

Procedures Title:

Tax Abatement Policy Guidelines & Criteria

(Under the Plant Rehabilitation and Industrial Development Districts Act 198 of 1974)

1. Policy Statement

The City of Ann Arbor is committed to the ongoing improvement in its financial state and the quality of life for its citizens. This can be achieved through the promotion of high quality development in all parts of the City, enhancing the competitiveness and expansion of Ann Arbor's economy. As these objectives are generally served by the enhancement and expansion of the local economy, the City of Ann Arbor will, on a case-by-case basis, give consideration to providing tax abatement as stimulation for economic development. It is the policy of the City of Ann Arbor that said consideration will be provided in accordance with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that the City of Ann Arbor is under any obligation to provide tax abatement to any applicant.

2. Introduction

Property tax abatements - full or partial relief from tax liability for certain land parcels - are the most commonly sought after form of financial assistance for an economic development project that cities use to attract and retain businesses in their area. Tax abatements are awarded after a public review process that is often both bureaucratic and political. They typically are targeted for improvements but not land, and thus enable policy makers to use them for enhancing the attractiveness of locations for investment, rehabilitation, and other economic development. Currently, 35 out of the fifty states offer property tax abatements.

The subject of tax abatement or exemption is sure to engender lively discussion in any public meeting, most of which is not likely to be very supportive. Part of the problem is that the term "abatement" suggests that the property tax is being reduced and the term "exemption" connotes that the property tax does not have to be paid at all. Describing the tool as a property tax "incentive" is a more accurate way to describe the role it plays in the economic development process.

Many feel that there are numerous benefits to offering tax abatements. Doing so shows that a city is probusiness and at least actively trying to encourage economic development. The preservation of the local tax base and providing for future tax revenue increases are important considerations for communities when deciding whether to authorize a tax abatement. The city still gains revenue with abatement while it may risk losing the local industry if it fails to show support for the expansion. Abatements can also be seen as a method to say "thank you" to a company that has been a good corporate citizen, and that has made a strong and long-term commitment to the community. Tax abatements can and should be considered strong business incentives for attracting industries to the local community.

Long-term tax incentives are actually an exemption of the value of the improvements (redevelopment) of a property for a period of time negotiated in a tax agreement between the

redeveloper and the municipality. The property taxes on the land remain, and are paid to the municipality that cannot be less than the total taxes paid on the property prior to the construction of the improvements. **The municipality will never receive less on the property than it did prior to the redevelopment project.** It will receive less total revenue than it would if it taxed the new improvements at full value, but the belief is that one-half of something is better than all of nothing.

While there are solid reasons for granting tax abatements, municipalities should also be aware of some of the factors why abatements might not be considered desirable. New development may be associated with greater demand for city services and infrastructure improvements, which result in revenue losses to the local unit. Also, there is the public perception that tax abatements are a form of "corporate welfare", particularly since residential property owners are not able to secure such tax relief. However, it should be noted that industry pays a higher tax rate even with abatements than homestead properties. And as mentioned above, the abatement is only for new improvements and thus the petitioning company must still pay the tax levels for pre-existing property. The offering of tax abatements can sometimes hurt current businesses, especially if the petitioning company is a direct competitor.

There are two main tax abatement laws in Michigan. Public Act (PA) 198 (enacted 1974 and as amended subsequently) allows for local municipalities to issue abatements for industrial property taxes. Up to 50% of property taxes (taxes on buildings, machinery, and equipment) can be reduced for the new construction of facilities, while the renovation of obsolete facilities are eligible for reduction of up to 100% or property taxes on the value of improvements made to a facility. Industrial Facilities Exemption Certificates are in effect for up to 12 years. P A 140 of 1999 created an accelerated liability provision in the Act for a business that leaves (and establish operations outside of the state) the tax-abated district before certification expiration. That is, tax-abated or exempted businesses that leave a district prematurely could be made liable for the remaining years on the exemption certificate. Liability under this provision is limited to the future value of the certificate until expiration. Exercise of this provision is at the discretion of the effected local government.

Public Act 328 (enacted 1998) allows for the provision of tax abatements of personal property, though these abatements are only available in certain designated areas of eligible distressed communities. A property tax exemption of 100% is available for all new personal property placed in a locally established district.

The Michigan Economic Growth Authority (MEGA), an agency established in 1995 with the purpose of both retaining and recruiting companies within the state, also has the power to issue tax credits and abatements to companies that relocate or expand within Michigan. The petitioning company must create a minimum number of jobs before the local community can authorize tax abatement, and it is only then the petitioner becomes eligible to receive MEGA tax incentives. In many cases the amount of tax savings realized at the local level is much smaller in comparison to the considerably larger tax incentives received from MEGA.

