



# Association of County Commissions of Alabama

## The Abatement Process: Compliance & Enforcement 2019

December 2019



# Abatements in Alabama

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- Tax abatements are designed to encourage economic development by reducing taxes associated with certain industries choosing to locate and/or expand in Alabama.
- Abatements are project-based and provide a reduction of taxes for a specified period of time for all of the state and the local portion of sales and use tax not levied for education.
- Local granting authorities may grant abatements to companies only where they have jurisdiction and based on the type of abatement.



# Abatement Laws

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- Tax Incentive Reform Act of 1992 (§40-9B) - for new and major addition projects
- Brownfield Development Tax Abatement (§40-9C) - for property that qualifies under ADEM's voluntary cleanup program
- Alabama Reinvestment and Abatements Act (§40-9G) - for expansion of existing facilities



# Tax Incentive Reform Act of 1992 (§40-9B)

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## Qualifications for Chapter 9B abatements

- New project
- Major addition
  - at least \$2 million OR
  - 30% of the original cost of existing property
- Qualifying project activity
  - Industrial or research enterprise defined by NAICS code
  - Specifically defined project
- Granting authority approval



# Chapter 9B – Qualifying Business Activity by NAICS

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## Qualifications – Business Activity by NAICS Code

- Manufacturing - Sectors 31 (except 311811), 32, 33
- Management of companies – 55
- Merchant wholesalers, goods – Subsectors 423 & 424
- Rail Transportation – 482
- Warehousing activities – 493
- Publishing Industries (except Internet) – 511
- Telecommunications carriers – 517
- Data processing, hosting, & related services – 518
- Space Research & Technology – 927
- Logging – Industry Group 1133
- Coal Mining – Industry Group 2121
- Scientific R&D Services – 5417
- Computer systems design & related services – 5415
- 4862 (pipeline transportation of natural gas),
- 4882 (rail transport support activities),
- 4883 (Port authority water transportation support activities (other than 48833)),



# Chapter 9B – Qualifying Business Activity by NAICS

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## Qualifications – Business Activity by NAICS Code

- 5121 (motion picture and video industries (other than 51213)),
- 5415 (computer systems design and related services),
- 5417 (scientific research and development services,
- Industry 22111 (electric power generation),
- 48691 (pipeline transportation of refined petroleum products),
- 48699 (all other pipeline transportation),
- 48819 (air transportation support activities),
- 51221 (record productions),
- 51913 (internet publishing, broadcasting, web search portals),
- 52232 (financial transactions processing, reserve and clearinghouse activities),
- 54133 (engineering services),
- 54134 (drafting services),
- 54138 (testing laboratories),
- 56291 (remediation services),



# Chapter 9B – Qualifying Business Activity by NAICS

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## Qualifications – Business Activity by NAICS Code

- 56292 (materials recovery facilities),
- 92811 (national security),
- National Industry 115111 (cotton ginning),
- 221330 (steam and air conditioning supply),
- 541614 (process, physical distribution, logistics consulting services),
- 561422 (in bound call centers only),
- 562213 (solid waste combustors and incinerators),
- 611512 (flight training facilities).



# Chapter 9B – Qualifying Business Activities

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## Qualifications – Business Activity by Specific Projects

- Headquarters facilities (NAICS 551114) (where at least 50 jobs are created)
- Data processing centers (where at least 20 jobs are created making \$40K)
- Research & development facilities
- Renewable energy facilities (solar projects)
- Tourism destination attractions
- Port authority operations
- Warehousing & storage (NAICS 493)
- Port and harbor operations (NAICS 488310)
- Marine cargo handling (NAICS 488320)
- Technology companies
- Agricultural centers





# Chapter 9B – Qualifying Business Activities

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## Qualifications – Business Activity by Specific Projects

A target of the state's economic development efforts pursuant to either of the following:

The accelerate Alabama Strategic Economic Development Plan, created by Executive Order Number 21 of the Governor on July 18, 2011, which identifies 11 targeted business sectors:

- Advanced Manufacturing in:
  - ✓ Aerospace/Aviation
  - ✓ Automotive
  - ✓ Agricultural Products/Food Production
  - ✓ Metal and Advanced Metals
  - ✓ Chemicals
  - ✓ Forestry Products
- Bioscience
- Foundational Targets in:
  - ✓ Corporate Operations
  - ✓ Cybersecurity
  - ✓ Data Centers
  - ✓ Distribution/Logistics
  - ✓ Information Technology
  - ✓ Research & Development



# Chapter 9B Abatements

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## **Abatement**

All sales taxes except the educational sales & use tax levies are abated.

