

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 97-009

**This document may not be used or cited as precedent. Code of Alabama 1975, §40-2A-5(a).**

TO: Company B  
P.O. Box 470  
Anytown, AL 36401

FROM: Commissioner of Revenue  
Alabama Department of Revenue

DATE: August 5, 1997

RE: The proposed assignment of Lease Agreement with the Industrial Development Board of the City of Evergreen.

**FACTS**

**In General**

**Leases and other agreements entered into by the Industrial Development Board of the City of Anytown and Company A prior to the Tax Incentive Reform Act of 1992 ("TIRA").**

1. Lease Agreement dated as of November 1, 1967, between the Industrial Development Board of the City of Anytown ("Board") and Company A ("Company A"), relating to the lease of the facility in Anytown, Alabama ("Facility"), a copy of which is attached as Exhibit A;
2. Lease Agreement dated as of May 1, 1978, between the Board and Company A, relating to the enlargement of Facility, a copy of which is attached as Exhibit B;
3. Assignment and Assumption Agreements dated as of May 15, 1981, between Company A and Company B, Inc. ("Company B"), relating to the assignment of both the 1967 and 1978 leases, a copy of which is attached as Exhibit C;



The Facility is situated on approximately 15 acres of land in Anytown, Alabama. The Facility is being used to manufacture household goods. This site was originally constructed in 1967 for Company A. An enlargement was made to the site in 1978 which necessitated the issuance of industrial revenue bonds to finance the construction of the addition and a new lease agreement was entered into between the Board and Company A. In 1981 Company A assigned its interest in the leases to Company B, the sole user of the Facility since 1981.

Company C, a Delaware corporation headquartered in Somecity, South Carolina, manufactures, assembles, sells and distributes apparel. The principal distribution and assembly facility used by Company C is now located in Anycity, North Carolina. Due to the need for additional space and to achieve projected cost savings by moving to a location more central to its merchandise flow, Company C is relocating its distribution and assembly facility to a new area. The choice of locations has been narrowed to Anytown, Alabama, and Somewhere, Louisiana. The final choice will be made based on (i) the availability on a long-term basis of an existing facility having a size and configuration that can be converted into a facility for use as the Company C Facility, (ii) the economic enticements or inducements available to Company C from state and local governments, (iii) available labor supply and (iv) geographic location.

The land on which the Facility is located is owned by the Board and is exempt from taxation by the State of Alabama pursuant to §11-54-96, Code of Alabama 1975. The Facility continues to be exempt from ad valorem taxation pursuant to the Tax Incentive Reform Act of 1992 (TIRA), §40-9B-7(c), Code of Alabama 1975. The original term under both the 1967 and the 1978 Leases expired on October 31, 1987. However, the 1978 lease allowed for a renewal option, which extended the expiration to October 31, 2007. Both Leases specifically allow for assignments. Company B with the consent and approval of the Board proposes to assign the Leases to Company C.

### **Ruling Requested**

Company B requests the following ruling:

That the Property will continue, after the proposed assignment to Company C, to qualify, pursuant to the Grandfather Provision of TIRA, §40-9B-7(c), for exemption from taxation under the Industrial

Development Act (IDB Act), §11-54-96, Code of Alabama 1975.

### **ANALYSIS**

The Tax Incentive Reform Act of 1992 (TIRA), authorizes the abatement of certain ad valorem taxes incurred in establishing or expanding industrial development within the state. TIRA also limits the abatements available through various public agencies and authorities. The Act is codified at §40-9B-1, et seq., Code of Alabama 1975. Section 40-9B-3, Code of Alabama 1975, defines several terms relevant to this ruling, "inducement" and "private use property", as follows:

**INDUCEMENT.** Refers to an agreement, or an "inducement agreement," entered into between a private user and a public authority or county or municipal government and/or a resolution or other official action, an "inducement resolution," "inducement letter," or "official action" adopted by a public authority or county or municipal government, in each case expressing, among other things, the present intent of such public authority or county or municipal government to issue bonds in connection with the private use property therein described.

**PRIVATE USE PROPERTY.** Any real and/or personal property which is or will be treated as owned by a private user for federal income tax purposes even though title may be held by a public authority or municipal or county government.

Sections 40-9B-7(a)(1) and 40-9B-7(c), Code of Alabama 1975, provide as follows:

(a) Notwithstanding any other provision of law, if a public authority or county or municipal government has title to or a possessory right in private use property, then:

(1) The property shall be subject to ad valorem taxes as if the private user held title to the property.

(c) The rule of subsection (a)(1) shall not apply to ad valorem taxes if a private user was entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, or would be entitled to use the property at some future time pursuant to inducement entered into or adopted before May 21, 1992, provided, however, that this subdivision shall apply only to the property and the amount of capital expenditures set out in such inducement, subject

to de minimis deviations.

Company A, as a private user, was entitled to use the property which is the subject of the Leases identified as Exhibits A and B, prior to May 21, 1992. Therefore, the Facility is exempt from ad valorem taxation pursuant to §40-9B-7(c), Code of Alabama 1975. Any leases or other agreements entered into between Company A and Company B executed prior to May 21, 1992, which have been identified as Exhibit C are exempt from ad valorem taxation pursuant to §40-9B-7(c), Code of Alabama 1975.

### **RULING**

Since Company B was entitled to use the Property pursuant to a lease agreement entered into before May 21, 1992, the Property will continue, after the proposed assignment to Company C, to qualify, pursuant to the Grandfather Provision of TIRA, §40-9B-7(c), for exemption from taxation under the IDB, §11-54-96, Code of Alabama 1975, through October 31, 2007.

### **ALABAMA DEPARTMENT OF REVENUE**

By: \_\_\_\_\_

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

HEM:GBG

