

June 2005 Legal Q&A
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Q: May a city abate municipal sales taxes?

A: Yes. Cities may offer sales tax abatements and refunds for a period of up to ten years within “neighborhood empowerment zones.” TEX. LOC. GOV’T CODE §378.004(2). As an alternative, cities may also effectively abate sales taxes through Chapter 380 economic development agreements, or within enterprise zones.

Q: What happens if a city fails to adopt its property tax rate by September 30th?

A: Cities that do not meet the September 30th deadline are nevertheless entitled to a “default” tax rate, which is equal to the lower of the following: 1) the effective tax rate for the upcoming tax year, or 2) last year’s actual tax rate. TEX. TAX CODE ANN. §26.05(c). The city council must pass an ordinance ratifying the default tax rate before the 5th day after the default rate is established. It is important to note that the September 30th deadline does not apply if the appraiser was late in delivering the certified roll to the city. In that case, the city would have 60 days following receipt of the certified roll to adopt its tax rate.

Q: If a city has granted a ten-year property tax abatement, and the abatement is about to expire, may the city grant another abatement on the same property?

A: No. Tax abatements may not exceed ten years. TEX. TAX CODE ANN. §312.204(a). This provision has been interpreted to prohibit consecutive tax abatements that in the aggregate exceed ten years on a given piece of property. Attorney General Opinion JC-133 (1999). This is true even if ownership of the property has changed.

Q: If a citizen is considering donating property to a city, will the donation be income tax-deductible for the citizen?

A: Yes. A city is a “qualified entity” to which tax-deductible charitable donations may be made, provided the donated property is to be used for public purposes. Only a certain percentage of the value of the property might be deductible, however, depending on several factors, including the income of the taxpayer. Donors will want to consult with their own tax professionals prior to making donations.

Q: May a city require that candidates for mayor or city council not be delinquent in their city property taxes?

A: Several home rule city charters contain such a requirement, but the enforceability of those provisions is unclear. The Texas Election Code spells out several eligibility criteria for city officials and authorizes additional requirements by home rule cities, but tax compliance is not mentioned among them. Two federal cases have addressed the situation, and have come to opposite conclusions. *Gonzales v. Sinton*, 319 F. Supp. 189 (1970), holds that such a

requirement is unconstitutional under federal law, but *Corrigan v. Newaygo*, 55 F.3d 1211 (1995), cert. denied, concludes otherwise. See also *Turner v. Fouche*, 396 U.S. 146 (1970) and *Deibler v. City of Rehobeth Beach, Delaware*, 790 F.2d 328. Cities should consult with local legal counsel prior to attempting to reject an election applicant on the basis of delinquent taxes.

Q: Our city invests its funds in certificates of deposit only. Do we still need to attend training in the Public Funds Investment Act?

A: Yes. The Public Funds Investment Act (PFIA) requires that the treasurer, the chief financial officer (if the treasurer is not the chief financial officer), and the investment officer of a local government attend investment training every two years, beginning within twelve months after taking office. The PFIA makes no exception or allowance for cities that don't invest, or invest very little. TEX. GOV'T CODE ANN. §2256.008(a).

Incidentally, certificates of deposit are considered investments under the PFIA, meaning that their purchase is not proper unless the city has adopted a written investment policy authorizing their use.

Q: What is the consequence for failure to comply with the Public Funds Investment Act training requirements?

A: Though the law contains no penalty provision, auditors and bond rating agencies are increasingly knowledgeable about the PFIA's requirements. Failure to obtain the necessary training could result in negative marks on the city's audit, or a downgrade in the city's credit rating, which could affect municipal borrowing.