

ORANGE COUNTY UNIFORM TAX ABATEMENT POLICY-2005

SPECIAL PROVISION OF THE ORANGE COUNTY APPRAISAL DISTRICT

The final determination of value to be abated is vested with the Orange County Appraisal District(OCAD), an agency autonomous from the Taxing Jurisdiction(s). The Procedures used by OCAD are attached as Exhibit "A" and incorporated and adopted in this Abatement Policy for all purposes.

STATEMENT OF PURPOSE SECTION I

(a) The Governing Body of the Taxing Jurisdiction(s) adopted this tax abatement policy to provide incentives to the owner of real property who proposes a Project to develop, redevelop or improve eligible facilities. The incentives will consist of a limited special exemption from certain taxes provided that the Owner agrees to accept and abide by this Policy and provided that the real property is located in a lawfully created Reinvestment or Enterprise Zone.

(b) This policy is intended to improve the quality of life in economically depressed areas by stimulating industrial development, and job creation and retention.

DEFINITIONS SECTION II

(a) "**Abatement**" means the full or partial exemption from ad valorem taxes of certain real property values and/or tangible personal property values in a reinvestment or enterprise zone designated by the Taxing Jurisdiction(s) for economic development purposes.

(b) "**Agreement**" means a contractual agreement between a property owner and/or lessee and the Taxing Jurisdiction(s).

(c) "**Base Year**" means the calendar year in which the abatement contract is executed (signed).

(d) "**Base Year Value**" means the assessed value of eligible property January 1 preceding the execution of the agreement plus the value of eligible property improvements and Tangible Personal Property made after January 1, but before the execution of the Agreement, and which property is owned by the owner, co-owner, its parent companies, subsidiaries, partners, venturers, or any entity exercising control over the owner or subject to control by the owner.

(e) "**Deferred Maintenance**" means improvements necessary for continued operation which that do not improve productivity, or alter the process technology, reduce pollution or conserve resources.

(f) "**Eligible Facilities**" means new, expanded or modernized buildings and structures, tangible personal property as defined in the Texas Tax Code, including fixed machinery and equipment, which is reasonably likely as a result of granting abatement to contribute

to the retention or expansion of primary employment or to attract major investment in the reinvestment or enterprise zone that would be a benefit to the property and that would contribute to the economic development within the Taxing Jurisdiction(s), but does not include facilities which are intended primarily to provide goods or services to residents or existing businesses located in the Taxing Jurisdiction(s) such as, but not limited to, restaurants and retail sales establishments. Eligible facilities may include, but shall not be limited to, industrial buildings and warehouses. Eligible facilities may also include facilities designed to serve a regional population greater than the County for medical, scientific, recreational or other purposes.

(g) “**Expansion**” means the addition of buildings, structures, machinery, tangible personal property, equipment or payroll for purposes of increasing production capacity.

(h) “**Facility**” means property improvements completed or in the process of construction which together comprise an integral whole.

(i) “**Modernization**” means a complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery, equipment, pollution control devices or resource conservation equipment.

(j) “**New Facility**” means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

(k) “**Productive Life**” means the number of years a property improvement is expected to be in service in a facility.

(l) “**Tangible Personal Property**” means tangible personal property classified as such under state law, but excluding inventory and/or supplies and tangible personal property that was located in the investment or enterprise zone at any time before the period covered by the agreement with the County.

ABATEMENT AUTHORIZED SECTION III

(a) **Eligible Facilities.** Upon application, Eligible Facilities shall be considered for tax abatement as hereinafter provided.

(b) **Creation of New Value.** Abatement may only be granted for the additional value of eligible facilities made subsequent to and specified in an abatement agreement between the Taxing Jurisdiction(s) and the property owner or lessee, subject to such limitations as the Taxing Jurisdiction(s) may require.

(c) **New and Existing Facilities.** Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.

(d) **Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements, and related fixed improvements necessary to the operation and administration of the facility.

