



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

August 2, 2022

Phillip M. Whitehead, Esq.  
Attorney, Tishomingo County Board of Supervisors  
Post Office Box 38  
Tishomingo, Mississippi 38873

Re: Ad Valorem Tax Exemptions for Manufacturing and Free Port  
Warehouses

Dear Mr. Whitehead:

The Office of the Attorney General has received your request for an official opinion.

### **Background**

According to your request, two related entities with operations in Tishomingo County have previously been granted various manufacturing and free port warehouse tax exemptions.

During the manufacturing process, raw material assets are ultimately transferred between entities. You state that neither entity's inventory has been subject to ad valorem taxes because it is held in a free port warehouse before shipping to one other location within the state for production into a compound part that is ultimately shipped out of state.

### **Question Presented**

May Tishomingo County grant the manufacturing exemption pursuant to Mississippi Code Annotated Sections 27-31-101 *et seq.* and the free port warehouse exemption for personal property in transit through the state pursuant to Mississippi Code Annotated Sections 27-31-51 *et seq.* to the entities in question?

### **Brief Response**

Whether an entity is eligible for the manufacturing exemption under Sections 27-31-101 *et seq.* and the free port warehouse exemption under Sections 27-31-51 *et seq.* is a question of fact for the governing authorities of Tishomingo County. If an entity is eligible, the governing authorities of Tishomingo County have the discretionary authority to grant both exemptions.

### **Applicable Law and Discussion**

As an initial matter, this office cannot opine on past actions of the Tishomingo County Board of Supervisors (the “Board”). Pursuant to Section 7-5-25, this office may only opine on prospective questions of law. An Attorney General’s Opinion can neither validate nor invalidate past action. MS AG Op., *Magee* at \*1 (Aug. 29, 2008). We offer the following opinion on the question of future action of the Board in granting potential ad valorem tax exemptions.

You ask about two different potential tax exemptions, the first one being Section 27-31-101, which authorizes the governing authorities to grant exemptions from ad valorem taxation to certain manufacturers and other new entities for a specified period of time, subject to certain limitations. *Id.* at (1). Ultimately, whether the entities qualify for tax exemption pursuant to Section 27-31-101 for property at various stages of the manufacturing process is for the Board to decide, and it has the discretion to determine whether to grant the exemption.

You also ask whether the two entities and their respective property are eligible for tax exemptions under Section 27-31-53, which pertains to free port warehouses. Free port warehouses must be licensed by the governing authorities of the county or municipality where the warehouse or storage facility is located. Miss. Code Ann. § 27-31-51. Personal property which is in transit in this state is eligible for the exemption if it falls under one of four distinct scenarios specified in the statute. Even if the personal property at issue fits under one of the four scenarios, the granting of the exemption is discretionary, and the governing authorities “must review the factual situation as it relates to the goods in question being stored during the manufacturing process, determine if these goods meet one of the [four] requirements set forth in the statute, and then make its decision whether to grant the exemption after such review.” MS AG Op., *Gamble* at \*1 (Oct. 20, 2000). The free port warehouse exemption “shall be in addition to all other exemptions heretofore granted by the laws of the State of Mississippi.” Miss. Code Ann. § 27-31-61.

One of the entities about which you inquire has a separate on-site production facility in addition to its warehouse. This office recently opined that a processing or production facility located at the same physical address as the storage facility or warehouse, which the governing authority determines to be a completely separate facility, structure, place, or area from the storage facility or warehouse, may qualify as “not more than one (1) other location in this state” as required by Section 27-31-53. MS AG Op., *Miller* at \*2 (May 13, 2020). *Miller* reiterates that it is within the sole discretion of the governing authority of the county where the storage facility or warehouse is located to determine whether to grant an exemption to personal property being stored therein.

The questions you present require the Board to make factual determinations about the two entities’ facilities and personal property, with such findings spread upon its minutes. Whether to grant exemptions under Sections 27-31-101 *et seq.* and 27-31-51 *et seq.* is left to the sole discretion of the Board.

Phillip M. Whitehead, 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/ Misty Monroe*

Misty Monroe  
Assistant Attorney General

OFFICIAL OPINION