It should be noted that the City of Ann Arbor established a policy of sorts in October 1993 regarding tax abatements and the granting of Industrial Facilities Exemption Certificates by other governmental jurisdictions to Ann Arbor companies. The adopted resolution (R-476-10-93) was an attempt to stem the departures of companies from Ann Arbor and the associated net loss of jobs and municipal tax revenue. With this policy Ann Arbor put other taxing jurisdictions on notice that the City would object to the grant of tax abatements unless a newly created firm,

a relocated company, or expansion of an existing facility replaced a vacancy created by a petitioner's departure from Ann Arbor.

The decision to grant tax abatements is extremely subjective even when the parameters for consideration and approval are well defined. One thing is certain, the Mayor and City Council must find that the expected benefits to the City of Ann Arbor of the proposed abatement agreement equal at a minimum the costs to the City of the proposed agreement. They must also insure that the abatement is in the public interest because it will facilitate at the very least those objectives described below. The fact remains that to be a player in the economic development "ballgame", local municipalities can't afford to ignore the utility of tax abatements to retain and attract businesses. If this is the tool that permits that overarching goal then it must be used judiciously whether or not there is community agreement on the benefits of tax abatements.

3. Objectives

Applications for tax abatement under the provisions of Act 198 of 1974 as amended will be evaluated in terms of potential benefit to the City of Ann Arbor by consideration of the following objectives.

3.1. Increase the tax base;

3.2. Promote diversification of the industrial base;

3.3. Provide employment opportunities in the City of Ann Arbor; **3.4.** Promote community sustainable development

3.5. Projects that do not create a high demand for city services or have an adverse impact on city infrastructure;

3.6. Attract companies and facilities engaged in advanced manufacturing, advanced information technology or other computer-related industries, life sciences or biotechnology, nanotechnology, alternative energy, and small technologies like advanced devices, materials and sensors, or any high-technology activity that qualifies under P A 144, of 2000;

3.7. Provide economic stimulus to other business activities in the City;

4. Eligible Property or Industries

The following types of enterprises or industry sectors are eligible to apply for Tax Abatement pursuant to PA 198 as amended:

4.1. manufacturing

4.2. mining

4.3. high-technology (as defined by PA 144 of 2000) **4.4.** research and Development

4.5. wholesale and trade

- 4.6. office operations
- 4.7. agricultural processing facilities
- 4.8. convention and trade centers over 250,000 sf (as defined by PA 140 of 1999)
- 4.9. operation of a hydro-electric dam by a private company other than a public utility
- 4.10. property acquired, constructed, altered, or installed due to the passage of proposal A in 1976
- 4.11. buildings, building improvements, machinery, equipment, furniture and fixtures
- 4.12. real property and personal property are eligible, whether owned or leased (provided the lessee is liable for payment of taxes on the property)

5. Ineligible Property or Industries

The following types of enterprises or industry sectors are not eligible to apply for Tax Abatement pursuant to P A 198 as amended:

- 5.1. land is specifically excluded from the benefits of the Act and is fully taxable
- 5.2. speculative buildings as defined by Section 207.553 Section 3(8) of PA 198 of 1974, as amended
- 5.3. property of a public utility other than an electric generating plant that is not owned by a local unit of government for which an application was approved by the legislative body of a local government unit between June 30, 1999 and June 30, 2002
- 5.4. existing buildings or equipment prior to construction of a "new facility" 5.5. inventory

6. Criteria for Eligibility Consideration

- 6.1. Generally, the project meets sustainable community development principles such as equity (pay and living standards), ecology (reliance on renewable resources to conduct business), and economy (% profits or % revenues that are represented locally);
- 6.2. The value of land and existing facilities or personal property, if any;
- 6.3. The type and value of the proposed improvements;
- 6.4. The expected economic life of the proposed improvements;
- 6.5. The number of existing, permanent jobs to be retained by the proposed improvements;
- 6.6. The number of new permanent and full-time jobs to be created by the proposed improvements, paying at least living wages and with the provision of health and other benefits;

6.7. The amount of local payroll to be created or enhanced;

6.8. The pay ratio and scale of new jobs created;

6.9. That the new jobs to be created will be filled in whole or in part by Ann Arbor residents or those projected to reside within the City, a commitment to hire minorities and economically disadvantaged individuals, and a commitment to contract work to local, minority and women-owned businesses;

