

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 00-012

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TO: Taxpayer

FROM: Michael Patterson
Commissioner of Revenue

DATE: July 9, 2001

FACTS

For purposes of this ruling, the requestor informed us and we have assumed without investigation that:

1. In Year A, Company S, a subsidiary of Company P, began producing motor vehicles in Town P, State P. Company S initially performed all of its parts sequencing and consolidation functions. In Year B, Company S and Company L formed a project team to analyze the flow of supplier parts being used in their manufacturing facility. It was determined that the cost per square foot of using an onsite production to provide these functions was substantially more than the cost of outsourcing such functions to an off-site staging facility. Company M was selected to and has performed these functions in State P for Company S since Year C.
2. In Year D, Company P announced plans to construct a _____ manufacturing plant in County, Alabama (the "Manufacturing Plant"). The Manufacturing Plant will be owned and operated by Company C. Company C is an Alabama single-member limited liability company; its single member is Company P. The Manufacturing Plant is currently under construction and production should begin Future Year.
3. In Year E, Company M was selected to perform parts sequencing and consolidation services for Company C at the Manufacturing Plant. Company M and its wholly owned subsidiary, Company M Subsidiary, formed Taxpayer to undertake Company M's business opportunities in Alabama. No formal contractual relationship between

Taxpayer and Company C existed at the time of the request. Counsel for the requestor did, however, provide a copy of a contract between Company M and Company C relating to the State P operations titled "Agreement for Services" and informed the Department that the contractual relationship for the Manufacturing Facility between Company C and Taxpayer would be quite similar. The requestor's counsel, however, noted that Taxpayer, unlike Company M, would not perform any parts assembly services for Company C at the Manufacturing Facility in County. Additionally, the requestor's counsel represents that unlike the contractual relationship between Company M and Company C, the contractual relationship between Taxpayer and Company C will provide for the financial liability of Taxpayer to Company C in the event parts not meeting Company C quality standards are accepted for delivery by Taxpayer at its distribution center.

4. Taxpayer, in accordance with the ruling request proposes to establish a just-in-time material sequencing, consolidation and distribution center in County, Alabama (the "Taxpayer Facility"). While the operations of the Taxpayer Facility are still proposed, actual construction of the facility has been underway.
5. The purpose of the Taxpayer Facility is to provide support functions for a single customer, Company C. Taxpayer's sequencing requirements are dictated solely via an electronic message from Company C. This message includes Company C's production schedule, from which Taxpayer must immediately sequence and consolidate the parts needed to meet Company C's immediate production schedule. Packaging of sequenced and consolidated parts by Taxpayer is made in reusable production containers owned by Company C. As such, Company C mandates packaging specifications for each assembly item to be packed by Taxpayer. Taxpayer may be required to clean or repair these production containers from time to time.
6. The chronology of the functions Taxpayer will undertake is as follows:
 - (a) Supplier parts are ordered for Company C and delivered to the Taxpayer Facility. Examples of parts include: A, B, C, and D. Employees of Taxpayer scan supplier parts received to ensure quality and quantity. Once scanned by Taxpayer, an electronic message is sent to Company C who in turn compensates the supplier.
 - (b) Company C will continuously send electronic messages to the Taxpayer with its immediate production schedule that outlines the number, type and specifications of motor vehicles that will be produced.
 - (c) Taxpayer then sequences the parts per the Company C production schedule for a single point on Company C's production line in the proper order.
 - (d) The sequenced parts are then transported to the Manufacturing Plant and rolled directly to the assembly line for just-in-time arrival.

7. Taxpayer does not purchase the parts from the suppliers and does not take title thereto.
8. The Taxpayer initially informally presented this request to local authorities in an attempt to qualify this project for tax abatement under Alabama Code § 40-9B-1 et. seq. These authorities informed the Taxpayer that they would be interested in granting the tax abatements but because of the circumstances the Taxpayer would have to pre-clear the abatement request with the Department to determine if the request was within the legal limits of the statute. This request followed.

REQUESTED REVENUE RULINGS

- A. The Taxpayer Facility qualifies as an industrial or research enterprise as defined in Alabama Code § 40-9B-3(6). The property and equipment to be acquired as well as any construction to be accomplished for the Taxpayer Facility is for the purpose of establishing this enterprise. Therefore, said real and personal property is industrial development property.
- B. Taxpayer's predominant trade or business activity conducted at the Taxpayer Facility constitutes industrial, warehousing or research activity as defined in Alabama Code §40-18-190(6). The property and equipment to be acquired as well as any construction to be accomplished for the Taxpayer Facility is for the purposes of establishing this enterprise, and, provided that the other requirements of Alabama Code §40-18-190(11) are met, the Taxpayer Facility will meet the definition of a qualifying project.

