

TYLER COUNTY COMMISSIONERS COURT  
SPECIAL MEETING/PUBLIC HEARING  
April 23, 2014 — 9:00 a.m.

THE STATE OF TEXAS                      ON THIS THE 23rd day of April, 2014 the  
Commissioners' Court in and for Tyler County, Texas convened in a Special Meeting and Public  
Hearing at the Commissioners' Courtroom in Woodville, Texas, the following members of the  
Court present, to wit:

JACQUE L. BLANCHETTE	COUNTY JUDGE, Presiding
MARTIN NASH	COMMISSIONER, PCT. #1
MIKE MARSHALL	COMMISSIONER, PCT. #3
JACK WALSTON	COMMISSIONER, PCT. #4
KATRINA WALSTON	DEPUTY COUNTY CLERK, EX OFFICIO

The following were absent: Commissioner Hughes thereby constituting a quorum. In addition  
to the above were:

JACKIE SKINNER	COUNTY AUDITOR
DAN HUNT	ASST. CRIMINAL DIST. ATTORNEY

Judge Blanchette opened the meeting for the purpose of a public hearing for consideration of a  
tax abatement to German Pellets for a proposed sawmill on the pellet plant property.

Dan Hunt updated the court on the abatement process. He recommended no action until the court  
receives a formal application and an economic impact analysis.

There was no participation from the public. Judge Blanchette summarized the court is not in  
position to take action because of the incomplete process of the application as well as a finalized  
and approved contract to be submitted to the court for action.

Commissioner Walston motioned and Commissioner Marshall seconded the motion to adjourn  
the meeting. All voted yes

THERE BEING NO FURTHER BUSINESS, THE PUBLIC HEARING ADJOURNED.

ATTEST



Donece Gregory, County Clerk



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# TAX ABATEMENT GUIDELINES

*County of Tyler*

TEXAS

As Adopted by the Tyler County Commissioners Court

April \_\_, 2014

## **SECTION I** **STATEMENT OF PURPOSE**

The Commissioners Court of Tyler County, Texas adopts 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.

## **SECTION II** **DEFINITIONS**

- (a) "**Abatement**" means the full or partial exemption from ad valorem taxes of certain real property values in a reinvestment or enterprise zone designated by the County for economic development purposes.
- (b) "**Agreement**" means a contractual agreement between a property owner and/or lessee and the County.
- (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 within the entity on January 1 preceding the execution of the abatement agreement.
- (e) "**Deferred Maintenance**" improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (f) "**Distribution Center**" means buildings and structures, including fixed machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials owned by the Facility operator where a majority of the goods or services are distributed to points beyond Tyler County.
- (g) "**Eligible Facilities**" or "Eligible Projects" means new, expanded or modernized buildings and structures, as defined in the Texas Property 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 County, but does not include facilities which are intended primarily to provide goods or services to residents or existing businesses located in the County 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.

(h) **"Eligible Property"** means the on-site buildings, structures, fixed machinery and equipment, storage tanks, process units (including all integral components necessary for operations), site improvements, and infrastructure included in the project, and the permanent office space and related fixed improvements necessary to the operation and administration of the project.

(i) **"Expansion"** means the addition of buildings, structures, machinery, tangible personal property, equipment, payroll or other taxable value for purposes of increasing production capacity.

(j) **"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. Modernization shall include improvements for the purpose of increasing productivity or updating the technology of machinery and equipment, or both.

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

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

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

### **SECTION III WHEN ABATEMENT AUTHORIZED**

(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 creation of additional value to eligible facilities made subsequent to and specified in an abatement agreement between the County and the property owner or lessee, subject to such limitations as the County may require. Under no circumstances will abatements be considered or granted once construction on a facility or project has begun.

(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 increase in 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, vehicles, and vessels. Additionally, any property for which abatement is prohibited by state law or pursuant to these guidelines or the tax abatement agreement.

(f) **Owned/Leased Facilities.** If a leased facility is granted abatement, both the owner/lessor and the lessee shall be parties to the abatement contract with the County.

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

- (1) Must create an increased appraised ad valorem tax value based upon the Tyler County Appraisal District's assessment of the eligible property.
- (2) Must prevent the loss of payroll or retain, increase or create payroll (full-time employment) on a permanent basis in the County.
- (3) Must not have the effect of displacing workers or transferring employment from one part of the County to another.
- (4) Must demonstrate by an independent economic impact analysis that the local economic benefit will be substantially in excess of the amount of anticipated foregone tax revenues resulting from the abatement.

#### **SECTION IV CONSIDERATION FACTORS**

(a) **Standards For Tax Abatement.** The following non-exclusive factors may be considered in determining whether to grant tax abatements for an Eligible Facility or Project, 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, local subcontractors and local vendors and suppliers will be used in the construction phase of the project;
- (8) The amount of local taxes to be generated directly;
- (9) The amount the property tax base valuation will be increased during the term of the abatement and after abatement;
- (10) The amount of economic impact the Eligible Facility will provide to the local community;
- (11) The costs to be incurred by the County to provide facilities or services directly resulting from the new improvements;
- (12) 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;
- (13) The population growth of the County projected to occur directly as a result of new improvements;
- (14) The types and values of public improvements, if any, to be made by the applicant seeking abatement;
- (15) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- (16) The impact of the proposed project on the business opportunities of existing businesses;
- (17) The attraction of other new businesses to the area as a result of the project;

- (18) The overall compatibility with the zoning ordinances and comprehensive plan for the area; and  
(19) Whether the project is environmentally compatible with no negative impact on quality of life perceptions.

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.

