

TAX ABATEMENT
GUIDELINES, CRITERIA AND PROCEDURES
FOR
ELLIS COUNTY

**Approved at Ellis County Commissioners' Court
Minute Order No. 96-188 on August 12, 1996**

**Renewed, Reaffirmed, and Reenacted at Ellis
County Commissioners' Court by Minute Order
No. 98-192 on July 13, 1998**

**Renewed, Reaffirmed, Reenacted at Ellis
County Commissioners' Court by Minute Order
No. 20-213 on July 10, 2000**

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**Renewed, Reaffirmed, Reenacted at Ellis
County Commissioners' Court by Minute Order
No. 457.06 on November 13, 2006**

**Renewed, Reaffirmed, Reenacted at Ellis
County Commissioners' Court by Minute Order
No. 145.09 on February 23, 2009**

**Renewed, Reaffirmed, Reenacted at Ellis
County Commissioners' Court by Minute Order
No. 135.11 on February 28, 2011**

**Renewed, Reaffirmed, Reenacted at Ellis
County Commissioners' Court by Minute Order
No. _____ on August 25, 2011**

**TAX ABATEMENT
GUIDELINES AND PROCEDURES
FOR
ELLIS COUNTY, TEXAS**

**SECTION 1
AUTHORITY, PURPOSE AND OBJECTIVES**

- 1.01 Pursuant to Chapter 312 of the Property Tax Code, Ellis County, Texas (hereinafter “County”) is authorized to designate Reinvestment Zones and to enter into tax abatement agreements in areas of the County that do not include areas that are in the taxing jurisdiction of the municipality. With regards to properties located in Reinvestment Zones for which a municipality has given tax abatement incentives, the County may also enter into tax abatement agreements pursuant to the County’s guidelines and criteria.
- 1.02 Section 312.002 of the Property Tax Code requires that the County establish guidelines and criteria governing tax abatement agreements. These guidelines and criteria are for the purpose of promoting the efficient and reasonably consistent administration of tax abatement incentives. These guidelines are effective for two (2) years from date adopted by Commissioners’ Court. A three-quarter (3/4) vote by Commissioners’ Court is required to amend or repeal these guidelines.
- 1.03 These guidelines and criteria, and the procedures established herein, do not:
- a) limit the discretion of the Commissioners’ Court to decide whether to enter into a specific tax abatement agreement,
 - b) limit the discretion of the Commissioners’ Court to delegate to its employees the authority to determine whether or not the Commissioners’ Court should consider a particular application or request for tax, and
 - c) create any property right, contract right, or other legal right to any person, or firm, or corporation to have the Commissioners’ Court consider or grant a specific application for a specific request for tax abatement.

**SECTION 2
DEFINITIONS**

- 2.01 “*Abatement*” means the full, or partial, exemption from County ad valorem taxation of the increased values of eligible properties in a Reinvestment Zone designated as such in accordance with State law, or the full or partial exemption from County ad valorem taxation of the increased values of properties located within a municipality’s taxing jurisdiction where the municipality has granted full or partial exemption to those properties from municipal taxes.

