

**ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 01-001**

THIS DOCUMENT MAY NOT BE USED OR CITED AS PRECEDENT. §40-2A-5(a), CODE OF ALABAMA 1975.

TO:

FROM: Michael Patterson
Commissioner, Alabama Department of Revenue

DATE: June 11, 2001

RE: Abatement of Recording Taxes

FACTS

The facts as stated in your ruling request are as follows:

In 1999, the Industrial Development Board (the "IDB") *inter alia* and CORPORATION X entered into the "Project Agreement" whereby CORPORATION X proposed to build and operate a facility for the manufacture of products to be located in an unincorporated portion of a county in Alabama (the "Project"). In 1998, the IDB and CORPORATION X entered into a Tax Abatement Agreement whereby the IDB agreed to cause the abatement of, among other things, deed, mortgage and all other similar recording taxes for CORPORATION X and CORPORATION X's on-site Vendors (as defined in the Tax Abatement Agreement with respect to the Project), whenever such taxes become due and payable, in the manner set forth pursuant to §40-9B-4(d), Code of Alabama 1975.

In order to secure the performance of various Vendors providing services to CORPORATION X at the Project, CORPORATION X has entered into and will continue to enter into Option, Security and Mortgage Agreements, leases and other instruments (collectively, the "Instruments") in furtherance of the Project. The specific business purpose of each instrument is discussed in greater detail below.

CORPORATION X has entered into and will continue to enter into numerous agreements with various Vendors in which such Vendors agree to provide services to CORPORATION X in furtherance of the Project. On-site Vendors will locate certain equipment or fixtures on the Project Realty as required by their respective Service Agreements to service the needs of

CORPORATION X's production facility. Such on-site Vendors have rights to locate equipment and fixtures on the Project Realty and to access the Project Realty through either a lease or the grant of a license. CORPORATION X has retained and will retain on-going options ("Options") to purchase any and all on-site equipment and fixtures of the Vendors at a price equal to the unamortized value of the fixtures and equipment from time to time, with such price set forth on a schedule attached to each Option. This option to purchase the Vendor's fixtures and equipment is a means of preventing potential disruption of the Project or facility operations in the case of a default. These Options may be exercised by CORPORATION X at any time. In order to secure the performance by the Vendors of their obligations to sell the fixtures and equipment at the prices agreed to by both parties in the Options, CORPORATION X has required and will continue to require Vendors to enter into Security Agreements and Financing Statements.

CORPORATION X attempted to record the first package of such documents, including: (i) a Memorandum of Lease, and (ii) an Option, Security and Mortgage Agreement, in the office of the Judge of Probate, but the judge refused to accept such documents for recordation without the payment of taxes pursuant to §§40-22-1 and 2.

ISSUE

Whether or not the instruments to be recorded in the probate office convey title into or out of the public authority, as required by §40-9B-4(d)?

ANALYSIS

Alabama's legislature allows the abatement of certain taxes pursuant to §40-9B-4, Code of Alabama 1975. Paragraph (d) of that section states as follows: "Mortgage and recording taxes with respect to mortgages, deeds, and documents relating to issuing or securing obligations and conveying title into or out of the public authority or county or municipal government with respect to a private use industrial property may be abated by complying with the procedures set forth in this chapter."

This language shows that an abatement of recording taxes may occur only if, among other things, the documents to be recorded convey "title into or out of the public authority...." The legislature chose to use the conjunction "and" in paragraph (d), making the provision concerning the conveyance of title a requirement for abatement.

At the Department's request, you provided copies of the documents which were presented to the Judge of Probate for recording, but were returned because of the non-payment of recording taxes. A review of these documents shows that title is not conveyed "into or out of the public authority or county or municipal government ...", as required by §40-9B-4(d). Instead, these documents involve CORPORATION X and other private parties. Therefore, these documents are not subject to an abatement of recording taxes.

CONCLUSION

Because the documents in question do not convey "title into or out of the public authority ...", these documents do not qualify for an abatement of recording taxes pursuant to §40-9B-4(d). Consequently, the general provisions of §40-22-1 and/or §40-22-2 apply to the recording of the documents you sent to the probate office.

MICHAEL PATTERSON
Commissioner, Alabama Department of Revenue

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