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Opinion No 87-8

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THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

January 26, 1987

SUBJECT: Taxation And Revenue - Business Inventory
Exemption

SYLLABUS: No tax return is required for the assessment and taxation of merchant's inventory for the 1988 and subsequent tax years. The merchant, however, must file an annual application for exemption and furnish the information required therefor. If the exemption is not filed, the inventory is taxable.

TO: Mr. Guy A. Pitts, Jr., Director
Property Division
South Carolina Tax Commission

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

QUESTION: Are merchants required to return inventory for assessment and taxation for the 1988 and subsequent years? Is an application for the exemption of the inventory required for such years?

APPLICABLE LAW: Sections 12-3-145, 12-37-220, 12-37-450 and 12-37-970, Code of Laws of South Carolina, 1976.

DISCUSSION:

The exemption is provided by Section 12-37-450 for the 1985, 1986 and 1987 tax years. Seventeen percent of the fair market value of the inventory was exempted in 1985, fifty percent in 1986 and one hundred percent in 1987. The section further provided that:

" . . . The exemption provided in this section is not allowed if the return is received by the Commission after the due date"

For the years 1985, 1986 and 1987, the timely filing of the tax return is a necessary prerequisite for the exemption. The General Assembly, however, by Section 3 of Part II of Act 540, Acts of 1986, specifically exempted the inventory for the 1988 and subsequent years. The act amended section 12-37-220 so as to exempt:

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"Effective for the 1988 and subsequent taxable years, all inventories of business establishments."

Since the inventory is now exempt, is there a requirement to file the return under Section 12-37-970? The filing of the return for purposes of the assessment and taxation of the property for the 1988 and subsequent tax years would be a useless and unwarranted burden upon the merchant. Section 12-37-970 provides in part that:

"Notwithstanding any other provision of law, the assessment for property taxation of merchants' inventories, . . . shall be determined by the Commission from property tax returns submitted by the taxpayers to the Commission . . ."

The applicable rule is stated in Independence Ins. Co. v. Independent Life & Accident Ins. Co., 218 S.C. 22, 61 S.E.2d 399, as follows:

"As a general rule, the enactment of revisions and codes manifestly designed to embrace an entire subject of legislation, operates to repeal former acts dealing with the same subject, although there is no repealing clause to that effect."

When the General Assembly exempted the inventory from taxation, it negated any requirement to file the return for the assessment and taxation of the inventory. The exemption covers the entire subject of the taxation of the inventory. Act 540 thus repealed any requirement to file the return after 1987 as such is not thereafter a condition for the exemption.

Notwithstanding that there is no requirement to return the inventory, there is a requirement that an annual application for the exemption be made. Section 12-3-145 provides in part that:

"Any tax-exempt property owner or any property owner whose property may qualify for property exemption shall obtain an application for the exemption from the commission and shall file the application for exemption between January first and the last day of February of each year, containing the information requested by the commission."

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The Commission should therefore provide an application for the exemption with the necessary information to be provided thereon for determining the exemption. If the application is not filed, the exemption is waived and the inventory is taxable.

CONCLUSION:

No tax return is required for the assessment and taxation of merchant's inventory for the 1988 and subsequent tax years. The merchant, however, must file an annual application for exemption and furnish the information required therefor. If the exemption application is not filed, the inventory is taxable.

JLAJr/jws