



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS

May 13, 2020

David B. Miller, Esq.  
Attorney for the Forrest County Board of Supervisors  
Post Office Box 1310  
Hattiesburg, Mississippi 39403-1310

Re: Tax Exemption Pursuant to Miss. Code Ann. Section 27-31-53

Dear Mr. Miller:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

### **Questions Presented**

Under the 2018 amendments to Miss. Code Ann. Section 27-31-53, does a production or processing facility located at the same physical address as a licensed free port warehouse qualify as “one (1) other location in this state?”

If so, to the extent an exemption of personal property qualifying under Section 27-31-53(d) specifically is discretionary, is the Board of Supervisors required to exempt such property pursuant to a free port warehouse exemption granted for a five (5) year term effective January 1, 2016, some two years before the effective date of the 2018 amendments?

### **Brief Response**

A production or processing facility located at the same physical address as a licensed free port warehouse, but located in a completely separate facility, structure, place or area, qualifies for an exemption pursuant to Section 27-31-53(d), at the discretion of the governing authority of the county or municipality where the warehouse or storage facility is located.

The Board of Supervisors is not required to exempt personal property pursuant to a free port warehouse exemption granted for a five (5) year term effective January 1, 2016, some two years before the effective date of the 2018 amendments. A new application should be submitted for a

free port warehouse license that includes the production or processing facility that was not previously considered by the Board.

### **Applicable Law and Discussion**

Miss. Code Ann. Sections 27-31-51 through 27-31-61 provide for the licensing of qualified free port warehouses and granting exemptions from ad valorem taxes to certain personal property which is temporarily stored in such warehouses while in transit to another state. Section 27-31-53 states that:

All personal property in transit through this state which is (a) moving in interstate commerce through or over the territory of the State of Mississippi, (b) which was consigned or transferred to a licensed “free port warehouse,” public or private, within the State of Mississippi for storage in transit to a final destination outside the State of Mississippi, whether specified when transportation begins or afterward, (c) manufactured in the State of Mississippi and stored in separate facilities, structures, places or areas maintained by a manufacturer, licensed as a free port warehouse, for temporary storage or handling pending transit to a final destination outside the State of Mississippi, or (d) consigned or transferred to a licensed free port warehouse, public or private, within the State of Mississippi, for storage pending transit to not more than **one (1) other location in this state** for production or processing into a component or part that is then transported to a final destination outside of the State of Mississippi, may, in the discretion of the board of supervisors of the county wherein the warehouse or storage facility is located, and in the discretion of the governing authorities of the municipality wherein the warehouse or storage facility is located, as the case may be, be exempt from all ad valorem taxes imposed by the respective county or municipality and the property exempted therefrom shall not be deemed to have acquired a situs in the State of Mississippi for the purposes of such taxation.

(Emphasis added).

At issue is what qualifies as “one (1) other location in this state.” Miss. Code Ann. Section 27-31-51 provides the definition for free port warehouse licensing; however, it not does specifically define what constitutes “more than one (1) other location in this state for production or processing.” Section 27-31-51(2) does set forth that the manufacturer of personal property maintain “separate facilities, structure, place or area” for temporary storage of personal property pending transfer of the property to a location outside of Mississippi. Section 27-31-51(2) specifically states as follows:

A manufacturer of personal property that maintains separate facilities, structures, places or areas for the temporary storage and handling of such personal property pending transit to a final destination outside the State of Mississippi shall be eligible for licensing under Sections 27-31-51 through 27-31-61 as a “free port warehouse,” and any license issued to such a manufacturer before January 1, 2012, is hereby ratified, approved and confirmed.

*Black's Law Dictionary*, Fifth Edition, defines "separate" as "individual, distinct, particular, disconnected." Section 27-31-51 clearly and unambiguously allows for an exemption of personal property stored in a warehouse or storage facility if it is maintained separately from the processing or production facility. The statute does not specifically require that the warehouse or storage facility be maintained at a physical address other than that of the processing or production facility.

It is, therefore, the opinion of this office that a production or processing facility, though located at the same physical address of the warehouse or storage facility, but determined by the governing authority to be a completely separate facility, structure, place or area from the warehouse or storage facility, may qualify as "not more than one (1) other location in this state" as required by Section 27-31-53. Of course, it is solely within the discretion of the governing authority of the county or municipality wherein the warehouse or storage facility is located to determine whether an exemption will be granted to personal property being stored at such facility pursuant to Section 27-31-53.

In response to your second question, it is clear from your letter that the original free port warehouse license was obtained in 2016, prior to the 2018 addition of subparagraph (d) to Section 27-31-53. The 2018 amendment to Section 27-31-53 authorizes a tax exemption for incoming raw materials and work-in-progress, which are being stored prior to being produced or processed at an in-state facility and then being transported from that facility to a destination out of state. Section 27-31-53(d) specifically states as follows:

All personal property in transit through this state which is . . .

(d) consigned or transferred to a licensed free port warehouse, public or private, within the State of Mississippi, for storage pending transit to not more than one (1) other location in this state for production or processing into a component or part that is then transported to a final destination outside of the State of Mississippi, may, in the discretion of the board of supervisors of the county wherein the warehouse or storage facility is located, and in the discretion of the governing authorities of the municipality wherein the warehouse or storage facility is located, as the case may be, be exempt from all ad valorem taxes imposed by the respective county or municipality and the property exempted therefrom shall not be deemed to have acquired a situs in the State of Mississippi for the purposes of such taxation.

. . .

When the Forrest County Board of Supervisors granted the 2016 free port warehouse license, it likely did not consider the production or processing facility when making its determination to grant the license and exemptions for the personal property being stored at the warehouse or storage facility since that language was absent from the statute at the time. Consequently, a new application should be submitted for a free port warehouse license to include the production or processing facility. At that time, the Board may properly consider and make a factual determination as to whether it will grant a tax exemption for the personal property that will be transferred from the warehouse or storage facility to the production or processing facility to be finally transported from that facility to a destination out of state.

David B. Miller, Esq.

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Avery Mounger Lee*

Avery Mounger Lee  
Special Assistant Attorney General

OFFICIAL OPINION