

# **Tax Abatement Agreements**

**Texas City Attorneys Association  
Riley Fletcher Basic Municipal Law Seminar  
Lubbock, Texas  
February 24, 2006**

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## **In General:**

### **What is a tax abatement agreement?**

The authority to enter into tax abatement agreements is found in the Property Redevelopment and Tax Abatement Act located in chapter 312 of the Texas Tax Code. This chapter authorizes property taxing entities, excluding school districts, to limit the property taxes assessed on real property or tangible personal property located on real property due to the repairs or improvements to the property.<sup>1</sup> Only property located within a reinvestment zone is eligible for a tax abatement agreement. Accordingly, a tax abatement agreement is an agreement limiting the increase in the value of the property taxes due to improvements or repairs to real property. Such agreements are limited to ten (10) years in length.<sup>2</sup>

### **Who may enter into a tax abatement agreement?**

Those entities which levy ad valorem taxes, excluding school districts,<sup>3</sup> are authorized to execute tax abatement agreements. Nonetheless, only a city can initiate the process to enter into a tax abatement agreement within the city limits of the city.<sup>4</sup> The county or the city may initiate the process for tax abatement agreements within the extraterritorial jurisdiction of a city.<sup>5</sup> Further, only the county may initiate the tax abatement process outside the city limits or ETJ of a city.<sup>6</sup>

### **Can a school district enter into a tax abatement agreement?**

A school district is no longer authorized to enter into tax abatement agreements.<sup>7</sup> Their authority to limit appraised values is found in the Texas Economic Development Act located in chapter 313 of the Texas Tax Code.

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<sup>1</sup> TEX. TAX CODE ANN. § 312.204(a) (Vernon Supp.2004-05).

<sup>2</sup> *Id.*

<sup>3</sup> TEX. TAX CODE ANN. § 312.002(f) (providing on or after September 1, 2001, a school district may not enter into a tax abatement agreement). *See also*, TEX. TAX CODE ANN. § 312.0025 (discussing designation of reinvestment zone by school districts in certain instances).

<sup>4</sup> TEX. TAX CODE ANN. § 312.204.

<sup>5</sup> TEX. TAX CODE ANN. § 312.206.

<sup>6</sup> TEX. TAX CODE ANN. § 312.401.

<sup>7</sup> TEX. TAX CODE ANN. § 312.002(f).

### **How long does a tax abatement agreement last?**

A tax abatement agreement cannot exceed ten (10) years in length.<sup>8</sup> In Texas Attorney General Opinion JC-0133 (1999), the Attorney General noted a “governmental entity may not grant a tax abatement for property that previously received a ten-year tax abatement.”<sup>9</sup> Nonetheless, this would not preclude granting a new tax abatement agreement on different property which was not subject to a prior agreement. Recently the Texas Attorney General noted, “a prior tax abatement agreement concerning specific property does not preclude a municipality from agreeing to abate taxes on different business personal property at the same location. A new abatement agreement must fully comply with chapter 312 requirements.”<sup>10</sup> This would include the owner or lessee making specific repairs or improvements to the property as a condition for the granting of the tax abatement.<sup>11</sup>

### **What are the required steps to establish a tax abatement agreement?**

There are essentially seven (7) steps which must be undertaken to enter into a tax abatement agreement.

- (1) The taxing unit must pass “a resolution stating that the taxing unit elects to become eligible to participate in tax abatement.”<sup>12</sup>
- (2) The taxing unit must establish guidelines and criteria governing tax abatement agreements.<sup>13</sup>
- (3) The taxing unit must deliver in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone notice of the public hearing designating a reinvestment zone. This notice must be delivered not later than the seventh (7<sup>th</sup>) day before the date of the public hearing.<sup>14</sup>
- (4) The taxing unit must publish in a newspaper of general circulation with

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<sup>8</sup> TEX. TAX CODE ANN. §§ 312.204(a) & 312.208(a) (any modification of an agreement cannot extend beyond ten (10) years from the date of the original agreement).

<sup>9</sup> Tex. Att’y Gen. Op. No. JC-0133 (1999) at 6.

<sup>10</sup> Tex. Att’y Gen. Op. No. GA-0304 (2005) at 7.

<sup>11</sup> TEX. TAX CODE ANN. § 312.204(a).

<sup>12</sup> TEX. TAX CODE ANN. § 312.002(a).

