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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

July 19, 1985

FILE NO. 85-014

REVENUE:

Power of Taxing Districts to  
Abate Taxes Under Sections 162 and  
162e of the Revenue Act of 1939

Honorable Gerald F. Grubb  
State's Attorney, Boone County  
615 North Main Street  
Belvidere, Illinois 61008

Dear Mr. Grubb:

I have your letter wherein you state:

"A corporation in Boone County is considering a plan to change its production facility substantially. It proposes the following improvements to its assembly plant:

1. Construction of two new docking areas to accommodate larger trucks.
2. Structural modification of an existing docking area involving the addition of truck bays and the moving of the docking area from its location inside the plant to a location abutting the plant.

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3. Re-location of offices from the middle of the plant's work area to various scattered locations inside the existing facility.
4. Two building additions to the existing plant for cafeterias.
5. Modification of two existing spray booths requiring the raising of the roof to a height above the roof of the existing facility.
6. Structural re-work of a part of the existing facility to handle additional stress caused by the location of a 'Phosphate system' within the existing facility.
7. Modification of a 'Clean Room' by the addition of sound proofed walls and lowered ceilings.
8. Modification of a solid waste handling equipment room.
9. Improvement of the existing roadways around the perimeter of the plant to the new docking facilities to handle laden trucks.
10. Construction of a new roadway from a public highway across the plant grounds to a new docking facility.

The estimated value of the construction and modification work is \$15 million. A re-tooling of the existing equipment on the plant site and the addition of new plant equipment, which is referred to by the corporation as personal property, is estimated to cost \$300 million.

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You ask the following questions concerning this proposal:

1. Would the improvements described above, if constructed, constitute the expansion of a previously existing facility within the meaning of section 162 of the Revenue Act of 1939 (Ill. Rev. Stat. 1985 Supp., ch. 120, par. 643), which authorizes local taxing districts to abate property taxes under certain circumstances?

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2. Do the limitations upon the maximum term and aggregate amounts of taxes abated pursuant to section 162 of the Revenue Act of 1939 also apply to taxes abated pursuant to section 162e of that Act (Ill. Rev. Stat. 1983, ch. 120, par. 643e), which authorizes the abatement of property taxes on property located within an "enterprise zone"?
3. Is the amount of taxes which may be abated under section 162 of the Revenue Act of 1939 limited to the amount of increased value attributable to the expansion of the facility? If so, does this limit apply to each taxing district separately?
4. Is that part of section 162e of the Revenue Act of 1939 which limits the amount of taxes which may be abated to the amount attributable to the construction or rehabilitation of improvements to be applied to each taxing district individually, or to the aggregate of all participating taxing districts?
5. To qualify for tax abatement under either section 162 or 162e of the Revenue Act of 1939, must the improvements made increase the assessed valuation of the property?
6. Are taxes abated pursuant to section 162e of the Revenue Act of 1939 included in the maximum limitation upon the amount of taxes which may be abated under section 162 of the Act?
7. Can a taxing district implement a tax abatement plan under either section 162 or 162e of the Revenue Act of 1939 which would make the amount of taxes to be abated contingent upon future events, such as an increase or reduction in the firm's work force?

In response to your first question, section 162 of the Revenue Act of 1939 provides in pertinent part:

" \* \* \*

Any taxing district, upon a majority vote of its governing authority, may, after the determination of the assessed valuation of its property, order the clerk of that county to abate any portion of its taxes on the property of any industrial firm locating within the taxing district during the immediately preceding calendar year from another state, territory, or country, or having been newly created within this State during the immediately preceding calendar year, or for an expanded previously existing facility. Such abatement shall not exceed a period of 10 years and the total aggregate amount of abated taxes shall not exceed \$1,000,000.

\* \* \*

(Emphasis added.)

In opinion No. 82-010, issued May 14, 1982 (1982 Ill. Att'y Gen. Op. 24), my predecessor advised that the expansion of a previously existing facility by an industrial firm qualifies that property for tax abatement pursuant to section 162. No determination was made, however, as to whether the construction of improvements such as the corporation in question has proposed would constitute the expansion of a facility within the meaning of section 162 of the Revenue Act of 1939.

In the absence of statutory definitions indicating a different intent, it is assumed that words used in a statute were intended to be given their ordinary and popularly understood meaning. (Winks v. Board of Education (1979), 78 Ill. 2d 128, 137.) The word "expand" ordinarily means "to extend" or "to enlarge". (Federal Electric Co. v. Zoning Board (1947),

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398 Ill. 142, 146; see also State v. Spink Hutterian Brethren (S. Ct. S.D. 1958), 90 N.W.2d 365, 378.) The construction of improvements within a structure which do not enlarge its dimensions generally is not considered to constitute expansion. See Town of Seabrook v. D'Agata (S. Ct. N.H. 1976), 362 A.2d 182, 183.

According to your description of the improvements proposed by the corporation, several additions and modifications would be made to the existing manufacturing facility as part of its renovation. These additions and modifications would result in the enlargement of the facility itself. Given the ordinary meaning of the term "expand", it is my opinion that the proposed improvements, if constructed, will constitute the expansion of a previously existing facility within the meaning of section 162 of the Revenue Act of 1939, and consequently, the property will be eligible for tax abatement under that section. Because this is my conclusion, it is not necessary to consider, as raised elsewhere in your letter, whether the construction of improvements which do not enlarge an existing facility also may constitute expansion for purposes of section 162.

