

## **GUIDELINES AND CRITERIA GOVERNING TAX ABATEMENT II ANDREWS, TEXAS**

### **SECTION I. General Purpose:**

The City of Andrews, Andrews County and Andrews County Hospital District (hereinafter referred to as the Affected Jurisdictions) located within the County of Andrews, Texas, are committed to the promotion of business development and to an ongoing improvement in the quality of life for their citizens. The Affected Jurisdictions recognize that these objectives are generally served by enhancement and expansion of the local economy. The Affected Jurisdictions will, on a case by case basis, give consideration to providing tax abatement, as authorized by V.T.C.A., Tax Code, Chapter 312, as stimulation for economic development within the Affected Jurisdictions. It is the policy of the Affected Jurisdictions that said consideration will be provided in accordance with the guidelines and criteria herein set forth and in conformity with the Tax Code.

Nothing contained herein shall imply, suggest or be understood to mean that the Affected Jurisdictions are under any obligation to provide tax abatement to any applicant and attention is called to V.T.C.A., Tax Code, Section 312.002(d). With the above rights reserved all applications for tax abatement will be considered on a case by case basis.

### **SECTION II. Definitions:**

As used within these guidelines and criteria, the following words or phrases shall have the following meaning:

1. **Abatement of Taxes:** To exempt from ad valorem taxation all or part of the value of certain Improvements placed on land located in a Reinvestment Zone designated for economic development purposes as of the date of execution of the Tax Abatement Agreement for a period of time not to exceed five (5) years.
2. **Affected Jurisdiction:** The City of Andrews, County of Andrews, and the Andrews County Hospital District or any other governmental taxing unit located totally within or partially within the County of Andrews that has adopted these guidelines and criteria.
3. **Abatement Agreement:** (1) A contract between a property owner and an Affected Jurisdiction for the abatement of taxes 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.
4. **Base Year Value:** The assessed value of property eligible for tax abatement as of January 1 preceding the execution of an Abatement Agreement as herein defined.
5. **Existing Facility or Structure:** A facility as of the date of execution of the Tax Abatement Agreement, located in or on Real Property eligible for tax abatement.
6. **Facility:** The improvements made to Real Property eligible for tax abatement and including the building or structure erected on such Real Property.

7. **Improvements or Repairs to Real Property:** The construction, addition to, structural upgrading of, replacement of, or completion of any facility located upon, or to be located upon, Real Property, as herein defined.
8. **New Construction:** The construction of a Facility on previously undeveloped real property eligible for tax abatement.
9. **Owner:** The record title owner of the Real Property. In the case of land leased from an Affected Jurisdiction, the lessee shall be deemed the owner of such leased property together with all improvements.
10. **Real Property:** Land on which Improvements are to be made or fixtures placed.
11. **Reinvestment Zone:** Real Property designated as a Reinvestment Zone under the provisions of V.T.C.A., Tax Code, Section 312.

### **SECTION III. Intent of Criteria and Guidelines:**

The Intent of the criteria and guidelines, as herein set forth, is to establish the minimum standards which an applicant for tax abatement must meet in order to be considered for such status by the Affected Jurisdictions.

### **SECTION IV. Criteria and Guidelines for Tax Abatement:**

Any type of Facility will be eligible for tax abatement consideration provided such Facility meets the following guidelines and criteria:

1. To be considered for execution of a Tax Abatement Agreement, the business must meet all of the following criteria:
  - a) Be located entirely within Reinvestment Zone No. 2;
  - b) Involve repairs, improvements to or new construction of a business;
  - c) Have a minimum expenditure of \$10,000 for the proposed repairs, improvements or new construction;
  - d) Conform to all the requirements of the City of Andrews Zoning and other applicable ordinances.

2. A business meeting the criteria and guidelines for tax abatement, as set forth above, shall be eligible for tax abatement as follows:

- General Business, excluding Hotel/Motel Accommodations

Repairs, Improvements or New Construction:

<u>Terms of Abatement</u>	<u>Minimum Investment</u>
Up to 3 yrs. @ 100%	\$10-50,000
Up to 5 yrs. @ 100%	> \$50,000

- Hotel/Motel Accommodations

Repairs, Improvements or New Construction

<u>Terms of Abatement</u>	<u>Minimum Investment</u>
Up to 3 yrs. @ 100%	\$10-100,000
Up to 5 yrs. @ 100%	> \$100,000

3. The following types of Property shall be **ineligible** for tax abatement status and shall be fully taxed.

- a) Real Property;
- b) tools;
- c) furnishings and other forms of movable personal property;
- d) vehicles;
- e) aircraft;
- f) housing;
- g) boats;
- h) property owned by the State of Texas or any State agency; and,
- i) property owned or leased by a member of the affected Jurisdiction.

