufacturing facility, whether or not used to support all or part of the facility structure.

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a five year period, invest at least thirty-five million dollars in real or personal property in South Carolina.

³⁶ South Carolina Code §12-36-120(1).

³⁷ 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.

³⁸ This exemption also applies to distribution facilities complying with the notice requirements and meeting the investment requirements of the exemption.

³⁹ South Carolina Code §12-36-2120(51). See also South Carolina Revenue Ruling #97-6.

R. Computer Equipment

Sales of computer equipment that will be used in connection with a manufacturing are exempt from the tax if certain requirements are met.⁴⁰

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a seven year period, invest at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and create at least three thousand eight hundred full-time new jobs at the single manufacturing facility.

“Computer equipment” means 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.⁴¹

The exemption only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.⁴²

S. Construction Material

Sales of construction materials used in the construction of a single manufacturing facility are exempt from the tax if certain requirements are met.⁴³

The taxpayer must meet one of two sets of investment and job requirements:

- (1) The taxpayer must make a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen month period.⁴⁴

However, from July 1, 2010 through June 30, 2011, the sale of qualifying construction material will be subject to the tax at a state rate of one percent, plus the applicable local sales and use tax rate. This exemption is being phased in and the sale of qualifying construction material will not be fully exempt until July 1, 2011.

⁴⁰ South Carolina Code §12-36-2120(65)(b). An exemption for computer equipment also applies to technology intensive facilities, as defined in South Carolina Code §12-6-3360(M)(14)(b), complying with the notice requirements and investment requirements set forth in South Carolina Code §12-36-2120(65)(a).

⁴¹ South Carolina Code §12-36-2120(65)(c).

⁴² Act No. 124 of 2009, Section 3B.

⁴³ South Carolina Code §12-36-2120(67).

⁴⁴ This exemption, requiring a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen month period, also applies to distribution facilities or combined manufacturing and distribution facilities.

- (2) The taxpayer must make a capital investment of at least seven hundred fifty million dollars in real and personal property at the facility over a seven year period and must create at least three thousand eight hundred full-time new jobs at the facility over a seven year period.

This exemption became effective November 1, 2009 and only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.⁴⁵

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption.

⁴⁵ Act No. 124 of 2009, Section 4B.