- 2.02 “*Agreement*” means the assessed value of either (1) the applicant’s subject real property and improvements on January 1 of the year of the execution of the agreement plus the agreed upon value of any property improvements made after that January 1, but before execution of the agreement.
- 2.03 “*Base Year Value*” means the assessed value of either (1) the applicant’s subject real property and improvements on January 1 of the year of the execution of the agreement plus the agreed upon value of any property improvements made after that January 1, but before execution of the agreement.
- 2.04 “*Economic Life*” means the number of years a property improvement is expected to be in service provided, however, in no event shall the number of years exceed the depreciation allowance specified in the Federal Internal Revenue Service Code.
- 2.05 “*Enterprise Zone*” means the addition of buildings, structures, fixed machinery, or equipment for the purpose of increasing production capacity.
- 2.06 “*Expansion*” means the addition of buildings, structures, fixed machinery, or equipment for the purpose of increasing production capacity.
- 2.07 “*Facility*” means real property along with any improvements completed or in the process of construction which together comprise an integral whole.
- 2.08 “*Lease*” means a relationship whereby the business applying for tax abatement has a contract with the owner of said property for possession of either the real property on which improvements are to be made and/or movable personal property to be used for the operation of the business for a defined period of time. (*See Texas Attorney General Opinion No. JC-300 (2000): precluding an agreement with an owner of a leasehold interest in tax-exempt property.*)
- 2.09 “*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 operation, alteration, or installation of buildings, structures, fixed machinery, or equipment. It shall not be for the purpose of reconditioning, refurbishing, repair or for maintenance or completion of deferred maintenance.
- 2.10 “*New Facility*” means a property previously undeveloped which is placed into service by means other than expansion or modernization.
- 2.11 “*Reinvestment Zone*” is an area designated as such for the purpose of tax abatement as authorized by the County in accordance with the Texas Property Tax Code Annotated §312.401, as amended.
- 2.12 “*Ineligible Property*” is inventory, supplies and that portion of the market value of property exempted from taxation pursuant to Section 11.31 of the Texas Property Code. Ineligible Property also includes mobile personal property, such as a motor vehicle, that is not fixed to property located within a municipal Reinvestment Zone.

SECTION 3
REINVESTMENT ZONE DESIGNATION

- 3.01 A Reinvestment Zone may only be designated in accordance with §312.401 of the Texas Property Tax Code (V.T.C.A.) as amended.
- 3.02 A Reinvestment Zone under §312.401 of the Texas Property Code may only be designated by the Commissioners' Court in an area of the County that does not include an area within the taxing jurisdiction of a municipality.
- 3.03 An area may be designated as a Reinvestment Zone if the Commissioners' Court, after a public hearing on the proposed designation, finds that the designation would contribute to the retention or expansion of primary employment within the County, or would attract major investment into the Zone that would be a benefit to the property to be included in the Zone and would contribute to the economic development of the County.
- 3.04 The public hearing on the proposed Reinvestment Zone designation must be held prior to the findings and action of the Commissioners' Court on the proposal. At this hearing, all interested persons are entitled to speak and present evidence for or against the designation.
- NOT LATER THAN THE SEVENTH (7TH) DAY BEFORE THE DATE OF THE HEARING, NOTICE OF THE HEARING MUST BE; (1) PUBLISHED IN A NEWSPAPER HAVING GENERAL CIRCULATION IN THE COUNTY; AND (2) DELIVERED IN WRITING TO THE PRESIDING OFFICER OF THE GOVERNING BODY OF EACH TAXING UNIT THAT INCLUDES IN ITS BOUNDARIES REAL PROPERTY THAT IS TO BE INCLUDED IN THE PROPOSED REINVESTMENT ZONE.
- A delivered notice made under subsection (2) in the paragraph above is presumed to be 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. THE PUBLIC HEARING MUST ALSO BE POSTED AS AN AGENDA ITEM ON THE COMMISSIONERS' COURT AGENDA TO COMPLY WITH THE TAX CODE AND THE TEXAS OPEN MEETINGS ACT.
- 3.05 If the Commissioners' Court finds that designation of the area as a Reinvestment Zone is proper, such proposed designation shall be put to a vote of the Commissioners' Court, and will pass if a majority of the members of the Commissioners Court in attendance vote to approve the designation.
- 3.06 The order of the Commissioners' Court designating the area as a Reinvestment Zone shall contain a description of the precise boundaries of the Zone.
- 3.07 The designation of a Reinvestment Zone may be for a period up to five (5) years. No designation shall exceed five (5) years, and a designation shall automatically expire five (5) years after the date of the designation unless renewed by the Commissioners' Court for subsequent periods not to exceed five (5) years each. This provision does not affect the guidelines for length of abatements called out in Section 6 hereinafter.