6.10. Applicant's commitment to demonstrating sound environmental and design practices when constructing, operating and maintaining the facility, including but not limited to, minimizing impervious surfaces, utilization of clean and renewable energies, implementation of water conservation and storm water management practices, and flood protection measures (if appropriate), provision of incentives for mass and alternative transportation options, and the sponsorship of other innovative practices that serve to minimize the project's environmental impact and to protect water, land and energy resources for the economic and quality of life benefit of the community;

6.11. The costs to be incurred by the City to provide facilities or services directly resulting from the new improvements;

6.12. The amount of ad valorem taxes to be paid the City 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;

6.13. The types and values of public improvements, if any, to be made by applicant seeking Abatement;

6.14. The proposed improvements compete with existing businesses to the detriment of the local economy;

6.15. The potential community impact such as the estimated fiscal and services burden on the local school district and county, or the projected demand on the city's housing market;

6.16. The extent to which the proposed use of tax abatement is consistent with the City's goals, development priorities, Master Plan and zoning codes.

6.17. The approval of an abatement makes the local firm eligible for a State incentive which requires a local contribution.

The aforementioned criteria are not intended to be absolute. The Mayor and City Council reserves the right to consider such additional goals and criteria which are intended or set forth under the goals and policies of ACT 198 and which are consistent with the general health, safety and welfare of the City of Ann Arbor.

7. Application

Application for an Industrial Facilities Exemption Certificate involves the City of Ann Arbor and

the State of Michigan. Only the Mayor and City Council have the authority to establish an Industrial Development District and approve an Industrial Facilities Exemption Certificate once the following procedures have been fulfilled.

7.1. "Petition for Establishment of Industrial Development or Plant Rehabilitation District." The owners of an industrial property located within the proposed district may petition for the establishment of an Industrial Development District or a Plant Rehabilitation District as a first step towards an application for an Industrial Facilities Exemption Certificate. Such a petition for establishment of a District must be filed with the City Clerk's office.

7.2. "Notice of Public Hearing to Approve Establishment of Industrial Development District." Pursuant to P A. 198 of 1974, as amended, the City's representative shall give notice of a public hearing. Written notice to the applicant, City Assessor, a representative of each of the affecting local taxing units (defined to be the City of Ann Arbor, Washtenaw County, Ann Arbor Public Schools, Ann Arbor District Library, Washtenaw Intermediate School District and Washtenaw Community College) must be provided no later than the seventh day before the designated public hearing. The general public must be notified by publication in a newspaper of general circulation within such taxing jurisdiction no later than the seventh day before the designated public hearing. All notified individuals and representatives will thereby be afforded an opportunity to be heard on the petition for establishment of an Industrial Development District.

7.3. "Approval or Denial of an Industrial Development District." The Mayor and City Council will approve or deny the request for establishment of an Industrial Development District following the public hearing and full consideration of the request. Once the district is established the City of Ann Arbor cannot stop an application within the established district from being submitted, acted upon and given the full right to the appeal process. The Mayor and City Council can refuse to establish a district and the petitioner can appeal no further.

7.4. "Filing of Application." Petitioner can submit an application for an Industrial Facilities Exemption Certificate only after the Mayor and City Council approves the establishment of an Industrial Development District following a duly noticed public hearing. The application for a certificate shall be made to the City Clerk on forms provided by the Michigan State Tax Commission. Application for tax abatement of real or personal property in an existing Industrial Development District are ineligible if the improvements occurred and/ or property was installed or otherwise fully operational within the facility more than six months prior to the City's receipt of the application.

7.5. "Application Fee." A non-refundable fee must accompany the application for an Industrial Facilities Exemption Certificate. The amount of the non-refundable application fee will be equal to the lesser of the City's actual costs to process the Application, two percent (2%) of the total property taxes abated for the term that the Industrial Facilities Exemption Certificate is in effect, or **\$1,000**.

7.6. "Public Hearing on Application for an Industrial Facilities Exemption Certificate."

The local governing body, prior to the review and consideration of an application, must schedule a public hearing for an Industrial Facilities Exemption Certificate, pursuant to P A. 198 of 1974, as amended. Written notice to the applicant, City Assessor, a representative of each of the

affecting local taxing units (defined to be the City of Ann Arbor, Washtenaw County, Ann Arbor Public Schools, Ann Arbor District Library, Washtenaw Intermediate School District and Washtenaw Community College) must be provided no later than the seventh day before the designated public hearing. The general public must be notified by publication in a newspaper of general circulation within such taxing jurisdiction no later than the seventh day before the designated public hearing. All notified individuals and representatives will thereby be afforded an opportunity to be heard on the petition for establishment of an Industrial Development District.

