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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Keith Mahaffey
Mayor, Town of Vance
Post Office Box 193
Vance, Alabama 35490

Tax Incentive Reform Act of 1992 -
Tax Abatements - Industrial
Development - Municipalities -
Industrial Development Boards -
Tuscaloosa County

Neither the Town of Vance nor its Industrial Development Board can enter into an agreement to abate noneducational county ad valorem taxes or county construction-related transaction taxes if there is no corresponding municipal ad valorem tax or construction-related transaction tax to be abated.

The Town of Vance or its Industrial Development Board can enter into an agreement to abate all or part of the State's 3.5 mills of noneducational ad valorem taxes, the state construction-related transaction taxes, and the mortgage and recording taxes related to private-use industrial property and security documents and other recordable documents associated therewith.

Dear Mayor Mahaffey:

This opinion of the Attorney General is issued in response to your request on the behalf of the Town of Vance.

QUESTION

Do the provisions of sections 40-9B-4 and 40-9B-5 of the Code of Alabama allow the Town of Vance, a municipal corporation, by and through its Industrial Development Board, to enter into an agreement to abate noneducational county ad valorem taxes, construction-related transaction taxes, and mortgage and recording taxes for a private-use industrial property if the Town of Vance does not have municipal ad valorem taxes but would include in its abatement agreement a provision to abate any future municipal ad valorem taxes?

FACTS, ANALYSIS, AND CONCLUSION

The Tax Incentive Reform Act of 1992, section 40-9B-1, *et seq.*, of the Code of Alabama provides for the taxation of private-use property held by a public authority or municipal or county government as if the private user held title to the property. The intent of the act is to encourage industrial development within the State and to provide some incentives through the abatement of some taxes. A private user may apply for and be granted, if the property constitutes industrial development property, an abatement of noneducational ad valorem taxes, construction-related transaction taxes, and mortgage and recording taxes.

Section 40-9B-3 of the Code of Alabama defines "abate, abatement," "construction related transaction taxes," "industrial development property," "mortgage and recording taxes," and "noneducational ad valorem taxes" as follows:

(1) ABATE, ABATEMENT. A reduction or elimination of a taxpayer's liability for tax. An abatement of transaction taxes imposed under Chapter 23 of this title, shall relieve the seller from the obligation to collect and pay over the transaction tax as if the sale were to a person exempt, to the extent of the abatement, from the transaction tax.

(2) CONSTRUCTION RELATED TRANSACTION TAXES. The transaction taxes imposed by Chapter 23 of this title, on tangible personal property and taxable services incorporated into an industrial development property, the cost of which may be added to capital account with respect to the property, determined without regard to any rule which permits expenditures properly chargeable to capital account to be treated as current expenses.

.....

(5) INDUSTRIAL DEVELOPMENT PROPERTY. Real and/or personal property acquired in connection with establishing or expanding an industrial or research enterprise in Alabama.

.....

(9) MORTGAGE AND RECORDING TAXES. The taxes imposed by Chapter 22 of this title.

(10) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem taxes imposed by the state, counties, municipalities, and other taxing jurisdictions of Alabama that are not required to be used for educational purposes or for capital improvements for education.

ALA. CODE § 40-9B-3 (2003).

Section 40-9B-4 of the Code authorizes the granting of an abatement and provides as follows:

(a) *Noneducational ad valorem taxes, construction related transaction taxes*, except those local construction related transaction taxes levied for educational purposes or for capital improvements for education, *and mortgage and recording taxes* may be abated with respect to private use

industrial property and security documents and other recordable documents associated therewith as provided in this chapter.

(b) No abatement of noneducational ad valorem taxes may exceed the maximum exemption period. No further abatement with respect to the same private use industrial property may be granted unless there is a major addition to the property, in which event abatement may be granted only with respect to the noneducational ad valorem taxes on the major addition by complying with the procedures set forth in this chapter.

