

TAX ABATEMENT AND ECONOMIC DEVELOPMENT AGREEMENTS FOR TEXAS COUNTIES

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THE V.G. YOUNG INSTITUTE OF COUNTY GOVERNMENT, A PART
OF THE TEXAS A&M AGRILIFE EXTENSION SERVICE AND
THE TEXAS A&M UNIVERSITY SYSTEM
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TEXAS CONTINUES TO GROW:

- Texas population/2020 Census Data: 29,145,505 (15.907% increase from 2010)
- Some counties (urban) experienced significant growth – others (rural) lost population
- County governance problems: revenue caps; unfunded state mandates; demand for increased services/infrastructure; rising costs; limited authority to develop revenue to meet increased public needs
- County tools for **preferred economic growth** include statutory authority to make economic development programs and agreements (including tax abatement)

COUNTY GOVERNANCE – IT'S DIFFERENT

- Commissioners Court -- **GOVERNING BODY**
- Limited regulatory body -- Express or implied powers rule
- County generally cannot use public resources to benefit private interests -- **EXCEPTION: ECONOMIC DEVELOPMENT**
- Valid action -- only as **GOVERNING BODY** through recorded vote at public meeting
- **COUNTY NOT BOUND** through individual action of court member

CONSTITUTIONAL AND STATUTORY BASIS

- **TEX. CONST. art. III, § 52(a):** authorizes Texas Legislature to provide for creation of county economic development programs, and the making of loans and grants of public money for economic development
- **TEX. LOC. GOV'T CODE Ch. 381 & TEX. TAX CODE Ch. 312:** authorize Texas counties to: (1) enact specific, worthwhile economic development programs to improve local and regional economies; and (2) pursuant to those programs, approve, execute, and implement tax abatement and other economic development agreements

COUNTY ECONOMIC DEVELOPMENT AUTHORITY

- **Economic Development Program** – Enacted by recorded vote of commissioners court at public meeting
- **Economic Development Agreement** – After negotiation and compliance with procedural requirements, approved by recorded vote of commissioners court at public meeting
- **PRIMARY TOOLS:** TEX. LOC. GOV'T CODE § 381.004 (for Chapter 381 Agreements – without tax abatement) and TEX. TAX CODE Ch. 312 (for tax abatement agreements)
- **PRIMARY QUESTIONS:**
 - What **PUBLIC POLICY GOALS (OR PUBLIC PURPOSES)** exist to justify the program and agreement?
 - What **AGREEMENT PROVISIONS** will ensure those goals are accomplished or substantially achieved?

CH. 381 AGREEMENT: WHAT CAN A COUNTY DO?

- Use county employees, funds, and services for implementation of program
- Make loans/grants of public funds for economic development
- Make tax abatement agreements through TEX. TAX CODE Ch. 312 compliance procedure
- Accept donations/contributions of funds, property, and services
- Create/implement a County Board of Development
- Access the Texas Unclaimed Money Fund for economic development
- Engage in development projects under federal law
- **ESTABLISH/IMPLEMENT SUFFICIENT CONTROLS TO ACCOMPLISH ALL PUBLIC POLICY GOALS**

CH. 312 COUNTY TAX ABATEMENT PROCEDURE

- Required enactment of **COUNTY GUIDELINES** for tax abatement + decision by commissioners court to participate in tax abatement;
- Applicant submits **APPLICATION** for reinvestment zone designation and tax abatement agreement pursuant to **GUIDELINES**;
- **PUBLIC HEARING** held at commissioners court meeting for proposed **REINVESTMENT ZONE** (special notice rules exist);
- **ECONOMIC DEVELOPMENT PROGRAM & REINVESTMENT ZONE** created by public meeting vote of commissioners court;
- **TAX ABATEMENT AGREEMENT** negotiated/drafted;
- **AGREEMENT** approved by public meeting vote of commissioners court at **REGULAR** meeting (special notice rules exist)

CH. 312 or Ch. 381: KEY ISSUES FOR AGREEMENT

- Abatement + Abatement Period (negotiated issues)
- Base Year Tax Treatment
- Deferral/Dead Year Tax Treatment + Deferral Year Payments (negotiated issues)
- Payment in Lieu of Taxes/PILOT or Percentage Abatement (negotiated issues)
- Applicant's Production Requirements or Deliverables (negotiated issues -- but constitute important contract promises to County for performance)
- Default + Claw-Back Remedies + Tax Recapture (incl. penalties and interest)
- Economic Development Grants (extra compensation for County);
- Cost Reimbursement to County (incl. attorney's fees);
- Drop-Dead Provision (protection for County);
- Indemnity, Choice of Law, Venue, Governmental Immunity, and Other Litigation Issues (protections for County)

CH. 312 and 381 AGREEMENTS:

TYPICAL ISSUES FOR DEFAULT CLAIMS

- Non-compliance with special notice rules or County Guidelines for proper enactment, and errors in property descriptions/contiguous land area requirements
- Disputes re amount or schedule of economic development incentives (incl. abatement + PILOT + loans/grants of funds)
- Failure to deliver (or untimely delivery of) deferral year, PILOT, economic development grant, or tax payments to County
- Deferral year tax treatment disputes
- Production requirement failures + Claw-Back Remedy assertion
- Failure to allow county inspection of facilities and documents to confirm agreement compliance

CH. 312 TAX ABATEMENT AGREEMENT MODIFICATION/TERMINATION

- **Modification** – permissible at any time prior to expiration but:
 - may add only provisions that could have been added initially;
 - may delete provisions not necessary to original agreement;
 - must use same enactment procedure required for original agreement;
 - abatement period may not be extended beyond 10-yrs. from date of abatement period stated in original agreement.
 - reinvestment zone may not be modified or revised to add or delete zone land.
- **Termination** – permissible by mutual consent of parties, in same manner that the original agreement was approved/executed.

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