7.7. "Review of Application." All Tax Abatement applications shall be individually reviewed by representatives of the City and other appropriate taxing jurisdictions as necessary, including but not limited to, the City Administrator, Chief Financial Officer, City Attorney, and City Assessor. The Mayor and City Council will approve or deny an agreement based on the recommendations of the City Administrator and Chief Financial Officer, and the merits and due diligence of the application, and the guidelines and criteria set forth herein. In addition, in its discretion, the Mayor and City Council may appoint a Tax Abatement Review committee or board, or assign such role or responsibilities to an existing governance body, which will assess the application and make suggested recommendations to the Mayor and City Council regarding each application.

7.8. "Existing Enterprise Considerations." The Mayor and City Council may, at its discretion, give any weight it feels appropriate to the approval or denial of a tax abatement application, based upon their consideration of whether or not the petitioner's company or facility would compete with an already similar existing business. In general, the City Council takes the position it is unfair for an existing local tax paying business - operating in the same or a similar manner as far as type of product or services, scope of production and/or services, and the size of investment made - to have compete with a new business whose taxes would be abated.

7.9. "Denial of Abatement." No Abatement Agreement shall be authorized if it is determined that: **7.9.1**• There would be substantial adverse effect on the tax base or costs associated with the provision of government services;

7.9.2. The applicant has insufficient financial capacity, which reasonably could be expected to jeopardize the success of the undertaking;

7.9.3. The planned or potential use of the property would constitute a hazard to public safety, health, or welfare;

7.9.4. Granting an Abatement might lead to the violation of other codes or laws; **7-9-5**• For any other reason deemed appropriate by the City.

7.10. "Application to State." If the Mayor and City Council approve the application for a Certificate, the City Clerk shall forward the application to the Michigan State Tax Commission and the Michigan Economic Development Corporation for their review and approval. The State Tax Commission grants the final approval and issues the Industrial Facilities Exemption Certificate.

7.11. "Indemnification of City of Ann Arbor In Event of State Denial." The petitioner acknowledges and agrees to hold the City of Ann Arbor harmless in the event the Michigan State Tax Commission denies its application for an Industrial Facilities Exemption Certificate.

8. Taxability

From the execution of the Abatement, to the end of the Agreement period, property taxes shall be payable as follows:

8.1. The value of ineligible property, such as land, as provided in **Section 5.1**, shall be fully taxable using 100% market value as determined by the City Assessor;

8.2. The base-year value of existing eligible property, as determined each year, shall be fully taxable as provided in **Section 9.2.2** and **9.2.5**.

8.3. The additional value of new eligible property, real or personal, shall be fully taxable at the end of the Abatement period.

9. Agreement

9.1. "Notice to Jurisdictions." The City's representative shall notify the governing body of each of the other taxing units in which the property is located not later than the 7th day before the date on which the City enters into the Abatement Agreement with a written notice that the City intends to enter into the Agreement.

9.2. "Agreement Contents." The City shall formally execute an Agreement with the owner of the facility, and lessee as required, which shall include:

9.2.1. The commencement date and the termination date of Abatement;

9.2.2. The estimated value to be abated and the base-year value;

9.2.3. The percent of value to be abated each year;

9.2.4. The minimum or Base-Year real and personal property tax liability during the life of the abatement;

9.2.5. The proposed use of the facility; nature of construction or improvements, time schedule, map, and legal description of the property;

9.2.6. A list of existing machinery, equipment, furniture and fixtures, which will be replaced or renovated. A list of existing machinery, equipment, furniture and fixtures, which will continue to be used in the facility. The list should include description, type, identification, year of acquisition, and original cost. (Not applicable to a new facility or speculative building);

9.2.7. The size of investment in real or personal property, and/or the increase in number of employees for each of the following categories - at prior year-end, new hires, attrition, and employees at present year-end;

9.2.8. Contractual obligations regarding Base-Year taxes or in the event of default, violation of terms and conditions, delinquent taxes, recapture, administration and assignment as provided under **Sections 7.3, 8, 9, and 10**;

9.3. " Guarantee of Base-Year Taxes." The applicant guarantees to the City that, except for the State Education Taxes, during the years of the tax abatement, the facility's taxes, for real or personal property, for all local taxing units, shall never be less than the amount of taxes for the year the application is filed and as defined in the Agreement. This Base-Year Amount shall be adjusted each year by the same rate of inflation as set forth in the Consumer Price Index, provided that for purposes of the Agreement the rate of inflation and the Consumer Price Index shall not exceed five percent (5%) per year. For personal property abatements, the taxes will also be adjusted downward for depreciation based on the State Tax Commission multipliers.