- 3.08 Property may be located both in a Reinvestment Zone designated by the County and in a Reinvestment Zone designated by a municipality.
- 3.09 Designation of an area as an Enterprise Zone under the Texas Enterprise Zone Act (Chapter 2303, Government Code) constitutes designation of the area as a Reinvestment Zone without further hearing or other procedural requirements other than those set out in the Texas Enterprise Zone Act.
- 3.10 Section 312.204(b) of the Code requires that tax abatement agreements made with the owners of property in a Reinvestment Zone must contain identical terms for the portion of the value of the property that is to be exempt and the duration of the exemption.

SECTION 4
ABATEMENT AUTHORIZED

- 4.01 Abatement is authorized, subject to approval of the Commissioners' Court and execution of a lawful tax abatement agreement, for properties located within a Reinvestment Zone designated by the Commissioners' Court or an Enterprise Zone established pursuant to the Texas Enterprise Zone Act.
- 4.02 Abatement is also authorized for properties located within a municipal Reinvestment Zone when the municipality has entered into a tax abatement agreement with regard to a property located within the Zone. An agreement for such properties must be in accordance with the terms of §312.206 of the Property Tax Code (V.T.C.A.), as amended.
- 4.03 Authorized Facilities: Tax abatement may be granted for new facilities and for expansion or modernization of existing facilities. The economic life of a facility or improvements must exceed the life of the abatement agreement.
- 4.04 Eligible Property: Tax abatement may be granted for all or a portion of the value of the real property, all or a portion of the value of the tangible personal property located on the real property, or all or a portion of the value of both, up to the maximum percent of abatement expressed within section 6.02. Pursuant to section 2.12, tangible personal property expressly does not include mobile personal property, such as a motor vehicle, that is not fixed to property located within a municipal Reinvestment Zone.
- 4.05 Eligible Applicant: Tax abatement may be granted to the owner of taxable real property, the owner of tangible personal property or the owner of a leasehold interest in tax-exempt real property. In regard to a lessee of taxable real property, tax abatement may apply to all or a portion of the value of the fixtures, improvements, or other real property owned by the lessee and located on the property that is subject to the lease, all or a portion of the value of tangible personal property owned by the lessee and located on the real property that is the subject of the lease, or all or a portion of the value of both the fixtures, improvements, or other real property and the tangible personal property, up to the maximum percent of abatement expressed within section 6.02.

- 4.06 Value of Abatement: Authorized facilities may be granted abatement on all or a portion of the increased taxable value of eligible property over the base year value for a period to be determined by the Commissioners' Court. This abatement, if granted as to real property, is not with regard to the entire value of the property, but only as to the extent that the value of the real property exceeds the value for the year in which the abatement is granted (i.e. Base Year).

SECTION 5

PROJECT IMPACT DATA

5.01 Introduction

The information required in this Section will be used by the Commissioners' Court to determine whether or not it is in the best interest of the County to offer tax abatement to a particular applicant. The applicant should endeavor to provide the most accurate information and estimates possible based upon available information. The applicant may be requested by the County to describe the methodologies utilized to respond to the questions and to supply supporting documentation.

5.02 Employment Impact

The applicant must provide detailed information answering the following inquiries:

- a) What is the estimated number of permanent, full-time new jobs that will be created in Ellis County?
- b) What is the estimated number of permanent, full-time jobs that will be retained in Ellis County?
- c) How many new, temporary and/or part-time jobs will be created in Ellis County?
- d) How many new, temporary and/or part-time jobs will be retained in Ellis County?
- e) What types of jobs will be created?
- f) What is the estimated multiplier effect on Ellis County's economy?

5.03 Employee Benefits

The Company must offer a health benefit plan to its full-time employees at a rate that is reasonable to the majority of its employees and which allows access to the plan by the employees' dependents.

