

1973 S.C. Op. Atty. Gen. 119 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3511, 1973 WL 20971

Office of the Attorney General

State of South Carolina

Opinion No. 3511

April 16, 1973

***1 Where there is an abandonment of an exemption from property taxes by a manufacturer and the property to which the exemption initially applied is sold to another manufacturer, the exemption so abandoned is not revived to the benefit of the purchasing manufacturer.**

Charleston County Attorney

Reference is made to your letter of February 15, 1973, concerning the exemption of certain property from county taxes. The property was that of Avco Lycoming Corporation on which a manufacturing business was operated until the end of 1971. No manufacturing has been conducted on the property since the end of 1971, and the property was sold on January 23, 1973; and the purchaser, Cummins Engine Company, Inc., is now installing machinery, etc., in order to commence its manufacturing business on the property.

Avco was entitled to certain exemptions from taxation provided by Section 65-1542 and 65-1543, and your request is for the opinion of this office of whether the exemption that annexed to the property when Avco conducted the manufacturing business continues for the property.

It is well settled in this State that it is the property (manufacturing plant) that is exempt from taxation and not the owner thereof. 'This section exempts from taxation manufactories, and not persons, natural or corporate, who may locate, establish, or own and operate such manufactories * * *.' *Duke Power Co. v. Bell*, 156 S. C. 299, 152 S. E. 865.

The exemptions that therefore attached to a manufacturing plant usually follow such manufacturing plants. Here, however, no 'manufacturing plant' has been conducted or operated on the property since December 1971 and another manufacturing plant will not begin to operate on the property until possibly sometime later in 1973. It would not be logical to conclude that the property was entitled to the exemption as a manufacturing plant during the 1972 and 1973 tax years when the manufacturing business had been completely abandoned during such years by Avco. The abandonment of the 'manufacturing plant' by Avco therefore terminated the exemption.

'The exemption will remain effective as long as the factory exists and the business continues, unless granted only for a limited period, but is forfeited by the abandonment of the enterprise as the total discontinuance of the business * * *.' 84 C. J. S., Taxation, Section 273, page 519.

'The object of the constitutional exemption was to encourage the introduction in the state of machinery for the purpose of manufacturing * * *. As long as the factory exists, and the property and machinery are dedicated to the purpose required (manufacturing) the reason for the exemption exists * * *.' *Waterbury v. Atlas Cordage Co.*, 42 La. Ann. 723, 7 So. 783.

The New Jersey Court was concerned with an exemption for franchise tax purposes and stated:

'Relief from the imposition of this tax was extended to manufacturing companies carrying on business in this State to encourage the business of manufacturing in the State. If a company may retain valuable a franchise free from the burden without engaging in business, the object of this proviso would be frustrated.' *State v. State Board of Assessors*, 55 N. J. L. 55, 25 A. 329.

*2 The same analogy exists in the present case because it is understood that Avco ceased to operate the manufacturing plant without any intent or expectation of reopening the same. No exemption was claimed on the property for the 1972 tax year and the property was, with the knowledge of Avco, assessed by the Charleston County Tax Assessor. This point is significant because the Tax Commission is statutorily charged with the duty of assessing the property of manufacturers.

It is therefore the opinion of this office that at the time of purchase by Cummins Engine Company, Inc., there was no exemption attached to the property, therefore, none could be carried forward.

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South Carolina Tax Commission

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