Chapter 312:
Local Property Tax Abatements

One of Texas' key economic development programs—Chapter 312 of the Tax Code that allows cities and counties to offer temporary tax abatements—is set to expire in 2019. In this brief, TTARA looks at how the program works.

Things to Know

- The Legislature must re-authorize Chapter 312 in 2019 or it will expire, leaving Texas without one of its most important economic development tools.
- Chapter 312 was first passed in 1987 and was extended in 1991, 2001, and 2009. This incentive program is critical to the economic vitality of Texas and must continue.
- Chapter 312 of the Tax Code, allows cities, counties and non-school special districts to offer full or partial property tax exemption for new investments for a period not to exceed 10 years for new investments.
- Chapter 312 allows communities to attract new jobs and grow tax bases without any cost to the state or to local taxpayers.
- Texas has among the highest property tax burdens in the nation, putting the state at a competitive disadvantage in attracting major investment projects.

How an Abatement Works

Chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act, allows the governing bodies of cities, counties and special districts to exempt all or part of the taxable value of new investments for a period not to exceed 10 years. Chapter 312 does not apply to school districts, as they are covered by Chapter 313. Chapter 312 is a local option program that has no fiscal impact on the state budget.

To be eligible for an abatement, a project must be a new facility or an expansion or modernization of an existing one. Only residential, commercial, or industrial projects are eligible; oil and gas development is not.

The tax abatement process is open to public scrutiny at every stage of the process. Reinvestment zones must be approved by city councils or county commissioners courts by official actions in public meetings. This approval can only occur after a public hearing is conducted and notices are delivered to presiding officers of each taxing unit governing body in the zone. Guidelines and criteria are required to be approved by each taxing unit individually (except for school districts that cannot participate).

Agreements can then be negotiated and must be approved by a majority vote of each taxing unit governing body in public meetings. Notice must be given 7 days before the date on which a city or county plans to approve an agreement to each taxing unit located in the reinvestment zone, along with a copy of the agreement. In order to receive the abatement, the property owner must then file an exemption application with the appraisal district and be approved. The appraisal district must report the agreements to the Comptroller of Public Accounts. The Comptroller publishes a biennial report to the Legislature reporting new abatements.

Abatement agreements are required to include certain provisions. They must specify the improvements to be made to the property and provide access for city or county employees to verify that the agreements are followed. The agreements must require payment of taxes, or “claw-back” provisions, if a property owner fails to comply with the abatement terms. In addition, annual certificates of compliance must be filed with the applicable taxing units to ensure accountability and visibility for the public.

Why Does Texas Need Abatements?

Texas is a relatively high tax state for business—particularly capital-intensive businesses. Texas does not levy a personal income tax and relies more heavily on sales and property taxes than other states. Texas has some of the highest property tax rates across the states—fourth highest for an industrial facility and 65% higher than the national average (see below). Without incentives such as the abatements allowed under Chapter 312, Texas would be at a significant disadvantage when competing for major capital investment projects.

Abatements by the Numbers

In 2016 and 2017, the most recent years for which data are available, cities and counties entered 165 new agreements. Less than half of the agreements were for the maximum allowable 10 years. Most of the agreements abated taxes on new construction, as opposed to expansions.

Revenue Gain—Not a Loss

Tax abatements do not reduce *existing* local property taxes and do not cause a loss of revenue. Instead, they offer a temporary limit on future taxes for a facility not yet built. Even so, projects typically *add* to the tax rolls even during the time of the abatement. For example, the abatement may not exempt the entire investment. Further, project inventories, which can be substantial, may not be subject to an abatement. Plus, major projects typically spark construction or business activity with support companies near the project.

Nor do tax abatements cause the state to lose—in fact, the state ends up a clear winner. Abated projects may enjoy temporary local tax relief, but they pay 100% of their franchise, sales, and other state taxes.

Critics erroneously equate the “cost” of an abatement to the amount of benefit a project receives, rather than the benefit it brings to the community. In fact, the choice for the community is typically between a vacant field or a permanent new facility that will pay a substantial amount of state and local taxes over its lifespan.

State and local tax bills differ substantially across locations. For a company, it is not the amount of the tax incentive it receives that sways its decision. It is the ultimate tax cost over the life of the project that matters—a factor that is often ignored, and rarely even scored, by public policymakers.

Property Taxes Over a 25-Year $1 Billion Investment