(e) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for tax abatement: land, supplies, inventory, deferred maintenance, property to be rented or leased (except as provided in Section III(f)), property which has a productive life of less than ten years, or any other property for which abatement is not allowed by state law.

(f) **Owned/Leased Facilities.** If a leased facility is granted abatement, the agreement shall be executed with the lessor and the lessee.

(g) **Economic Qualification.** In order for an Eligible Facility to receive tax abatement the planned improvement:

(1) Must be expected to have an increased appraised ad valorem tax value based upon the Orange County Appraisal District's assessment of the eligible property; and

(2) Must be expected to prevent the loss of payroll or retain, increase or create payroll on a permanent basis in Orange County.

(3) Must not have the effect of displacing workers or transferring employment from one part of Orange County to another.

(h) **Standards For Tax Abatement.** The following factors, among others, shall be considered in determining whether to grant tax abatements for an Eligible Facility, and if so, the percentage of value to be abated and the duration of the tax abatement:

(1) Existing improvements, if any;

(2) Type and value of proposed improvements;

(3) Productive life of proposed improvements;

(4) Number of existing jobs to be retained by proposed improvements;

(5) Number and types of new jobs to be created by proposed improvements;

(6) The extent to which new jobs to be created will be filled by persons who are economically disadvantaged, including residents of a Reinvestment or Enterprise Zone;

(7) The extent to which local labor or local subcontractors will be used in the construction phase of the project;

(8) Amount of local taxes to be generated directly;

(9) Amount the property tax base valuation will be increased during term of abatement and after abatement;

(10) The costs to be incurred by the Taxing Jurisdiction(s) to provide facilities or services directly resulting from the new improvements;

(11) The amount of ad valorem taxes to be paid to the Taxing Jurisdiction(s) during the abatement period considering (a) the existing values; (b) the percentage of new value abated; (c) the abatement period; and (d) the value after expiration of the abatement period;

(12) The population growth of Orange County projected to occur directly as a result of new improvements;

(13) The types and values of public improvements, if any, to be made by applicant seeking abatement;

(14) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;

(15) The impact on the business opportunities of existing businesses;

(16) The attraction of other new businesses to the area as a result of the project;

(17) The overall compatibility with the zoning ordinances and comprehensive plan for the area;

(18) Whether the project is environmentally compatible with no negative impact on quality of life perceptions;

(19) The extent to which local vendors and suppliers will be used in the construction phase of the project.

Each application for tax abatement shall be reviewed on its merits utilizing the factors provided above. After such review, abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

(i) **Local Employment.** For purposes of evaluating Section III(h)(7), Local labor is defined as those laborers or skilled craftsmen who reside in a nine county region comprised of Jefferson, Orange, Hardin, Jasper, Newton, Liberty, Tyler and Chambers counties, as well as the Bolivar Peninsula area of Galveston County.

(k) **Denial of Abatement.** Neither a reinvestment or enterprise zone nor abatement agreement shall be authorized if it is determined that:

(1) There would be a substantial adverse affect on the provision of government service or tax base;

(2) The applicant has insufficient financial capacity;

(3) Planned or potential use of the property would constitute a hazard to public safety, health or morals;

(4) There is a violation of state or federal laws; or

(5) Any other reason deemed appropriate by the County.

(l) **"Taxability"** From the execution of the abatement agreement to the end of the agreement period, taxes shall be payable as follows:

- (1) The value of ineligible property as provided in Section II(e) shall be fully taxable; and
- (2) The base year value of existing eligible property as determined each year shall be fully taxable.

