

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

December 14, 2018

Anthony Nowak, Esquire  
DeSoto County Board of Supervisors  
Post Office Box 346  
Hernando, Mississippi 38632

Re: Tax Exemption for New Enterprise or Expanded Enterprise

Dear Mr. Nowak:

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

**OFFICIAL OPINION**

**Facts**

In your letter, you explain that DeSoto County is a rapidly growing county, including many new business enterprises locating its operations within the County. You further explain that it is not uncommon for these new enterprises to lease existing buildings in whole or part. You mention that Section 27-15-101 of the Mississippi Code provides a board of supervisors the authority to grant tax exemptions to new enterprises, and Section 27-31-105 provides authority for it to grant tax exemptions to expanded enterprises. You state that while the law sets forth certain eligibility requirements for the permitted tax exemption, you have found no requirement that the new enterprise, or expanded enterprise, be the title owner of the property upon which they locate their operations.

**Questions Presented**

1. Is a new enterprise, which is the lessee of the property upon which the new enterprise is located, entitled to the exemptions permitted by Miss. Code Ann. Section 27-31-101, including exemptions for real property?
2. Is a new enterprise, which is the lessee of a portion of the property upon which the new enterprise is located, entitled to the exemptions permitted by Miss. Code Ann. Section 27-31-101, including exemptions for real property, for the portion of the property it leases?
3. Is an expanded enterprise, which is the lessee of the property upon which the expanded enterprise is located, entitled to the exemptions permitted by

Miss. Code Ann. Section 27-31-105, including exemptions for real property?

4. Is an expanded enterprise, which is the lessee of a portion of the property upon which the expanded enterprise is located, entitled to the exemptions permitted by Miss. Code Ann. Section 27-31-105, including exemptions for real property, for the portion of the property it leases?

5. With respect to the questions above must the enterprise demonstrate that it is the entity responsible for paying the property taxes, pursuant to its lease agreement, in order to be eligible for the exemptions?

### Response and Legal Analysis

In response to your first two questions, Section 27-31-101 authorizes county boards of supervisors in their discretion to grant exemptions from ad valorem taxes, except state and school district taxes, for a period not to exceed ten years for specific kinds of new enterprises, as determined by the Department of Revenue. These exemptions may be for both real and personal property. Section 27-31-101(3) limits exemptions to the following enterprises:

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- (a) Warehouse and/or distribution centers;
- (b) Manufacturing, processors and refineries;
- (c) Research facilities;
- (d) Corporate regional and national headquarters meeting minimum criteria established by the Mississippi Development Authority;
- (e) Movie industry studios meeting minimum criteria established by the Mississippi Development Authority;
- (f) Air transportation and maintenance facilities meeting minimum criteria established by the Mississippi Development Authority;
- (g) Recreational facilities that impact tourism meeting minimum criteria established by the Mississippi Development Authority;
- (h) Data/information processing enterprises meeting minimum criteria established by the Mississippi Development Authority;
- (i) Technology intensive enterprises or facilities meeting criteria established by the Mississippi Development Authority;
- (j) Health care industry facilities as defined in Section 57-117-3; and
- (k) Telecommunications enterprises meeting minimum criteria established by the Mississippi Development Authority. The term "telecommunications enterprises" means entities engaged in the creation, display, management, storage, processing, transmission or distribution for compensation of images, text, voice, video or data by wire or by wireless means, or entities engaged in the construction, design, development, manufacture, maintenance or distribution for compensation of devices, products, software or structures used in the above activities. Companies organized to do business as commercial broadcast radio stations, television stations or news organizations primarily serving in-state markets shall not be included within the definition of the term "telecommunications enterprises."

