



State of Alabama Department of Revenue

Montgomery, Alabama 36132

GEORGE E. MINGLEDORFF III

Assistant Commissioner

LEWIS A. EASTERLY

Secretary

H. E. "GENE" MONROE, JR.
Commissioner

ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 96-013

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

TO: Company B

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: February 20, 1997

RE: The ad valorem taxation of property subject to leases entered into prior to the enactment of the Tax Incentive Reform Act of 1992.

FACTS

In General

Company A, Inc. ("Company A") operates a corrugating medium mill (the "Mill") located near the City of Anytown, Alabama. Substantial portions of the Mill and the site of the Mill are owned by The Industrial Development Board of the City of Anytown (the "Board") and leased to Company A under the leases listed below (collectively, the "Leases"). The original Mill was constructed in 1974-1976. Many of the costs of the original Mill and improvements to the Mill have been financed through the issuance of bonds by the board. As part of a corporate reorganization, Company A proposes to transfer its interest in the Mill to Company B, Inc. ("Company B"), which is a wholly-owned subsidiary of Company A.

Leases entered into by the Board and Company A prior to the Tax Incentive Reform Act of 1992 ("TIRA") or entered into pursuant to inducement agreements in place prior to TIRA.

Pre-TIRA Leases:

1. Lease Agreement dated as of September 1, 1974 between the Board and Company A, relating to the lease of the original Mill, a copy of which is attached as Exhibit A;

2. Lease Agreement dated as of December 1, 1974 between the Board and Company A, relating to the financing of certain pollution control facilities constituting part of the original Mill, a copy of which is attached as Exhibit B;

3. Lease Agreement dated as of February 1, 1975 between the Board and Company A, relating to the lease of a shops and stores facility, a copy of which is attached hereto as Exhibit C;

4. Lease Agreement dated as of June 1, 1978 between the Board and Company A, relating to the lease of certain pollution control facilities at the Mill, a copy of which is attached hereto as Exhibit D;

5. Lease Agreement dated as of April 1, 1979 between the Board and Company A, relating to the lease of a woodwaste boiler, a copy of which is attached hereto as Exhibit E;

6. Lease Agreement dated as of November 1, 1986 between the Board and Company A, relating to the financing of certain facilities through the refunding of a portion of the bonds issued pursuant to the leases listed as items 4 and 5 above, a copy of which is attached hereto as Exhibit F; and

7. Lease Agreement dated as of April 1, 1991 between the Board and Company A, relating to the lease of certain specified facilities at the Mill, a copy of which is attached hereto as Exhibit G.

Pre-TIRA inducement agreements ("Inducement Agreements"):

A. Inducement Agreement dated February 19, 1988 between Board and Company A relating to various pulp mill, paper mill, power and recovery and woodlands projects, a copy of which is attached hereto as Exhibit H;

B. Amendment, dated May 21, 1990, to Inducement Agreement between the Board and Company A relating to H₂S boiler, wastepaper recycling plant and other projects, a copy of which is attached hereto as Exhibit I;

C. Inducement Agreement dated March 13, 1991 between Board and Company A relating to various pulp mill, paper mill, power and recovery and woodlands projects, a copy of which is attached hereto as Exhibit J; and

D. Amendment, dated December 27, 1991, to Inducement Agreement between the Board and Company A relating to various pulp mill, paper mill, power and recovery;

woodlands, wastepaper recycling, environmental, warehousing and other projects, a copy of which is attached hereto as Exhibit K.

Leases between Board and Company A grandfathered under TIRA because they are Leases entered into pursuant to the Inducement Agreements:

a. Lease Agreement dated as of December 1, 1993 relating to the lease of certain specified facilities at the Mill, a copy of which is attached hereto as Exhibit L; and

b. Lease Agreement dated as of January 1, 1996 relating to a wastepaper recycling facility, a copy of which is attached hereto as Exhibit M.

The bonds issued in connection with the Leases listed as items 1 through 6 and b above were sold to unrelated investors. The bonds issued in connection with the Leases listed as items 7 and a above were purchased by Company A.

Rulings Requested

Company B requests the following rulings:

1. The Property that is owned by the Board and is the subject of the Leases, after the interest and obligations of Company A under the Leases is assigned to and assumed by Company B, will be exempt from ad valorem taxation pursuant to §40-9B-7(c), Code of Alabama 1975.

2. The Property that is owned by the Board and leased to Company B under Leases that are entered into pursuant to the Inducement Agreements, after the interest of Company A under the Inducement Agreements is assigned to Company B, will be exempt from ad valorem taxes under §40-9B-7(c), Code of Alabama 1975.