APPLICATION SECTION IV

- (a) Any present, potential owner, or Lessee of taxable property in the Taxing Jurisdiction(s) may request the creation of a reinvestment or enterprise zone and tax abatement by filing a written request with the presiding officer of the lead Taxing Jurisdiction.
- (b) The application shall consist of a completed application form which shall provide detailed information on the items described in Section III(h) hereof; a map and property description; a time schedule for undertaking and completing the planned improvements. In the case of modernization, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.
- (c) Prior to the adoption of an ordinance order designating a reinvestment or application by the Lead Taxing Jurisdiction for designation of an enterprise zone, the lead Taxing Jurisdiction shall: (1) give written notice to the presiding officer of the governing body of each taxing unit in which the property to be subject to the agreement is located not later than the seventh (7th) day before the public hearing; and (2) publish notice of a public hearing in a newspaper of general circulation within such taxing jurisdiction not later than the seventh (7th) day before the public hearing. Before acting upon the application, the Taxing Jurisdiction shall, through public hearing, afford the applicant and the designated representative of any governing body referenced hereinabove opportunity to show cause why the abatement should or should not be granted.
- (d) The Lead Taxing Jurisdiction shall make every reasonable effort to by resolution either approve or disapprove the application for tax abatement within forty-five (45) days after receipt of the application. The Lead Taxing Jurisdiction shall notify the applicant of approval or disapproval.
- (e) The Taxing Jurisdiction shall not establish a reinvestment or enterprise zone or enter into an abatement agreement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation or improvements related to a proposed modernization, expansion or new facility.
- (f) Information that is provided to the Taxing Jurisdiction(s) in connection with an application or request for tax abatement and that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which a tax abatement agreement is requested is confidential and not subject to public disclosure pursuant to the Texas Public Information Act until the tax abatement agreement is executed. That information in the possession of a taxing unit after the agreement is executed is not confidential and is subject to disclosure.

AGREEMENT SECTION V

- (a) Not later than the seventh (7th) day before the date on which the Taxing Jurisdiction(s) enters into the abatement agreement, the Taxing Jurisdiction(s) shall deliver to the presiding officer of the governing body of each other taxing unit in which the property is located a written notice that the Taxing Jurisdiction(s) intends to enter into the agreement. The notice shall include a copy of the prepared agreement.
- (b) After approval, the Taxing Jurisdiction(s) shall formally pass a resolution and execute an agreement with the owner of the facility and lessee as required which shall include at least the following terms:
- (1) Estimated value to be abated and the base year value;
 - (2) Percent of value to be abated each year as provided in Section III(g);
 - (3) The commencement date and the termination date of abatement;
 - (4) The proposed use of the facility, nature of construction, time schedule, map, property description and improvement list as provided in application, Section IV(b);
 - (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, or assignment;
 - (6) Provision for access to and authorization for inspection of the property by Taxing Jurisdiction(s) employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;
 - (7) Limitations on the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;
 - (8) Provision for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;
 - (9) Contain each and every term agreed to by the owner of the property;
 - (10) Requirement that the owner or lessee of the property certify annually to the governing body of each taxing unit that the owner or lessee is in compliance with each applicable term of the agreement; and
 - (11) All terms required by Texas Tax Code §312.205, as amended; Such agreement shall normally be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to the Taxing Jurisdiction(s).

RECAPTURE SECTION VI

- (a) In the event that the company or individual (1) allows its ad valorem taxes owed the Taxing Jurisdiction(s) to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or (2) violates any of the terms and conditions of the abatement agreement; and fails to cure during the cure period, the agreement then may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within thirty (30) days of the termination.
- (b) Should the Taxing Jurisdiction(s) determine that the company or individual is in default according to the terms and conditions of its agreement, the Taxing Jurisdiction(s) shall notify the company or individual of such default in writing at the address stated in

the agreement; and if such is not cured within thirty (30) days from the date of such notice ("Cure Period"), then the agreement may be terminated.

ADMINISTRATION SECTION VII

(a) The Chief Appraiser of the Orange County Appraisal District will annually determine an assessment of the real and personal property subject to each abatement agreement. Each year, the company or individual receiving abatement shall furnish the appraiser with such information as may be necessary to determine compliance with the abatement agreement. Once value has been established, the Chief Appraiser will notify the Taxing Jurisdiction(s) of the amount of the assessment.

