ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-4-3
REQUIREMENTS FOR ASSESSING AND GRANTING OF ABATEMENT OF NONEDUCATIONAL AD VALOREM TAXES ON CERTAIN PROPERTY

TABLE OF CONTENTS

810-4-3-.01	Scope Of Rules (Repealed 12/31/18)
810-4-3-.02	Taxability Of Property - Chapter 9B
810-4-3-.03	Property Qualifying For Abatement - Chapter 9B
810-4-3-.04	Authorization For Abatement - Chapter 9B
810-4-3-.05	Procedures For Granting Of Abatement - Chapter 9B
810-4-3-.06	Administrative Procedures (Repealed 12/31/18)
810-4-3-.07	Enforcement - Chapter 9B
810-4-3-.08	Taxability Of Property - Chapter 9G
810-4-3-.09	Property Qualifying For Abatement - Chapter 9G
810-4-3-.10	Authorization For Abatement - Chapter 9G
810-4-3-.11	Procedures For Granting Abatement - Chapter 9G
810-4-3-.12	Enforcement - Chapter 9G

810-4-3-.01 Scope Of Rules (Repealed 12/31/18).

(Repealed)
Author: Jennifer D. Hughes
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810-4-3-.02 Taxability Of Property - Chapter 9B.

(1) Private use property is any real and/or personal property treated as owned by a private user for Federal Income Tax purposes even though title may be held by a public authority, municipal, or county government. A private user is any individual, partnership, or for-profit corporation treated as the owner of private use property for Federal Income Tax purposes. Private use property is subject to Ad Valorem Tax, if the private user held title to the

property when a public authority, county, or municipal government has title to or a possessory right (i.e. leasehold interest) in the private use property.

(2) Private use property will not be subject to Ad Valorem Tax if a private user was entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992 or would be entitled to use the property at some future time pursuant to an inducement entered into before May 21, 1992. This exemption applies only to the property and the amount of capital expenditures set out in the inducement, subject to de minimis deviations. The inducement must be reflected in an official document. The private use property becomes taxable at the end of the lease term or the end of the lease, whichever occurs earlier.

(3) The term "de minimis deviations" as used in Title 40, Chapter 9B, Code of Ala. 1975, and in this rule means, the amount of capital expenditures for private use property, not exceeding 10 percent in the aggregate of the amount set forth in the inducement or lease or other agreement. Data processing center projects as defined in §40-9B-3, Code of Ala. 1975, are subject to the investment thresholds and the de minimis deviations standards do not apply.

(4) A lessee of property from a public authority, county, or municipal government is treated as the owner of the real and/or personal property for Federal Income Tax purposes in accordance with Internal Revenue Service Rules and Regulations and Generally Accepted Accounting Principles.

(5) The treatment of a private user as owner for Federal Income Tax only applies to property owned by a county, city, or public authority.

(6) Once property becomes private use property, it will not lose its status as private use property because of a change in accounting procedures or a change from a capital lease to an operating lease.

(7) When any lease or agreement entered into before May 21, 1992 expires, the property covered by the lease or agreement will become taxable. If the old lease contains a separately stated option to renew for a clearly defined and limited period of time, and the option is properly exercised, the property will remain exempt for the renewal period as long as it conforms precisely to the terms of the option.

(8) Changes, alterations, or rewrites of a lease for refinancing purposes will not alter the exempt status of the property. Changes must be consistent with the original terms of the lease, and not extend the term of the initial or permitted renewal term.
Author: Jennifer D. Byrd

Statutory Authority: Code of Ala. 1975, §40-2A-7(a)(5), Title 40, Section 9B.
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810-4-3-.03 Property Qualifying For Abatement - Chapter 9B.

(1) Property qualifying for tax abatements under Title 40, Chapter 9B, Code of Ala. 1975, must be classified as industrial development property. For purposes of this rule, industrial development property is defined as real and/or personal property acquired in connection with establishing or expanding an industrial or research enterprise in Alabama.

(2) If the trade or business to be conducted by a private user at a given site is predominantly (i.e. more than 50% of the project investment) in the nature of an industrial or research enterprise, then all of the property to be acquired or constructed at said site will constitute industrial development property eligible for abatements under Chapter 9B. If the predominant activity is not in the nature of an industrial or research enterprise, then only the portion, of the personal property used for industrial research or enterprise will constitute industrial development property eligible for abatement under Chapter 9B.

