

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 98-001

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

TO:

FROM: Commissioner, Alabama Department of Revenue

DATE: February 23, 1998

RE: "Approved company" incentives granted pursuant to §41-10-44.1, et seq., Code of Ala. 1975

FACTS

The following is a summary of relevant facts, as represented to the Department in your ruling request:

Corporation "A", a Delaware corporation, is a wholly-owned subsidiary of Corporation "B".

Corporation A was formed by Corporation B for the purpose of acquiring an industrial operation in Alabama from Corporation "Z", which operated an industrial plant in Alabama until November 1993, when the plant was closed. The plant was inactive from November 1993 until January 1994, when Corporation A acquired the plant's assets and a leasehold interest in the real property.

In January 1994, Corporation A purchased all of the tangible personal property located at the plant from Corporation Z. Corporation A also entered into a sub-lease agreement with Corporation Z for the real property. Corporation Z is the primary lessee of the real property from the State Industrial Development Authority ("SIDA"). Since January 1994, Corporation A has operated the plant and equipment as an industrial enterprise pursuant to §41-10-44.2(3), Code of Ala. 1975.

Prior to Corporation A's acquisition of, and investment in, the plant, Corporation A applied for financing from SIDA pursuant to §41-10-44.1, et seq. SIDA

adopted a resolution selecting Corporation A as an "approved company," pursuant to §41-10-44.4, and issued project obligations to finance Corporation A's acquisition of the property. This financing was completed in August 1994. Consequently, Corporation A claims eligibility for the incentives provided pursuant to §41-10-44.8.

The shareholders of Corporation B are contemplating selling all of their stock in that corporation to the Third-Party Corporation, an unrelated third party. No assets of Corporation A will be sold or transferred by Corporation B, however. If this sale occurs, the Third-Party Corporation intends to assume the obligations of Corporation A, including the project obligations, and anticipates investing additional funds to expand the scope of Corporation A's industrial operation at the plant.

ISSUE

Whether or not a sale of the stock of Corporation B will affect Corporation A's ability to continue to claim certain incentives previously granted to Corporation A as an "approved company" pursuant to §41-10-44.1, et seq., Code of Ala. 1975?

ANALYSIS

Pursuant to §41-10-44.4, Corporation A was granted "approved company" status by SIDA. Section 41-10-44.8 authorizes approved companies to receive certain incentives related to the undertaking of "projects" which are financed by SIDA's "project obligations."

Here, the entity (Corporation A) which was authorized by SIDA to receive these incentives will remain the exact same entity after the sale of Corporation B to the Third-Party Corporation, if such sale occurs. According to your representation, no assets of Corporation A will be sold or transferred by Corporation B. In other words, the approved company prior to the proposed sale is Corporation A; likewise, the approved company after the sale will be Corporation A. If the shareholders of Corporation B sell their shares in that corporation to a third party, Corporation A's status as a separate legal entity will be unaffected. See, generally, State v. Capital City Asphalt, Inc., 437 So.2d 1288 (Ala. Civ. App. 1983) (affirmed in Ex parte Capital City Asphalt, Inc., 437 So.2d 1291 (Ala.1983)). Therefore, a sale of the stock of Corporation B will not affect Corporation A's ability to continue to claim the incentives previously granted to Corporation A by SIDA.

In your ruling request, you cite Revenue Ruling 97-015 as support for your position. Section 40-2A-5(a), Code of Ala. 1975 (1997 Cum. Supp.), states the following:

"Revenue rulings shall be binding on the department and the state ... only with respect to the taxpayer making the request and only with respect to the facts contained in the request. A revenue ruling shall constitute the department's interpretation of the law or regulations as applied to the facts contained in the request, but only pertaining to the particular facts described in the request, and only to the taxpayer making the request."

Therefore, Revenue Ruling 97-015 applies only to the requester of that ruling and cannot be used as support for your position in this request. In fact, the published versions of all Department revenue rulings contain the following heading: "This document may not be used or cited as precedent. Code of Alabama 1975, §40-2A-5(a)."

CONCLUSION

The proposed sale of Corporation B's stock to the Third-Party Corporation will not involve the sale or transfer of any of Corporation A's assets. Further, the sale of the stock of Corporation B will not affect Corporation A's ability to continue to claim the incentives previously granted by SIDA to Corporation A. Hopefully, this ruling sufficiently answers your request.

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

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