(b) The abatement agreement shall stipulate that employees and/or designated representatives of the Taxing Jurisdiction(s) will have access to the facility during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representative of the company or individual and in accordance with its safety standards.

(c) Upon completion of construction, the designated representative of the Taxing Jurisdiction(s) shall annually evaluate each facility receiving abatement to insure compliance with the agreement, and a formal report shall be made to the Taxing Jurisdiction(s).

(c) The Taxing Jurisdiction(s) shall timely file with the Texas Department of Economic Development and the State Property Tax Board all information required by the Tax Code.

AGREEMENT SECTION VIII

Abatement may be transferred and assigned in whole or in part by the holder to a new owner or lessee of the same facility upon the approval by resolution of the Commissioners' Court; subject to the financial capacity of the assignee and provided that all conditions and obligations in the abatement agreement are assumed. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessee are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

SUNSET PROVISION SECTION IX

These guidelines and criteria are effective upon the date of their adoption and will remain in force for two years, unless amended by three-quarters of the Governing Body of each of the Taxing Jurisdiction(s) at which time all reinvestment and enterprise zones and tax abatement agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the guidelines and criteria may be modified, renewed or eliminated.

**DISCRETION OF THE TAXING JURISDICTION(S)
SECTION X**

The adoption of these guidelines and criteria by the Taxing Jurisdiction(s) does not:

- (1) Limit the discretion of the Taxing Jurisdiction(s) to decide whether to enter into a specific tax abatement agreement;
- (2) Limit the discretion of the Taxing Jurisdiction(s) to delegate to its employees the authority to determine whether or not the Taxing Jurisdiction(s) should consider a particular application or request for tax abatement; or
- (3) Create any property, contract, or other legal rights in any person to have the Taxing Jurisdiction(s) consider or grant a specific application or request for tax abatement.

**QUESTIONS TO BE ANSWERED IN ORDER TO DEVELOP
AN APPLICATION AND ECONOMIC IMPACT STATEMENT
FOR VALUE ADDED TAX ABATEMENTS IN ORANGE COUNTY**

General:

Orange County will provide a representative to assist in preparation and presentation of all documents and to guide them through the abatement process.

Opening Paragraph:

The application should include a summary statement about the company and its operations. This information can come from an annual report, corporate 10K or other document provided by the company. (Please include these documents with this questionnaire.)

Maps and Plats

Provide maps, plats, and drawings necessary to establish the location of the improvements and their relationships to the boundaries of cities, ETJ's, and reinvestment or enterprise zone boundaries.

Questions to be Answered

(1) Is your project within a city limit?_____. Name of City_____

(2) Is your project within an ETJ?_____. Name of City_____

(3) Is your project within an Enterprise or Reinvestment Zone?____ Which?_____

(4) Will you own the realty or lease the realty?_____

(5) Present Appraisal District value of land and any EXISTING improvements owned by the OWNER:_____

(Answer this question based on Appraisal District records for the specific site you select.)

Number of Acres:_____ or Square Feet: _____

(6)Type and value of proposed improvements:_____

Type of construction:_____

(Tiltwall, Build-Out of Existing Facility, Etc.)

Value of Construction:_____

Value of Equipment:_____

Value of Personal Property: _____

Value of Pollution Control Devices: _____

(7) Productive life of proposed improvements: _____ years, or term of initial lease: _____

(8) Number of existing jobs to be retained by proposed improvements: _____
(Answer only if the location is already in or near Orange County and now employs Orange County residents.)

(9) Number and types of new jobs to be created by proposed improvements: _____

(10) Amount of Annual local payroll to be created: _____.

(11) What percentage and type of jobs to be created will local residents have the opportunity to fill? _____

(12) Amount property tax base valuation will be increased:
During term of abatement: _____
After term of abatement: _____

(13) The costs to be incurred by local government to provide facilities or services directly resulting from the new improvements: _____
(Explain any costs for development or depletion of infrastructure the county or city is being asked to absorb, if any.)

