

**ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 02-001**

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TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: February 27, 2002

RE: The proposed additions and expansion under the industrial development inducement agreement between the Industrial Development Board of the City of Any Place and ABC, Inc.

Facts

According to the relevant portions of the request, the facts are:

The Industrial Development Board of the City of Any Place ("Board") is an Alabama public corporation. On May 5, 1981, the Board entered into a formal inducement agreement ("inducement") with ABC, Inc. ("ABC"). The inducement contemplated the development of a manufacturing complex ("Project") in Any County, Alabama. The relevant portions of the inducement provide:

1. The purpose of the Project was to develop commerce in the area served by the Board, which includes Any County, Alabama.
2. The Project would require expenditures of up to two billion dollars expressed in terms of 1981 dollars, plus increases in cost due to inflation.
3. The Project would be "acquired, constructed, and installed in phases and said expenditures to be incurred in increments beginning in the year 1981 and extending at least through 1995."

4. ABC could assign its rights under the inducement to a subsidiary or affiliated corporation.

5. In an amendment dated April 26, 1995, the Board purported to extend the duration of the 1981 inducement until “at least December 31, 2010.”

ABC wants to install a new manufacturing line under the terms of the 1981 inducement. ABC would assign its rights under the inducement to DEF, a subsidiary of ABC who would operate this new manufacturing line.

Issue

Is the expansion of an industrial development project by a subsidiary of ABC induced pursuant to a May 21, 1981, inducement agreement and leased pursuant to a June 21, 1984, lease agreement grandfathered under the transition rules of the Tax Incentive Reform Act of 1992?

Analysis

The Tax Incentive Reform Act of 1992 (“TIRA”), codified at §§40-9B-1 et seq., Code of Alabama 1975, authorizes the abatement of certain ad valorem, recording, and construction related transaction taxes incurred in establishing or expanding industrial development within the state. TIRA also limits the duration of abatements available through various public agencies and authorities. Before the adoption of TIRA, Industrial Development Board Property was automatically exempt from ad valorem, recording, and construction related transaction taxes. After May 21, 1992, the effective date of TIRA, such property became subject to these taxes. Nevertheless, TIRA includes a “Grandfather Clause” that allows property to remain exempt if acquired subject to a lease or other agreement in effect before May 21, 1992.

The inducement stated the parties’ intent that the Project would be built in phases to continue “at least through 1995.” The inducement was executed before May 21, 1992; therefore transition rules of TIRA grandfather the terms of the original inducement for its duration. The Board amended the inducement after the effective date of TIRA to extend the term of the inducement. However the original terms of the inducement did not allow the parties to extend the duration of the inducement past the original term, thus the amendment is in effect a new inducement.

Ruling

Exemptions from taxation are to be strictly construed against the exemption and in favor of the right to tax and no person or property is exempt unless the intention to exempt clearly appears. Consequently, the parties to a pre-TIRA agreement must have clearly set out the duration of the agreement

before the effective date of TIRA in order for a post-TIRA expansion of the project to be grandfathered under TIRA's transition rules.

The terms of the 1981 inducement do not clearly express the intent that the inducement apply to an expansion contemplated in 2001; therefore, assuming the parties have met all other requirements for obtaining an abatement, only the abatements allowed under TIRA would be available to ABC and DEF for the 2001 expansion.

CYNTHIA UNDERWOOD, Commissioner
Alabama Department of Revenue

CU:JMH:pj