4. To qualify for tax abatement, one of the following conditions must apply:

- a) The Real Property and eligible improvements must be owned by the same person, corporation, partnership or other business entity; or,
- b) In the case of Real Property leased from an Affected Jurisdiction, all improvements placed thereon must be owned by the same person, corporation, partnership or other business entity and said owner must have a leased commitment for the full term of the abatement.

5. In Reinvestment Zone No. 2, the amount and term of abatement shall be determined on a case by case basis, however, in no event shall taxes be abated for a term in excess of five (5) years. The amount of the taxable value of Improvements to be abated and the term of the abatement shall be determined by the City of Andrews in all cases where the property for which tax abatement is applied for is within the City limits or extraterritorial jurisdiction of the City or by the County of Andrews in all cases where the property for which tax abatement is applied for is outside of these limits of the City of Andrews, but within the County of Andrews.

6. No property shall be eligible for tax abatement unless such property is located in Reinvestment Zone No. 2 in accordance with V.T.C.A., Tax Code, Section 312.

7. Notwithstanding any of the requirements set forth in Section IV Subsection 3, the governing body of an Affected Jurisdiction upon the affirmative vote of a three-fourths (3/4) of its members may vary any of the above requirements when variation is demonstrated by the applicant for Tax Abatement that variation is in the best interest of the Affected Jurisdiction to do so and will enhance economic development of the Affected Jurisdiction.

8. Taxability:

- a) The portion of the value of Improvements to be abated shall be abated in accordance with the terms and provisions of a Tax Abatement Agreement executed between the Affected Jurisdiction and the owner of the Real Property, which agreement shall be in accord with the provisions of V.T.C.A., Tax Code, Section 312.205. When an investment improves existing property, the portion of the value of property eligible for abatement is the value of real property which has increased in market value because of the development, re-development or improvements specified in the abatement contract.
- b) All ineligible property, if otherwise taxable as herein described, shall be fully taxed.

9. If a business meets the criteria and guidelines, as provided in Section IV above, the business will be eligible for and receive an abatement of taxes for a period of up to five (5) years. The Registration of Commercial Tax Abatement, including these "GUIDELINES AND CRITERIA GOVERNING TAX ABATEMENT", will comprise the Tax Abatement Agreement. Said Agreement will be automatically granted subject to the following:

The governing body of each Affected Jurisdiction retains total discretion as to whether tax abatement is to be granted. Such discretion, as herein retained, may be exercised on a case by case basis by the Affected Jurisdiction electing to withdraw from participation as provided herein. The adoption of these guidelines and criteria by the governing body of an Affected Jurisdiction does not:

- a) Limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for tax abatement; or,
- b) Limit the discretion of the governing body to decide whether to withdraw from a specific Tax Abatement Agreement;

10. The burden to demonstrate that an application for tax abatement should be granted shall be upon the applicant. Each Affected Jurisdiction to which the application has been directed shall have full authority to request any additional information from the applicant that the governing body of such Affected Jurisdiction deems necessary to assist it in reviewing such application.

#### **SECTION V. Tax Abatement Agreement:**

- 1. After the creation of a Reinvestment Zone, a Tax Abatement Agreement may be executed between the owner and any Affected Jurisdiction. The Tax Abatement Agreement shall:
  - a) Establish and set forth the Base Year assessed value of the property for which tax abatement is sought.