(3) All real and personal property, the cost of which may be added to the capital account, comprising a data processing center acquired at any time during the applicable maximum exemption period qualifies for abatement. Property includes but is not limited to, computers, software licensed for use, equipment supporting computing, networking or data storage; cooling systems, cooling towers, and other temperature infrastructures, power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of a data processing center, including, but not limited to, exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and any other equipment necessary for the maintenance and operation of a data processing center.

(4) Co-location lessees of data processing centers must receive the same incentives as the lessor based on the data center’s qualifying activities, provided the tenants are included in the initial abatement agreement or later added to the original abatement agreement through addenda. Once the exemption period begins, the addition of a lessee does not extend the maximum exemption period. However, a tenant's investment can be applied to the calculation of aggregate capital investment necessary to extend the maximum exemption period as provided in §40-9B-3. In no

event will the tax abatements granted to a data processing center extend beyond the end of the applicable maximum exemption period.

(5) A major addition for a data processing center project must not include capitalized repairs, rebuilds, maintenance, or replacement equipment on real and/or personal property placed in service before the date the abatement is granted. Capitalized repairs, rebuilds, maintenance, refresh equipment, and replacement equipment acquired by a data processing center project during the maximum exemption period as defined by §40-9B-3 will qualify for an abatement. Once the maximum exemption period as defined by §40-9B-3 expires, all real and personal property will become fully taxable.

(6) With the exception of a data processing center project, no further abatement with respect to the same private use industrial property may be granted unless there is a major addition as defined by §40-9B-3, Code of Ala,1975.

(a) To constitute a major addition within the meaning of Title 40, Chapter 9B, Code of Ala. 1975, the lesser of an investment of 30 percent of the original cost of currently existing industrial property, the sum total of original facilities and equipment, and any expansion or additions to date before the abatement request, or $2,000,000 must be made.

(b) With the exception of a data processing center, a major addition does not include capitalized repairs, rebuilds, maintenance, or replacement equipment.

(c) Costs associated with renovating or remodeling existing facilities of an operating industrial or research enterprise do not qualify for an abatement under Chapter 9B.

(d) Equipment that performs the same function as the equipment that it replaces, even though the new equipment performs the function better or faster, is defined as replacement equipment. Equipment that replaces existing equipment that performs not only the same function, but also an additional function, qualifies as a capital investment in meeting the thirty percent (30%) or $2,000,000 threshold of a major addition.

(e) Replacement property qualifies for the remainder of an abatement previously granted on the equipment being replaced.

(f) Replacement equipment acquired subject to a lease in effect before May 21, 1992 is taxable only according to the lease.

(7) If an expansion project qualifies as both a major addition and a qualifying project, a private user may seek abatements:

(i) solely under the authority of Chapter 9B,

(ii) solely under the authority of Chapter 9G, or

(iii) under both authorities with respect to different portions of its investment.

If the private user has a portion of a proposed expansion which constitutes replacement equipment that would not otherwise qualify for abatement under Chapter 9B, but would qualify under the authority of Chapter 9G, the private user may elect to petition for separate abatements of Ad Valorem Tax. Any expansion to industrial development property that constitutes both a major addition and a qualifying project, must be granted separate tax abatement agreements under Title 40, Chapter 9B, Code of Ala. 1975 and Title 40, Chapter 9G, Code of Ala. 1975. All Chapter 9G agreements must receive separate consents by the state, county, and city.

(a) Only industrial development property not previously placed in service in Alabama by the user or a related party may be eligible for an abatement of noneducational Ad Valorem Tax.

(b) A change of ownership or assignment of interest of an operating industrial or research enterprise does not qualify the property for a new or additional abatement. The new owner will be allowed to receive the remainder of abatements previously granted.

(c) A change of ownership or assignment of interest of non-operating industrial or research enterprise property to an unrelated party qualifies the property for a new abatement in accordance with the statutes.

(8) Industrial development property that ceases to be used in the active conduct of an industrial or research enterprise for six consecutive months will no longer be eligible for abatement of Ad Valorem Tax with respect to any major additions.

Author: Jennifer D. Byrd

Statutory Authority: Code of Ala. 1975, §40-2A-7(a)(5), Title 40, Section 9B and Chapter 9G.

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810-4-3-.04 Authorization For Abatement - Chapter 9B.

(1) Noneducational Ad Valorem Tax may be abated with respect to private use industrial property. Education taxes, as defined in 40-9B-3(5) Code of Ala. 1975, cannot be abated.

(2) Abatement of noneducational Ad Valorem Tax cannot exceed the maximum exemption period as defined in §40-9B-3.

