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ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 96-009

This document may not be used or cited as precedent. Ala. Code §40-2A-5(a) (1993 Replacement Volume).

TO: Corporation "B"

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: December 27, 1996

RE: Written election to receive capital credit, as authorized by §40-18-200, Code of Alabama 1975 (1996 Cum. Supp.)

FACTS

In September 1993, Corporation "A" entered into an agreement with the State of Alabama and several state agencies whereby the state and these agencies agreed to take certain actions to induce Corporation "A" to locate a manufacturing plant in Alabama. Also in September 1993, the State Industrial Development Authority ("SIDA") adopted a resolution certifying Corporation "A" as an "approved company" for the purposes of Act 93-851 (the "1993 Act"). Generally, the 1993 Act increased the powers of SIDA by providing SIDA with the authority to grant certain financing and tax incentives to "approved companies" for the express purpose of inducing the location or expansion of industrial and research facilities within Alabama.

Corporation "B" was incorporated on December 20, 1994. Corporation "B" is a wholly-owned subsidiary of Corporation "C". On December 30, 1994, Corporation "B" merged with Corporation "A", which was a wholly-owned subsidiary of Corporation "C". Corporation "B" was the surviving corporation.

ISSUES

1. Upon filing the written election authorized by §40-18-200, Code of Ala. 1975 (1996 Cum. Supp.), whether or not Corporation "B" (a) is deemed to have waived and relinquished all future tax credits, job development fees, or other incentives provided in the 1993 Act (as defined in §40-18-190(15)), and (b) is entitled to the "capital credit" defined in

§40-18-190(3)?

2. If the Department determines that §40-18-200 does not apply to Corporation "B", whether or not Corporation "B" (a) is eligible to qualify as an "investing company" (as defined in §40-18-190(7), Code of Ala. 1975 (1996 Cum. Supp.)) and (b) will be entitled to the capital credit (as defined in §40-18-190(3)) irrespective of making the election of §40-18-200, so long as Corporation "B" complies with §40-18-190, et seq.?

3. Whether or not the total amount of "capital credit" available to Corporation "B" and the period during which such capital credit is available to the company are limited or otherwise affected by Corporation "B's" status as an "approved company" pursuant to the 1993 Act, since, according to Corporation "B", it has not received any tax incentives pursuant to the 1993 Act?

ANALYSIS

Act 95-187, now codified as §40-18-190, et seq., Code of Ala. 1975 (1996 Cum. Supp.), became effective on June 15, 1995, and provided for an income tax credit against an Alabama income tax liability with respect to income generated by certain "qualifying projects." This income tax credit is an annual percentage of the "capital costs" of such "qualifying projects" and commonly is referred to as the "capital credit." Section 40-18-200, Code of Ala. 1975 (1996 Cum. Supp.), states the following:

Each business entity and each project for each business entity with respect to which the State Industrial Development Authority adopted, prior to January 16, 1995, a resolution accepting a project for such entity may, at any time prior to December 31, 1996, file with the department a written election to receive the capital credit granted by this article, and upon the filing, each entity shall thereupon become entitled to the capital credit provided for in this article. Each entity shall, however, upon the filing of the election, be deemed to have waived and relinquished all future tax credits, job development fees, or other incentives provided for in the 1993 Act, and the amount of any tax credits, job development fees, or other incentives actually received by the entity pursuant to the 1993 Act, as well as the period during which the entity was entitled to receive any incentives under the 1993 Act, shall be taken into account for all purposes of this article, specifically including, without limitation, the period during which the capital credit is available and the limitation on the total amount of capital

credits provided in Section 40-18-195.

Based on the foregoing, Corporation "B" would be deemed to have waived and relinquished all future tax credits, job development fees, or other incentives provided by the 1993 Act, upon its filing of the written election authorized in §40-18-200. The filing of this election would cause Corporation "B" to become entitled to the capital credit granted by §40-18-190, et seq. This ruling as to the first issue causes a discussion of (and ruling upon) the second issue to be unnecessary. Therefore, the second issue is pretermitted.

Concerning the third issue, the amounts, if any, of credits, fees, or incentives actually received by the approved company pursuant to the 1993 Act, as well as the period during which the approved company was entitled to receive such amounts, would be taken into account for purposes of the capital credit of the 1995 Act. Section 40-18-200. In your ruling request, you state that neither Corporation "A" nor Corporation "B" has received any tax incentives pursuant to the 1993 Act. Based on that representation, the amount and the period of the 1995 Act's capital credit available to Corporation "B" would not be limited by any tax incentives of the 1993 Act.

CONCLUSION

The foregoing legal issues are controlled by the provisions of §40-18-200, Code of Ala. 1975 (1996 Cum. Supp.). Hopefully, this ruling sufficiently answers your requests.

H. E. "Gene" Monroe, Jr.
Commissioner of Revenue

HEMJr:JP:pj