



***Abatements and Construction in
Progress – Theory vs. Reality
AAAO District Meeting
April 4, 2019
Pelham Civic Complex***





Common Abatements in Alabama

- 40-9B
 - New Project
 - Major Addition
- 40-9G
 - Refurbishment
 - Replacement/Upgrade
- Combination 40-9B and 40-9G



Components of the Abatement Package

- Abatement application
 - Outlines the general user information and dollar amounts requested for abatement
 - By itself this form does not signify that an abatement has been granted
- Tax Abatement Agreement
 - Contains the specific contract terms between the private user and the granting authority
- Granting Authority Resolution
 - Ratifies that the Tax Abatement Agreement has been accepted



Which Document is Most Important?

All parts of the abatement package are necessary to understand the terms that will govern the abatement.

However, the Resolution, is the document that ties the package together, showing that the granting authority publicly presented the agreement and ratified it.

Whenever the Tax Abatement Agreement and Resolution differ, the Resolution's terms are used.



Provisions of the Act – 9B

40-9B

- Only qualifying activities are eligible for abatements
- New projects and major additions over \$2M or 30% of original investment
- Abatement of non-educational property taxes up to 20 years (30 years for data processing centers which meet investment thresholds) from the date the property becomes owned, for federal income tax purposes
- Abatement ends at maximum exemption period or the date on which the user has ceased operation for 6 consecutive months



Provisions of the Act – 9G

40-9G

- An addition, expansion, improvement, renovation, re-opening, or rehabilitations of a facility
- Capitalized repairs, rebuilds, maintenance and replacement of existing equipment
- Amount of tax abatement is equal to the excess amount of property taxes owed on the affected existing property for the tax year immediately before the qualifying project was placed in service (no CIP)
- Maximum exemption period for abatement of property taxes is up to 20 years from the time the property is placed in service
- No other inducement agreement may be in place with the private user



Maximum Exemption Period

Section 40-9B-3

Definitions.

(a) For purposes of this chapter, the following words and phrases mean:

(12) **MAXIMUM EXEMPTION PERIOD**. ... a period equal to the shorter of:

a. Either of the following:

1. **Twenty years from and after: (i) The date of initial issuance by a county, city, or public authority of bonds to finance any costs of a private use property, or (ii) If no such bonds are ever issued, the later of: A. The date on which title to the property was acquired by or vested in the county, city, or public authority, or B. The date on which the property is or becomes owned, for federal income tax purposes, by a private user;**

b. The period ending on the date on which the property has ceased, for 6 consecutive months, to be used in the active conduct of an industrial or research enterprise.



40-9G Additional Provisions

Section 40-9G-2

Incentives for qualifying projects; filings; audits; promulgation of regulations.

(a) For any qualifying project, an abatement may be allowed for ad valorem taxes and construction related transaction taxes.

(1) The abatement of construction related transaction taxes shall be subject to and shall follow the procedures, provisions, limitations, and definitions of Chapter 9B, except that capitalized repairs, rebuilds, maintenance and replacement equipment shall qualify for abatements.

(2) The abatement of ad valorem taxes shall be subject to and shall follow the procedures, provisions, limitations, and definitions of Chapter 9B, except as follows:

a. The amount of the ad valorem tax abatement shall be equal to the ad valorem taxes owed, minus the ad valorem taxes owed from the tax year immediately before the qualifying project was placed in service;

b. As to any ad valorem tax abatement, capitalized repairs, rebuilds, maintenance and replacement equipment shall qualify for abatements;



Theory - Abatement Starts - Real

➤ IF REVENUE BONDS ARE ISSUED

Abatement period begins on the date of the initial bond issuance

➤ IF NO BONDS ISSUED

- Land – The taxpayer may choose to begin the abatement period with the first October 1 lien date after the granting of the abatement or wait until any facilities have been completely constructed and the project placed in production.
- Building(s) – if construction of the building(s) will stretch over more than one October 1 lien date, the taxpayer may choose to begin the abatement on the first October 1 lien date after construction has begun, regardless of the percentage of completion of the building(s) on the lien date. If this option is chosen, the abatement period will begin at this time.
- If the building(s) is not complete on the first October 1 lien date after the abatement is granted, the taxpayer may choose to pay the full millage rate on the portion of the building(s) present on the October 1 lien date and wait until the facility is complete to begin the abatement period. If this option is chosen, the abatement period begins on the first October 1 lien date after completion of the building(s).