GENERAL DISCUSSION

The requestor makes two general arguments, which are discussed in parts designated below:

I.

First the Taxpayer asserts that it is a manufacturer. The Taxpayer argues that the primary business activity at the Taxpayer Facility is the manufacturing support functions of parts sequencing and consolidation, which is an integral part of the activities of manufacturing of _____ described in major Group ____.¹ Fundamentally, the Taxpayer argues that because the Taxpayer provides a business service that is an associated activity of a manufacturing process for a single customer, its activities are indistinguishable from the manufacturing process of this customer. Although noting that it would not be binding between this Taxpayer and the Department, the Taxpayer asserts that Revenue Ruling 99-006 presented a parallel fact pattern and the Department would be acting in a consistent manner only if it approved the Taxpayer's request.

Based upon the facts presented, this Taxpayer does not engage in activities² that would qualify it for an abatement under Alabama Code §40-9B-1 et. seq. or for capital credits under Alabama Code §40-18-190 et. seq. Taxpayer is not a manufacturer as that term is commonly understood. A "manufacturer" is commonly understood to be an entity, which by labor, art, or skill transforms raw material into some kind of finished product or article of trade. The Taxpayer correctly points out that the process of manufacturing involves many different types of dependent and related activities. However, the activities of a Taxpayer must be viewed alone rather than as a part of a much larger process to determine qualification under both the abatement and capital credit statutes. There is absolutely no authority to allow an entity, such as the Taxpayer, which performs a nonessential³ business support function for a qualified manufacturer, to qualify through the business attributes unique to this customer of a Taxpayer. Revenue Ruling 99-006 does not lend support for the Taxpayer's argument. That Ruling was unique to a particular industry and the specific wording within a single SIC Code. Language or analysis within that Ruling indicating otherwise is rejected.

II.

¹ SIC Code Major Group _____ relates to the manufacture of Finished Product. Facilities performing activities properly classified under SIC Code Major Group _____ meet the requirements to be classified as industrial development property as defined in Alabama Code §40-9B-3(5) and as an industrial, warehousing or research activity as described in Alabama Code §40-18-190(6).

² A Particular Part that is delivered by a Company C supplier to the Taxpayer is not changed in form before it is delivered by the Taxpayer to the Company C assembly line. Accepting delivery of a Particular Part, inspecting a Particular Part, lining up a series of Particular Part in some certain order and transporting a Particular Part to an assembly line does not materially change the form or utility of the article of trade. The predominant business activity of this Taxpayer is support services.

³ While parts sequencing or consolidation increases efficiency and quality in the manufacturing process, it is not an essential or integral part of the Taxpayer's customer's manufacturing process. Likewise, the outsourcing of this support function is neither fundamental nor necessary to the manufacturing process of Taxpayer's customer.

Alternatively, the Taxpayer argues that it qualifies for economic incentives as a wholesaler. Taxpayer asserts that its activities are substantially similar to its parent, Company M, which, it claims, was mandated by Occupational Safety & Health Administration of the U.S. Department of Labor (“OSHA”) to use SIC Code Number _____. Specifically, the Taxpayer claims that in Prior Year, Company M and OSHA settled several legal matters and the mandate to use SIC Code Number _____ was an important part of the settlements.

SIC Code Number _____ is available only to “establishments primarily engaged in the wholesale distribution of _____.” The Taxpayer accepts deliveries of items ordered and paid for by the manufacturer directly. Although the Taxpayer has custody of the goods, it does not acquire title or ownership to the parts. This Taxpayer is a bailee - not a wholesale distributor of these parts.

After the Taxpayer made the assertion that Company M was “mandated” by OSHA to use SIC Code Number _____, the Department requested⁴ that it submit a copy of the OSHA settlement for review. The Taxpayer now concedes that the settlement agreement does not address OSHA mandating them to use this SIC Code Number. Rather it now asserts that OSHA assigned it this number after a careful analysis of its operations. However, the actual operations and business posture of the Taxpayer do not indicate that it’s SIC Code Number should be _____.

CONCLUSION

The Commissioner of the Department of Revenue declines to grant the Taxpayer’s requested rulings. The Taxpayer is neither a manufacturer nor a wholesale distributor and cannot be qualified under the appropriate statutes for the economic incentives requested.

Michael Patterson
Commissioner of Revenue

⁴ We note without reliance thereon that by electronic response to this request, possibly accidentally sent to counsel for the Department, Company M was likely aware that the assertions of an OSHA “mandate” to use a particular SIC Code Number as an “important part of the settlement” made by Taxpayer’s representative was factually incorrect when asserted.