

**GUIDELINES AND
CRITERIA FOR GRANTING TAX
ABATEMENT IN REINVESTMENT
ZONES CREATED BY
LOVING COUNTY, TEXAS
MAY 14th, 2018**

May 2018

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REINVESTMENT ZONES CREATED BY LOVING COUNTY**

WHEREAS, taxing units for Texas and the nation now use Tax Abatement to successfully attract industry to their localities and Loving County deems it necessary to compete with these localities by having the ability to offer Tax Abatements, and

WHEREAS, Tax Abatement is a useful tool to attract new wealth and employment into Loving County and is the highest civic priority, and

WHEREAS, any tax Incentive offered by Loving County will be limited to new and existing businesses that bring added wealth and employment into the community, and

WHEREAS, an eligible taxing jurisdiction, under Texas law, must establish Guidelines and Criteria to be eligible to offer Tax Abatement prior to granting Tax Abatement, and said Guidelines and Criteria to be unchanged for a two year period unless amended by a three-fourths vote of the governing body, and

WHEREAS, all applicants for Tax Abatement will be considered on a case-by-case basis and established Guidelines and Criteria shall not be construed or implied that Loving County is under obligation to grant Tax Abatement or other tax incentives to an applicant:

NOW THEREFORE BE IT RESOLVED, in consideration of these premises, the Guidelines and Criteria for granting Tax Abatement in reinvestment zones are hereby established for Loving County.

SECTION 1 – DEFINITIONS

- A. ABATEMENT: The full or partial exemption from ad valorem taxes of certain property in a reinvestment zone for economic development purposes.
- B. ABATEMENT AGREEMENT: A contract between a property owner and Loving County for the Abatement of tax on qualified Real Property located within the Reinvestment Zone, or Tangible Personal Property, or both, as authorized by V.T.C.A., Tax Code, Section 312.204.
- C. BASE YEAR VALUE: The assessed value of eligible property January 1 preceding the execution of an Abatement Agreement as herein defined, plus (if applicable) the agreed upon value of eligible property improvements made after January 1 but before the execution of an Abatement Agreement.
- D. DEFERRED MAINTENANCE: Improvements necessary for continued operation which do not improve productivity or alter the process of technology.
- E. DISTRIBUTION CENTER FACILITY: A building or structure including Tangible Personal Property used or to be used primarily to receive, store, service or distribute goods or materials.
- F. EXPANSION OF EXISTING FACILITIES OR STRUCTURES: The addition of buildings, structures, machinery or equipment to a Facility after the date of execution of an Abatement Agreement.

- G. EXISTING FACILITY OR STRUCTURE: A facility as of the date of execution of the Abatement Agreement, located in or on Real Property eligible for tax abatement.
- H. FACILITY: The improvements made to Real Property eligible for tax abatement and including the building or structure erected on such Real Property and/or any Tangible Personal Property to be placed in or on said Real Property.
- I. IMPROVEMENTS TO REAL PROPERTY OR IMPROVEMENTS: The construction, addition to, structural upgrading or, replacement of, or completion of any facility located upon, or to be located upon, Real Property, as herein defined, or any Tangible Personal Property placed in or on said Real Property.
- J. MANUFACTURING FACILITY: A facility which is or will be used for the primary purpose of the production of goods or materials or the processing or change of goods or materials to a finished product.
- K. MODERNIZATION means the complete or partial reconstruction or installation of a facility similar or expanded production capacity. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. Modernization is not the repair or reconditioning of machinery or building.
- L. NEW FACILITY: The construction of a Facility on previously undeveloped Real Property eligible for tax abatement.
- M. NEW PERMANENT JOB: A new employment position created by a business that has provided employment to an employee of at least 1,820 hours annually and intended to be an employment position that exists during the life of the abatement.
- N. OTHER BASIC INDUSTRY: A facility other than a distribution center facility, a regional service facility or a manufacturing facility which produces goods or services or which creates new or expanded job opportunities and services a market of which fifty percent (50%) of revenues come from outside of Loving County.
- O. OWNER: The record title owner of Real Property or the legal owner of Tangible Personal Property. In the case of land leased from a public entity, the lessee shall be deemed the owner of such leased property together with all improvements and Tangible Personal Property located thereon.
- P. PRODUCTIVE LIFE: The number of years a Facility is expected to be in service.
- Q. REAL PROPERTY: Land on which Improvements are to be made or fixtures placed.
- R. REGIONAL SERVICES FACILITY: A Facility, the primary purpose of which is to service or repair goods or materials and which creates Job opportunities with Loving County
- S. REINVESTMENT ZONE: Real Property designated as a Reinvestment Zone under the provisions of V.T.C.A., Tax Code, Section 312.
- T. RENEWABLE POWER FACILITY AND FIXTURES A facility and fixtures associated therewith which is or will be used for the primary purpose of the production of electricity from a renewable fuel source such as wind and solar.
- U. TANGIBLE PERSONAL PROPERTY: Any Personal Property, not otherwise defined herein and which is necessary for the proper operation of any type of Facility