(3) In addition to the terms above, the abatement will terminate if the property ceases to be used in the active conduct of an industrial or research enterprise, or the approved activity for six (6) consecutive months.
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Statutory Authority: Code of Ala. 1975, §40-2A-7(a)(5), Title 40, Section 9B.
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810-4-3-.05 Procedures For Granting Of Abatement - Chapter 9B.

(1) A petition for abatement of noneducational Ad Valorem Taxes may be made by any person who is the owner of private use industrial development property, proposes to become a private user of industrial development property, or undertakes a major addition to existing industrial development property to the appropriate granting authority before the time the property is placed in service for Ad Valorem Tax purposes in accordance with the procedures described below. The petition must be accompanied by an application provided by the department and contain information that will permit the granting authority to make a reasonable cost/ benefit analysis to determine qualification for abatement and maximum abatement period.

(2) Subject to geographical, jurisdictional, or other limitations set forth in §40-9B-5(c), Code of Ala. 1975, and with the exception of data processing centers, the appropriate governing body of a municipality, county, or public industrial authority may grant abatements of noneducational Ad Valorem Tax for a period not to exceed 10 years with respect to private use industrial property.

(a) The governing body of a municipality is authorized to grant abatements with respect to private use industrial property located within the limits of the municipality or within the police jurisdiction of the municipality; however,

the governing body of the municipality must also abate the corresponding municipal taxes.

(b) The governing body of a county is authorized to grant abatements with respect to private use industrial property located in the county and not within a municipality or the police jurisdiction of a municipality unless consented to by resolution of the governing body of the municipality.

(c) The governing body of a public industrial authority is authorized to grant abatements with respect to private use industrial property located within the jurisdiction of the public industrial authority; however, no abatement of county taxes may be granted unless the authority has also abated the corresponding municipal taxes.

(3) Abatements authorized for data processing centers may be granted according to the procedures above for a period not to exceed 30 years within the constraints of §40-9B-3, Code of Ala. 1975.

(4) A corresponding municipal Ad Valorem Tax is defined as an Ad Valorem Tax levied by the municipality. If a municipality does not have a corresponding municipal tax, a municipality or municipal authority may abate the county Ad Valorem Tax only if the governing body of a county authorizes by resolution the municipality or municipal authority to abate the eligible county Ad Valorem Tax. The resolution by the county or county authority, as applicable, must be adopted by a majority of its members.

(5) An abatement of noneducational Ad Valorem Tax for a period longer than 10 years may be granted:

(a) By the governing body of a municipality, with respect to private use industrial property located within the limits of the municipality or within the police jurisdiction of the municipality, but only as to municipal noneducational taxes.

(b) By the governing body of a county, with respect to private use industrial property located in the county, but only as to county noneducational taxes.

(c) By the Governor, with respect to private use industrial property located in the state but only as to state noneducational taxes.

(6) The governing body of a county and a municipality may separately authorize one or more public industrial authorities to provide by resolution for the consent on its behalf.

(7) Abatements granted by the granting authority be embodied in an agreement between the granting authority and the private user, setting forth:

(a) The estimated amount of each abatement and the maximum exemption period.

(b) Good faith projections by the private user of the amount to be invested and the number of individuals to be employed with the corresponding payroll, initially and in the succeeding three years.

(8) The private user must file with the department within ninety (90) days after the granting of the abatements, a copy of the required agreements, consents and/or resolutions, and application.
Author: Jennifer D. Byrd
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-9B-5, 41-22-6.
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810-4-3-.06 Administrative Procedures (Repealed 12/31/18).

(REPEALED)
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810-4-3-.07 Enforcement – Chapter 9B.

(1) The department shall enforce Title 40, Chapter 9B, Code of Ala. 1975 under the authority granted to the department §40-2-11 Code of Ala. 1975.

(2) The department, through the Property Tax Division, shall review and conduct inspections and investigations as necessary on Ad Valorem Tax abatements granted under Title 40, Chapter 9B, Code of Ala. 1975.
Author: Jennifer D. Byrd
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), Title 40, Section 9B.
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810-4-3-.08 Taxability Of Property - Chapter 9G.

(1) Private use property is any real and/or personal property treated as owned by a private user for Federal Income Tax purposes even though title may be held by a public authority, municipal, county government. A private user is any individual, partnership, or for-profit corporation treated as the owner of private use property for Federal Income Tax purposes. Private use property is subject to **Ad Valorem Tax**, if the private user held title to the property when a public authority, county, or municipal government has title to or a possessory right (i.e. leasehold interest) in the private use property.