9.3.1. If at any time during the abatement period the amount of investment for any reason, except those set forth in the Agreement, results in the amount of taxes the Company owe to the City to be less than the City's share of the Base-Year Amount as adjusted by the Consumer Price Index, the Company agrees and shall pay upon written request in a prompt and timely manner to the City the difference between what the Company is levied by the City in taxes, and the City's share of the Base-Year Amount, as adjusted by the Consumer Price Index (as defined herein not to exceed 5% per year).

9.3.2. This provision shall not apply to the extent that the taxes levied on the Company by the City are less than the City's share of the Base-Year Amount, as adjusted herein, because of an act of nature, fire, criminal act, energy shortage, act of terrorism or war, or other catastrophic event, or depreciation of the Company's property, and subject to the City of Ann Arbor taxation in the Base-Year.

9.3.3. For any year in which the City receives a payment under this Section, the Company also shall cause the City to receive a comparable amount based on each of their respective millage rates for that year, for all other governmental units for whom the City levies property taxes under the General Property Tax Act, P A 206 of 1893. The City shall disburse such amounts for the other governmental units to them. In no event shall the Company's payments for a calendar year under this Section exceed the amount of the Company's abated taxes for that year.

10. Recapture of Taxes in Event of Non-Compliance

10.1. "Termination." In the event that the company or individual (1) allows its ad valorem taxes owed the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/ contest; or (2) violates any of the terms and conditions of the Abatement Agreement and fails to cure during the Cure Period, the Agreement than may be terminated and all taxes previously abated by virtue of the Agreement will be recaptured and paid within thirty (30) days of the termination.

10.2. "Cure Period." Should the City determine that the company or individual is in default according to the terms and conditions of its Agreement, the City 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.

11. Administration

11.1. "Assessment Determination." The City Assessor of the City of Ann Arbor shall annually determine an assessment of the real and personal property covered under the Abatement. Each year, the company or individual receiving abatement shall furnish the City

Assessor with such information as may be necessary for the Abatement. Once value has been established, the City Assessor shall notify the City of the amount of the assessment.

11.2. "Access Guaranteed." The Abatement Agreement shall stipulate that employees and/or designated representatives of the City of Ann Arbor will have access to the abated property during the term of the Abatement to inspect the facility and determine if the terms and conditions of the Agreement are being met (covered under 7.2.6). All inspections will be made only after proper notification, and will 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 all safety standards. The City Assessor has direct authority to act on behalf of the City with all inspections.

11.3. "Annual Assessment Reports." All recipients of an Industrial Facilities Exemption Certificate must abide by the following requirements:

11.3.1. The taxpayer must file a timely annual Personal Property Statement on a form approved by the Michigan State Tax Commission;

11.3.2. Assessment based upon the recognized professional/scientific methodology for the appraisal of real and personal property for tax purposes, and is recommended and supported by the Michigan State Tax Commission manual.

12. Assignment

An Abatement Agreement may not be transferred nor assigned by the holder to a new owner or lessee of the same facility without prior approval by resolution of the Mayor and City Council of the City of Ann Arbor. Any assignment shall provide that all conditions, terms and obligations in the original Abatement Agreement are guaranteed by execution of an additional contractual Agreement with the City as an addendum to the Abatement Agreement. No assignment or transfer shall be approved if the parties to the existing Agreement (the new owner or lessee) are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

13. Public Disclosure of Application, Agreement and Reports

Information that is provided to the City of Ann Arbor in connection with an Application or request for Tax Abatement and that describes privileged financial and corporate data, the specific processes or business activities to be conducted, or the equipment or other property to be located as part of the facility for which the Tax Abatement is sought, is strictly confidential and not subject to public disclosure until the Tax Abatement Agreement is executed. That information in the custody of a taxing unit after the Agreement is executed is Public Record, and no longer confidential or privileged.

14. Sunset Provision

These Guidelines and Criteria are effective upon the date of their adoption, and will remain in force for five (5) years, unless amended by three-quarters vote of the Mayor and City Council of the City of Ann Arbor, at which time all Industrial Development Districts 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.

15. Legal Disclaimer to Potential Applicants

The adoption of these guidelines and criteria by the Mayor and City Council do not:

15.1. Consequentially award a tax abatement if the petitioner meets all the listed criteria;

15.2. Limit the discretion of the Mayor and City Council to decide whether to enter into a specific tax abatement agreement;

15.3. Limit the discretion of the City Council to delegate to its employees the authority to determine whether or not the City Council should consider a particular Application or request for Tax Abatement;

15.4. Create any property, contract, or other legal right in any person to have the City of Ann Arbor consider or grant a specific application or request for tax abatement.

15.5. Exclude the right of the Mayor and City Council to modify the tax abatement policy to reflect changing objectives, priorities and/or conditions.