## **Usage**

Only for capital expenditures, during construction & equipping new and expanding projects. Includes real property expansion (additional square footage only for major additions), new and upgraded equipment.

## **Exemption Period**

Until completion of project (except data processing centers)

## **Approval**

City, county, or public authority.



# Chapter 9B Abatements

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## What is allowed for new projects

- All purchases of tangible personal property associated with constructing and equipping a project that goes into the capital account of a private user:
  - Building materials
  - Furniture, fixtures, and equipment
  - Vehicles, rolling stock (based at project site)
  - Tooling, dies, jigs, molds - *does not have to be capitalized by private user as long as property is for use by the private user.*



# Chapter 9B Abatements

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## What is allowed for major addition projects

- All purchases of tangible personal property associated with constructing and equipping a project that goes into the capital account of a private user:
  - Building materials (addition to real property)
  - Furniture, fixtures, and equipment
  - Vehicles, rolling stock (based at project site)
  - Tooling, dies, jigs, molds - *does not have to be capitalized by private user as long as property is for use by the private user.*
  - Includes upgraded equipment
    - ✓ equipment that replaces existing equipment, which performs the same function, but also one additional function



# Chapter 9B Abatements

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## What is NOT allowed for new projects

- Replacement/spare parts
- Consumables
- Expensed items not subject to capitalization

## What is NOT allowed for major addition projects

- Same as above plus:
  - Renovations to facilities (under the existing roof)
  - Replacement equipment
  - Modifications to existing equipment already owned by the private user



# Data Processing Center Projects – Chapter 9B

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## Usage

- Sales and use tax – all capitalized expenditures
  - Includes capitalized expenditures for the lessor and any lessee with respect to co-location centers
  - Includes refresh, maintenance, and renovations

## Maximum Abatement period

- 10 years – for projects that invest up to \$200M within 10 years from commencement of project
- 20 years – for projects that invest over \$200M but less than \$400M within 10 years from commencement of project
- 30 years – for projects that invest over \$400M – must invest over \$200M within first 10 years and exceed \$400M within 20 years



# Brownfield Abatements (Chapter 9C)

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- Allows county and municipal governments to provide tax incentives to private users recovering land pursuant to §22-30E, the Alabama Land Recycling and Economic Redevelopment Act.
- Includes qualifying real property and any personal property acquired in connection with the cleanup and redevelopment of the real property.
- Requires a voluntary cleanup plan to be approved by the Alabama Department of Environmental Management (ADEM).



# Brownfield Abatements - Chapter 9C

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## **Abatement**

All local sales taxes except the educational sales & use tax levies are abated.

## **Usage**

Only for capital expenditures, during construction & equipping project.

## **Exemption Period**

Until completion of project

## **Approval**

City and county governments





# Alabama Reinvestment and Abatements Act (§40-9G)

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## Chapter 9G Abatements for a qualifying project

Created primarily for companies undertaking projects such as reopening a closed facility, refurbishing an existing facility, equipment rebuilds, and/or purchasing replacement equipment; however, expansions and upgraded equipment may qualify. The abatement is subject to and shall follow the same procedures, provisions, limitations, and definitions of Chapter 9B, with the following exceptions:

- **Sales and Use Taxes** - Capital expenditures on repairs, rebuilds, maintenance, and replacement equipment (including spare parts) allowed.



# Chapter 9G Abatement - Qualifying Projects

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- Predominantly involves an approved industrial activity.
- Includes at least a \$2 million in expenditure on the addition, expansion, improvement, or renovation of a facility or replacement of any existing equipment or tangible personal property.
- The business cannot have entered into any project agreement with the Governor for other incentives.



# Chapter 9G – Qualifying Business Activities

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Subject to and follow the same procedures, provisions, limitations, and definitions under Section 40-9B with some exceptions.

- **Qualifications**
  - ✓ Business activity by NAICS Code – same as Chapter 9B qualifications.
- Headquarters facilities
- Research & development facilities
- Production of biofuels
- Accelerate Alabama activities
- Technology companies
- Agricultural center



# Chapter 9G Abatements

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## **Abatement**

All sales taxes except the educational sales & use tax levies are abated.

