

HUTCHINSON COUNTY TAX ABATEMENT POLICY GUIDELINES AND CRITERIA

Section 1 STATEMENT OF PURPOSE

The purpose of the Commissioners Court of Hutchinson County, Texas, in adopting these tax abatement guidelines and criteria is to improve the quality of life in Hutchinson County by stimulating industrial development and job creation and retention by providing property tax incentives to the owners of real property who propose a project to develop, redevelop, or improve eligible facilities. The incentives will consist of a limited special exemption from certain property taxes on real property located in a lawfully created reinvestment zone provided such owner agrees to accept and abide by this policy and the terms of any tax abatement agreement entered into pursuant to these guidelines.

Section 2 DEFINITIONS

- (a) **"Abatement"** means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated by Hutchinson County for economic development purposes.
- (b) **"Agreement"** means a written contractual agreement between a property owner and/or lessee and Hutchinson County for the purpose of granting a tax abatement.
- (c) **"Base year"** means the calendar year in which the abatement contract is executed.
- (d) **"Base year value"** means the assessed value of eligible property January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1, but before the execution of the Agreement.
- (e) **"Deferred maintenance"** means the improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (f) **"Eligible jurisdiction"** means Hutchinson County and any municipality, school district, college district, or other local taxing districts or jurisdictions eligible to abate taxes according to Texas law and which levies ad-valorem taxes upon and provides services to property located within the proposed or existing reinvestment zone in Hutchinson County.
- (g) **"Employee"** for the purposes of the economic qualifications of Section 3(f)(2) of these Guidelines and Criteria shall include all persons directly employed by the owner of the planned improvement at the abated facility site/reinvestment zone together with any independent contractor or employee of independent contractors employed on a full-time (40 hours per week equivalent) basis at the facility site/reinvestment zone continuously for the duration of the abatement agreement. An employee should reside within Hutchinson County in order to qualify under the economic qualification of Section 3(f)(2); provided, however, a variance may be allowed by the Commissioners Court to this residence

requirement. The officers of a corporation shall be "employees" under this definition.

- (h) **"Expansion"** means the addition of buildings, structures, machinery or equipment for purposes of increasing production capacity.
- (i) **"Facility"** means property improvements completed or in the process of construction which together comprise an integral whole.
- (j) **"Hutchinson County Vendor and Services"** means a company that employs Hutchinson County residents and pays Hutchinson County ad valorem taxes.
- (k) **"Modernization"** means the replacement and upgrading of existing facilities, which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation, and extends the economic life of the facility. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, repairing, or completion of deferred maintenance.
- (l) **"New Facility"** means a property previously undeveloped, which is placed into service, by means other than or in conjunction with expansion or modernization.
- (m) **"Productive Life"** means the number of years a property improvement is expected to be in service.
- (n) **"Qualified Vendors and Services"** means those vendors and services that meet the company's individual stated requirements, which can include but are not limited to: safety, financial condition, environmental record, quality or ability to perform.
- (o) **"Reinvestment Zone"** is an area designated as such for the purpose of tax abatement as authorized by Chapter 312 of the Texas Tax Code.

Section 3 **ABATEMENT AUTHORIZED**

- (a) **Creation of New Value.** Abatement may only be granted for the additional value of eligible real property improvements made subsequent to and specified in a tax abatement agreement between Hutchinson County and the property owner or lessee, subject to such limitations as Hutchinson County may require.
- (b) **New and Existing Facilities.** Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.
- (c) **Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements and such office space and related fixed improvements necessary to the operation and administration of the facility.
- (d) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for tax abatement: land; inventories; supplies; tools; furnishings, and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodations; retail facilities; deferred maintenance investments; property which has a productive life less than ten years; property owned or used by the State of Texas or its political

subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas, or any property exempted by local, state, or federal law.

- (e) **Value and Term of Abatement.** A tax abatement, if approved, shall be granted effective with the January 1 valuation date immediately following the date of the order or resolution of the Commissioners Court granting the abatement and approving the abatement application. The value of the abatement will be determined based on the merits of the project, including, but not limited to, capital investment value and added employment. Up to one hundred percent of the value of new eligible properties may be abated for a term not to exceed seven years or for a term of years not to exceed one-half (1/2) of the productive life of the improvement, whichever is less. However, a project must provide an extraordinary economic benefit to the County to be considered for a one hundred percent abatement. The abatement may be extended through an initial agreement and a subsequent agreement may be required to comply with state law regarding the term of the reinvestment zone.

If a modernization project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit(s).

