

810-4-3-.03 Property Qualifying for Abatement – Chapter 9B.

(1) Property qualifying for tax abatements under Title 40, Chapter 9B, Code of Ala. 1975, must be classified as industrial development property. For purposes of this rule, industrial development property is defined as real and/or personal property acquired in connection with establishing or expanding an industrial or research enterprise in Alabama.

(2) If the trade or business to be conducted by a private user at a given site is predominantly (i.e. more than 50% of the project investment) in the nature of an industrial or research enterprise, then all of the property to be acquired or constructed at said site will constitute industrial development property eligible for abatements under Chapter 9B. If the predominant activity is not in the nature of an industrial or research enterprise, then only the portion, of the personal property used for industrial research or enterprise will constitute industrial development property eligible for abatement under Chapter 9B.

(3) All real and personal property, the cost of which may be added to the capital account, comprising a data processing center acquired at any time during the applicable maximum exemption period qualifies for abatement. Property includes but is not limited to, computers, software licensed for use, equipment supporting computing, networking or data storage; cooling systems, cooling towers, and other temperature infrastructures, power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of a data processing center, including, but not limited to, exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and any other equipment necessary for the maintenance and operation of a data processing center.

(4) Co-location lessees of data processing centers must receive the same incentives as the lessor based on the data center's qualifying activities, provided the tenants are included in the initial abatement agreement or later added to the original abatement agreement through addenda. Once the exemption period begins, the addition of a lessee does not extend the maximum exemption period. However, a tenant's investment can be applied to the calculation of aggregate capital investment necessary to extend the maximum exemption period as provided in §40-9B-3. In no event will the tax abatements granted to a data processing center extend beyond the end of the applicable maximum exemption period.

(5) A major addition for a data processing center project must not include capitalized repairs, rebuilds, maintenance, or replacement equipment on real and/or personal property placed in service before the date the abatement is granted. Capitalized repairs, rebuilds, maintenance, refresh equipment, and replacement equipment acquired by a data processing center project during the maximum exemption period as defined by §40-9B-3 will qualify for an abatement.

Once the maximum exemption period as defined by §40-9B-3 expires, all real and personal property will become fully taxable.

(6) With the exception of a data processing center project, no further abatement with respect to the same private use industrial property may be granted unless there is a major addition as defined by §40-9B-3, Code of Ala, 1975.

(a) To constitute a major addition within the meaning of Title 40, Chapter 9B, Code of Ala. 1975, the lesser of an investment of 30 percent of the original cost of currently existing industrial property, the sum total of original facilities and equipment, and any expansion or additions to date before the abatement request, or \$2,000,000 must be made.

(b) With the exception of a data processing center, a major addition does not include capitalized repairs, rebuilds, maintenance, or replacement equipment.

(c) Costs associated with renovating or remodeling existing facilities of an operating industrial or research enterprise do not qualify for an abatement under Chapter 9B.

(d) Equipment that performs the same function as the equipment that it replaces, even though the new equipment performs the function better or faster, is defined as replacement equipment. Equipment that replaces existing equipment that performs not only the same function, but also an additional function, qualifies as a capital investment in meeting the thirty percent (30%) or \$2,000,000 threshold of a major addition.

(e) Replacement property qualifies for the remainder of an abatement previously granted on the equipment being replaced.

(f) Replacement equipment acquired subject to a lease in effect before May 21, 1992 is taxable only according to the lease.

(7) If an expansion project qualifies as both a major addition and a qualifying project, a private user may seek abatements:

- (i) solely under the authority of Chapter 9B,
- (ii) solely under the authority of Chapter 9G, or
- (iii) under both authorities with respect to different portions of its investment.

If the private user has a portion of a proposed expansion which constitutes replacement equipment that would not otherwise qualify for abatement under Chapter 9B, but would qualify under the authority of Chapter 9G, the private user

may elect to petition for separate abatements of Ad Valorem Tax. Any expansion to industrial development property that constitutes both a major addition and a qualifying project, must be granted separate tax abatement agreements under Title 40, Chapter 9B, Code of Ala. 1975 and Title 40, Chapter 9G, Code of Ala. 1975. All Chapter 9G agreements must receive separate consents by the state, county, and city.

(a) Only industrial development property not previously placed in service in Alabama by the user or a related party may be eligible for an abatement of noneducational Ad Valorem Tax.

(b) A change of ownership or assignment of interest of an operating industrial or research enterprise does not qualify the property for a new or additional abatement. The new owner will be allowed to receive the remainder of abatements previously granted.

(c) A change of ownership or assignment of interest of non-operating industrial or research enterprise property to an unrelated party qualifies the property for a new abatement in accordance with the statutes.

(8) Industrial development property that ceases to be used in the active conduct of an industrial or research enterprise for six consecutive months will no longer be eligible for abatement of Ad Valorem Tax with respect to any major additions.

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Authority: §40-2A-7(a)(5) and Title 40, Chapter 9B, Code of Ala. 1975, Title 40, Chapter 9G, Code of Ala. 1975

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