

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 80-1-1 February 13, 1986

SUBJECT: Taxation & Revenue - Constitutionality Of Proposed Legislation To Exempt Research And Development Facilities From Designated Property Taxes.

SYLLABUS: A proposed act that would exempt the facilities of new enterprises engaged in research and development and certain additions to existing facilities from designated property taxes would not be in conflict with the South Carolina Constitution.

TO: Honorable Tom G. Mangum
Chairman, Committee on Ways & Means
South Carolina House of Representatives

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

QUESTION: Does a proposed act that would exempt the facilities of new enterprises engaged in research and development and additions to existing facilities from designated property taxes be in conflict with the South Carolina Constitution?

APPLICABLE LAW: Article X, §§ 1(a), 2(a) and 3(g), South Carolina Constitution; § 12-43-220(a) South Carolina Code of Laws, 1976.

DISCUSSION:

Article X, § 1 of the Constitution provides in part that:

"All real and personal property owned by or leased to manufacturers * * * and used by the manufacturer * * * in the conduct of such business shall be taxed on an assessment equal to ten and one-half percent of the fair market value of such property.

Section 12-43-220(a) is the codified provision that sets forth the same classifications and ratios as the constitutional Article. By Act 419, Acts of 1984, the General Assembly amended § 12-43-220(a) so as to provide:

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"Real property owned by or leased to a manufacturer and used primarily for research and development is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property under item (a) of this section. The term 'research and development' means basic and applied research in the sciences and engineering and the design and development of prototypes and processes.

The constitutionality of this provision is the subject of a pending action in the Richland County Court of Common Pleas. For purposes of this Opinion, however, we presume the act to be constitutional and within the powers of the General Assembly as set forth in Article X, § 2(a) that provides:

"The General Assembly may define the classes of property and values for property tax purposes of the classes of property set forth in Section 1 of this article * * *."

By reason of such, this office concluded by Opinion of November 25, 1985, (copy appended) that the research and development facilities of a manufacturer were not exempt from taxation.

Because of the amendment, property owned by a manufacturer and used for research and development purposes is not a part of the manufacturing establishment.

In an Opinion of May 5, 1981, (copy appended) this office concluded that the General Assembly could grant property tax exemptions to manufacturers that were not specifically treated or prohibited by Article X, § 3(g). The basis for this conclusion was the language of Article X, § 3 that states:

"In addition to the exemptions listed in this section, the General Assembly may provide for exemptions from the property tax, by general laws applicable uniformly to property throughout the State and in all political subdivisions, but only with the approval of two-thirds of the members of each House."

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Under the reasoning of the Opinion of May 5, 1981 and because research and development facilities of manufacturers are not a part of the manufacturing establishment, the General Assembly may exempt the same from taxation.¹ Research and development facilities of nonmanufacturers could likewise be exempt.

CONCLUSION:

A proposed act that would exempt the facilities of new enterprises engaged in research and development and certain additions to existing facilities from designated property taxes would not be in conflict with the South Carolina Constitution.

JLAJr:wcg

¹Should the act of the General Assembly that declares such facilities to be not used in the conduct of the manufacturer's business be declared invalid, then in such event, the facilities would be exempt under Article X, § 3. It was the 1984 Act that removed the exemption as this property was prior thereto considered to be part of a manufacturing establishment. Nonmanufacturers' research and development facilities would also be exempt under the proposed legislation.