- (f) **Economic Qualifications.** In order to be eligible for designation as a reinvestment zone and to qualify for tax abatement the planned improvement:

- (1) Must be reasonably expected to increase and must actually increase the value of the property in the amount of \$200,000 or more;
- (2) Must prevent the loss of employment, retain or create employment for at least ten (10) people on a full-time (40 hours per week equivalent) basis in Hutchinson County for the duration of the abatement period at the tax-abated facility site described in the abatement application. The proposed number of employees to be employed at the tax-abated facility as stated in the abatement application for the property that is the subject of the tax abatement agreement (including the projected creation or retention of employment) must be maintained for the duration of the abatement period at the tax-abated facility site. For purposes of this subsection, in order for a planned improvement to be considered as preventing the loss of employment or retaining employment, the tax-abated facility/project must be necessary in order to retain or keep employment at levels as indicated in the application and in order to retain the proposed number of employees at the tax-abated facility as indicated in the application. The owner/applicant seeking to qualify on the basis of retention or preventing loss of employment must provide a detailed statement as an attachment to its application affirmatively representing compliance with this subsection and explaining the necessity of this project to prevent loss of employment. Any variance from the requirements of this subsection is subject to approval of the Commissioners Court in accordance with the variance section of these Guidelines & Criteria;
- (3) Must not be expected to solely or primarily have the effect of transferring employment from one part of the county to another part of the county. A variance may be requested relative to this provision and the approval of such requested variance shall be at the sole discretion of the Commissioners Court; and
- (4) Must be necessary because capacity cannot be provided efficiently utilizing existing

improved property.

Additionally, the owner of the project:

- (5) Must file a plan statement with the application demonstrating willingness and planned efforts to use qualified Hutchinson County vendors and services where applicable in the construction and operations of the facility. Hutchinson County vendors and services must be competitive with non-county vendors and services regarding price, quality, safety, availability and ability perform;
- (6) Must not file with the Hutchinson County Appraisal District a valuation or taxpayer protest or notice of protest pursuant to the Texas Property Tax Code during the abatement period legally protesting or challenging the valuation of the abated improvements of a manufacturing facility pursuant to an appraisal method that produces a valuation of improvements based on each improvement's value as a separate item of personal property rather than the improvements' value as integral fixtures of a producing manufacturing facility. An owner's legal protest or challenge to the improvements' value pursuant to the Texas Property Tax Code must be based on and use historically approved or accepted appraisal methods and techniques allowed by law (Texas Property Tax Code) and acceptable to the Chief Appraiser of the Hutchinson County Appraisal District. The filing of a valuation protest or challenge or notice of protest based on or using the unacceptable appraisal method mentioned in this sub-section or based on or using appraisal methods or techniques that are unacceptable to the Chief Appraiser (including the one mentioned in this subsection) shall cause the tax abatement agreement to be subject to termination and recapture of all previously abated taxes.
- (7) Must not be a defendant in any litigation by the County seeking recovery or recapture of previously abated taxes.
- (g) **Taxability.** From the execution of the tax abatement agreement to the end of the agreement period, taxes shall be payable as follows:
 - (1) The value of ineligible property as provided in Section 3(d) shall be fully taxable;
 - (2) The base year value of existing eligible property as determined each year shall be fully taxable; and,
 - (3) The additional value of new eligible property shall be taxable in the manner and for the period determined in accordance with Section 3(e), "Value and Term of Abatement," and as provided in the tax abatement agreement.
 - (4) The additional value of new eligible property shall be fully taxable at the end of the abatement period.

Section 4

ABATEMENT APPLICATION

- (a) Any present or potential owner of taxable property in Hutchinson County may request the creation of reinvestment zone and tax abatement by filing a written request and a completed application with Hutchinson County through the County Judge. Applicant shall also furnish a copy of same to each County Commissioner.
- (b) The application shall consist of a completed application form together with: (i) a general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements which will be a part of the facility; (ii) a map and property description; (iii) a time schedule for undertaking and completing the planned improvements; and, (iv) employment and contract information. 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 County may also require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors of the applicant.
- (c) Prior to the adoption of an ordinance designating a reinvestment zone, the County Judge shall (i) give written notice to the presiding officer of the governing body of each eligible jurisdiction not later than the seventh day before the public hearing, and (ii) publish notice of a public hearing in a newspaper of general circulation within Hutchinson County not later than the seventh day before the public hearing. Before acting upon the application, the County, through such public hearing, shall afford the applicant and the designated representative of any governing body of an eligible jurisdiction, and such other interested parties, an opportunity to speak and present written materials for or against the approval of the tax abatement.
- (d) Any final decision or interpretation as to the intent and/or meaning, of the County's tax abatement policy or of any provision contained in these guidelines and criteria, and any final decision as to whether or not an application complies or does not comply with these guidelines and criteria, and any final decision as to whether to grant or deny tax abatement, shall be made by the Commissioners Court in its sole discretion.

Section 5 **DENIAL OF ABATEMENT**

- (a) Neither a reinvestment zone nor a tax 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; or
 - (2) The applicant has insufficient financial capacity; or
 - (3) The planned or potential use of the property would constitute a hazard to public safety, health or morals, or would violate any applicable code or law; or
 - (4) The request for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed modernization, expansion or new facility; or
 - (5) There is some other reason(s) deemed appropriate by the County not to approve such tax abatement.