- b) Provide that the taxes paid on the base year assessed value shall not be abated as a result of the execution of said Tax Abatement Agreement.
- c) Provide that ineligible property as subscribed in Section IV, Subsection 6, hereinabove shall be fully taxed.
- d) Provide for the exemption of Improvements in each year covered by the agreement only to the extent the value of such Improvements for each such year exceeds the value for the year in which the agreement is executed.
- e) Fully describe and list the kind, number and location of all of the improvements to be made in or on the Real Property.
- f) Set forth the estimated value of all improvements to be made in or on the Real Property.
- g) Clearly provide that tax abatement shall be granted only to the extent that the Improvements to Real Property increase the value of the Real Property for the year in which the Tax Abatement Agreement is executed.
- h) Provide for the portion of the value of the improvements to Real Property of improvements to be abated.
- i) Provide for the commencement date and the termination date. In no event shall said dates exceed a period of five (5) years.
- j) Describe the type and proposed use of the improvements to Real Property or improvements including:
  - 1. The type of facility.
  - 2. Whether the improvements are for repairs, improvements or new construction at a business.
  - 3. The nature of the construction and proposed time table of completion.
  - 4. Any other information required by the Affected Jurisdiction.
- k) Provide a legal description of the Real Property upon which improvements are to be made.
- l) Provide access to and authorize inspection of the Real Property or improvements by employees of the Affected Jurisdiction, who have executed a Tax Abatement Agreement with owner to insure improvements are made according to the specifications and conditions of the Tax Abatement Agreement.
- m) Provide for contractual obligations in the event of default by owner or violation of the terms or conditions by owner which allows for the recapturing of property tax revenue in the event owner defaults or otherwise fails to make improvements as provided in said Tax Abatement Agreement, and any other provision as may be required or authorized by State Law.

- n) Contain each term agreed to by the owner of the property.
  - o) Provide that the governing body of the City of Andrews and/or other Affected Jurisdictions may cancel or modify the agreement if the property owner fails to comply with the agreement.
2. Upon receiving a Registration of Commercial Tax Abatement and not later than the seventh (7<sup>th</sup>) day before the City of Andrews (as required by V.T.C.A., Tax Code, Section 312.2041 or Section 312.402) enters into an agreement for tax abatement under V.T.C.A., Tax Code, Section 312.204, the governing body of the City of Andrews or a designated officer or employee thereof shall deliver to the presiding officer of the governing body of each of the taxing units in which the property to be subject to the agreement is located, a written notice that the City of Andrews intends to enter into the agreement. The notice must include a copy of the proposed Tax Abatement Agreement. An Affected Jurisdiction, at its sole discretion, may elect to withdraw from the Tax Abatement Agreement by providing written notice to the City of Andrews within twenty (20) days of said notice.
  3. A notice, as above described in Subparagraph 2, is presumed delivered when placed in the mail, postage paid and properly addressed to the appropriate presiding officer. A notice properly addressed and sent by registered or certified mail for which a return receipt is received by the sender is considered to have been delivered to the addressee.
  4. Failure to deliver the notice does not affect the validity of the agreement.

**SECTION VI. Application:**

1. Any present owner of taxable property located within an Affected Jurisdiction may apply for tax abatement by filing a Registration of Commercial Tax Abatement with the City Manager when the Real Property for which abatement is sought is located within the City limits of the City of Andrews.
- 2) Information that is provided to an Affected Jurisdiction in connection with a registration application or request for tax abatement and which describes the specific processes or business activity to be conducted or the equipment or other property to be located on the property for which tax abatement is sought is confidential and not subject to public disclosure until the Tax Abatement Agreement is executed. Information in the custody of an Affected Jurisdiction after the agreement is executed is not confidential (V.T.C.A., Tax Code, Section 312.003).

**SECTION VII. Recapture:**

1. In the event that the applicant or owner has entered into a Tax Abatement Agreement to make required improvements to a facility of any type, but fails to undertake or complete such improvements, then in such event the Affected Jurisdiction to whom the application for tax abatement was directed shall give the applicant or owner ninety (90) days notice of such failure. The applicant or owner shall demonstrate to the satisfaction of the Affected Jurisdiction, above mentioned, that the applicant or owner has commenced to cure such failure within the ninety (90) days above mentioned. In the event that the applicant or owner fails to demonstrate that he is taking affirmative action to cure his failure, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the

calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within ninety (90) days of the date of termination.