<sup>13</sup> *Id.*

<sup>14</sup> TEX. TAX CODE ANN. § 312.201(d).

the city notice of the public hearing designating a reinvestment zone. This notice must be published not later than the seventh (7<sup>th</sup>) day before the date of the public hearing.<sup>15</sup>

- (5) Following a public hearing, a city may designate an area within the taxing jurisdiction or ETJ of the municipality as a tax abatement reinvestment zone. The city must designate the reinvestment zone by ordinance.<sup>16</sup>
- (6) At least seven (7) days before the date on which a city enters into a tax abatement agreement, the city must deliver to the presiding officer of the governing body of each other taxing unit in which the property subject to the agreement is located a written notice that the city intends to enter into a tax abatement agreement.<sup>17</sup> The notice must include a copy of the proposed agreement. Nonetheless, failure to deliver the notice does not affect the validity of any agreement.<sup>18</sup>
- (7) Enter into a tax abatement agreement with the owner or lessee of real property located within the reinvestment zone. The agreement must be approved by the affirmative vote of a majority of the members of the governing body of the municipality or other taxing unit at a regularly scheduled meeting of the governing body.<sup>19</sup>

### **What portion of the appraised property value can the City abate?**

The Tax Code provides that a tax abatement agreement may provide for the exemption of the real property in each year covered by the agreement only to the extent its value for that year exceeds its value for the year in which the agreement is executed.<sup>20</sup> Accordingly, only the increase in value may be abated. For example, if a business has a property site which as of January 1 is valued at \$1,000,000. Further, the entity agrees to make improvement or repairs to the property, which increases the value of the property to \$1,400,000. The taxing units may abate from taxation the \$400,000 increase in property value. Moreover, the taxing unit could abate from one percent (1%) to one hundred percent (100%) the property taxes paid on the \$400,000 increase.

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<sup>15</sup> TEX. TAX CODE ANN. § 312.201(d).

<sup>16</sup> TEX. TAX CODE ANN. § 312.201(a).

<sup>17</sup> TEX. TAX CODE ANN. § 312.2041(a).

<sup>18</sup> TEX. TAX CODE ANN. § 312.2041(c).

<sup>19</sup> TEX. TAX CODE ANN. § 312.207(a).

<sup>20</sup> TEX. TAX CODE ANN. § 312.204(a).

**Can the City abate delinquent property taxes?**

Article III, section 55 of the Texas Constitution provides that the legislature “shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any country or defined subdivision thereof.” Consequently, a tax abatement agreement cannot abate delinquent taxes.<sup>21</sup>

**Can a tax abatement agree be granted for newly added business personal property if there was an earlier ten (10) year tax abatement at the site on previously existing personal property?**

The Texas Attorney recently concluded a prior tax abatement agreement concerning specific property does not preclude a municipality from agreeing to abate taxes on different business personal property at the same location. Nonetheless, a new agreement must fully comply with the chapter 312 of the Texas Tax Code.<sup>22</sup>

**Guidelines and Criteria:**

**Can a taxing unit enter into a tax abatement agreement without the owner of the property meeting certain criteria?**

The governing body of a taxing unit may not enter into a tax abatement agreement unless the governing body finds that the terms of the agreement and the property subject to the agreement meet certain guidelines and criteria adopted by the governing body.<sup>23</sup>

**Can a taxing unit establish a reinvestment zone without having established criteria and guidelines governing tax abatement agreements?**

A city or county may not designate an area as a reinvestment zone unless the governing body has established guidelines and criteria governing tax abatement agreements. Furthermore, the taxing unit must pass a resolution stating that the taxing unit elects to become eligible to participate in tax abatements.<sup>24</sup>

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<sup>21</sup> Tex. Att’y Gen. Op. No. LO-95-090 (1995).

<sup>22</sup> Tex. Att’y Gen. Op. No. GA-0304 (2005).

<sup>23</sup> TEX. TAX CODE ANN. § 312.002(b).

<sup>24</sup> TEX. TAX CODE ANN. § 312.002(a).

**Must the guidelines and criteria provide for the abatement of both new facilities and structures and for the expansion or modernization of existing facilities and structures?**

Guidelines applicable to property must provide for the availability of tax abatement for both new facilities and structures and for the expansion or modernization of existing facilities and structures.<sup>25</sup>

**How long are guidelines and criteria effective?**

Guidelines and criteria are effective for two (2) years from the date of adoption.<sup>26</sup>

**Can guidelines and criteria be amended or repealed?**

Guidelines and criteria can be amended or repealed. During the two (2) year period, guidelines and criteria may be amended or repealed by a 3/4<sup>th</sup> vote of the members of the governing body.<sup>27</sup> Accordingly, this would require an affirmative vote of four (4) of the five (5) council members, for cities with five (5) city council members.

