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ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 93-010

This document may not be used or cited as precedent. Code of Alabama 1975, §40-2A-5(a).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: September 24, 1993

SUBJECT: Imposition of Alabama Corporate Income Tax on Funds and Value of Property Received in Exchange for Corporation's Agreement to Locate Plant Site in Alabama

FACTS

Company A is a corporation organized for the purpose of locating an appropriate site within the United States of America on which to construct a production facility. The facility is estimated initially to employ approximately X amount of people and require an aggregate investment of X amount of dollars. Among a number of sites under consideration for the facility is a certain tract of real property located in Alabama.

In an effort to induce Company A to locate its production facility in Alabama, the "State", the "County", the "City", the Industrial Development Authority (the "IDA"), and the County Industrial Development Authority (the "CIDA") have executed a series of agreements with Company A. These agreements are as follows:

(1) An agreement between the State and Company A setting forth the terms under which Company A will locate its production facility in X County (the "State Agreement");

(2) An agreement among the County, the CIDA and Company A supplementing the terms under which Company A will locate its production facility in X County (the "County Agreement");

(3) An agreement among the City, the CIDA and Company A supplementing the terms under which Company A will locate its production facility in X County (the "City Agreement"); and

(4) A grant agreement between the CIDA and Company A setting forth the terms governing the CIDA's grant of X amount of dollars to Company A in connection with Company A's location of its production facility in X County (the "CIDA Grant Agreement").

CIDA Site Grant

Sections II and III of the State Agreement obligate the CIDA, in conjunction with the State, the City and the County (collectively, the "Parties") to: (1) convey the site on which the production facility will be constructed to Company A at no cost; and (2) finance a number of different improvements to the site (the site, together with the related improvements, is hereinafter referred to simply as the "site"). The site is being offered to Company A to induce Company A to locate its production facility in X County. A more complete explanation of the Parties' obligations to Company A concerning the site is provided in the relevant portions of the State Agreement. Such portions of the State Agreement are specifically incorporated by reference into the ruling request on this issue.

Tax Increment Funds

Section 4.1 of the State Agreement obligates the State to deliver X amount of dollars to Company A as a reimbursement to Company A of costs incurred in the course of constructing its production facility in X County. The money is being made available to Company A to induce Company A to locate its production facility in X County and will be provided to Company A only in return for Company A's locating the facility in X County. All or a portion of the funds may be provided to Company A through the issuance of so-called "tax increment" bonds by the IDA pursuant to the provisions of Act No. X. Under this arrangement, Company A would be obligated to make annual payments to IDA in an amount equal to its state corporate income tax liability. IDA would use the monies to make the principal and interest payments on the bonds. In the event that Company A's projected payments to the IDA are insufficient to fund a bond issue large enough to meet the State's obligation, the State must provide the difference to Company A through some other means. A more complete explanation of the State's obligation to Company A concerning delivery of the funds is provided in Section 4.1 of the State Agreement. The provisions of Section 4.1 of the State Agreement are specifically incorporated by reference into the ruling request on this issue.

CIDA Grant Agreement Funds

Section 4.3 of the State Agreement obligates the State to coordinate and cooperate with Company A in negotiations with the

CIDA to implement the terms of an economic development grant. These negotiations have resulted in the execution of the CIDA Grant Agreement. Under the terms of the CIDA Grant Agreement, the CIDA has agreed to provide Company A with a grant of X amount of dollars. The grant from the CIDA will be provided to Company A to defray costs incurred by Company A in the course of constructing its production facility in X County. The grant will be provided to Company A by the CIDA only if Company A agrees to locate the production plant in X County. If Company A agrees to locate the production plant in X County, a lump sum payment of X amount of dollars must be paid to Company A by the CIDA on or before March 31, 1994. A more complete explanation of the CIDA's obligation to Company A concerning the grant from the CIDA is provided in the CIDA Grant Agreement. The provisions of the CIDA Grant Agreement are specifically incorporated by reference into the ruling request on this issue.

