

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 99-002

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

TO: ABC, Inc.

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: May 27, 1999

RE: Whether a post-Abatement Act sublease of pre-Abatement Act Industrial Development Board property is subject to ad valorem taxation because the improvements on the Industrial Development Board property were financed entirely with private funds and not Industrial Development Board bond funds?

FACTS

The facts as stated by ABC, Inc., a successor and assignee to the Lease Agreement between the Industrial Development Board of the City of Anytown and XYZ Corporation.

The Industrial Development Board of the City of Anytown, Inc. ("Board") was organized pursuant to the provisions of Act 648 adopted at the 1949 regular session of the legislature of the State of Alabama, approved September 14, 1949. This Act is codified as §11-54-80, et seq., Code of Alabama 1975. Pursuant to this Act the Board has certain powers, among them the following:

(1) To acquire land and buildings and other improvements thereon and machinery and equipment in order to promote industry, develop trade and further the use of the agricultural products and natural resources of the State of Alabama (the "State"), by inducing manufacturing, industrial, commercial and research enterprises to establish new projects within the State;

and,

- (2) To enlarge and expand existing projects located in the State and to lease the same as a Project; and
- (3) The Board is authorized by the Act to lease to others any or all of its Projects for such rentals and upon such terms and conditions as the Board may deem advisable and to issue Industrial Development Revenue Bonds payable solely from the lease revenues and receipts from, and secured by a mortgage of lands, buildings and machinery and other improvements acquired with the proceeds of the sale thereof;

On May 1, 1973, the Board, as Lessor, leased to S-A Corporation, as "Original Lessee", a 53.29 acre tract located in Anytown County, Alabama under a Lease Agreement (hereinafter referred to as "Primary Lease"). On November 1, 1983, XYZ Corporation obtained all the rights and interest in the Primary Lease, together with all the improvements thereon. XYZ Corporation is hereinafter referred to as "Lessee". Beginning June, 1984, Lessee constructed a 93,929 sq. foot building generally known as "XYZ Building 16" on a portion of the demised property for its use. The building was constructed entirely with Lessee funds, and not from the proceeds of bonds issued by the Board. The Primary Lease term expires April 30, 2013, and is in full force and effect.

On March 31, 1998, Lessee subleased to ABC 8.51 acres (out of the original 53.29 acres) including all of Building 16, pursuant to a Sublease Agreement between Lessee, as Landlord, and ABC, Inc., as Tenant. ABC has an option to purchase the 8.51 acres, which ABC expects to exercise in 2013 upon expiration of the Primary Lease. ABC currently uses the property as a facility for the manufacture of printed circuit boards.

The Primary Lease 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

Tax Incentive Reform Act of 1992, codified at Alabama Code, §40-9B-1 *et seq.* (1975) (the "Reform Act"), became effective on May 21, 1992. On that date, pursuant to §40-9B-7(a), property owned by a public authority, or county or municipal government being used by a private user became subject to ad valorem taxation, construction related transaction taxes and recording taxes. 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.

XYZ Corporation, as a private user of property owned by the Industrial Development Board of the City of Anytown, Inc., a public authority, therefore, became subject to ad valorem taxation. However, pursuant to the provisions of §40-9B-7(c), commonly referred to as the "Grandfather Clause", XYZ Corporation, as Lessee, under a lease or other agreement entered into prior to May 21, 1992, continued to be exempt from ad valorem taxation. Although the terms of the original lease provide for assignment and subletting of the property of the Project, ABC, Inc., a private user, was not entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, nor was ABC, Inc. entitled to use the property at some future time pursuant to an inducement entered into or adopted prior to May 21, 1992. Therefore, the sublease entered between XYZ Corporation and ABC on March 31, 1998, is not "grandfathered" under the pre-Abatement Act agreement between XYZ Corporation and the Industrial Development Board of the City of Anytown, Inc.

Ruling

The property covered by the ABC, Inc. sublease does not qualify for an exemption

from ad valorem taxation. Exemption provisions are to be strictly construed against the exemption and in favor of taxation and the intent to exempt such persons or property must clearly appear in some statute or constitutional provision. See, Crim v. Phipps, 601 So.2d 474 (1992). Clearly to be "grandfathered" under the pre-Abatement Act, the private user seeking the exemption must have had an interest in the property on the effective date of the Reform Act, May 21, 1992.

The Tax Incentive Reform Act of 1992, was enacted to give businesses an abatement for establishing or expanding industrial development within the state. ABC, Inc., could have applied for its own ten-year exemption under the Reform Act. However, §40-9B-4(e) and Administrative Rule 810-4-3-.05, paragraph 1, both provide that an abatement under this section be granted only with respect to private use industrial property that has not previously been placed in service by the private user who is applying for the abatement or by a person who is a related party with respect to such private user. ABC, Inc., is currently using the property as a facility for the manufacture of printed circuit boards, and the property was placed into service prior to filing a petition requesting an abatement.

The issue regarding the financing of XYZ Building 16 entirely with private funds and not Industrial Development Board bond funds was not addressed in this ruling.

ALABAMA DEPARTMENT OF REVENUE

By: _____

James P. Hayes, Jr.
Commissioner of Revenue

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