



State of Alabama Department of Revenue

Montgomery, Alabama 36132

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

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 96-011

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Secretary

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TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: January 8, 1997

RE: Revenue Ruling 96-011

FACTS

The facts as stated by Company A's representative, are:

In General

Company A and its affiliates were preliminarily approved by the State Industrial Development Authority ("SIDA") and entered into a Preliminary Agreement with the SIDA pursuant to the 1993 capital credit act. This approval included two components as a single "project" (the "Project") enhancing an existing mill ("Mill 1") and certain related improvements to another mill ("Mill 2"). Specifically included in the preliminary agreement were controlled affiliates of Company A. Company A then sought to raise the funds for these facilities by bringing in joint venture partners.

Mill 1

To facilitate raising investor capital, construction and acquisition of Mill 1 was begun by Company B, an Alabama general partnership. Mill 1 was financed by issuance of bonds by the SIDA.

Initially, the partners of Company B were Company A and Company C, an unrelated investor. However, Company C has now sold its interest in Company B to

Company D, a wholly owned subsidiary of Company A, resulting in Company B being owned by Company A and a wholly owned subsidiary of Company A.

Mill 2

Construction of Mill 2 was commenced by Company A. To facilitate the raising of investor capital, the construction in progress was transferred to Company E, a limited liability company, having two members: Company A and Company F, a wholly owned subsidiary of Company A. Company E is taxable as a partnership for income tax purposes. Thus, Mill 2 was begun by Company A and then transferred during construction to an LLC owned by Company A and a wholly owned subsidiary of Company A.

Abatements

In 1995, The Industrial Development Board for the City, Alabama, granted abatements with respect to Mill 2 and Mill 1 to Company A, "its successor and assigns, (including Company E and any affiliate of [Company A] or Company E which may become the indicated interested party as contemplated hereby)." Because Company A commenced construction of Mill 2 and then transferred the construction in progress to Company E, Company E is a successor or assign of Company A.

Proposed Mergers

Company A has decided to no longer seek investor capital. Therefore, to simplify its corporate structure and to allow the SIDA bond issues to be refinanced as Company A obligations, Company A plans to merge Company D, Company E, and Company F into Company A. Because Alabama and Delaware law do not allow a general partnership to merge into a corporation, the partners of Company B will be merged with an Alabama limited liability company, which will then be merged with Company A.

Upon completion of the mergers, all mills will be owned by Company A.

By resolution, the SIDA determined that both components of the project, Mill 2 and Mill 1, are "projects" within the 1993 act and that Company B and Company A are "approved companies." SIDA further found that Company E is an "affiliate" within the original SIDA resolution and that Company E is also "an entity

with respect to which the Inducement Resolution was adopted."

Rulings Requested

Company A requests the following rulings:

1. Mill 2 and Mill 1 will together constitute a single Approved Project.

2. The Department will honor SIDA's findings respecting Company A, Company E, and Company B and, therefore, consider each as eligible to elect to come under the 1995 act by timely filing of a Form INT-3 under Section 11 of the 1995 Act.

3. Company B and Company E may jointly file a single Form INT-3 with the Department before December 31, 1996, and have Mill 1 and Mill 2 become a Qualifying Project under the 1995 capital credit law.

4. Following the mergers, if Company B and Company E have timely filed Form INT-3, Company A may calculate the income tax credit allowed by the 1995 act and the \$2,000,000 minimum investment required by the 1995 Act based on all capital costs incurred by Company A, Company E, or Company B with respect to Mill 1 and Mill 2.

5. Following the mergers, Company A will be entitled to the benefits of the tax abatements granted with respect to Mill 1 and Mill 2.

GENERAL DISCUSSION

To summarize, the principal players of the "project", (1) Company B, a partnership consisting of Company A and a wholly owned subsidiary, Company D; and (2) Company E, an L.L.C., now involve either Company A or a wholly owned subsidiary of Company A. There are no longer any "outside" investors involved in the "project." Upon completion of the proposed mergers, all components of the two "projects" will be owned by Company A.

It is well settled that the rights and privileges of two corporations which have merged continue to exist in the merged corporation. International Paper Co. v. Broadhead, 662 So.2d 277 (Ala. Civ. App. 1995). Both Company D and Company E will merge with Company A and continue to exist within the merged corporation. The partnership between Company D and Company A will merge with an Alabama limited liability company, which will

then be merged with Company A. The rights and privileges of Company D, Company B and Company E will survive the merger. International Paper Co. v. Broadhead, supra. Accordingly, the rights of Company D, Company B and Company E pursuant to the "project" should inhere to Company A.

RULINGS

1. Pursuant to Code of Ala. 1975, §41-10-44.4, the SIDA, not the Revenue Department, has the power to designate an applicant as an "approved company" and approve a "project." For that reason, the Department declines to issue a ruling on whether, following the proposed mergers, Mill 1 and Mill 2 will remain an "approved project." However, since the SIDA resolution which approved Mill 2 and Mill 1 as a "project" approves Company A "on behalf of itself and certain affiliates," the Department is unaware of any facts concerning the mergers which would affect the status of the "project" under the 1993 Act. This is especially true in light of the fact that the rights of Company A's affiliates inhere to the merged corporation.

2. Pursuant to Code of Ala. 1975, §40-18-200, an entity which has previously received a SIDA resolution accepting a "project" prior to January 16, 1995, may elect (by filing Form INT-3 with the Department before December 31, 1996) to receive the 1995 capital credit. This election waives any incentives provided by the 1993 Act. Company A, Company E and Company B obtained the SIDA resolution in 1993. Accordingly, following the mergers and assuming the entities' continued status as an "approved company", Company A, Company E and Company B are eligible to file Form INT-3 before December 31, 1996, and have Mill 1 and Mill 2 become a "project" under the 1995 Act.

3. The only prerequisite for election of the incentives provided by the 1995 Act, as opposed to the 1993 Act, is a SIDA resolution accepting a "project" prior to January 16, 1995. As previously stated, the SIDA resolution which approved Mill 1 and Mill 2 as a "project" was entered in 1993 and approved Company A "on behalf of itself and certain affiliates." Since Company B and Company E are both affiliates of Company A, the two entities may jointly file a single Form INT-3 with the Department before December 31, 1996 and have Mill 1 and Mill 2 become a "project" under the 1995 Act.

4. Following the mergers and assuming Company A's continued status as an "approved company", if Company B and Company E timely filed a Form INT-3, then Company A, as the remaining "merged" corporation, may calculate the income tax credit allowed by the 1995 Act based on all capital costs incurred by Company A, Company E, or Company B with respect to Mill 1 and Mill 2. However, the amount of any tax credit, job development fees or other incentives received or utilized pursuant to the 1993 Act should be taken into account in computing the capital credit allowed pursuant to the 1995 Act.

5. The tax abatement documents ("Inducement Agreement") specifically provide that the abatements are allowed to Company A "for itself and on behalf of Company E". Therefore, following the mergers, Company A will be entitled to the benefits of the tax abatements granted with respect to Mill 1 and Mill 2.

ALABAMA DEPARTMENT OF REVENUE

By: 

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

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