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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. 83-021

REVENUE:

Application of Section 162 of the  
Revenue Act of 1939 to Newly-incorporated  
Foreign Corporations

Michael T. Woelffer, Acting Director  
Department of Commerce and Community Affairs  
222 South College  
Springfield, Illinois 62706

Dear Mr. Woelffer:

I have your letter wherein you state:

" \* \* \*

\* \* \* [A] corporation, recently formed in  
another state, is considering locating its  
initial manufacturing facility in Illinois,  
provided the corporation is eligible for tax  
abatement treatment by local taxing districts.  
The corporation concerned is a wholly-owned  
subsidiary of a large parent corporation which  
operates numerous subsidiaries throughout the  
nation and the world. The parent corporation,  
and several other subsidiaries now operate other

facilities in Illinois, in taxing districts in counties other than the proposed location of the new facilities. The Illinois site is in competition with sites in two other states which have already committed to abate local taxes, and a substantial investment in Illinois hangs in the balance.

\* \* \*

You ask the following questions relating to the circumstances described above:

1. Is a newly-incorporated foreign corporation which locates its first manufacturing facility in Illinois "a firm locating within the taxing district \* \* \* from another State" for purposes of section 162 of the Revenue Act of 1939 (Ill. Rev. Stat. 1982 Supp., ch. 120, par. 643), and thus, eligible for property tax abatement in accordance with its provisions?
2. Is an otherwise qualified subsidiary corporation, which is wholly-owned by a foreign corporation presently operating other facilities within the State either by itself or by other subsidiary corporations, eligible for property tax abatement under section 162 of the Act?

For the reasons hereinafter stated, it is my opinion that the corporation in question is "a firm locating within the taxing district \* \* \* from another State" within the meaning of section 162 and therefore, if otherwise qualified, is eligible for tax abatement by local taxing districts. Further, it is my opinion that the operation of other facilities within Illinois by corporate affiliates of the newly-created corporation will not, in general, disqualify that corporation from receiving local property tax abatement.

Section 162 of the Act provides in pertinent part:

"Each county clerk shall estimate and determine the rate per cent upon the assessed valuation of the property in the respective taxing districts \* \* \* in his county that will produce, within the proper divisions of such county, not less than the net amount of the several sums that will be required by the county board or certified to him according to law \* \* \*.

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.

\* \* \*

"

In opinion No. 82-010, issued May 14, 1982, my predecessor advised that section 162 authorizes property tax abatement in three circumstances only: firstly, when an industrial firm locates within a taxing district from another State, territory, or country; secondly, when an industrial firm is created within Illinois during the calendar year immediately preceding the decision by a taxing body to abate taxes; and lastly, when an industrial firm expands a previously-existing facility within the taxing district. (Ill. Att'y Gen. Op. No. 82-010, issued May 14, 1982, at 4-5.) Since the foreign corporation in

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question will engage in manufacturing, it is assumed to be an "industrial firm" for purposes of the application of section 162 of the Act. (See Ill. Att'y Gen. Op. No. 82-010, issued May 14, 1982, at 4.) In response to your first question, it is my opinion that a newly-incorporated foreign corporation which locates its initial manufacturing facility within Illinois, locates within the taxing district from another State within the meaning of section 162 of the Act, and is therefore eligible for property tax abatement by taxing districts in which the new facility is located.

It is generally recognized that the domicile of a corporation is in the State of its incorporation, even when the corporation maintains its offices or principal place of business, and conducts the majority of its business, elsewhere. (Martin v. Central Trust Co. (1927), 327 Ill. 622, 635; Riley v. Gulf, Mobile & Ohio Railroad Co. (S. Dist. Ill. 1959), 173 F. Supp. 416, 419.) Thus, the corporation in question is domiciled in the State of its incorporation regardless of where it may intend to establish its manufacturing facilities or principal place of business. If the corporation determines to locate a manufacturing facility in Illinois, it will, under the plain language of section 162 of the Act, locate in Illinois from another State and be eligible for tax abatement.

Further, this conclusion is in accordance with the fundamental principle of statutory construction that a statute

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should be interpreted and construed so as to effectuate the intent of the General Assembly in its enactment. (Karlson v. Murphy (1944), 387 Ill. 436, 443.) That part of section 162 of the Revenue Act of 1939 which authorizes local property tax abatement for industrial firms in certain circumstances was added by Public Act 82-316, effective January 1, 1982 (Senate Bill 486). Representative Davis, House sponsor of Senate Bill 486, explained its purpose as follows:

" \* \* \*

\* \* \* Senate Bill 486 is in keeping with the notion of trying to lure industry back into the State of Illinois and into our towns and villages and even, of course, into the major cities that are decaying and lacking for industry moving out. \* \* \* I think if we're going to continue along the line of trying to bring industry back into the State of Illinois we have to provide similar incentives that the Sun Belt states do in relation to trying to lure that industry in and giving them some sort of inducement to settle in our towns and cities and villages in Illinois. \* \* \*

\* \* \*

"  
(Remarks of Representative Davis, June 17, 1981,  
House Debate on Senate Bill No. 486, at 133.)

In the circumstances you have described, the corporation in question is considering locating a manufacturing facility in one of three States, including Illinois. According to the remarks of its House sponsor, the intent of Public Act 82-316 is to induce industry to locate in Illinois by offering financial incentives in the form of property tax abatements. The

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offering of such a tax incentive to a newly-formed foreign corporation is clearly within the intent of section 162 of the Revenue Act of 1939, as well as within its terms.

With respect to your second question, you advise that, although the corporation at issue does not currently operate any facilities in Illinois, both its parent corporation and other subsidiaries of the parent do operate facilities within the State. Given these circumstances, you ask whether the newly-formed subsidiary corporation will be eligible for tax abatement by local taxing bodies should it locate a manufacturing facility within Illinois.

It is a well-established principle that a corporation is separate and distinct as a legal entity from other corporations with which it may be affiliated, and mere stock ownership in one corporation by another, or the use of common officers and directors, does not create a relationship of principal and agent, representative or alter ego between the two. (Main Bank v. Baker (1981), 86 Ill. 2d 188, 204; Superior Coal Co. v. Department of Finance (1941), 377 Ill. 282, 289-90.) Although the legal fiction of distinct corporate existence will be disregarded when necessary to circumvent fraud or when the corporation is so organized and its affairs so conducted as to make it merely an instrument of another corporation, there is a

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presumption of corporate regularity which will not be disregarded without a substantial showing that the corporation was really a dummy or sham for another corporation or party. Walker v. Dominick's Finer Foods, Inc. (1980), 92 Ill. App. 3d 645, 649.

In the absence of evidence that the corporation in question was organized in order to allow another corporation to circumvent restrictions in section 162 of the Revenue Act of 1939, the activities of its affiliated corporations should not be imputed to it. Therefore, it is my opinion that an otherwise qualified subsidiary corporation is eligible for tax abatement under section 162 of the Revenue Act of 1939 even though its parent or other affiliated corporations currently operate facilities within the State.

Very truly yours,



A T T O R N E Y G E N E R A L