Other Incentives

Other provisions of the State Agreement obligate the Parties to provide Company A with a number of other incentives in connection with Company A's decision to locate its production facility in X County. Examples of these other incentives include, without limitation, reimbursement/payment of: (1) training facility costs; (2) training equipment costs; and (3) rail line construction costs. These other incentives are being offered to Company A to induce Company A to locate its production facility in X County and will be provided to Company A only in return for Company A's commitment to locate the production facility in X County. A more complete explanation of the Parties' obligation to Company A concerning these other incentives is provided in the relevant portions of the State Agreement. Such portions of the State Agreement are specifically incorporated by reference into the ruling request on this issue.

Successors and Assigns

Section 7.10 of the State Agreement authorizes Company A to assign its rights under the terms of the State, County, City and CIDA Grant Agreements to an affiliate. For the purposes of this ruling, Company A, its successors and assigns, are hereinafter collectively referred to as the "Taxpayer".

ISSUES

(1) Whether the fair market value of the site and the related site improvements provided pursuant to the terms of the State, County and City Agreements will be excludible from the recipient Taxpayer's gross income under Alabama Code §40-18-14(2)-c;

(2) Whether the funds provided pursuant to Section 4.1 of the State Agreement will be excludible from the recipient's gross income under Alabama Code §40-18-14(2)-c;

(3) Whether the funds provided by the CIDA pursuant to the terms of the CIDA Grant Agreement will be excludible from the recipient Taxpayer's gross income under Alabama Code §40-18-14(2)-c; and

(4) Whether the other incentives provided pursuant to the terms of the State Agreement will be excludible from the recipient Taxpayer's gross income under Alabama Code §40-18-14(2)-c.

LAW AND ANALYSIS

In determining a corporation's gross income for Alabama corporate income tax purposes, Code of Alabama 1975, §40-18-34 provides, in part, that the term "gross income" means gross income as defined in Section 40-18-14. Section 40-18-14(2)-c exempts from Alabama income tax the "value of property acquired by gift." See also, Alabama Corporate Income Tax Regulation 810-3-14-.02(3)(a).

According to the Alabama Supreme Court, there are three elements in making a valid gift. First, the donor must intend to surrender title and dominion over the property. Second, there must be actual delivery of the property to the donee. Third, there must be acceptance by the donee. Dial v. Dial, 603 So.2d 1020 (Ala. 1992). See also, Samford v. First Alabama Bank, 431 So.2d 146 (Ala. 1983); First Alabama Bank of Montgomery v. Adams, 382 So.2d 1104 (Ala. 1980).

It is clear that the State, County, and City Agreements which are the subject of this transaction constitute gifts of funds and property to Company A. All of the donors clearly intend to relinquish title and dominion over the funds and property and Company A plans to accept the funds and property pursuant to and upon execution of the agreements.

The fact that the agreements are negotiated documents does not prevent the inducements from being classified as gifts, as long as no conditions exist to hinder vesting of title to the property. The fact that the gifts are accompanied by conditions or qualifications does not necessarily render the inducements invalid gifts, unless the conditions or qualifications are inconsistent with the vesting of title. 38 C.J.S. Gifts §36 (1943). Nothing in the agreements hinder the vesting of title of the funds and property in Company A pursuant to and upon execution of the agreements. Accordingly, the transactions are valid gifts.

RULINGS

The State, County, and City Agreements contemplate gifts of funds and property to Company A. As gifts, the funds and property are exempt from Alabama corporate income tax pursuant to section 40-18-14(2)-c. Based on this analysis, the Department issues the following rulings:

(1) The fair market value of the site and the related site improvements provided pursuant to the terms of the State, County and City Agreements will be excludible from the recipient Taxpayer's gross income under Code of Alabama 1975, §40-18-14(2)-c;

(2) The funds provided pursuant to Section 4.1 of the State Agreement will be excludible from the recipient Taxpayer's gross income under Code of Alabama 1975, §40-18-14(2)-c;

(3) The funds provided by the CIDA pursuant to the terms of the CIDA Grant Agreement will be excludible from the recipient Taxpayer's gross income under Code of Alabama 1975, §40-18-14(2)-c; and

(4) The other incentives provided pursuant to the terms of the State Agreement will be excludible from the recipient Taxpayer's gross income under Code of Alabama 1975, §40-18-14(2)-c.

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