Section 6

AGREEMENT

- (a) If approved, the Hutchinson County Commissioners Court shall formally pass a resolution and execute an agreement with the owner of the facility as required, and such resolution shall include at least the following information and terms:
- (1) Estimated value to be abated and the base year value;
 - (2) Percent of value to be abated each year as provided in Section 3(e);
 - (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 the tax abatement application submitted by applicant;
 - (5) Contractual obligations in the event of a default, violation of a term or condition, delinquent taxes, recapture, administration and assignment as provided herein;
 - (6) Size of investment and average number of jobs involved for the period of abatement; and
 - (7) A provision that the owner shall certify annually that the owner is in compliance with each term of the agreement and that the owner annually furnish information necessary for Hutchinson County's evaluation of the owner's compliance with the terms and conditions of the tax abatement agreement and these guidelines and criteria (in the form of an annual report/statement of compliance), together with an additional provision that Hutchinson County may, at its election, request and obtain information from the owner as is necessary for the County's evaluation of the owner's compliance with the terms and conditions of the tax abatement agreement and these guidelines and criteria.
- (b) Such agreement shall normally be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to the County.

Section 7

RECAPTURE

- (a) If a facility or project is not completed as specified in the tax abatement agreement, or if the facility or project contemplated herein is completed and begins producing product or service but the company fails to maintain the level of employment (including the projected creation or retention of employment) stated in the abatement application for the facility or project, the County may elect to:
- (1) Declare a default and terminate the abatement agreement without recapturing prior years' abated taxes;
 - (2) Declare a default, terminate the agreement and order a recapture of all or part of the previous years' abated taxes; or,
 - (3) Set specific terms and conditions for the continuation of the abatement exemption for the duration of the term of the agreement under its present terms or alter the amount of the abatement for the remaining term of the agreement.
- (b) Should Hutchinson County determine that the company or individual is in default according to the terms and conditions of its agreement, Hutchinson County shall notify the

company or individual 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.

- (c) 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 will be recaptured and paid within sixty (60) days of the termination.
- (d) Upon the owner's failure to provide the certification, or any requested statement or information pursuant to the provisions described in Section 6(a)(7) without just cause within sixty (60) days of the request for the information, or upon the presentation of any false or misleading statement, the County may, at its option, be construed as a default by the owner and cause for immediate termination of the tax abatement agreement and recapture of all previously abated taxes, if after written notice of default, the owner has not cured such default prior to the expiration of thirty (30) days from such written notice. The cure period provisions of subsections (b) and (c) above are not applicable to a default and termination under this paragraph.

Section 8

ADMINISTRATION

- (a) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property comprising the reinvestment zone and subject to each abatement agreement. Each year, the company or individual receiving abatement shall furnish the assessor with such information as may be necessary for the abatement. Once value has been established, the Chief Appraiser shall notify the County of the amount of the assessment.
- (b) The agreement shall stipulate that the County, the County Auditor, and such other designated employees or representatives of Hutchinson County, shall have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such a manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with the facility's safety standards.
- (c) Upon completion of construction, the owner of an abated facility must submit a written report/statement of compliance annually during the life of the abatement to the Hutchinson County Commissioners Court clearly detailing the status of the facility and how it is complying with the abatement guidelines. The County shall annually evaluate each abated facility and present all possible violations to the contract and agreement to the Hutchinson County Commissioners Court. A form of annual report that may be used by the owner is attached as Attachment A to these Guidelines & Criteria, and the owner's annual report

shall, at a minimum, contain the information shown in the Attachment A form.

- (d) The County shall timely file with the Texas Department of Commerce and the Property Tax Division of the State Comptroller's office all information required by the Tax Code.

Section 9 **SUNSET PROVISION**

- (a) These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two years, at which time all reinvestment zones and tax abatement contracts created pursuant to its provisions will be reviewed by Hutchinson County to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria will be modified, renewed or eliminated, provided that such actions shall not affect existing contracts or applications for tax abatement filed prior to the expiration of said Guidelines and Criteria. Applications for abatement filed prior to the expiration of the Guidelines and Criteria shall be governed by the provisions of these Guidelines and Criteria regardless of any subsequent modification or amendment.
- (b) This policy is mutually exclusive of existing Industrial District Contracts and owners of real property in areas deserving of special attention as agreed by the eligible jurisdictions.
- (c) These Guidelines and Criteria for Granting a Tax Abatement shall be effective on the date the Commissioners Court enters its resolution and/or order adopting these Guidelines and Criteria, and shall remain in force until for a period of two years from such date, subject to being amended, superseded, modified, renewed, terminated or vacated by the Commissioners Court prior to such termination date.

Section 10 **DISCRETION OF THE COUNTY**

The adoption of these guidelines and criteria by Hutchinson 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.