



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 28, 2022

Michael R. Moore, Esq.
Attorney, City of Pascagoula
Post Office Box 1529
Pascagoula, Mississippi 39568-1529

Re: Retroactive Tax Exemptions

Dear Mr. Moore:

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

Background

Your request involves industrial tax exemptions and seeks guidance on the application of Mississippi Code Annotated Sections 27-31-105, 27-31-107, and 27-31-109 as they relate to applications for tax exemptions for replacement of industrial equipment. An industrial entity in Pascagoula acquired replacement equipment in both 2014 and 2016. In 2015, the entity submitted an application for a ten-year tax exemption for the replacement equipment acquired in 2014. The entity also submitted an application in 2017 for a five-year exemption for the other replacement equipment acquired in 2016. While the City of Pascagoula (the “City”) granted preliminary approval of the applications, it never took any further action granting or denying final approval. On May 31, 2022, the entity submitted new applications on the 2014 replacement equipment for a tax exemption for the years 2022, 2023, and 2024 and on the 2016 replacement equipment for a five-year exemption for the years 2022, 2023, 2024, 2025, and 2026. The City has granted preliminary approval, and the Department of Revenue has certified both applications’ eligibility.

Questions Presented

1. Would granting final approval in 2022 of the subsequent tax exemption applications for replacement equipment acquired in 2014 and 2016 violate the prohibition against granting exemptions retroactively?
2. If you determine that granting final approval of the above-referenced exemption applications would not constitute retroactive exemptions, are you aware of any other

requirements or restrictions in Mississippi Code Annotated Sections 27-31-101 *et seq.* that would restrict the City from granting the applications?

Brief Response

1. Sections 27-31-105 *et seq.* authorize the City, in its discretion, to grant both newly submitted tax exemption applications without violating the prohibition against granting exemptions retroactively so long as the exemptions begin the year the new request is submitted and do not exceed the original ten-year total limitation.
2. Pursuant to Section 7-5-25, we are unable to respond to this question by official opinion because it is a mixed question of law and fact and goes beyond the scope of an official opinion.

Applicable Law and Discussion

As an initial matter, opinions of this office are issued on prospective questions of law for future guidance of those officials entitled to receive them. MS AG Op., *Goddard* at *1 (June 8, 2007). An Attorney General's opinion can neither validate nor invalidate past action. MS AG Op., *Magee* at *1 (Aug. 29, 2008). Therefore, this office cannot opine on any previous actions taken by the City. We offer the following for prospective guidance only.

Section 27-31-101 authorizes municipal authorities, in their discretion, to grant exemptions from ad valorem taxation to certain manufacturers and other new enterprises as determined by the Department of Revenue and enumerated in subsection (3). *See* MS AG Op., *Whitehead* at *1 (Aug. 2, 2022) (opining that whether an entity is eligible for the exemption under Section 27-31-101 is a question of fact for the governing authorities). Municipal authorities also may grant ad valorem tax exemptions to those enterprises specified in Section 27-31-101(3) that make "additions to or expansions of the facilities or properties or replace[] equipment used in connection with or necessary to the operation of such enterprise." Miss. Code Ann. § 27-31-105. While the method for obtaining and granting exemptions for manufacturers and new enterprises is set forth separately in Sections 27-31-107 and 27-31-109, the procedure for requests and the time limits for exemptions for replacement equipment are as follows:

For any additions, expansions or replacements with reference to any particular new enterprise, which have been completed during any calendar year, only one (1) request must be made for the exemptions sought for the additions, expansions or replacements. The time of the exemption shall commence from the date of completion of the additions, expansions or replacements, and shall extend for a period not to exceed ten (10) years thereafter; however, boards of supervisors and municipal authorities, in lieu of granting the exemption for one (1) period of ten (10) years, may grant the exemption in consecutive periods of five (5) years each, but the total of such consecutive periods shall not exceed ten (10) years. The initial request for an exemption must be made in writing by June 1 of the year immediately following the year in which the additions, expansions or replacements are completed. If the initial request for the exemption is not timely made, the board of

supervisors or municipal authorities may grant a subsequent request for the exemption and, in such case, the exemption shall begin on the anniversary date of completion of the additions, expansions or replacements in the year in which the request is made and may be for a period of time extending not more than ten (10) years from the date of completion of the additions, expansions or replacements. Any subsequent request for the exemption must be made in writing by June 1 of the year in which it is granted.

Miss. Code Ann. § 27-31-105(1). If the City finds that the initial applications for exemptions were not timely made, then the City has the authority to grant the subsequent requests. Ultimately, whether an entity is entitled to a tax exemption for replacement equipment pursuant to Section 27-31-105 is a factual determination that may only be made by the City. MS AG Op., *Nowak* at *3 (Dec. 14, 2018); MS AG Op., *Williams* at *2 (June 28, 2012) (granting ad valorem tax exemptions strictly discretionary with governing authorities).

You question whether the two subsequent applications for exemption, if granted, would violate the prohibition against granting exemptions retroactively. There is no authority for the City to make a tax exemption decision that should have occurred during the term of a previous board. *See Williams* at *2 (opining that no authority exists to retroactively grant tax exemptions dating back to a prior time); MS AG Op., *Dreher* at *2 (Mar. 17, 2000) (municipal authorities may not retroactively approve actions dating back to a prior time). However, the City is considering new, subsequent exemption applications, and if the City, in its discretion, grants these exemptions, it may only grant them for the current tax year and the years remaining within the ten-year total period, not the previous tax years. Miss. Code Ann. § 27-31-105 (stating an exemption granted in response to a subsequent request shall begin “in the year in which the request is made. . .”). Tax exemptions cannot be granted for years prior to the current tax year. *City of Jackson v. Sly*, 343 So. 2d 473, 476 (Miss. 1977) (holding that retroactive exemptions resulting in tax refunds would untenably burden taxing authorities); *see also* MS AG Op., *Creekmore* at *3 (Aug. 15, 2003). “Any attempt to grant a tax exemption retroactively would fail for any year prior to the current tax year.” *Williams* at *2. According to the facts in your request, the entity is requesting tax exemptions for the current year (the year in which the subsequent applications were filed) and future tax years that do not exceed the ten-year total period allowed by the statute.

It is the opinion of this office that there would be no violation of the prohibition against retroactivity if the municipal governing authorities grant subsequent exemptions, as evidenced by an order entered upon it minutes, to commence in the current tax year, not a previous tax year, and applying to the remaining years within the original ten-year total limitation period.

Your second question asks this office to delineate any other requirements or restrictions in Sections 27-31-101 *et seq.* that would restrict the City from granting the requested tax exemptions. Your question is a mixed question of law and fact, and it is beyond the scope of an official opinion to attempt to list any and all requirements or restrictions pertaining to the City’s authority to grant ad valorem tax exemptions. *See* MS AG Op., *Lee* at *4 (Aug. 6, 2021) (citing MS AG Op., *Barrett* at *1 (Aug. 29, 1984) (refusing to respond by official opinion on the basis that the question posed was overly broad)). Accordingly, we are unable to respond to your second question by official opinion.

Michael R. Moore, 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