

810-4-3-.02 Taxability of Property.

(1) Private use property shall be subject to property taxes as if the private user held title to the property when a public authority, county, or municipal government has title to or a possessory right (i.e. leasehold interest) in private use property.

(2) The taxability provision will not apply if a private user was entitled to use the property pursuant to a lease or other agreement entered into before the effective date of Title 40, Section 9B, Code of Alabama 1975 (May 21, 1992) or would be entitled to use the property at some future time pursuant to an inducement (as defined in Title 40, Section 9B, Code of Alabama 1975) entered into before the effective date of Title 40, Section 9B, Code of Alabama 1975, and shall apply only to the property and the amount of capital expenditures set out in such inducement, subject to de minimis deviations. The inducement must be reflected in an official document.

(a) The term "**de minimis deviations**" as used in Code of Alabama 1975, Section 40-9B-1, et seq. and in this rule shall mean, with reference to the amount of capital expenditures for private use property, not exceeding 10 percent in the aggregate of the amount set forth in the inducement or lease or other agreement.

(3) Private use property is 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 governments.

(4) A private user is any individual, partnership, or corporation organized for profit that is or will be treated as the owner of private use property for federal income tax purposes.

(5) A lessee of property from a public authority, county, or municipal government shall be treated as the owner of such real and/or personal property for federal income tax purposes in accordance with Internal Revenue Service Rules and Regulations and Generally Accepted Accounting Principles.

(6) The treatment of a private user as owner for federal income tax only applies to property owned by a county, city or public authority.

(7) Once property becomes private use property, then said property shall not lose its status as private use property because of a change in accounting procedures or a change from a capital lease to an operating lease.

(8) When any lease or agreement entered into prior to the effective date of Title 40, Section 9B, Code of Alabama 1975 (May 21, 1992) expires, the property covered by the lease or agreement will become taxable upon execution of a new lease. If the old lease contains a separately stated option to renew for a clearly defined and limited period of time, and the option is properly exercised, the property shall remain

exempt for the renewal period as long as the renewal period conforms precisely to the terms of the option.

(a) Changes, alterations, or rewrites of a lease for refinancing purposes if consistent with the original terms of the lease, and which do not extend the term of the initial or permitted renewal term, will not alter the exempt status of the property.

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Authority: Section 40-2A-7(a)(5), Title 40, Section 9B, Code of Alabama 1975

History: Filed October 29, 1992. Refiled with LRS November 16, 1992.
Certification filed with LRS February 26, 1993, effective April 1, 1993.

Amended: Filed December 15, 2004, effective January 19, 2005.