(c) An abatement of construction related transaction taxes shall apply only to tangible personal property and taxable services incorporated into a private use industrial property, the cost of which may be added to capital account with respect to the property, determined without regard to any rule which permits expenditures properly chargeable to capital account to be treated as current expenses. No abatement of construction related transaction taxes shall extend beyond the date the private use industrial property is placed in service. No further abatement may be granted for construction related transaction taxes with respect to the private use industrial property unless incurred in connection with a major addition, in which event only construction related transaction taxes that may be added to capital account with respect to the major addition, determined without regard to any rule which permits expenditures properly chargeable to capital account to be treated as current expenses, may be abated by complying with the procedures set forth in Act 92-599. No local construction related transaction taxes levied for educational purposes or capital improvements for education may be abated.

(d) Mortgage and recording taxes with respect to mortgages, deeds, and documents relating to issuing or securing obligations and

conveying title into or out of the public authority or county or municipal government with respect to a private use industrial property may be abated by complying with the procedures set forth in this chapter.

(e) An abatement under this section may 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, as defined in 26 U.S.C. §267, with respect to such private user.

ALA. CODE § 40-9B-4 (2003) (emphasis added).

Section 40-9B-5 of the Code allows for the granting of the abatements authorized in section 40-9B-4 and provides as follows:

(a) Subject to the geographical or jurisdictional or other limitations specified in subsections (b), (c), and (d), the governing body of a municipality, a county, or a public industrial authority may grant abatements of all of the taxes allowed to be abated under Section 40-9B-4 with respect to private use industrial property.

(b) The abatements authorized to be granted pursuant to subsection (a) may be granted:

(1) ***By the governing body of a municipality***, with respect to private use industrial property located within the limits of the municipality or within the police jurisdiction of the municipality; ***provided, however, that the governing body shall not grant an abatement of any county taxes unless the body has also abated the corresponding municipal taxes.***

(2) By the governing body of a county, with respect to private use industrial property located in the county and not within a municipality or the

police jurisdiction of a municipality, unless consented to by resolution of the governing body of the municipality.

(3) *By the governing body of a public industrial authority, with respect to private use industrial property located within the jurisdiction of the public industrial authority; provided, however, that any municipal public industrial authority shall not grant an abatement of any county taxes unless the authority has also abated the corresponding municipal taxes.*

ALA. CODE § 40-9B-5 (2003) (emphasis added).

Act 2002-265 added the following language, respectively, to subsection (b)(1) and (b)(3) of section 40-9B-5: “provided, however, that the governing body shall not grant an abatement of any county taxes unless the body has also abated the corresponding municipal taxes” and “provided, however, that any municipal public industrial authority shall not grant an abatement of any county taxes unless the authority has also abated the corresponding municipal taxes.” 2002 Ala. Acts No. 2002-265, 548.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 334 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997). It is the opinion of this Office that the amendments to section 40-9B-5 made by Act 2002-265 were made to prevent municipalities and municipal public industrial authorities from abating county taxes with respect to private-use industrial property located within their jurisdiction, unless the municipality or authority abated its own municipal taxes. Therefore, neither the Town of Vance nor its Industrial Development Board can enter into an agreement to abate noneducational county ad valorem taxes, construction-related transaction taxes, and mortgage and recording taxes if there are no corresponding municipal taxes to be abated. The promise to abate any future municipal taxes is not sufficient.

Although a municipality is limited in its authority to abate county noneducational taxes, the same limitations do not apply to state noneducational taxes. Accordingly, either the Town of Vance or its Industrial Development Board can enter into an agreement to abate all or part of

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the State's 3.5 mills of noneducational ad valorem taxes, the state construction-related transaction taxes, and the mortgage and recording taxes related to private-use industrial property and security documents and other recordable documents associated therewith.

I hope this sufficiently answers your question. If this office can be of further assistance, please do not hesitate to contact Gwendolyn B. Garner, Legal Division, Department of Revenue.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/GBG

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