(2) Private use property will not be subject to Ad Valorem Tax if a private user was entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, or would be entitled to use the property at some future time pursuant to an inducement entered into before May 21, 1992 applies only to the property and the amount of capital expenditures set out in the inducement, subject to de minimis deviations. The inducement must be reflected in an official document. The private use property becomes taxable at the end of the lease term or the end of the lease, whichever occurs earlier.

(3) The term "de minimis deviations" as used in Title 40, Chapter 9B, Code of Ala. 1975, and in this rule means, the amount of capital expenditures for private use property, not exceeding 10 percent in the aggregate of the amount set forth in the inducement or lease or other agreement. Data processing center projects as defined in §40-9B-3, Code of Ala. 1975, are subject to the investment thresholds and the de minimis deviations standards do not apply.

(4) A lessee of property from a public authority, county, or municipal government is treated as the owner of the real and/or personal property for Federal Income Tax purposes in accordance with Internal Revenue Service Rules and Regulations and Generally Accepted Accounting Principles.

(5) The treatment of a private user as owner for Federal Income Tax only applies to property owned by a county, city, or public authority.

(6) Once property becomes private use property it will not lose its status as private use property because of a change in accounting procedures or a change from a capital lease to an operating lease.

(7) When any lease or agreement entered into before May 21, 1992 expires, the property covered by the lease or agreement will

become taxable. If the old lease contains a separately stated option to renew for a clearly defined and limited period of time, and the option is properly exercised, the property will remain exempt for the renewal period as long as it conforms precisely to the terms of the option.

(8) Changes, alterations, or rewrites of a lease for refinancing purposes will not alter the exempt status of the property. Changes must be consistent with the original terms of the lease, and not extend the term of the initial or permitted renewal term.
Author: Jennifer D. Byrd
Statutory Authority: Code of Ala. 1975, §40-2A-7(a)(5), Title 40, Chapter 9B.
History: New Rule: Filed November 16, 2018; effective December 31, 2018.

810-4-3-.09 Property Qualifying For Abatement - Chapter 9G.

(1) Property qualifying for tax abatements under Title 40, Chapter 9G, Code of Ala. 1975 must be classified as an approved activity, as defined in §40-9G-1.

(2) If the trade or business to be conducted by a private user at a given site is predominantly (i.e. more than 50% of the project investment) in the nature of an approved activity then all of the property to be acquired or constructed at said site will constitute industrial development property eligible for abatements under Chapter 9G. If the predominant activity is not in the nature of an approved activity, then only that portion used in an approved activity will be eligible for abatements under Chapter 9G and any related real property will not be eligible for an abatement.

(3) To constitute a qualifying project within the meaning of Title 40, Chapter 9G, Code of Ala. 1975, there must be an investment in capital expenditures that equals or exceeds $2,000,000 as part of any addition, expansion, improvement, renovation, re-opening, rehabilitation of a facility, or replacement of any existing equipment. The project must predominately involve an approved activity. Abatements pursuant to Chapter 9G are not available if a project agreement has been entered into with the Governor for the provision of other incentives.

Replacement equipment and capitalized costs associated with renovating, remodeling rebuilding, and maintaining an existing operating approved activity as part of a qualifying project will qualify for abatement.

(4) All abatements granted by Chapter 9G are subject to the requirements of Chapter 9B except as follows:

(a) County noneducational Ad Valorem Tax may be abated only with the consent by resolution of the governing body of the county. Municipal noneducational Ad Valorem Tax may be abated only with the consent by resolution of the governing body of the municipality. State noneducational Ad Valorem Tax may be abated only with the consent of the Governor. However, the governing body of a county and a municipality may separately authorize one or more public industrial authorities to provide by resolution for the consent on its behalf.

(b) The amount of any Ad Valorem Tax abatement must be equal to the Ad Valorem Tax owed, minus the Ad Valorem Tax owed for the tax year immediately preceding the qualifying project placed in service date.

(5) If an expansion project qualifies as both a major addition per Chapter 9B and a qualifying project per Chapter 9G, a private user may seek abatements

(a) solely under the authority of Chapter 9B,

(b) solely under the authority of Chapter 9G, or

(c) under both authorities with respect to different portions of its investment.

