



# State of Alabama Department of Revenue

Montgomery, Alabama 36132

G. SAGE LYONS  
Commissioner

GEORGE E. MINGLEDORFF III  
Assistant Commissioner

LEWIS A. EASTERLY  
Secretary

## ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 96-001

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

TO:

FROM: Commissioner of Revenue  
Alabama Department of Revenue

DATE: April 29, 1996

RE: Revenue Ruling 96-001:

### FACTS

In May 1994, Taxpayer considered acquisition of the assets of Company A and Company B (collectively, the "Debtors") which were located in Alabama. At that time, Company A and Company B were debtors in possession in a pending jointly administered bankruptcy case.

On July 14, 1994, Taxpayer and the Debtors entered into a Sale of Assets Agreement.

On August 1, 1994, the Sale of Assets Agreement was approved by the Bankruptcy Court. Thereafter, due to closing complications, Taxpayer acquired the first priority security interest of Bank in assets of the Debtors.

In September 1994, Taxpayer undertook the management of the Debtors' facility under the auspices of the Bankruptcy Court. Workers continued to be employed by the Debtors. The Debtors' employees at this time totaled approximately 25, which constituted the minimum workforce required to continue their business operations pending the consummation of a sale to Taxpayer.

In 1995, the State Industrial Development Authority ("SIDA") adopted a resolution granting preliminary approval to Taxpayer as an "approved company" for benefits under Act No. 93-851 (the "Act"). Debtors' employees continued to number approximately 25 at the time the SIDA resolution was adopted.

In May 1995, Taxpayer acquired substantially all of the personal property of the Debtors. The Debtor's employees (approximately 40 at this time) were hired by a sister corporation of Taxpayer. The additional 15 employees were hired by one or both of the Debtors using capital from a loan by Taxpayer to the Debtors that was approved by the Bankruptcy Court. Taxpayer continues to lease the facility formerly occupied by the Debtors on a temporary basis until a new site is located and purchased.

Taxpayer now proposes to relocate and expand the existing business operations, at a cost of at least \$2 million (but less than \$5 million), and employ approximately 35 to 50 additional employees (the "Proposed Transaction"). Either by merger or transfer, employees employed by Taxpayer's sister corporation will be employed by Taxpayer in connection with the Proposed Transaction.

#### RULINGS

You have requested that I issue the following rulings.

- A. The Proposed Transaction constitutes an "expansion project" for purposes of the Act.

Code of Alabama 1975, §40-2A-5(a) grants me the authority to issue "revenue rulings" describing the substantive application of any law or regulation administered by the Department of Revenue. The Department does not administer the determination and selection of "approved companies" for purposes of the Act. Accordingly, I decline to issue a ruling on this request.

- B. The employees hired by Taxpayer or Taxpayer's sister corporation since January of 1995, the date of the SIDA resolution giving preliminary approval to Taxpayer as an "approved company" under the Act, which employees shall be employed by Taxpayer, constitute new employees within the meaning of the Act and, as such, are subject to the job development fee, as allowed by Code of Alabama 1975, §41-10-44.8(a)(2).

The SIDA has given preliminary approval to the Proposed Transaction as an "expansion" project. This ruling is conditioned upon the issuance by the SIDA of its project obligations for the purpose of financing Taxpayer's project and on final approval of Taxpayer as an "approved company" for benefits under the Act.

Code of Alabama 1975, §41-10-44.8(b) states in pertinent part:

. . . Job development fees shall not be collected from

persons employed by an approved company prior to the entry by such approved company into an agreement with the authority for financing of a project.

The SIDA Project Approval Criteria further provides that the term "new employees" includes only those individuals who (i) have not previously been employed by the "approved company" in Alabama; (ii) will be employed at the project site; and (iii) will be subject to the personal income tax imposed by §40-18-2 of the Alabama Code upon commencement of employment at the site.

In January of 1995, the SIDA gave preliminary approval to the Proposed Transaction as qualifying for the benefits of the Act. At that time, the Debtors employed approximately 25 people. Those employees were employed with respect to the existing facility, and, therefore, because they are not a part of the expansion, should not be treated as new employees for purposes of this request. Employees hired since that time were and will be hired in anticipation of the Proposed Transaction. They were not previously employed by Taxpayer in Alabama. They will be employed at the project site and will be subject to the personal income tax imposed by §40-18-2 of the Alabama Code.

Therefore, the employees hired by Taxpayer or Taxpayer's sister corporation since January of 1995, the date of the SIDA resolution giving preliminary approval to Taxpayer as an Approved Company under the Act, which employees shall be employed by Taxpayer, constitute new employees within the meaning of the Act and, as such, are subject to the job development fee.

ALABAMA DEPARTMENT OF REVENUE

By:

G. SAGE LYONS  
As its Commissioner

GSL:MDG:pj