

1976 WL 30900 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 16, 1976

*1 The office building and research facility of a manufacturer situate within this State is taxed on an assessment equal to ten and one-half percent of such property's fair market value provided the same is used in the conduct of the manufacturer's business.

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QUESTION

If a corporation engaged in manufacturing operations outside the State of South Carolina has a research facility or an office facility located in South Carolina, would such research facility or office facility be subject to taxation at 10.5% by the Tax Commission in accordance with the provisions of Section 2(a) of Act 208 and Section 1 of Act 618 of 1975?

STATUTE INVOLVED

Act 208, Acts of 1975, as amended and codified as Section 65-1605.1(a).

DISCUSSION

The language of the statute is that:

'All real and personal property owned or leased to manufacturers * * * and used by such 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.'

We find nothing in the statute that reflects legislative intent to tax this property on an assessment less than the ten and one-half percent. The property is that of a manufacturer and if used in the business of the manufacturer the same is taxed at ten and one-half percent of value notwithstanding that the manufacturing activity of the business is carried on outside the State.

An opinion of this date relative to this subject should be referred to for the specific conclusion of this office. The Supreme Court of Ohio, however, considered a statute of that state that provided:

'Within the meaning of the term 'using in business', occurring in this title, personal property shall be considered to be 'used' when employed or utilized in connection with ordinary or special operations, when required or held as means or instruments for carrying on the business, when kept and maintained as a part of a plant capable of operation, whether actually in operation or not, or when stored or kept on hand as material parts, products or merchandise; * * *.

'Business' includes all enterprises of whatsoever character conducted for gain, profit or income and extends to personal service occupations.' [Hinde & Dauch Paper Co. v. Evatt](#), 143 Ohio 307, 55 N.E. 2d 129.

Property of a manufacturer consisting of a lodge and cottage used for the purpose of entertaining employees, customers and prospective customers, holding meetings of district managers, etc. was held to be used in the manufacturing business. Hinde & Dauch Paper Co. v. Evatt, supra.

The court further held:

'It certainly would not be urged that the furniture and fixtures in the offices and sales rooms of the appellee, whether within the manufacturing establishment or located elsewhere, are not 'used in business.' No more can it be contended that equipment of any character procured and used for the recreation of employees or for the entertainment of employees or customers or customers and prospective customers of the company is not used in connection with the business. Such procurement and use of the property was without doubt designed to increase the production and particularly to promote the sales of the company's products. To be subject to taxation, it is not essential that such property be used directly in the process of manufacturing. It need be only a means of instrumentality for carrying on the business.'

CONCLUSION

*2 The office building and research facility of a manufacturer situate within this State is taxed on an assessment equal to ten and one-half percent of such property's fair market value provided the same is used in the conduct of the manufacturer's business.

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