For example, for the portion of a proposed expansion which constitutes replacement equipment that would not otherwise qualify for abatement under Chapter 9B, a private user may elect to petition for a property tax abatement for the property under the authority of Chapter 9G. If the private user so elects, and regardless of the length of the abatement, the state, county and city would each have to separately consent to the abatement under Chapter 9G. For any expansion to property that constitutes both a major addition per Chapter 9B and a qualifying project per Chapter 9G, tax abatements must be granted under separate tax abatement agreements under Title 40, Chapter 9B, Code of Ala. 1975 and Title 40, Chapter 9G, Code of Ala. 1975.

(6) A change of ownership or assignment of interest of an operating industrial or research enterprise does not qualify the property for a new or additional abatement. The new owner will be allowed to receive the remainder of abatements previously granted.

(7) A change of ownership or assignment of interest of the property of a non-operating qualifying project to an unrelated party shall qualify the property for a new abatement. The property of the new owner or private user otherwise qualifies for an abatement in accordance with the statutes. A non-operating industrial or research facility will be considered one that has ceased operation for a period of six consecutive calendar months.

(8) Property that ceases to be used in the active conduct of an approved activity for six consecutive months will no longer be eligible for abatement of Ad Valorem Tax.
Author: Jennifer D. Byrd
Statutory Authority: Code of Ala. 1975, §40-2A-7(a)(5) and Title 40, Chapter 9B and 9G
History: **New Rule:** Filed November 16, 2018 effective December 31, 2018.

810-4-3-.10 Authorization For Abatement – Chapter 9G.

(1) Noneducational Ad Valorem Tax may be abated with respect to private use industrial property. Education taxes, as defined in 40-9B-3(5), Code of Ala. 1975, cannot be abated.

(2) Abatement of noneducational Ad Valorem Tax cannot exceed the maximum exemption period as defined in §40-9B-3, Code of Ala. 1975.

(3) In addition to the terms above, the abatement will terminate if the property ceases to be used in the active conduct of an industrial or research enterprise, or the approved activity for six (6) consecutive months.
Author: Jennifer D. Byrd
Statutory Authority: Code of Ala. 1975, §40-2A-7(a)(5), Title 40, Chapter 9B.
History: **New Rule:** Filed November 16, 2018 effective December 31, 2018.

810-4-3-.11 Procedures For Granting Abatement – Chapter 9G.

(1) A petition for abatement of noneducational Ad Valorem Tax may be made by the owner of a qualifying project to existing industrial development property, to the appropriate granting authority in accordance with the procedures described below. The petition must be accompanied by an application provided by the department and contain information that will permit the granting authority to make a reasonable cost/benefit analysis to determine qualification for abatement and maximum abatement period.

(2) All petitions for noneducational Ad Valorem Tax abatement, regardless of the maximum exemption period, requested under Title 40, Chapter 9G, Code of Ala. 1975, will be granted as follows:

(a) County noneducational Ad Valorem Tax may be abated only be the consent by resolution of the governing body of the county. The governing body of a county may separately authorize one or more public industrial authorities to provide by resolution for the consent on its behalf.

(b) Municipal noneducational Ad Valorem Tax may be abated only by the consent by resolution of the governing body of the municipality. The governing body of a municipality may separately authorize one or more public industrial authorities to provide by resolution for the consent on its behalf.

(c) State noneducational Ad Valorem Tax may be abated only with the consent of the Governor.

(3) The abatements granted by the granting authorities shall be embodied in an agreement between the granting authorities and the private user setting forth:

(a) The estimated amount of each abatement and the maximum exemption period.

(b) Good faith projections by the private user of the amount to be invested and the number of individuals to be employed with the corresponding payroll, initially and in the succeeding three years.

(4) The private user must file with the department within ninety (90) days after the granting of the abatements, a copy of the required agreements, consents and/or resolutions, and application.
Author: Jennifer D. Byrd
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-9B-5, 41-22-6, and Title 40, Chapter 9G.
History: **New Rule:** Filed November 16, 2018 effective December 31, 2018.

810-4-3-.12 Enforcement – Chapter 9G.

(1) The department shall enforce Title 40, Chapter 9B, Code of Ala. 1975, under the authority granted to the department §40-2-11, Code of Ala. 1975.

(2) The department through the Property Tax Division, shall review and conduct inspections and investigations as necessary on Ad Valorem Tax abatements granted under Title 40, Chapter 9B, Code of Ala. 1975.
Author: Jennifer D. Byrd
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5) and Title 40, Chapter 9B and Chapter 9G.
History: **New Rule:** Filed November 16, 2018 effective December 31, 2018.