

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

January 20, 1988

OPINION NO. 88-7 pgs

SUBJECT: Taxation & Revenue - Exemption-Business Inventory.

SYLLABUS: The exemption provided by § 12-37-220(30) applies to inventory held for sale in the normal course of business by the class of businesses that had been required to return similar inventory to the South Carolina Tax Commission for assessment and taxation.

TO: Mr. James L. Brodie  
Chief of Operations  
Property Division

FROM: Joe L. Allen, Jr. *JAL*  
Chief Deputy Attorney General

QUESTION: Does the exemption provided by § 12-37-220(30) for business inventory apply to inventory other than that previously returned by a merchant to the Tax Commission?

APPLICABLE LAW: Sections 12-37-220(30) and 12-37-450, South Carolina Code of Laws, 1976.

DISCUSSION:

The statute does not define a business establishment or set forth what constitutes inventory for purposes of the exemption. In their broadest terms, the phrases would include just about every activity entered into for gain and a listing of all property of a business.

We are here concerned with an exemption from taxation and settled rules of construction require a more limited and practical meaning.

The General Assembly first provided for the exemption in 1984 Act 512, Part II, § 16(3). It was clear from the language that the exemption was limited to the inventory required to be returned to and assessed by the South Carolina Tax Commission.

The exemption was for "the inventory of business establishments" and one condition for the same was that the return of the inventory had to be timely received by the

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Commission. The state further reimbursed the taxing entities for the revenue not collected because of the exemption. This was amended in 1986 by Act 540, Part II, § 3. Again, the term business establishments was used and the requirement for the timely return was retained through the 1987 tax year. Effective for the 1988 tax year no return is due and the exemption was transferred from § 12-37-450 to § 12-37-220(30).

The rule is against a liberal construction of the statute.

"Language creating tax exemption is not liberally construed in favor of taxpayer claiming exemption." Citadel Development Foundation v. County of Greenville, 279 S.C. 443, 308 S.E.2d 797. (For other cases see 17A S.C.D., Taxation, Key 204, et seq.)

A consideration of these circumstances can lead to but one logical conclusion. The exemption is to apply to the inventory that is held by a business establishment for sale in the normal course of its business. It is further limited to those businesses of the class that had been required to return the inventory to the South Carolina Tax Commission for the purpose of assessment and valuation.

"The foremost concept in the word 'inventory' as is used in the personal property tax exemption statute is an availability for sale in the ordinary course of business." Olson Equipment Co. v. City of Minneapolis, 258 Minn. 146, 171 N.W.2d 717.

CONCLUSION:

The exemption provided by § 12-37-220(30) applies to inventory held for sale in the normal course of business by the class of businesses that had been required to return similar inventory to the South Carolina Tax Commission for assessment and taxation.<sup>1</sup>

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<sup>1</sup>This conclusion is fortified by the administrative interpretation of the exemption since its enactment in 1984. It has been applied only to this type business and

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to property held for sale in the ordinary course of business. Such a construction is entitled to great weight and should not be overruled without cogent reasons. Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682. Additionally, the state continues to reimburse the taxing entities for the revenue not collected because of the exemption. The appropriations have been limited to the amount of revenue not collected from such business inventories.