## **Usage**

Sales and use tax on capital expenditures on expansions, equipment, renovations, repairs, rebuilds, refurbishments, retrofits, renovations, replacements, modifications during construction & equipping of project and ends when project is placed in service.

## **Local Approval**

City, county, or public authority.



# Chapter 9G Abatements

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## What is allowed

- All purchases of tangible personal property associated with the project that goes into the capital account of a private user

## What is NOT allowed

- Consumables or expensed items not subject to capitalization



# Abatement Process

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- A private user applies for an abatement with the granting authority for a specific project.
- Granting authority passes a resolution authorizing the abatement of taxes.
- Granting authority enters into an agreement with the private user to ratify the resolution.
- The granting authority and the private user provide documentation to the Department of Revenue for processing.
- Once the abatement package is processed, the Department of Revenue issues a certificate of exemption and a (separate) letter to the private user with instructions regarding their future responsibilities. |



# ADOR Application Checklist

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The following items must be submitted in the abatement application package so that ADOR can process the abatement.

- 1) Signed Sales and Use Tax Exemption application (Form ST:EX-A2).
- 2) A copy of the executed abatement agreement.
- 3) A copy of the certified resolution by the authorized public body.
- 4) A copy of the combined application for abatement of taxes (Form CO:CAA, CAAC, or CAAG).
- 5) Documentation showing that the private user is enrolled in the E-Verify program.
- 6) Proof that a copy of the resolution and abatement agreement was provided to the county commission by certified mail or physical delivery if an authority other than the county was the granting authority.
- 7) Project Notification with the Alabama Department of Commerce.



# Abatement Process – Next Steps

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Once all the documents are received and reviewed by ADOR, contractors can be issued a certificate of exemption.

- **A prime contractor** must attach written confirmation from the private user that it will be making purchases of tangible personal property to be incorporated into the project that has received abatement(s).
- **A subcontractor** must attach written confirmation from the private user or the prime contractor that it will be making purchases of tangible personal property to be incorporated into the project referenced above.



**A written confirmation must be on the company's letterhead.**





# Abatement Process – Next Steps

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- A certificate of exemption allows the certificate holder to make tax exempt purchases of tangible personal property for the project.
- All private users and contractors are required to remit sales and use taxes on a monthly basis for:
  - Taxes levied for education
  - Full taxes on unabated items
- Remit online via one spot by visiting <https://revenue.alabama.gov/sales-use/one-spot/> or contact the local county and city offices.
- If the total investment exceeds 110% of the amount granted, an amendment must be requested through the granting authority.



# Amending an Abatement

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Submit amended abatement application to the granting authority

Obtain the amended resolution and the amended abatement agreement

Provide the amended resolution and the amended agreement to ADOR & the county tax assessing official



# Sales and Use Tax Exemption Certificate Extension

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- If the request is to extend the certificate of exemption for **up to a year** from the project's original completion date, private user can request an extension through ADOR office by sending in a request on company letterhead.
  - *The letter should include a brief explanation as to why the extension is needed and the new extension date that is being requested. The **granting authority must be cc'd** in the request for us to accept the extension.*
- If the request is to extend the certificate of exemption for **more than a year** past the initial expiration date, the granting authority must agree to the extension in writing and ADOR must be provided with the copy of the letter.



# Other Considerations

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- Only qualified purchases for the project listed in the application should receive the abatement.
- Abatements may only be granted to the entity listed on the tax abatement agreement, its successors, and assignee. In the event that the entity receiving the abatement changes their name, proper documentation must be provided to reflect these changes in the abatement documents.
- If an ongoing business is sold, the new owner may receive the remaining abatement, with assignment and proper documentation.



# Abatement Enforcement

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- Resolution and Agreement must be in compliance with the statute.
- Statute > Resolution > Agreement.
- Only the granting authority has the authority to grant or deny the abatement request.
- The abatement agreement is a contract between the granting authority and the private user.
- Granting authority can include project requirements or “claw backs” outside of statute as a condition to the abatement agreement.
- State and local agencies can enforce the statute, rules, and what is specified in the abatement agreement (i.e., assessment of unabated items, collect education levies).



# Questions?



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