

Instruction: This is a model letter. Adapt to fit your facts and circumstances.

D A T E

VIA FACSIMILE AND
U.S. MAIL

N A M E
C O M P A N Y
A D D R E S S L I N E
C I T Y , S T A T E Z I P C O D E

Re: Application for Exemption of Ad Valorem Taxes

Dear :

This letter is to update you on the status of the application for exemption from ad valorem taxes which our firm filed on behalf of . The bottom line is that the application is presently stalled with the County Board of Supervisors due to a dispute as to the interpretation of Code Annotated (Supp.). I am working with , Executive Director of , and , Administrator for the County Board of Supervisors to resolve the conflict and have the application approved. Unfortunately, this may require obtaining an opinion letter from the Attorney General's office or filing a declaratory judgment action. As a result, it may take several months to get the application approved, assuming any ruling is in our favor.

The details of how we arrived at our present situation are as follows: As you know we filed an Application for Exemption from Ad Valorem Taxes pursuant to CODE on or about . Duplicate originals of the application and one copy were forwarded , Administrator for the County Board of Supervisors with copies to at and with . It is the practice of the County Board of Supervisors to refer all applications for tax exemptions to , who then makes recommendations to the Board of Supervisors regarding the granting of the application and the term of the exemption. As a general rule, the Board of Supervisors follow the exact recommendation of . Because the committee on tax exemption only meets once or twice a month and the Board of Supervisors only meet on the first of each month, it was not unusual that I had heard nothing regarding approval or denial of the application by the end of January. In fact, applications are routinely granted without any notice to the parties.

When I checked on the status of our application towards the end of , told me that the application had never been referred to . When I told him that we had sent him a copy in the mail, he stated that he did not receive it. Moreover, indicated to me that an Attorney

General's opinion had been issued in _____ which interpreted the statute as to provide that the exemption applied only to that portion of goods shipped out of state, and that the Board of Supervisors could not grant _____ an exemption on all of its inventory. When I questioned about this, he could not direct me to any specific attorney general opinion letter or ruling from the State Tax Commission. After my conversation with _____, I spoke with _____ and your office indicated that there was a problem regarding the interpretation of the statute and that I was not sure whether we would be able to qualify for the exemption, whether we would only be able to exempt a portion going out of state, or whether it would be necessary to litigate the matter in order to get a determination of the issue.

After talking with _____, I continued to attempt to "get to the bottom" of what _____ had told me, because it simply did not make sense. Much of what _____ was trying to use as an explanation to justify why _____ could not receive the exemption appeared to apply to the exemption of a free port warehouse, which is covered by CODE. Although I tried to explain to _____ that we were not applying under the free port statutes, but were making an application under _____, he insisted that the limitations which he said the Attorney General had put on the statute applied. We even discussed in detail the fact that there was nothing anywhere in the statute which related to any percentages or calculations of amount shipped out of state. _____ further told me that the only person that he knew who could explain it to me was _____, an attorney at the firm in _____.

After talking with _____, I contacted _____ at the _____ State Tax Commission, Property Tax Division. He indicated to me that he knew of no State Tax Commission ruling which would prevent _____ from obtaining the exemption set forth in _____. As he correctly noted, the statute is at the discretion of the Board of Supervisors and does not require any approval from the State Tax Commission. Because of this fact, he did not have a lot of experience with _____, but stated that he believed the exemption should be available to _____.

After talking with _____, I also talked with _____, a staff attorney for the _____ Attorney General who deals primarily with tax exemption issues. _____ and I discussed in hypothetical terms a situation like that of _____. In particular, we discussed the fact that the statute had been amended in _____ to provide that the exemption applied to distributors and wholesale merchants. We compared the language of the old statute and the new statute and also discussed a case decided under the old statute. That case, _____, interpreted an old version of _____ to apply only to goods manufactured in _____. In _____, a New York corporation sought an exemption for goods manufactured outside the state of _____, but warehoused in _____. The city denied the application and on appeal to the Circuit Court of _____ County, the Circuit Court reversed the city and granted the exemption. The case was then appealed to the _____ Supreme Court who ruled that the exemption did not apply on the basis of language in the old statute _____ and _____ of the Constitution.

Although we cannot guarantee or opine that _____ is absolutely entitled to the exemption requested under _____, we believe, that given the present wording of the statute and the apparent intent of the legislature, that the _____ case can be distinguished and there is a reasonable basis for granting the exemption as requested. _____ verbally agreed with our position, with the caveat that it was not a formal opinion and she would be required to do additional research before rendering an

official opinion. also stated that there have been five AG opinions regarding , the latest being in 1991, and none of the opinions have dealt with the statute as revised.

In addition, I also talked with to see if she could shed some light onto the situation and 's thinking. Apparently, has relied on to some extent in determining what exemptions are available to various entities. It was ' opinion that in the past, had only been for goods manufactured in . However, she agreed that with the changes in the statute, may be entitled to the exemption.

Although I have no proof, it is my suspicion that after we filed our application, told the Board of Supervisors that we could not qualify for the exemption because our goods are not manufactured in , and nothing was done with regard to the application. I was never notified of any problem, nor did tell me about any purported adverse interpretation of the statute until I inquired in late . now says that he cannot find the application and is not sure whether it was ever filed. I know that it was sent to his office. suggested maybe that a bundle of our mail got lost, but I find that difficult to believe, considering that received his copy and I know of no one else claiming to have failed to receive any correspondence sent from our office. Rather, I believe that was confused about our ability to receive the exemption and that he either told the Board of Supervisors to hold off on taking any action or simply ignored the matter.

Based on the conversations I have had with all the various parties, it is my recommendation that we proceed with attempting to obtain the exemption under § , even if this requires obtaining an Attorney General's opinion. I do not believe, based on his confusion regarding the law and his apparent reliance on that will concede that is entitled to the exemption without such an opinion from the Attorney General. One alternative would be to file a declaratory judgment action in the Circuit Court of County for determination as to the availability of the exemption to . Another alternative may be to withdraw the application under and proceed with efforts to obtain a free port warehouse exemption. A free port exemption has the advantage of not being a limited time to ten (10) years and also currently exempts school taxes. The obvious down side is that a free port license must be obtained from State Tax Commission and the exemption will be limited to that portion of goods which are shipped out of state as opposed to all inventory.

At the present time, I am continuing my discussions with and in hopes of getting them to agree that is entitled to the exemption under , although I do not expect any success without obtaining an opinion from the Attorney General or a judicial decision. I would be most appreciative if you would give this matter some consideration and inform me as to how would like to proceed. In the meantime, if you have any questions or would like to discuss this further, please do not hesitate to contact me.

Sincerely,

By:

CC: :