

810-4-3-.02 Taxability of Property - Chapter 9B.

(1) Private use property is any real and/or personal property treated as owned by a private user for Federal Income Tax purposes even though title may be held by a public authority, municipal, county government. A private user is any individual, partnership, or for-profit corporation treated as the owner of private use property for Federal Income Tax purposes. Private use property is subject to Ad Valorem Tax, if the private user held title to the property when a public authority, county, or municipal government has title to or a possessory right (i.e. leasehold interest) in the private use property.

(2) Private use property will not be subject to Ad Valorem Tax 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 an inducement entered into before May 21, 1992. This exemption applies only to the property and the amount of capital expenditures set out in the inducement, subject to de minimis deviations. The inducement must be reflected in an official document. The private use property becomes taxable at the end of the lease term or the end of the lease, whichever occurs earlier.

(3) The term "de minimis deviations" as used in Title 40, Chapter 9B, Code of Ala. 1975, and in this rule means the amount of capital expenditures for private use property, not exceeding 10 percent in the aggregate of the amount set forth in the inducement or lease or other agreement. Data processing center projects as defined in §40-9B-3, Code of Ala. 1975, are subject to the investment thresholds and the de minimis deviations standards do not apply.

(4) A lessee of property from a public authority, county, or municipal government is treated as the owner of the real and/or personal property for Federal Income Tax purposes in accordance with Internal Revenue Service Rules and Regulations and Generally Accepted Accounting Principles.

(5) The treatment of a private user as owner for Federal Income Tax only applies to property owned by a county, city, or public authority.

(6) Once property becomes private use property, it will not lose its status as private use property because of a change in accounting procedures or a change from a capital lease to an operating lease.

(7) When any lease or agreement entered into before May 21, 1992 expires, the property covered by the lease or agreement will become taxable. If the old lease contains a separately stated option to renew for a clearly defined and limited period of time, and the option is properly exercised, the property will remain exempt for the renewal period as long as it conforms precisely to the terms of the option.

(8) Changes, alterations, or rewrites of a lease for refinancing purposes will not alter the exempt status of the property. Changes must be consistent with the original terms of the lease, and not extend the term of the initial or permitted renewal term.

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