STATE OF ALABAMA, DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE
	§	ADMINISTRATIVE LAW DIVISION
vs.		
	§	DOCKET NO. F. 92-281
HISPAN CORPORATION 1313 North Market Street Room 7330, Southeast Wilmington, DE 19894,	§	
Taxpayer.	§	

FINAL ORDER

The Revenue Department assessed franchise tax against Hispan Corporation ("Taxpayer") for the years 1988 through 1991. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on April 15, 1993. David Pierson appeared for the Taxpayer. Assistant counsel Dan Schmaeling represented the Department. Jim Sizemore and John Mosley, Director and Project Manager, respectively, for the Alabama Development Office were also present at the hearing.

This case involves the franchise tax deduction provided at Code of Ala. 1975, §40-14-41(d)(2)d. That section allows a corporation to deduct from capital employed in Alabama all amounts invested in certain high unemployment counties ("qualifying counties") in Alabama.[1]

[1] The deduction is available only if a qualification certificate was issued between April 30, 1985 and April 30, 1990.

The Taxpayer invested $66,000,000.00 in Morgan County in 1990 and another $70,000,000.00 in 1991. The Taxpayer then deducted those amounts on its Alabama franchise tax returns for those years pursuant to §40-14-41(d)(2)d. The Department denied the deductions and the Taxpayer appealed to the Administrative Law Division.

The Department does not dispute the amount of the deductions or that Morgan County was a qualifying county as defined by the statute.[2] However, the deductions were denied because (1) the State and the Taxpayer failed to enter into an agreement for investment of the money, as required by the statute, and (2) the State failed to issue a qualification certificate to the Taxpayer, also as required by the statute.

The Taxpayer concedes that neither the required agreement nor the required qualification certification were issued in this case. Nevertheless, the Taxpayer argues that the deductions should still be allowed because various State and Morgan County officials told the Taxpayer that the deduction was available, and based thereon the Taxpayer believed that it would be allowed the deduction if it invested in Morgan County. Unfortunately, the fact that the

[2] To qualify as a "qualifying county" under the statute, a county must have sufficiently high unemployment as defined by the statute, and also, the county governing body must pass a resolution approving the issuance of a qualification certification. The Morgan County Commission failed to issue such a resolution in this case. However, the Department does not contest that Morgan County was a qualifying county in this case.

Taxpayer knew about and was led to believe that the deduction would be allowed is not sufficient to grant the deduction.

Section 40-14-41(d)(2)d. clearly requires that a qualification certificate must be issued before the deduction can be allowed. An agreement between the parties was also necessary prior to issuance of a qualification certificate.[3] Neither was done in this case and consequently the deduction must be denied. I would also disallow the deduction because Morgan County failed to pass the appropriate resolution as required to be a qualifying county under the statute. See footnote 2.

The Taxpayer cannot rely on the fact that it was led to believe by various State and Morgan County officials, including the Commissioner of Revenue, that the deduction would be allowed. The Department cannot be estopped from properly applying the tax laws based on erroneous statements by a Revenue Department official or employee. Community Action Agency of Huntsville, Madison County, Inc. v. State, 406 So.2d 890; State v. Maddox Tractor and Equipment Company, 69 So.2d 426. The same is certainly true concerning

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[3] The statute reads in part as follows: "Before any such amount invested by a taxpayer may be deducted from the amount of its capital employed in this state . . ., a qualification certificate must be issued to the taxpayer prior to the due date of the report required by §40-14-44 . . . . The issuance by the committee of any qualification certificate hereunder shall be conditioned upon the taxpayer having prior thereto or contemporaneously therewith entered into such agreement or agreements with the state as the committee herein provided for shall have determined to be appropriate . . . ."

statements by other State and Morgan County officials unrelated to the Revenue Department. Also, a deduction from taxation is a matter of legislative grace, and a taxpayer must strictly comply with the statute granting the deduction for the deduction to be allowed. Brundidge Milling Co. v. State, 228 So.2d 475.

The deductions were properly denied and the assessment in issue is upheld. Judgment is entered against the Taxpayer for additional franchise tax for 1988 through 1991 in the amount of $461,528.02, with additional interest computed from April 10, 1992.

Entered on April 30, 1993.

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BILL THOMPSON
Chief Administrative Law Judge