The statute does not set forth any other legal requirements for a new enterprise. The fact that a new enterprise leases the real property on which the new enterprise is located does not prohibit the new enterprise from applying for an exemption under Section 27-31-101. However, 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 person or corporation owning the property upon which the tax is levied is liable for payment of the ad valorem taxes assessed against such real property. See Miss. Code Ann. Section 27-35-5. The lessee is not the record owner and is not statutorily obligated to pay ad valorem taxes on real property being leased. The fact that the owner of the real property may have negotiated a term in a lease agreement that the lessee will be responsible for ad valorem taxes assessed on the real property does not alter the tax liability of the property and the duty of the owner to see that the taxes are paid. Thus, a new enterprise that is merely the lessee of real property is not entitled to a tax exemption on the real property it is leasing. However, the new enterprise may apply for an exemption on personal property being utilized in its enterprise. The determination of whether the new enterprise is entitled to a tax exemption pursuant to Section 27-31-101 is a factual one that may only be determined by the DeSoto County Board of Supervisors upon proper application of the new enterprise, as determined by the Department of Revenue.

In response to your third and fourth questions, Section 27-31-105 authorizes boards of supervisors to grant exemptions from ad valorem taxes to enterprises enumerated in Section 27-31-101 that have made additions to or expansions of the facilities and/or replaced equipment used in the operation of such enterprise. Section 27-31-105 conditions eligibility for the exemption on satisfaction of the procedural requirements set forth in the statute. Similar to Section 27-31-101, Section 27-31-105 has no other legal requirements for an enterprise to have the ability to apply for an exemption. Thus, the fact that an expanded enterprise leases the real property on which the expanded enterprise is located does not prohibit such expanded enterprise from applying for an exemption pursuant to Section 27-31-105. However, as stated above, a lessee of real property is not entitled to a tax exemption on the real property it is leasing as it is not the record title owner. The expanded enterprise may apply for an exemption on personal property being utilized in the expanded enterprise. However, the determination of whether the new enterprise is entitled to a tax exemption pursuant to Section 27-31-105 is a factual one that may only be determined by the DeSoto County Board of Supervisors upon proper application of the expanded enterprise, as determined by the Department of Revenue.

In response to your fifth question, this office is not in a position to make a determination as to what additional specific information the lessee would need to submit to the Board of Supervisors other than the information required pursuant to Section 27-31-107. For your information, Section 27-31-107 governs the process for applications for exemptions pursuant to Sections 27-31-101 through 27-31-117 and requires specific information be provided in the application. Section 27-31-107 states, in pertinent part:

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[I]n the application full information shall be given as to the property proposed to be exempted, the kind of articles to be manufactured, and the date from which exemption is claimed. Each application shall also show an itemized listing of the true value of all such property sought to be exempted. The governing authorities of the municipality or county board of supervisors may, by resolution spread on its minutes, approve such application for all or any part of the property sought to be exempted and for all or any part of the authorized period of exemption. The resolution of approval shall also have an itemized listing of the true value of all property to be exempted.

Once a resolution approving the application has been adopted by the governing authorities, the application is then forwarded to the Department of Revenue for determination of various issues. Section 27-31-107 reads, in pertinent part, as follows:

The application, together with the resolution of approval, shall be forwarded to the Department of Revenue within thirty (30) days from the date of the resolution. The department shall proceed to investigate the matter and determine whether the property is eligible for the exemption. After investigation of the eligibility of the property, the department shall certify its determination to the governing authorities of the municipality or the county board of supervisors. If such property sought to be exempted is not eligible for such exemption, as above set forth, the Department of Revenue shall so certify. If the Department of Revenue certifies that the applicant is eligible for an exemption, it shall be discretionary with the board of supervisors or municipal authorities as to whether they grant the exemption, but in no event shall an exemption be granted if the Department of Revenue certifies that the applicant is not eligible for an exemption. The original copy of the application for exemption shall be returned to the governing authorities of the municipality or the county board of supervisors, as the case may be.

This language grants the authority to make determinations on eligibility of property for exemption to the Department of Revenue. The governing authority then has the discretion to determine whether to grant the exemption or any part thereof which is certified eligible by the Department of Revenue. Any grant of an exemption by a board of supervisors must be entered by order and spread upon the minutes.

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