**If a property owner meets the taxing city's guidelines and criteria, must the city enter into a tax abatement agreement with the owner?**

The city still has discretion on whether to enter into a tax abatement agreement. Although, a property owner met certain guidelines and criteria, city council could still decide not to enter into a tax abatement agreement with a particular owner. Adoption of guidelines and criteria by the city council does not limit the discretion of the governing body as to whether to enter into a specific tax abatement agreement.<sup>28</sup> Further, adoption of guidelines and criteria does not create a property, contract or other legal right in any person to require the governing body to consider or grant a specific application or request for a tax abatement agreement.<sup>29</sup>

**Can a city receive technical assistance regarding the adoption of tax abatement guidelines?**

Yes, the Governor's Office of Texas Economic Development and Tourism and State

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<sup>25</sup> TEX. TAX CODE ANN. § 312.002(a).

<sup>26</sup> TEX. TAX CODE ANN. § 312.002(c).

<sup>27</sup> TEX. TAX CODE ANN. § 312.002(c).

<sup>28</sup> TEX. TAX CODE ANN. § 312.004(d)(1).

<sup>29</sup> TEX. TAX CODE ANN. § 312.004(d)(3).

Comptroller's office are authorized to provide technical assistance to a local governing body regarding the designation of reinvestment zones, the adoption of tax abatement guidelines, and the execution of tax abatement agreements.<sup>30</sup>

## **Designation of Reinvestment Zones:**

### **Can a city designate a reinvestment zone by ordinance or resolution?**

City council may designate a reinvestment zone by ordinance.<sup>31</sup> The ordinance must describe the boundaries of the zone and the eligibility of the zone for residential tax abatement or commercial-industrial tax abatement.<sup>32</sup>

### **Must the city reinvestment zone be located within the city limits?**

City council may designate a reinvestment zone within the city's limits or within the extraterritorial jurisdiction of the city.<sup>33</sup>

### **Must an area meet certain criteria to be designated a reinvestment zone?**

The Tax Code provides that an area considered for designation as a tax abatement reinvestment zone must meet certain criteria. The Tax Code provides that the area must:<sup>34</sup>

(1) substantially arrest or impair the sound growth of the municipality creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

- (A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;
- (B) the predominance of defective or inadequate sidewalks or streets;
- (C) faulty size, adequacy, accessibility, or usefulness of lots;
- (D) unsanitary or unsafe conditions;

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<sup>30</sup> TEX. TAX CODE ANN. § 312.005(b) (Although the Tax Code provision still references the Department of Commerce, this department is now part of the Governor's office).

<sup>31</sup> TEX. TAX CODE ANN. § 312.201(a).

<sup>32</sup> TEX. TAX CODE ANN. § 312.201(b).

<sup>33</sup> TEX. TAX CODE ANN. § 312.201(a).

<sup>34</sup> TEX. TAX CODE ANN. § 312.202(a).

- (E) the deterioration of site or other improvements;
  - (F) tax or special assessment delinquency exceeding the fair value of the land;
  - (G) defective or unusual conditions of title;
  - (H) conditions that endanger life or property by fire or other cause; or
  - (I) any combination of these factors;
- (2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality;
- (3) be in a federally assisted new community located in a home-rule municipality or in an area immediately adjacent to a federally assisted new community located in a home-rule municipality;
- (4) be located entirely in an area that meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5318);
- (5) encompass signs, billboards, or other outdoor advertising structures designated by the governing body of the municipality for relocation, reconstruction, or removal for the purpose of enhancing the physical environment of the municipality, which the legislature declares to be a public purpose; or
- (6) be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the municipality.

## **Tax Abatement Agreements:**

### **Must tax abatement agreements made with the owners of property within a single reinvestment zone contain identical terms?**

Agreements made with the several owners comprising a single reinvestment zone must contain identical terms with regards to the portion of the value of the property that is exempt and the duration of the exemption.<sup>35</sup> Yet, agreements made with several owners

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<sup>35</sup> TEX. TAX CODE ANN. § 312.204(b) (“The agreements made with the owners of property in a reinvestment zone must contain identical terms for the portion of the value of the property that is to be exempt and the duration of the exemption. For purposes of this subsection, if agreements made with the owners of property in a reinvestment zone before September 1, 1989, exceed 10 years in duration, agreements made with owners of property in the zone on or after that date must have a duration of 10 years.”)

