

# EXHIBIT D

Opinion No. 2014-067

August 8, 2014

The Honorable John Payton  
State Representative  
Post Office Box 181  
Wilburn, Arkansas 72179-0181

Dear Representative Payton:

This is in response to your request for my opinion on the following questions concerning tax exemptions under the Regional Intermodal Facilities Act, A.C.A. § 14-143-101 *et seq.*:

1. If an authority enters into a lease with a private entity under the Regional Intermodal Facilities Act, is the entity exempt from taxes as described in § 14-143-121?
2. If the answer to Question (1) depends on the particular facts related to the lease relationship, are there any guidelines to consider in determining whether the statutory tax exemptions may apply to the lessee?
3. Is there any type of contractual relationship that an authority may enter into with a private entity that would result in the entity being exempt from taxes as described in § 14-143-121?

## RESPONSE

The tax exemptions under A.C.A. § 14-143-121 extend only to an “authority” created under the provisions of the Regional Intermodal Facilities Act. The answer to your first question is therefore “no,” in my opinion. An entity that enters into a lease with a regional intermodal authority enjoys no tax exemption pursuant to this statute. The answer to this question is not dependent upon or in any way affected by the facts related to any such lease. Consequently, in response

to your second question, it is my opinion that there are no guidelines to consider. These statutory tax exemptions do not apply to any entity other than a regional intermodal authority, irrespective of any lease or other contractual arrangement that an authority may enter. The answer to your third question is necessarily “no,” in my opinion.

***Question 1 - If an authority enters into a lease with a private entity under the Regional Intermodal Facilities Act, is the entity exempt from taxes as described in § 14-143-121?***

Section 14-143-121, in relevant part, extends a tax exemption to an “authority”<sup>1</sup> under the Regional Intermodal Facilities Act (“the Act”) as follows:

(a) *Each authority* shall be exempt from the payment of any taxes or fees to the state, or any subdivision thereof, or to any office or employee of the state, or of any subdivision thereof; however, each authority shall withhold and remit state income taxes as prescribed by § 26-51-901 et seq.

(b)(1) *The property of each authority* shall be exempt from all local and municipal taxes.<sup>2</sup>

As you can see, the exemptions under this statute extend to an “authority” and its property. There is no suggestion on the face of this statute that the exemptions apply to any other entity. In response to your specific question, therefore, a private entity that enters into a lease with an authority enjoys no tax exemption pursuant to this statute.

I note that in presenting your questions you refer to A.C.A. § 14-143-126(b), which requires that leases entered by an authority “shall be for some purpose associated with intermodal transportation activities.” Although you have not stated as much, you may be speculating that a private lessee benefits from the statutory tax exemptions, given that the lessee must, according to this subsection,

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<sup>1</sup> An “authority” is a public corporation created jointly by municipalities and/or counties “for the purpose of acquiring, equipping, constructing, maintaining, and operating regional intermodal facilities.” A.C.A. §§ 14-143-103, -104 (Repl. 1998). For the definition of “facilities,” see A.C.A. § 14-43-102(6) (Supp. 2013). The term “intermodal” means “more than one (1) mode of interconnected movement of freight, commerce, or passengers.” *Id.* at (8).

<sup>2</sup> A.C.A. § 14-43-121 (Repl. 1998) (emphasis added).

be engaged in a purpose associated with intermodal transportation activities. In my opinion, however, there is no legal basis for such speculation. The Arkansas Supreme Court has consistently held that there is no implied exemption from a tax, but rather a claimant must clearly establish entitlement to an exemption:

The taxpayer carries a rather heavy burden to establish a right to the claimed exemption. “[T]his court has consistently held that the burden is on the taxpayer to establish clearly that the legislature intended the claimed exemption since taxation is the rule and exemption is the exception. An exemption cannot be implied.” [T]he burden is on the claimant “to establish clearly his right to exemption.” “Let it also be remembered that a tax exemption must be strictly construed, ‘and to doubt is to deny exemption.’”<sup>3</sup>

It must be concluded in light of these interpretive rules that the exemptions under A.C.A. § 14-143-121 extend exclusively to the authority. More specific to your question, any taxes a lessee might incur in the course of its operations are unaffected by this statute, in my opinion.<sup>4</sup>

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<sup>3</sup> *Heath v. Midco Equipment Co.*, 256 Ark. 14, 16, 505 S.W.2d 739 (1974) (citations omitted). *See also Arkansas Teacher Retirement System v. Short*, 2011 Ark. 263, 6, 381 S.W.3d 834, 838 (“It is settled that a taxpayer must establish an entitlement to an exemption beyond a reasonable doubt.”).

<sup>4</sup> It perhaps bears noting regarding these statutory tax exemptions that any such legislative grant of an exemption from ad valorem taxation is qualified by the constitutional requirement that the exempted public property must be put to an exclusively public use. Article 16, § 5 of the Arkansas Constitution exempts from property taxation “public property used exclusively for public purposes.” Section 6 of Article 16 provides that “[a]ll laws exempting property from taxation, other than as provided in this Constitution shall be void.” The Arkansas Supreme Court, in interpreting art. 16, § 5’s exemption for public property, has consistently held that in order for the property to be exempt from taxation two elements must be present: 1) the property must in fact be “public property,” that is it must be owned by a public entity; and 2) it must be used exclusively for public purposes. *See City of Little Rock v. McIntosh*, 319 Ark. 423, 892 S.W.2d 462 (1995); *Phillips v. City of Fayetteville*, 306 Ark. 87, 811 S.W.2d 308 (1991); *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 663 (1960). Both elements must be satisfied to meet the constitutional test. It is not the ownership of the property that entirely determines the matter. *See McIntosh*, 319 Ark. at 428 (stating with regard to A.C.A. § 14-362-121(b)(1) – which provides that “the property of each [regional airport] authority shall be exempt from all local and municipal taxes” – that “the statute must be read in light of the constitution, and that means that an airport authority will be exempt from paying ad valorem taxes when the land is used solely for public purposes.”). *See also Arkansas Teacher Retirement System v. Short*, 2011 Ark. 263, 381 S.W.3d 834, 840 (“[U]nless the property utilized by an agency is actually and exclusively used for a public purpose, it is not entitled to an exemption under the constitution.”); *Hilger v. Harding College*, 231 Ark. 686, 694, 331 S.W.2d 851 (1960) (“The property under our constitution must be actually occupied or made use of for a public purpose....”).

Of course, determining the taxable status of particular property is a matter for the local tax assessor, subject to judicial review. *See Pulaski County v. Jacuzzi Bros.*, 317 Ark. 10, 875 S.W.2d 296 (1994).

***Question 2 - If the answer to Question (1) depends on the particular facts related to the lease relationship, are there any guidelines to consider in determining whether the statutory tax exemptions may apply to the lessee?***

The answer to Question (1) is “no,” in my opinion, irrespective of the particular facts related to a lease. As explained above, the exemptions under A.C.A. § 14-143-121 apply solely to the authority, and no other entity. In response to your specific question, there are no guidelines to consider because the facts related to a lease relationship cannot conceivably make a lessee eligible for these tax exemptions.

***Question 3 - Is there any type of contractual relationship that an authority may enter into with a private entity that would result in the entity being exempt from taxes as described in § 14-143-121?***

No. See responses above.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM/EAW:cyh