In response to your second question, the Illinois Enterprise Zone Act (Ill. Rev. Stat. 1983, ch. 67 1/2, par. 601 et seq.) permits counties and municipalities, by ordinance, to

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create "enterprise zones" as a means of stimulating business and industrial growth and the retention of industry in depressed areas, in part through the granting of tax incentives. (See Ill. Rev. Stat. 1983, ch. 67 1/2, pars. 602, 605.)

Section 162e of the Revenue Act of 1939 provides in pertinent part:

"In addition to the authority to abate taxes pursuant to Section 162 of this Act, any taxing district, upon a majority vote of its governing authority, may order the county clerk to abate any portion of its taxes on real property, or any class thereof, located within an Enterprise Zone created pursuant to the Illinois Enterprise Zone Act, \* \* \* and upon which new improvements have been constructed after the effective date of this amendatory Act of 1982 or upon which existing improvements have been renovated or rehabilitated after such date. However, any abatement of taxes on any parcel shall not exceed the amount attributable to the construction of the improvements and the renovation or rehabilitation of existing improvements on such parcel, nor in the case of property within a redevelopment area created pursuant to the Real Property Tax Increment Allocation Redevelopment Act shall such abatement exceed the amount of taxes allocable to such taxing district.

\* \* \*

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The authority of a taxing district to abate property taxes pursuant to section 162e of the Revenue Act of 1939 on real property located within an enterprise zone is neither expressly nor impliedly made subject to the limitations contained in section 162 of that Act. To the contrary, the plain language of section 162e of the Act provides that the authority

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to abate taxes granted to taxing districts by that section is in addition to the authority granted under section 162 of the Act, and thus, is separate and distinct from the latter.

Therefore, it is my opinion that the limitations on the maximum term and aggregate amount of taxes abated pursuant to section 162 of the Revenue Act of 1939 do not apply to taxes abated pursuant to section 162e of that Act.

Similarly, section 162e of the Revenue Act of 1939 limits the amount of taxes which may be abated on any parcel under its terms to the amount attributable to the construction or renovation of improvements on that parcel. Clearly, this limitation applies only to taxes which are abated under the authority of section 162e. Therefore, it is my opinion that this limitation does not apply to taxes abated pursuant to section 162 of the Revenue Act of 1939.

In response to your fourth question, in opinion No. 82-010, my predecessor addressed the analogous question of whether the limitation on the aggregate amount of taxes abated under section 162 of the Act was to apply to individual taxing districts. Citing the familiar rule that a limitation or proviso must be construed together with the statutory provision which it restricts, it was stated:

" \* \* \*

Section 162 of the Revenue Code of 1939  
\* \* \* permits any individual taxing district to

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abate taxes as authorized in the section. The limitation regarding the total aggregate amount of taxes which may be abated must also be construed to apply to any individual taxing district which elects to abate taxes in accordance with the provisions of section 162 of the Revenue Act of 1939. Therefore, it is my opinion that the phrase 'the total amount of abated taxes shall not exceed \$1,000,000' applies separately to each taxing district which elects to abate taxes." (1982 Ill. Att'y Gen. Op. 24, 27.)

The reasoning of opinion No. 82-010 is equally applicable to the limitation upon the amount of taxes which may be abated pursuant to section 162e of the Revenue Act of 1939. Consequently, it is my opinion that this limitation applies individually to each taxing district which abates taxes under that section.

In response to your fifth question, there is no requirement under section 162 of the Revenue Act of 1939 that the expansion of a previously existing facility increase the assessed valuation of the real property in order for a taxing district to elect to abate taxes on the property. Under section 162e of the Act, however, the amount of taxes which may be abated is expressly limited to the amount attributable to the construction and renovation of improvements. This language necessarily implies that an increase in assessed valuation is a prerequisite to abating taxes pursuant to section 162e.

In response to your sixth question, I have concluded above that sections 162 and 162e of the Revenue Act of 1939



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grant separate and distinct powers to taxing districts to abate property taxes on qualifying parcels. The limitation on the aggregate amount of abated taxes permitted under section 162 thus applies only to taxes abated pursuant to its provisions. Therefore, it is my opinion that taxes abated by a taxing district pursuant to section 162e are not included in determining the amount of taxes which may be abated pursuant to section 162 of the Revenue Act of 1939.

In response to your final question, neither section 162 nor section 162e of the Revenue Act of 1939 specifies with particularity the form in which a taxing district may elect to abate taxes upon property which qualifies for tax abatement. Since the determination of whether to elect to abate taxes is discretionary in the first instance, I believe that a taxing district possesses wide latitude in choosing whether to make the abatement of taxes subject to reasonable and ascertainable conditions. It is my opinion that a taxing district may establish a tax abatement plan which provides that the amount of taxes to be abated will be contingent upon the occurrence of well-defined future events, so long as the express limitations in those sections are not exceeded.

Very truly yours,

  
ATTORNEY GENERAL