

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 98-017

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

TO: Company A

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: January 4, 1999

RE: The proposed additions, alterations and improvements to the Project entered into by Lease Agreement between the Industrial Development Board of the Town of Anyplace and Company B

FACTS

The facts as stated by Company A, a wholly owned subsidiary of Company B

The Industrial Development Board of the Town of Anyplace (the "Board") is an Alabama public corporation. The Board is empowered to issue its revenue bonds to secure and develop industry in the Town of Anyplace. Pursuant to this power, the Board entered into an industrial project (the "Project") in which it leased to Company B, a Delaware corporation, ("Company B") certain real property, a manufacturing plant, and certain items of machinery and equipment (the "Lease Equipment") for use in operating the manufacturing plant. The Lease Agreement was dated as of February 1, 1974, although actually executed by Company B on March 8, 1974, and actually executed by the Board on March 11, 1974, between the Board, as Lessor, and Company B, as Lessee. Under the Lease, the Project is the property of the Board and leased to Company B. Company B will assign all of its right, title and interest under the Lease to its wholly owned subsidiary, Company A, a California corporation (the "Company").

Section 3.1 of the Lease permits the Company to make "additions, alterations and improvements" to the Project. Section 3.1 further provides that all such additions, alterations and improvements "become a part of the Project" and are subject to the Lease terms. These Lease provisions establish that the Board owns the Project, specified

machinery and equipment and, whenever purchased, all additions, alterations and

improvements to the Project.

The Company desires to make additions, alterations and improvements to the Project, to be acquired subject to the lease which was in effect before May 21, 1992, the effective date of the Tax Incentive Reform Act of 1992, codified at ALABAMA CODE §40-9B-1 *et seq.* (1975) (the "Reform Act"). Prior to the adoption of the Reform Act, Industrial Development Board property was automatically exempt from ad valorem taxes. After passage of the Reform Act, the same property became subject to the ad valorem tax. Nevertheless, the Reform Act includes a "Grandfather Clause" that allows property to remain exempt if acquired subject to a lease in effect before the Reform Act became law.

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 B, as a private user, was entitled to use the property which is the subject of the Lease Agreement between the Industrial Development Board of the Town of Anyplace and Company B, prior to May 21, 1992. Therefore, the Project is exempt from ad valorem taxation pursuant to §40-9B-7(c), Code of Alabama 1975.

Company B plans to assign all of its right, title and interest under the Lease to its wholly owned subsidiary, Company A (the "Company"). Section 6.1 of the Lease allows Company B the right to assign the Lease Agreement and the leasehold interest created therein and to sublet the Project or any part thereof without the consent of the Board.

Ruling

Since Company B was entitled to make additions, alterations and improvements to the Project pursuant to a lease agreement entered into before May 21, 1992, any future additions, alterations and improvements to the Project will continue, after the proposed assignment, 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, through January 31, 2014, if and only if, the option to renew the Lease was properly exercised prior to its expiration on February 1, 1994.

ALABAMA DEPARTMENT OF REVENUE

By: _____
H. E. "Gene" Monroe, Jr.

Commissioner of Revenue

HEM:GBG