

**ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 02-004**

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: June 20, 2002

RE: Applicability of Ala. Code §40-9B-1 et seq., and Ala. Code §40-18-190 to §40-18-203, inclusive, to Taxpayer's planned facility

FACTS

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

ABC, a subsidiary of DEF develops, builds, and operates electric-generating facilities. ABC is considering a project in Any County, which will include construction of a 628-megawatt, natural gas-fired power plant. The plant will produce electrical power. Taxpayer, the indirect subsidiary of ABC and DEF, will own and operate the plant. ABC's projected capital investment in the construction of the plant is approximately 235 million dollars. Between 10 and 20 permanent jobs will be created. The electricity produced by the plant will be sold primarily to one customer, Company X.

ISSUES

(1) Whether the facility to be constructed by ABC and owned and operated by its indirect subsidiary, the Taxpayer, qualifies for an abatement under §40-9B-1, et seq., Code of Alabama 1975?

(2) Whether the facility to be constructed by ABC and owned and operated by its indirect subsidiary, the Taxpayer, qualifies for a credit under §40-18-190 to §40-18-203, inclusive, Code of Alabama 1975?

LAW AND ANALYSIS

(1) The Tax Incentive Reform Act of 1992, Ala. Code §40-9B-1, et seq., allows for a private user to apply for abatement of non-educational ad valorem taxes, construction-related transaction taxes, and mortgage and recording taxes if the property constitutes industrial development property.

Section 40-9B-3 defines "industrial development property" and "industrial or research enterprise" as follows:

(5) INDUSTRIAL DEVELOPMENT PROPERTY.

Real and/or personal property acquired in connection with establishing or expanding an industrial or research enterprise in Alabama.

(6) INDUSTRIAL OR RESEARCH ENTERPRISE.

Any trade or business described in 1987 Standard Industrial Classification Industry Group Number 0724, Major Groups 20 to 39, inclusive, 50 and 51, Industrial Group Number 737, and Industry Numbers 4613, 8731, 8733, and 8734, as set forth in the Standard Industrial Classification Manual published by the United States Office of Management and Budget.

Major Groups 20 to 39 in the Standard Industrial Classification (SIC) Manual involve manufacturing products, including food and kindred products; tobacco products; textile mill products; apparel and other textile products; lumber and wood products; printing and publishing; chemicals and allied products; petroleum and coal products; rubber and miscellaneous plastics products; leather and leather products; stone, clay, and glass products; primary metal industries; fabricated metal products; industrial machinery and equipment; electronic and other electric equipment; transportation equipment; instruments and related products; and miscellaneous manufacturing industries. Major Groups 50 and 51 in the SIC Manual involve wholesale trade of durable goods and nondurable goods, respectively. Industrial Group Number 737 refers to computer and data processing services. Industry Number 4613 refers to refined petroleum pipelines for products such as gasoline and fuel oil. Finally, Industry Numbers 8731, 8733, and 8734 refer to commercial physical research, noncommercial research organizations, and testing laboratories, respectively.

None of the above classifications includes a gas-fired power plant that produces electricity; therefore, the planned facility does not fall within the definition of "industrial or research enterprise." The Requester suggests that the planned facility falls into the category of "miscellaneous manufacturing industries;" however, the SIC Manual specifically deals with electricity generation elsewhere under Industry Numbers 4911, 4931, and 4939. While the planned facility might fall into one of those classifications, none of those classifications is included in the definition of "industrial or research enterprise" in subsection (6) of §40-9B-3. Because the planned facility does not fit into any of the acceptable SIC classifications, Taxpayer does not qualify for abatements under Ala. Code §40-9B-1 et seq.

(2) Ala. Code §§40-18-190 to 40-18-220, inclusive, provide that tax credits for certain capital costs are available for projects of new businesses and expanding businesses. Specifically, Ala. Code §40-18-192 provides in pertinent part:

Subject to compliance with §40-18-193, each investing company shall, upon filing of the statement required by §40-18-191 and upon the making of qualified investments and upon compliance with subsection (a) of §40-18-193,

be entitled to the capital credit, such credit to be allocated and available in accordance with subsection (b) of Section 40-18-194.

In order to claim the credit, the business must fall within the definition of “qualifying project” under §40-18-191(11). That section defines “qualifying project” as one in which the capital costs are not less than \$2,000,000 and the trade or business activity conducted will constitute an “**industrial, warehousing or research activity.**”

Subsection (6) of §40-18-191, in turn, defines “industrial, warehousing or research activity” as follows:

Any trade or business described in 1987 Standard Industrial Classification Major Groups 20 to 39, inclusive, 50 and 51, Industrial Group 737 and Industrial Numbers 4613, 8731, 8733, and 8734, as set forth in the Standard Industrial Classification Manual published by the United States Government Office of Management and Budget...

For the reasons described in part (1) of this ruling, the activity conducted at the planned facility does not fall within a Major Group specified in Ala. Code §40-18-190(6).

RULING

(1) Taxpayer does not qualify for a tax abatement under Ala. Code §40-9B-1, et seq., because the planned facility does not fall within the definition of an “industrial or research enterprise” as defined in §40-9B-3(6).

(2) Taxpayer is not eligible for a credit under Ala. Code §§40-18-190 to 203, inclusive, because the trade or business to be conducted at the planned facility does not constitute “industrial, warehousing or research activity” as defined in §40-18-190(6).

CYNTHIA UNDERWOOD
Commissioner, Alabama Department of Revenue

CU:JH:pj