2. In the event that the Affected Jurisdiction to whom application for tax abatement was directed determines that the applicant or owner is in default of any of the terms or conditions contained in the Tax Abatement Agreement, then in such event the Affected Jurisdiction, shall give the applicant or owner ninety (90) days written notice to cure such default. In the event such default is not cured to the satisfaction of the Affected Jurisdiction within the ninety (90) days notice period, then the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within ninety (90) days of the date of termination.
3. In the event that the applicant or owner allows ad valorem taxes on property ineligible for tax abatement owed to any Affected Jurisdiction to become delinquent and fails to timely and properly follow the legal procedures for their protest or contest, then in such event the Tax Abatement Agreement shall terminate and all abatement of taxes shall likewise terminate. Taxes abated during the calendar year in which termination, under this subparagraph, takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within ninety (90) days of the date of termination.
4. In the event that the applicant or owner, who has executed a Tax Abatement Agreement with any Affected Jurisdiction, relocates the business for which tax abatement has been granted to a location outside of the designated Reinvestment Zone, then in such event, the Tax Abatement Agreement shall terminate after ninety (90) days written notice by the Affected Jurisdiction to the Owner/Applicant. Taxes abated during the calendar year in which termination, under this subparagraph takes place shall be payable to each Affected Jurisdiction by no later than January 31st of the following year. Taxes abated in years prior to the year of termination shall be payable to each Affected Jurisdiction within ninety (90) days of the date of termination.
5. The date of termination shall, in every instance, be the 60th day after the day the Affected Jurisdiction sends notice of default, in the mail to the address shown in the Tax Abatement Agreement to the Applicant or Owner. Should the default be cured by the owner or Applicant within the ninety (90) day notice period, the Owner/Applicant shall be responsible for so advising the Affected Jurisdiction and obtaining a release from the notice of default from the Affected Jurisdiction, failing in which, the abatement remains terminated and the abated taxes must be paid.
6. In every case of termination set forth above, the Affected Jurisdiction to which the application for tax abatement was directed shall determine whether default has occurred by Owner (Applicant) in the terms and conditions of the Tax Abatement Agreement and shall so notify all other Affected Jurisdictions. Termination of the Tax Abatement Agreement by the Affected Jurisdiction to which the application for tax abatement was directed shall constitute simultaneous termination of all Tax Abatement Agreements of all other Affected Jurisdictions.

7. In the event that a Tax Abatement Agreement is terminated for any reason whatsoever and taxes are not paid within the time period herein specified, then in such event, the provisions of V.T.C.A., Tax Code. Section 33.01 will apply.

**SECTION VIII. Miscellaneous:**

1. Any notice required to be given by these criteria or guidelines shall be given in writing to the addresses appearing on the Tax Abatement Agreement:
2. The Chief Appraiser of the Andrews County Appraisal District shall annually assess the Real Property comprising the Reinvestment Zone No. 2. Each year, the applicant or owner receiving tax abatement shall furnish the Chief Appraiser with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the Affected Jurisdictions which levy taxes of the amount of assessment.
3. Upon the completion of improvements made to any type of Facility as set forth in these criteria and guidelines, a designated employee or employees of any Affected Jurisdiction having executed a Tax Abatement Agreement with applicant or owner shall have access to the Facility to insure compliance with the Tax Abatement Agreement.
4. A Tax Abatement Agreement may be assigned to a new owner but only after written consent has been obtained from all Affected Jurisdictions which have executed such an agreement with the applicant or owner.
5. These guidelines and criteria are effective upon the date of their adoption by an Affected Jurisdiction and shall remain in force for five (5) years. At the end of the five (5) year period these guidelines and criteria may be readopted, modified, amended or rewritten as the conditions may warrant.
6. Each Affected Jurisdiction shall determine whether or not said Affected Jurisdiction elects to become eligible to participate in tax abatement. In the event the Affected Jurisdiction elects by resolution to become eligible to participate in tax abatement, then such Affected Jurisdiction shall adopt these guidelines and criteria by separate resolution forwarding a copy of both resolutions to all other Affected Jurisdictions.
7. In the event of a conflict between these guidelines and criteria and V.T.C.A., Tax Code, Chapter 312, then in such event the Tax Code shall prevail and these guidelines and criteria interpreted accordingly.
8. The guidelines and criteria once adopted by an Affected Jurisdiction may be amended or repealed by a vote of three-fourths of the members of the governing body of an Affected Jurisdiction during the five (5) year term in which these guidelines and criteria are effective.