(14) The amount of ad valorem taxes to be paid to the county during the abatement period considering: (a) the existing values; (b) the percentage of new value abated; (c) the abatement period; and (d) the value after expiration of the abatement period.

(15) The population growth of the county that will occur directly as a result of new improvements: _____
(If you relocate to Orange County, how many of your employees do you anticipate to relocate?)

(16) The types and values of public improvements, if any, to be made by applicant seeking abatement:

(List any facilities from which the public might benefit.)

(17) Whether the proposed improvements compete with existing businesses to the detriment of the local economy:

(18) The impact on the business opportunities of existing businesses:

(Are there possibilities for local businesses to become suppliers? Any new retail opportunities?)

(19) The attraction of other new businesses to the area:

(Will any of your suppliers, customers, parent, or sister companies relocate because of your relocation?)

(20) The overall compatibility with the zoning ordinances and comprehensive plan for the area:

(21) Describe, including the estimated value, all pollution control devices and other improvements for which you intend to seek TCEQ exemption from taxation:

NOTE: Failure to accurately disclose exempted property may result in a total default under the Abatement Contract, resulting in recapture of previously abated taxes and forfeiture of future abatement.

EXHIBIT “A”

ORANGE COUNTY APPRAISAL DISTRICT PROCEDURE FOR CALCULATING ABATEMENTS

Purpose The purpose of this procedure is to clarify the method used in calculating the tax abatement under the attached Contract. This requires calculation of the current market Value, Base Year Value, and taxable Value as these terms are defined below. By deducting the abatable value from the current market Value the Taxable Value may be determined. However, in accordance with the Orange County Uniform Tax Abatement Policy, the Real Property Owner’s Current Taxable Value shall not be less than the Base Year Value in order for a project to receive the full amount of abatement.

Calculation of “ Current Market Value”

“Current Market Value” is determined by calculating for that Tax Year the market value of all industrial realty improvements of a property owner that comprise the “Base year Value” for each taxing entity.

Calculation of “Base Year Value”

“Base Year Value” for each taxing entity executing an abatement contract is the market value of all industrial realty improvements of a property owner located within that entity for the tax period defined as the “Base Year” less the abated value of all projects granted by that entity for the “Base year.” “Base year” is defined as the calendar year in which the abatement contract is executed (signed).

Calculation of “Taxable Value”

“Taxable Value” for each taxing entity is determined by deducting from the appraised market value of all industrial realty improvements of a property owner the amount of any applicable abatements granted for that Tax Year.

Calculation of Value Potentially Eligible for Abatement

The following procedures are followed for each project for which a tax abatement contract has been executed and for each taxing entity granting the abatement.

1. The project base value, if applicable, is subtracted from the current year project value, and the percentage of abatement to be granted is then applied to the net amount to determine the project value subject to abatement.
2. The Base Year Value is subtracted from the current Market Value. If the difference is greater than zero (0), then the remaining value is the value potentially eligible for abatement to the extent that it does not exceed the project

value subject to abatement. If the difference is zero (0) or less, then the project is not eligible for an abatement for that Tax Year.

Calculation of Abated Value

Each project that remains potentially eligible for abatement is then tested for each taxing entity granting the abatement on an individual basis in chronological order based on the date the contract was executed.

1. For the project being tested, the Base year Value plus the value potentially eligible for abatement for all other projects is subtracted from the Current Market Value. If the difference is greater than zero (0), then the remaining value is the value of the project to be abated to the extent that it does not exceed the project value subject to abatement for that year. If the difference is zero (0) or less, then the project is not eligible for an abatement for that Tax Year.

If a subsequent project being tested is determined to be ineligible for the full value potentially eligible for abatement calculated previously after performing the calculation stated above, then the test process must be redone for all prior projects using the actual value subject to abatement for the subsequent project to determine if there is any effect on the abatement for each project and each taxing entity for that Tax Year.