

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

October 5, 2018

Norma J. Anderson
Tunica County Tax Assessor/Collector
Post Office Box 655
Tunica, Mississippi 38676

Re: Free Port Warehouse Tax Exemption

Dear Ms. Anderson:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

Facts

In your letter, you explain that Tunica County entered into a memorandum of understanding which states, in pertinent part:

(i) The County shall, upon the Company's submission of a proper application therefore, issue to the Company a free port warehouse license pursuant to Section 27-31-51 et seq. of the Mississippi Code and approve a free port warehouse ad valorem tax exemption in perpetuity pursuant to Section 27-31-53 of the Mississippi Code exempting from all ad valorem taxes all of the Project's inventory, including raw materials, work-in-progress and finished goods, designated to be shipped outside of the State.

Question Presented

1. Can work in progress and raw materials be considered as part of free port warehouse tax exemptions?

Response

In response, an official opinion of the Attorney General can neither validate nor invalidate past actions of a governing board or official. Therefore, our response is limited to prospective matters which pertain to free port warehouse tax exemptions granted by Tunica

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County, and we cannot by official opinion comment or interpret the memorandum of understanding that was previously entered into by the Tunica County Board of Supervisors.

For future guidance only, Miss. Code Ann. Sections 27-31-51 through 27-31-61 provide for licensing of qualified free port warehouses, granting exemptions from ad valorem taxes to certain personal property which is temporarily stored in such warehouses while in transit to another state. Specifically, Section 27-31-53 describes the type of personal property which is exempt from taxation under these code sections as follows:

All personal property in transit through this state which is (a) moving in interstate commerce through or over the territory of the State of Mississippi, (b) which was consigned or transferred to a licensed "free port warehouse," public or private, within the State of Mississippi for storage in transit to a final destination outside the State of Mississippi, whether specified when transportation begins or afterward, (c) manufactured in the State of Mississippi and stored in separate facilities, structures, places or areas maintained by a manufacturer, licensed as a free port warehouse, for temporary storage or handling pending transit to a final destination outside the State of Mississippi, or (d) consigned or transferred to a licensed free port warehouse, public or private, within the State of Mississippi, for storage pending transit to not more than one (1) other location in this state for production or processing into a component or part that is then transported to a final destination outside of the State of Mississippi, may, in the discretion of the board of supervisors of the county wherein the warehouse or storage facility is located, and in the discretion of the governing authorities of the municipality wherein the warehouse or storage facility is located, as the case may be, be exempt from all ad valorem taxes imposed by the respective county or municipality and the property exempted therefrom shall not be deemed to have acquired a situs in the State of Mississippi for the purposes of such taxation.

Miss. Code Ann. Section 27-31-51(2) also provides that "[a] manufacturer of personal property pending transit to a final destination outside the State of Mississippi shall be eligible for licensing under Section 27-31-51 through 27-31-61 as a "free port warehouse" and any license issued to such a manufacturer before January 1, 2012, is hereby ratified, approved and confirmed."

Thus, the statute is clear that the exemption applies to personal property either moving through the state or manufactured in the state pending transit to a final destination outside of the state or personal property stored that will transfer to not more than one other location within the state for production or processing that is then transported to a final destination outside of the state. Raw materials or work-in-progress would not qualify under Section 27-31-53.

In any event, the exemption is not mandatory. The statute goes on to grant the governing

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authorities the discretion to exempt the property, providing that the above-described personal property:

may, in the discretion of the board of supervisors of the county wherein the warehouse or storage facility is located, and in the discretion of the governing authorities of the municipality wherein the warehouse or storage facility is located, as the case may be, and for such period of time as the respective governing body may prescribe, **be exempt** from all ad valorem taxes imposed by the respective county or municipality and the property exempted therefrom shall not be deemed to have acquired a situs in the State of Mississippi for the purposes of such taxation. **The governing authorities may exempt all or a portion of the assessed value of such property.**
[Emphasis added]


See also MS AG Op., Gamble (October 20, 2000)(citing MS AG Op., Shaw (November 9, 1989)). It is a well-settled principle of law that, to be exempt from ad valorem taxes, a property owner must show proof of a specific tax exemption. Generally, tax exemptions are strictly construed in favor of taxation and against the exemption, and the burden is on the owner/taxpayer to prove its right to an exemption. *City of Pascagoula v. First Chemical Corporation*, 388 So. 2d 160 (Miss. 1980); *City of Jackson v. Sly*, 345 So. 2d 473, 474-75 (Miss. 1979); MS AG Op., Creekmore (July 31, 2009). The board of supervisors must review the factual situation as it relates to the goods in question being stored and determine if these goods meet the requirements set forth in the statute, and then make its decision whether to grant the exemption after such review

If this office may be of any further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Avery Mounger Lee
Special Assistant Attorney General