

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 98-003

TO:

FROM: Commissioner, Alabama Department of Revenue

DATE: March 11, 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"), a Delaware corporation, is a wholly-owned subsidiary of Corporation B ("B"). The shareholders of B are a collection of two individuals, a corporation, a partnership, and a trust.

A was formed by B for the purpose of acquiring an industrial operation in City, Alabama, from Corporation C ("C"). C built and operated an industrial plant in City from \_\_\_\_\_ until \_\_\_\_\_, when the plant was closed. The plant was inactive from \_\_\_\_\_ until \_\_\_\_\_, when A acquired the plant's assets and a leasehold interest in the real property.

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

Prior to A's acquisition of, and investment in, the City plant, A applied for financing from SIDA pursuant to §41-10-44.1, et seq. SIDA adopted a resolution selecting A as an "approved company," pursuant to §41-10-44.4, and issued project obligations to finance A's acquisition of the property. This financing was completed in \_\_\_\_\_. Consequently, A claims eligibility for the incentives provided pursuant to §41-10-44.8.

B is contemplating selling all of its stock in A to Corporation D ("D"), an unrelated third-party, resulting in a change of ownership of A. No assets of A will be sold or transferred by B, however. If this sale occurs, D intends to assume the obligations of A, including the project obligations, and anticipates investing additional funds to expand the scope of A's industrial operation at the City plant.

### **ISSUE**

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

### **ANALYSIS**

Pursuant to §41-10-44.4, 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 (A) which was authorized by SIDA to receive these incentives will remain the exact same entity after the sale of its stock to D, if such sale occurs. According to your representation, no assets of A will be sold or transferred by B. In other words, the approved company prior to the proposed sale is A; likewise, the approved company after the sale will be A. The only change will be in the ownership of A's stock. Therefore, a sale of the stock of A will not affect A's ability to continue to claim the incentives previously granted to A by SIDA. This analysis is supported by the rule that the rights of two merging corporations inhere in the surviving corporation. See, generally, International Paper Co. v. Broadhead, 662 So.2d 277 (Ala. Civ. App. 1995). Accordingly, even a merger of A and D will not affect the surviving corporation's ability to claim the incentives.

### **CONCLUSION**

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

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

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