comprising a single reinvestment zone which is also located in an enterprise zone need not contain identical terms for the portion of the value of property that is to be exempt and the duration of the agreement.<sup>36</sup>

**If the city enters into a tax abatement agreement must the remaining taxing entities enter into tax abatement agreement?**

The remaining tax units (county, special districts, etc.) are not required to enter into a tax abatement agreement simply because the city has entered into a tax abatement agreement.<sup>37</sup>

**If the city enters into a tax abatement agreement and the other taxing entities enter into a tax abatement agreement with the owner, must the city, county and special districts enter into identical agreements?**

If the city enters into a tax abatement agreement with the owner of property located in a reinvestment zone, the remaining taxing entities may enter into a tax abatement agreement with the owner. The other taxing units are not required to enter into a tax abatement agreement. Further, tax abatement agreements entered into by the other taxing units are not required to contain identical terms of those contained in the agreement with the city.<sup>38</sup>

**Public Information:**

**If a business provides proprietary information in connection with an application or request for tax abatement, is the proprietary information considered public information?**

Certain information provided to a taxing unit in connection with a tax abatement application may be considered confidential and not subject to public disclosure until the tax abatement agreement is executed. Nonetheless, the information must describe the

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<sup>36</sup> TEX. TAX CODE ANN. § 312.204(f) (“The agreements made with owners of property in an enterprise zone that is also designated as a reinvestment zone are not required to contain identical terms for the portion of the value of property that is to be exempt and the duration of the agreement.”)

<sup>37</sup> TEX. TAX CODE ANN. § 312.206(a) (“[i]f property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made under Section 312.204 or 312.211, the governing body of each other taxing unit eligible to enter into a tax abatement agreements ... **may** execute a written tax abatement agreement ..”) (emphasis added).

<sup>38</sup> TEX. TAX CODE ANN. § 312.206(a) (“The agreement is not required to contain terms identical to those contained in the agreement with the municipality. The execution, duration, and other terms of an agreement made under this section are governed by the provisions of Sections 312.204, 312.205, and 312.211 applicable to a municipality . . .”)

specific processes or business activities to be conducted or the equipment or other property which will be brought onto the property. Information in the custody of a taxing unit is not confidential once the agreement is executed.<sup>39</sup>

## **State Administration of Tax Abatement Agreements:**

### **Is a taxing unit required to file a report with the State if a reinvestment zone is created or a tax abatement agreement is executed?**

The chief appraiser of each appraisal district that appraises property for a taxing unit that designates a reinvestment zone or executes a tax abatement agreement must deliver to the state comptroller before July 1 of the year following the year in which the zone is designated or the agreement is executed a report. Further, the comptroller is required to maintain a central registry of reinvestment zones designated and of tax abatement agreements executed.<sup>40</sup>

### **What information is required in the tax abatement report filed with the comptroller's office?**

The report which is required to be filed by the next July 1<sup>st</sup> must contain certain information. If the taxing unit establishes a reinvestment zone the report must contain a general description of the zone, including its size; the types of property located in it; the duration of the reinvestment zone; the guidelines and criteria established for the reinvestment zone, including subsequent amendments and modifications of the guidelines or criteria; a copy of each tax abatement agreement; and any other information required by the comptroller's office.<sup>41</sup>

If the taxing unit enters into a tax abatement agreement the report filed with the comptroller's office must contain a copy of each tax abatement agreement to which the taxing unit is a party and any other information required by the comptroller's office.<sup>42</sup>

### **Is there a state agency which can provide assistance concerning tax abatements?**

Yes the State Comptroller's office may provide assistance to a taxing unit on request by the governing body or by the presiding officer of its governing body relating to the

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<sup>39</sup> TEX. TAX CODE ANN. § 312.003.

<sup>40</sup> TEX. TAX CODE ANN. § 312.005(a).

<sup>41</sup> TEX. TAX CODE ANN. § 312.005(a)(1)-(a)(3).

<sup>42</sup> TEX. TAX CODE ANN. § 312.005(a)(2)&(a)(3).

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administration of tax abatements. Further, the Governor's Office of Texas Economic Development and Tourism and the State Comptroller's office may provide technical assistance to a local governing body regarding the designation of reinvestment zones, the adoption of tax abatement guidelines, and the execution of tax abatement agreements.<sup>43</sup>

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<sup>43</sup> TEX. TAX CODE ANN. § 312.005(b) (Although this Tax Code provision still references the Department of Commerce, this department is now part of the Governor's office).