Theory - Abatement Starts – Personal Property

➤ IF REVENUE BONDS ISSUED

Abatement period begins on the date of the initial bond issuance

➤ IF NO BONDS ISSUED

Abatement period begins with the first October 1 lien date following the property being placed in service



Reality – Abatement Starts

The Resolution and Abatement Agreement templates available on the ADOR website provide language that reflects the abatement law. However, granting authorities do not always use these templates, which can cause confusion as to when an abatement starts, especially for personal property and Construction in Progress (CIP)



Examples

1. Resolution and Abatement Agreement templates
 - Available at <https://revenue.alabama.gov/tax-incentives/major-tax-incentives/tax-abatements/>
2. Resolution specifically refers to a code section regarding length of abatement
3. Resolution specifically affirms the terms of the Abatement Agreement
4. Resolution does not mention the length of the abatement



Tax Abatement Agreement vs. Resolution

✓ (a) Noneducational Ad Valorem Taxes: all ad valorem taxes [REDACTED] that are not required to be used for educational purposes or for capital improvements for education;

✓ (a) If no bonds are to be issued, noneducational ad valorem taxes are expected to be approximately [REDACTED] per year and the maximum period for such abatement shall be valid for a period of ten (10) years, beginning with the October 1 lien date next proceeding the acquisition date of abated property.

Doesn't agree with the Act



Resolution Specifically Refers to a Code Section

WHEREAS, the Company has requested that the abatement of state and local noneducational ad valorem taxes (if applicable) be extended for a period of 10 years, in accordance with the Act; and **Specifically references the Act**

- all state and local noneducational ad valorem taxes [REDACTED]
- all construction related transaction taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, and/or
- all mortgage and recording taxes **Specifically references the Act**

as the same may apply to the fullest extent permitted by the Act. The period of abatement for the noneducational ad valorem taxes (if applicable) shall extend for a period of 10 years measured as provided in Section 40-9B-3(8) of the Act. **Wrong code reference (should be 40-9B-3(a)(12))**



Tax Abatement Agreement Example

(a) State and local noneducational real property and personal property ad valorem taxes with respect to the Project. The abatement period for each piece of Company real and personal property, specifically including property characterized as construction in progress ("CIP"), shall last for a period of ten (10) years, said abatement to start, on a property-by-property basis, on a date certain being the October 1st following the date and time Company takes possession and legal title to each said piece of property. More specifically, the tax abatement period for a piece of Company property, including CIP, shall start on a date certain depending upon when possession and title to the property is secured by Company. It is the express intention of the Board that the Company will be provided with an immediate ad valorem tax abatement for its property characterized as CIP.



Resolution Affirms the Abatement Agreement

NOW THEREFORE, BE IT RESOLVED by the Granting Authority as follows:

1. Approval is hereby given to the Form CO:CAA "Application to Local Granting Authority for Abatement of Taxes" of the Company and abatement is hereby granted of those taxes listed in the Tax Abatement Agreement to the extent stated in said agreement.



Tax Abatement Agreement

(a) [REDACTED] To the fullest extent permitted by statute, the City hereby grants to [REDACTED] an abatement from liability for the following taxes with respect to [REDACTED] investment in the Project:

(i) State and local noneducational ad valorem taxes with respect to [REDACTED] investment in the Project. The abatement period shall last for a period of ten (10) years for each piece of property, said abatement to start, on a property-by-property basis, on the October 1st following the date and time [REDACTED] takes possession of each said piece of property.

This is the only reference in either document saying when the abatement will begin



Resolution Doesn't Mention Length of Abatement

NOW THEREFORE BE IT RESOLVED by the [REDACTED],
Alabama that [REDACTED] as Council President is hereby granted the authority to
accept the applications submitted by the Project Parties for abatement of taxes.



What is a Tax Official to Do?

The county tax official has no control of how the abatement is granted or written – only how it is administered. To assess abated property, the tax office must be provided with certain information from the taxpayer.

- The abatement must be claimed by providing documentation
- Abated property must be identified properly on a return
- If questions arise, the taxpayer must be able to clarify in order to assess
- Any property listed as abated by the taxpayer must be a part of the project for which the abatement was granted



KEEP
CALM
AND
READ
ON

What's a Tax Official to Do?

Read the Documents – take notes and compare the statements. This is the only way to determine the intent of the parties.

Ask Questions – create a relationship with the taxpayer before you make your final assessment



Role of the Department of Revenue

- To act as an advisor to the county taxing officials regarding abatements. ADOR field auditors are available to consult and, if necessary, to inspect property subject to abatement.
- To offer classes on abatements through Auburn's Government and Economic Development Institute (GEDI) which are updated with any changes in the law
- To provide annual lists of abatements in each county to ensure that the county officials have a record of them