SECTION 2 - ABATEMENT AUTHORIZED

- A. ELIGIBLE FACILITIES Upon application, eligible facilities shall be considered for Tax Abatement as hereinafter provided:
- 1) Distribution Center Facilities;
 - 2) Manufacturing Facilities;
 - 3) Regional Services Facilities;
 - 4) Oil & Gas Processing and Field Services;
 - 5) Renewable Power Facility and Fixtures;
 - 6) Any other industry that Loving County, through its Commissioners Court determines will add to the County's economic base and result in the creation of new permanent jobs within Loving County
- B. CREATION OF NEW VALUE Abatement may be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between the property owner or lessee and Loving County subject to such limitations as Loving County may require.
- C. EXISTING AND NEW FACILITIES for the purpose of modernization or expansion, existing or new facilities may be granted Tax Abatement.
- D. ELIGIBLE PROPERTY Abatement may be granted to the value of buildings, structures, fixed machinery and equipment, size improvements and related fixed improvements necessary to the operation and administration of the facility.
- E. PARTIALLY ELIGIBLE Partially eligible for abatements are modernization projects which are intended to replace existing equipment or facilities when the existing equipment and facilities will be removed, thus eliminating existing value from the tax rolls. In this event, the value of the existing facility and equipment shall be frozen at the time of the abatement agreement and shall be frozen throughout the abatement period. The eligible abatable value of the new project shall be the difference between the total new investment amount and the existing tax value of the equipment and/or facility to be removed.
- F. INELIGIBLE PROPERTY The following types of property shall be fully taxable and ineligible for Tax Abatement: land, supplies, inventories, furnishings, and other forms of movable personal property, housing, Deferred Maintenance, property to be rented or leased except for as provided in Section 2 (g) and property with a productive life of less than ten (10) years.
- G. LEASED FACILITIES If a new facility is to be constructed by a third party for lease to an eligible applicant for abatement, then the building owner may also be eligible for abatement or other agreement may be executed and signed by the lessor and lessee.
- H. ECONOMIC QUALIFICATION In order to be eligible to receive Tax Abatement, the planned improvement must have an increased ad valorem tax value of \$ 150,000,000 based upon the Loving County Appraisal District assessment of eligible property and must add at least (10) new permanent jobs, unless the Commissioners Court approves an exception to the minimum jobs requirement due to the nature of the improvement. It must retain, increase or create payroll on a permanent basis. A company meeting the criteria and guidelines for tax abatement, as set forth herein, shall be eligible for tax abatement as follows:

Capital Investment	Or	Jobs Created	Max. Term	Abatement
\$25,000,000 —		10-20.	5 Years	20%-30%
\$50,000,000 —		21-35	10 Years	20% - 60%
\$101,000,000 or more		36 or more	10 Years	30%- 70%

The foregoing table is intended to be a general guideline; however, the Commissioners Court at its discretion may agree to Tax Abatement percentages and maximum terms greater than those set forth above.

- I. Terms of the Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the agreement.
- J. TAX ABATEMENT STANDARDS. The following factors, among others shall be considered in determining the qualifications for Tax Abatement:
 - 1) Type and value or proposed improvements;
 - 2) Productive life of proposed improvements;
 - 3) Number of existing jobs to be retained by the use of proposed improvements;
 - 4) Type and number of new jobs to be created by the use of improvements;
 - 5) Expected annual payroll to be created;
 - 6) If the projected new jobs will be held by persons residing in the taxing units of Loving County;
 - 7) Financing structure and the time period and amount of expenditures;
 - 8) If the improvements are compatible with all applicable land use regulations;
 - 9) If the operation will be comparable with environmental laws and will have no negative impact on quality of life; and
 - 10) Ability to provide an upfront financial contribution to Loving County or other projects.
- K. Loving County may reject an application for Tax Abatement for failure to meet any of the above listed under Section (2J).
- L. TAXABILITY From the execution of the Abatement agreement to the end of the Agreement period, the effect on taxes due and payable shall be as follows:
 - 1) the value of ineligible property as provided in section 2 (f) shall be *fully* taxable; and
 - 2) the base year value of existing eligible property as determined each year shall be fully taxable; and
 - 3) after the agreement period. All existing property plus the property considered as eligible property in this Agreement shall be fully taxable.
- M. If a property under an Abatement Agreement is sold, the Agreement may be transferred to the new owner upon notice to the Commissioner's Court. However, the Agreement may not be transferred if the new owner owes delinquent taxes in any of the taxing units affected by the abatement.