(b) **Local Employment.** For purposes of evaluating Section IV(a)(7): Local labor is defined as those laborers or skilled craftsmen who are residents and domiciliaries of the nine county region comprised of Tyler, Orange, Hardin, Jasper, Newton, Liberty, Jefferson, Polk, and Angelina counties. Local vendors and suppliers shall include only those located or having a principal office in Tyler County. Local Subcontractors shall include only those located or having a principal office in Tyler County.

Each recipient of property tax abatement shall additionally agree to give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency.

(c) Each recipient of a property tax abatement must also provide bidding information to local contractors, manufacturers and labor to allow them to have sufficient information and time to submit their bids and pre-bid meetings must be held between the owner and potential local bidders and suppliers of services and materials.

(d) **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 substantial hazard to public safety, health or morals;
- (4) The project would cause a violation of state or federal laws; or
- (5) For any other reason deemed appropriate by the County including the pendency of litigation between the individual or entity requesting the creation of the reinvestment or enterprise zone and the County.

(e) **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 this policy shall be fully taxable; and
- (2) The base year value of existing eligible property as determined each year shall be fully taxable.

#### **SECTION V** **APPLICATION PROCESS**

(a) Any present owner, potential owner or lessee of taxable property in the County may request the creation of a reinvestment or enterprise zone and tax abatement by filing a written request with the County Judge.

(b) The application shall consist of a completed application form; a map and property description with specific metes and bounds; 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. The County shall also require a non-refundable application fee in the amount of \$500.00 to be submitted with the application.

(c) Prior to the adoption of an ordinance order designating a reinvestment zone or application by the County for designation of an enterprise zone, the County 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 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 County shall, through public hearing, determine that the improvements sought are feasible and practical and would be a benefit to the land to be included in the zone.

(d) The County 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.

(e) Information that is provided to the County 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.

#### **SECTION VI** **AGREEMENT**

(a) Not later than the seventh (7th) day before the date on which the County enters into the abatement agreement, the County 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 County intends to enter into the agreement. The notice shall include a copy of the prepared agreement.

(b) The County shall formally pass a resolution and execute an agreement with the owner of the facility and lessee, as the case may be, 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;
- (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;
- (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 County 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 County.

#### **SECTION VII** **RECAPTURE**

(a) In the event that the company or individual (1) allows its ad valorem taxes owed the County 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 may be recaptured and paid within thirty (30) days of the termination.

(b) Should the County determine that the company or individual is in default according to the terms and conditions of its agreement, the 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 sixty (60) days from the date of such notice ("Cure Period"), then the agreement may be terminated. Alternatively, the County may, as a penalty for default or non-compliance with the provisions of the agreement, reduce the term of the abatement period and/or the annual percentage abatements available thereunder.

(c) Payment in Lieu of Taxes: If, during the period of this abatement, any Federal or State law provides and additional tax exemption for the property that is already the subject of this agreement, applicant agrees to decline that tax exemption during the period of this abatement. If applicant is unable to decline that tax exemption, applicant agrees to pay the taxes, or payment in lieu of taxes, on the reduction of property tax revenue to the County that is the result of said exemption. Any payment in lieu of taxes shall be due on or before November 15 of the year in which payment is due.

#### **SECTION VIII** **ADMINISTRATION**

(a) The Chief Appraiser of the Tyler 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 County of the amount of the assessment.

(b) The abatement agreement shall stipulate that employees and/or designated representatives of the County 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. Inspections 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 owner shall annually evaluate each facility receiving abatement to insure compliance with the agreement, and a formal report shall be made to the County.

(d) During the course of construction of the project, owner and its general contractor and/or subcontractors shall, on at least an annual basis, meet with designated County representatives for an onsite inspection to assure compliance with the terms of the abatement agreement. Owner shall be responsible to County for the payment of costs associated with such monitoring. In the event it is determined that Owner or its contractors have failed to comply with the terms of the abatement agreement, then County may terminate the abatement agreement or, in County's discretion, reduce the duration or annual percentages of such abatement.

(e) During construction, the applicant shall maintain appropriate records of the employees affected by this abatement, including but not limited to, proof of employees' legal residence, proof of immigration-resident status, and, if applicable, such other documentation that may be required to document compliance with the agreement

(f) The Chief Appraiser of the Tyler County Appraisal District shall timely file with the Texas Department of Economic Development and the State Property Tax Board all information required by the Tax Code.

**SECTION IX**  
**AGREEMENT**

Abatement may be transferred, assumed 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 guaranteed. 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. As a condition of transfer, an assignment fee of \$500.00 may be required, with the maximum fee being \$500.00.

**SECTION X**  
**SUNSET PROVISION**

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 Commissioners' Court 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.

**SECTION XI**  
**DISCRETION OF THE COUNTY**

The adoption of these guidelines and criteria by the County does not:



- (1) Limit the discretion of the County to decide whether to enter into a specific tax abatement agreement;
- (2) Limit the discretion of the County to delegate to its employees the authority to determine whether or not the County 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 County consider or grant a specific application or request for tax abatement.

TAX ABATEMENT GUIDELINES

*County of Tyler*

TEXAS

PASSED BY A MAJORITY VOTE OF THE COMMISSIONERS COURT  
of Tyler County, Texas the \_\_\_ of April, 2014.

*Martin Nash*  
\_\_\_\_\_  
Martin Nash, Commissioner Pct. 1

*Rusty Hughes*  
\_\_\_\_\_  
Rusty Hughes, Commissioner Pct. 2

\_\_\_\_\_  
Mike Marshall, Commissioner Pct. 3

*Jack Walston*  
\_\_\_\_\_  
Jack Walston, Commissioner Pct. 4

*Jacques L. Blanchette*  
\_\_\_\_\_  
Jacques L. Blanchette, County Judge

Attested by: *Donece Gregory*  
\_\_\_\_\_  
Donece Gregory, County Clerk