

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 92-001

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

REQUESTOR: Company A

SUBJECT: Exemption from Ad Valorem Taxes of Replacement Equipment under the Tax Incentive Reform Act §§40-9B-1, et seq., Code of Alabama 1975 (1992 Cum. Supp.).

DATE: March 22, 1993

FACTS

On June 1, 1989, the Industrial Development Board of the City of Montgomery entered into a lease agreement with Company A. The agreement provided that the Board would construct and equip a brick manufacturing facility within the City and lease the facility to Company A for a term to expire on September 15, 2004. The lease was assigned by the Board to AmSouth Bank, N.A., as trustee to secure payments under the revenue bonds issued to finance the facility.

Certain pieces of the original equipment are no longer serviceable and the Board is proposing to acquire and install new equipment at a cost of approximately \$1,125,000.00. The replacement equipment will perform the same functions and will be leased to Company A by the Board pursuant to a supplemental lease. The term of the original lease will remain unchanged.

The replacement equipment will be financed by the Board through the issuance of bonds and the supplemental lease will be

assigned to SouthTrust Bank of Alabama, N.A., as trustee to secure payments under the bonds.

ISSUE

Whether replacement equipment, to be purchased after the effective date of the Tax Incentive Reform Act of 1992, is entitled to the same tax-exempt status as the original equipment?

LAW AND ANALYSIS

Prior to passage of the Tax Incentive Reform Act of 1992 (the Act), which became effective May 21, 1992, property owned by an industrial development board was exempt from all taxes pursuant to §11-54-96, Code of Alabama 1975... "The industrial development board and all properties at any time owned by it... shall be exempt from all taxation in the State of Alabama." This statute aids boards in their efforts to attract business and industry to the State.

Boards routinely hold title to property and then lease the property (real and personal) to private users on long-term leases. The private users pay no taxes on the property due to board ownership, yet enjoy all the benefits of ownership for federal income tax purposes. This makes Alabama an attractive environment for business and industry. This scenario describes the relationship between Company A and the Industrial Development Board of the City of Montgomery.

The Tax Incentive Reform Act of 1992 (§§40-9B-1 et seq., Code of Alabama 1975 (1992 Cum. Supp.)), restricts tax-exemptions for private use property to non-educational ad

valorem taxes, non-educational construction related transaction taxes and in some instances recording taxes.

Section 40-9B-3(n) defines private use property as "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". The Company A facility is private use property.

Sections 40-9B-7(a)(1)-(3) subject all private use property to: (1) ad valorem taxes, (2) construction-related transaction taxes, and (3) recording taxes. Section 40-9B-5 does allow the non-educational portion of these taxes to be abated if the private use property can meet the requirements for an abatement pursuant to §§40-9B-3(f)-(g).

The tax-exempt status of the original Company A facility has not been altered due to the Act's "grandfather" clause. Section 40-9B-7(c) states:

"The rule of subsection (a)(1) [discussed above] 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..."

The equipment covered in the 1989 lease is unquestionably tax-exempt. However, is the replacement equipment, which is to be purchased after May 21, 1992, tax-exempt as well?

Section 40-9B-7(c) does not specifically address replacement equipment, however, the rules adopted by the Department of Revenue allow replacement equipment to assume the tax-exempt status of the equipment it replaces in some situations. Department of Revenue Rule No. 810-4-3-.03(4)B.2 states:

"Replacement equipment acquired subject to a lease in effect prior to Act 92-599 becoming law shall be taxable only according to the provisions of the lease".

Although the rule speaks in terms of taxing replacement equipment pursuant to a lease, its intent is to exempt from taxation, equipment purchased to replace original equipment that was tax exempt. The original equipment covered in the 1989 lease was tax-exempt, therefore, so is its replacement.

HOLDING

Based on the facts as presented, the Department agrees that pursuant to §40-9B-7(c), Code of Alabama 1975 (1992 Cum. Supp.), and Department of Revenue Rule 810-4-3-.03(4)B.2, the replacement equipment is exempt from all taxation.

---

STAN MCDONALD  
Commissioner of Revenue

SM:CEP:eb81