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Department of Revenue
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ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 93-012:

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: February 24, 1994

RE: Revenue Ruling 93-012:

FACTS

In the summer of 1987, Company A was considering a reorganization of Company B which, at that time, was owned jointly by Company A and Company C. In connection with that reorganization, it was contemplated that Company A, or a subsidiary of Company A, would construct an expansion of the facility located near City, Alabama.

The expansion of the facility was funded with proceeds of Industrial Revenue Bonds issued by the Industrial Development Board of City, Alabama (Board).

The reorganization was structured in a way that Company B created a wholly owned subsidiary named Taxpayer. At the conclusion of the transaction, Taxpayer became a wholly owned subsidiary of Company A. Company B transferred its City mill and assets to Taxpayer. Company B then transferred all of its common capital stock in Taxpayer to Company A in exchange for the stock of Company B owned by Company A.

Pursuant to an Inducement Agreement entered between Company A and the Board, the Board issued approximately $500,000,000.00 in Industrial Revenue Bonds. Company A assigned its rights under the Agreement to Taxpayer. Some of the costs of the project were financed through bonds which were sold to Taxpayer. Taxpayer purchased the bonds with funds provided to the Taxpayer

by Company A as a capital contribution. Company A obtained all or a portion of the funds contributed to the capital of Taxpayer by borrowing such funds.

The Board leased the land and expanded facilities (Project) to the Taxpayer. Beginning June 1, 1989, and June 1 and December 1, in each year thereafter until the full payment of the bonds, the Taxpayer will pay as rent for the Project, a sum of money equal to the amount payable on such dates as principal of and interest on the bonds.

As of June 30, 1993, the Board had issued Industrial Revenue Bonds totaling $550,667,074.00, the proceeds of which were used by the Board to construct facilities for lease to the Taxpayer. As of June 30, 1993, the Taxpayer's capital, including retained earnings and paid-in capital, was $1,295,267,236.00, composed of the following amounts:

Paid-in Capital	$ 883,360,707.00
Retained Earnings	$ 411,906,529.00
	$1,295,267,236.00

Taxpayer had been a wholly owned subsidiary of Company A. However, as part of an overall corporate restructuring, Company A contributed the stock of Taxpayer to another subsidiary owned by Company A so that Taxpayer is now wholly owned by a wholly owned subsidiary of Company A.

It is contemplated that the Taxpayer will declare a dividend of approximately $775,000,000.00 to its new parent so that, at the conclusion of the transaction, the capital of the Taxpayer, whether it be from paid-in capital or retained earnings, will still equal or exceed the amount of the then outstanding bonds issued by the Board. It is also contemplated that the Taxpayer will declare additional dividends in the future to its parent but will at all times maintain as its capital at least the sum of paid-in capital and retained earnings in an amount to equal or exceed the aggregate amount of bonds issued and outstanding.

The Taxpayer proposes, over the next several years, to engage in an expansion of the City facility, which expansion will total approximately $950,000,000.00. These improvements will be financed by the issuance of bonds by the Board, which bonds were induced on December 19, 1991. The Taxpayer will purchase the bonds issued by the Board using either its retained earnings, existing capital, or additional capital contributed by the parent to the Taxpayer. No portion of the funds used by the Taxpayer to purchase the bonds will be borrowed funds. At all times, the sum of paid-in capital and retained earnings will equal or exceed the aggregate amount of the bonds outstanding.

RULINGS

You have requested that I issue the following rulings, which are restated from your request.

> A. Notwithstanding the dividend, for franchise tax purposes Taxpayer will be allowed a deduction from its Alabama tax base for the amount invested by it in bonds issued by the Industrial Development Board of the City, the proceeds of which were used to finance a facility for Taxpayer.

Alabama franchise tax is imposed on foreign corporations based on the actual amount of the corporation's capital employed in the state. In determining the amount of capital employed by a foreign corporation in the state, Code of Alabama 1975, §40-14-41-d-2-b allows a deduction from the corporation's capital for

> [t]he amount invested by the taxpayer in bonds or other securities issued by the State of Alabama, or any county, municipality, or other political subdivision of the State of Alabama, or any public corporation organized under the laws of the State of Alabama, . . .

Municipal industrial development boards are public corporations organized under the laws of the State of Alabama. Harris v. Ethics Commission, 585 So.2d 93 (Ala. Civ. App. 1971); George A. Fuller Co. v. Vulcan Materials Co., 293 Ala. 199, 301 So.2d 74 (1974). Investments in bonds issued by the Board are deductible from Taxpayer's capital employed in the state for Alabama franchise tax purposes, pursuant to §40-14-41-d-2-b. Entitlement to the deduction is based upon ownership of the bonds, not the source of funds used to purchase the bonds. The Taxpayer is entitled to a deduction from its capital for the amount of its bonds, notwithstanding the source of the funds used to purchase the bonds or any future dividends given by the Taxpayer to the Taxpayer's parent corporation.

For franchise tax purposes, Taxpayer will be allowed a deduction from its Alabama tax base for the amount invested by it in bonds issued by the Board, notwithstanding any dividends issued to the Taxpayer's parent corporation.

> B. Notwithstanding the dividend, interest on bonds issued by the Board, the proceeds of which were used to finance project costs will be tax exempt for Alabama income tax purposes even though such bonds are owned by Taxpayer.

Code of Alabama 1975, §11-54-96, without any specific restrictions, exempts the income from bonds issued by municipal industrial development boards from "all taxation in the State of Alabama." The interest received by Taxpayer on bonds issued by the Board will be tax exempt for Alabama income tax purposes pursuant to §11-54-96, notwithstanding any dividends which may be granted to the Taxpayer's parent corporation.

C. Notwithstanding the dividend, the conclusion in paragraph B is not altered by the fact that the funds to purchase the bonds were initially received by Taxpayer from its parent, at that time Company A, even though Company A secured all or a part of the funds for such capital contributions from borrowing.

Entitlement to the exemption from taxation provided by §11-54-96 is not predicated upon the source of funds used to purchase the bonds. All interest received by the Taxpayer on bonds issued by the Board and owned by the Taxpayer will be tax-exempt for Alabama income tax purposes, notwithstanding the fact that the funds used to purchase the bonds were received from the Taxpayer's parent corporation.

GEORGE E. MINGLEDORFF III

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