

1981 S.C. Op. Atty. Gen. 86 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-61, 1981 WL 96587

Office of the Attorney General

State of South Carolina

Opinion No. 81-61

June 26, 1981

***1 SUBJECT: License Tax—Electrical Power**

A shipyard that makes limited repairs to ships and a nuclear fuel reprocessing plant used solely for research are not industrial customers within the parameters of [Section 12-23-20 of the 1976 Code](#).

TO: Mr. J. W. Lawson
Director
License Tax Division
South Carolina Tax Commission

QUESTION:

Are a shipyard engaged in the business of repairing ships and a nuclear fuel reprocessing plant used solely for research industrial customers within the parameters of [Section 12-23-20 of the 1976 Code](#)?

APPLICABLE LAW:

[Section 12-23-10](#), [12-23-20](#), [1976 Code of Laws](#), and [Regulation 117-49](#).

DISCUSSION:

[Section 12-23-10](#) provides in part:

'In addition to all other taxes of every kind imposed by law:

(2) Every public utility and electric cooperative engaged in the business of selling electric power within the State to the ultimate user of such power shall be subject to the payment of an excise, license or privilege tax of five tenths of one mill upon each kilowatt hour sold within the State to the ultimate user, * * *.'

[Section 12-23-20\(8\)](#) exempts the following from the tax levied by [§ 12-23-10](#).

'(8) Electric power sold to industrial customers as a class in excess of the amounts of electric power sold to industrial customers as a class during the corresponding months of the State's fiscal year 1957-1958; but all sales of electric power to any class of customer other than industrial customers shall continue to be assessed and taxed as provided in this article. As used in this section 'industrial customers' shall mean that class of customer engaged in the business of manufacture, fabrication, processing and related work.' (Emphasis added.)

'Industrial customers' has been further clarified in [Regulation 117-49](#). The pertinent part of that Regulation states:

'Hereafter, the South Carolina Tax Commission will use Division (D), Manufacturing, Standard Industrial Classification Manual, Bureau of the Budget, 1967, as a guide to classify 'industrial customers' as such term is used in [§ 12-23-10 of the 1976 Code](#).'

The sale of electrical power by a utility company to a shipyard engaged in the business of repairing ships or to a nuclear fuel reprocessing plant used solely for research would be exempt from the tax levied by [§ 12-23-10](#) if those facilities could be considered 'industrial customers'. To determine if those facilities are in fact 'industrial customers' reference must be made to Division (D), Manufacturing of the [Standard Industrial Classification Manual](#).

Section 3731 of Division (D) lists shipbuilding and repairing as manufacturers and hence industrial customers within the meaning of [§ 12-23-20](#). It is important to note, however, that not all repairs are contained within this Section. Boiler and tank cleaning and repairs, ship and hold cleaning, ship dismantling, joinery, paint and scaling, etc. are all categorized as non-manufacturing activities in the [Standard Industrial Classification Manual](#). Therefore, one that does not actually build ships but merely carries on the above-mentioned non-manufacturing activities is not an industrial customer and the sale of electrical power to such a customer would not qualify for an exemption under [§ 12-23-20](#).

*2 Nuclear fuel scrap reprocessing plants are listed under Section 2819 of Division (D). Such plants would, therefore, qualify as industrial customers. However, a plant that was originally created to reprocess nuclear fuel scrap but instead conducts research would be listed as a 'non-manufacturer' and any sale of electricity to such a facility would not qualify for an exemption under [§ 12-23-20](#). To say that such a plant manufactures, fabricates, or processes is to strain the meaning of [§ 12-23-20](#) and that is not permissible.

'Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption. He must clearly bring himself within the constitutional or statutory language upon which he relies.' [York County Fair Association v. South Carolina Tax Commission](#), 249 S.C. 337, 154 S.E.2d 361.

CONCLUSION:

A shipyard that makes limited repairs to ships and a nuclear fuel reprocessing plant used solely for research are not industrial customers within the parameters of [§ 12-23-20 of the 1976 Code](#).

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