3. All purchases by the Board pursuant to the terms of the Leases, the Inducement Agreements, or leases entered into pursuant to the Inducement Agreements will be exempt from sales and use taxes pursuant to §40-9B-7(d), Code of Alabama 1975.

ANALYSIS

The Tax Incentive Reform Act of 1992 (TIRA), authorizes the abatement of certain ad valorem taxes incurred in establishing or expanding industrial development within the state. TIRA also limits the abatements available through various public agencies and authorities. The Act is codified at §40-9B-1, et seq., Code of

Alabama 1975. Section 40-9B-3, Code of Alabama 1975, defines several terms relevant to this ruling, "construction related transaction taxes", "inducement" and "private use property", as follows:

CONSTRUCTION RELATED TRANSACTION TAXES. The transaction taxes imposed by Chapter 23 of Title 40, on tangible personal property and taxable services incorporated into an industrial development property, the cost of which may be added to capital account with respect to the property, determined without regard to any rule which permits expenditures properly chargeable to capital account to be treated as current expenses.

INDUCEMENT. Refers to an agreement, or an "inducement agreement," entered into between a private user and a public authority or county or municipal government and/or a resolution or other official action, an "inducement resolution," "inducement letter," or "official action" adopted by a public authority or county or municipal government, in each case expressing, among other things, the present intent of such public authority or county or municipal government to issue bonds in connection with the private use property therein described.

PRIVATE USE PROPERTY. Any real and/or personal property which is or will be treated as owned by a private user for federal income tax purposes even though title may be held by a public authority or municipal or county government.

Sections 40-9B-7 (a)(1)(2), 40-9B-7(c) and 40-9B-7(d), Code of Alabama 1975, provide as follows:

(a) Notwithstanding any other provision of law, if a public authority or county or municipal government has title to or a possessory right in private use property, then:

(1) The property shall be subject to ad valorem taxes as if the private user held title to the property.

(2) The private user of the property shall be liable for construction related transaction taxes as if the private user held title to such property.

(c) The rule of subsection (a)(1) shall not apply to ad valorem taxes if a private user was entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, or would be entitled to use the property at some future time pursuant to inducement entered into or adopted before May 21, 1992, provided, however, that this subdivision shall apply only to the property and the amount of capital expenditures set out

in such inducement, subject to de minimis deviations.

(d) The rule of subsection (a)(2) shall not apply to construction related transaction taxes if a private user was entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, or would be entitled to use the property at some future time pursuant to inducement entered into or adopted before May 21, 1992, provided, however, that this subdivision shall apply only to the property and the amount of capital expenditures set out in such agreement, subject to de minimis deviations.

Company A, as the private user, was entitled to use the property which is the subject of the Leases identified as Exhibits A-G, prior to May 21, 1992. Therefore, the property is exempt from ad valorem taxation pursuant to §40-9B-7(c), Code of Alabama 1975. Any leases or other agreements entered into pursuant to the Inducement Agreements between Company A and the Board executed prior to May 21, 1992, which have been identified as Exhibits H-K are exempt from ad valorem taxation pursuant to §40-9B-7(c), Code of Alabama 1975. The leases identified as Exhibits L-M relate to the Inducement Agreement Amendment, Exhibit K, which was executed prior to May 21, 1992. Therefore, the property subject to those leases is also exempt from ad valorem taxation.

RULINGS

1. The Property that is owned by the Board and leased to Company A pursuant to the Leases identified as Exhibits A-G, after the interest and obligations of Company A under these Leases is assigned to and assumed by Company B, will be exempt from ad valorem taxation pursuant to §40-9B-7(c), Code of Alabama 1975.

2. The Leases identified as Exhibits L-M relate to the Inducement Agreement Amendment, Exhibit K, which was executed prior to May 21, 1992. Therefore, the property subject to those leases is also exempt from ad valorem taxation.

3. Any future property owned by the Board and leased to Company B pursuant to the Inducement Agreement dated December 27, 1991, Exhibit K, after the interest of Company A under the Inducement Agreement is assigned to Company B, will be exempt from ad valorem taxes under §40-9B-7(c), Code of Alabama 1975.

4. All purchases by the Board pursuant to the terms of the Leases, the Inducement Agreements, or leases entered into pursuant to the Inducement Agreements will be exempt from sales and use taxes pursuant to §40-9B-7(d), Code of Alabama 1975.

References to the "Property" include all real and personal property that is owned by the Board and leased to Company B pursuant to the Leases (after assignment from Company A to Company

B) or leases entered into pursuant to the Inducement Agreements.

ALABAMA DEPARTMENT OF REVENUE

By: _____

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

HEM:GBG