SECTION 3 – APPLICATION

- A. If a request for Tax Abatement is not in an existing Reinvestment Zone, an application must be made to Loving County for creating a Reinvestment Zone. The written application must contain a plat with means and bounds or lot and block or section and block description of the Reinvestment Zone. The application shall be accompanied by an application fee of one thousand dollars (\$1,000) as authorized by Section 312.002(e) of the Texas Tax Code.
- B. An application for Tax Abatement must contain the following: a general description of the proposed use and general nature and extent of modernization, expansion or improvements to be undertaken, a description of the improvements, a map and description of the property, and a time schedule for undertaking and completing the improvements, and the investment for each stage of the improvements with proof of adequate financing. The application should contain information contained in Sec 2(1)
- C. Loving County shall give notice as provided by the Texas Property Tax Code, i.e. (1) written notice shall be given to the presiding officer of the governing body of each taxing unit in which the property to be subject to the agreement is located no later than that seventh day before the public hearing before the Governing Body of Loving County, and (2) publication shall be made in a newspaper of general circulation within such taxing jurisdiction no later than the seventh day before the public hearing. Loving County, through public hearing, shall afford the applicant, the designated representatives of the governing bodies, and other interested parties, referenced herein, a chance to show cause why Abatement should or should not be granted.

SECTION 4 - RECAPTURE

- A. In the event that the Owner or its assignee (1) allows its ad valorem taxes owed to Loving County to become delinquent and fails to timely and properly follow the legal procedures for their process and/or contest; or (2) violates any of the terms and conditions of the Abatement Agreement and fails to cure during the Cure Period in and after described, the agreement then may be terminated and taxes previously abated will be recaptured in the manner provided by the abatement agreement.
- B. Should Loving County determine that the company or individual is in default according to the terms and conditions of its agreement, Loving County 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.
- C. In the event that the Owner or Its assignee sells, leases, transfers, or otherwise conveys property subject to a tax abatement agreement to a governmental entity or other tax-exempt organization, the Owner will be considered to be in default and will be subject to the recapture provisions established by these guidelines and by the governing tax abatement agreement.

SECTION 5 – ADMINISTRATION

- A. The Loving County Appraisal District appraiser shall annually determine an assessment of the real and personal property comprising the reinvestment zone.
- B. The property owner shall each year certify to the County, compliance with all terms of the agreement. The County may cancel or modify the agreement if the owner fails to comply with the terms of the Agreement and shall collect all taxes as 100% of the assessed value of the property before entering into the Tax Abatement Agreement.
- C. The owner shall twee to permit the County to inspect the operation to verify compliance with the terms of the Agreement.

SECTION 6 – AGREEMENT

- A. Upon approval, the County shall formally pass a resolution and execute an Agreement with the Applicant and if applicable, the owner of the facility, which shall include:(1) the estimated value Lobe abated and the base year value;(2) percent of value to be abated each year;(3) the commencement date and termination date of the Abatement;(4) the proposed use of the facility, time schedule of construction, property description and improvement list; and (5) obligations in the event of default violation of terms of the Agreement delinquent taxes, recapture, administration and assignment Such agreement shall be executed at a date agreed between the applicant and Loving County.
- B. Applicant agrees to purchase all supplies and equipment locally, if possible.

SECTION 7 - SUNSET PROVISION

These Guidelines and Criteria shall remain in force for two (2) years after their adoption unless amended by three-fourths vote of the Commissioner's Court.

PASSED AND ADOPTED ON THIS THE 14th DAY OF MAY, 2018.


The Honorable Skeet Jones
Loving County Judge

Attest:


County Clerk