5.04 Proposed Improvements

The applicant must provide detailed information answering the following inquiries:

- a) Identify and describe the kind, number and location of all proposed real property improvements to the property and discuss the development schedule of the proposed improvements and/or additions.
- b) To what extent, if any, will additional public infrastructure improvements be needed? Detail the plans, if any, in existence for the provision of such improvements.
- c) What governmental approvals or permits will be required for the improvements?
- d) Is the financial capital required to complete this project already available (i.e. financing commitments, reserved funds, etc.)? Explain in detail.

5.05 Fiscal Impact

The applicant must provide detailed information answering the following inquiries:

- a) What is the estimated cost of the proposed real property improvements?
- b) How much real property value will be added to the tax roll by the end of the abatement period?
- c) How much direct sales tax will be generated?
- d) What is the proposed depreciation schedule for real property to be abated?

5.06 Community Impact

The applicant must provide detailed information answering the following inquiries:

- a) What effect (approximately) will the proposed project have on the local housing market?
- b) What environmental impact, if any, will be created by the project? Environmental impact information must be provided noting any anticipated impacts of the project on the environments, including, but not limited to, water quality, storm water and runoff, floodplain and wetlands, solid waste disposal, noise levels and air quality. Additionally, the company must provide a written company policy on air quality mitigation.
- c) What will be the estimated impact on the local school districts in numbers of new students?
- d) What support services or products, if any, will the applicant be procuring from the local business community in the construction of real property improvements, and with regard to its operations?

5.07 The applicant must supply a legal description of any subject real property with an area location and adjacent property owners' identified to the County.

5.08 Pursuant to §312.003 of the Property Tax Code, information submitted in the application process is confidential, and not subject to public disclosure until the tax abatement agreement is granted or denied.

SECTION 6
GUIDELINES FOR LENGTH AND LEVEL OF ABATEMENT

6.01 When a determination has been made to offer tax abatement, the guidelines in section 6.02 below will be used to determine the length and level of that abatement. These guidelines reflect maximum percentages and years, and apply to both new facilities and expansion or modernization of existing facilities. The Ellis County Commissioners' Court will determine eligibility as well as the percentage and length of abatement on a case-by case basis.

6.02	Maximum Percent of Maximum Value which Years of May be Abated Abatement	Market Value	OR	New Full Time Jobs Created	
	35%	1,000,000 - 2,500,000		26-50	3
	40%	2,500,001 - 5,000,000		51 -75	5
	45%	5,000,001 - 10,000,000		76- 100	7
	50%	10,000,001 - 20,000,000		101 - 200	7
	55%	20,000,001 - 35,000,000		201 - 300	7
	60%	35,000,001 - 50,000,000		301 -400	7
	65%	50,000,001 - 65,000,000		401 - 500	7
	70%	65,000,001 - AND OVER		501 - AND OVER	7

6.03 Deleted 11-06

6.04 If the market value of eligible improvements declines below the lower limit for eligibility for certain percentage abatement, then the abatement percentage to be applied shall be adjusted in accordance with the chart in Section 6.02. For example, if the market value of eligible improvements declines from \$70,000,000 to \$40,000,000, the abatement percentage shall decline from 70% to 60%. In no event shall an abatement percentage exceed the percentage agreed in the abatement agreement approved by the Ellis County Commissioners' Court.

SECTION 7
PROCEDURAL GUIDELINE

7.01 Any person or entity desiring that Ellis County consider tax abatement on real property must comply with the following procedural guidelines. Nothing herein shall imply or suggest that the County is under any obligation to provide tax abatement, or provide any length and/or level/value of tax abatement to any applicant.

7.02 Any person or entity desiring that Ellis County consider tax abatement on real property within the corporate limits of a municipality located within Ellis County must first obtain tax abatement from the municipality wherein the property is located. At the time a person or entity desiring tax abatement begins negotiations with a municipality seeking tax abatement for new construction, or expansion and/or modernization, the municipality will make the Commissioner of the Precinct wherein the property is located aware of the process. If tax abatement will be requested from Ellis County, Ellis County's representative will be invited to make comments during the negotiations. Ellis County's representative will make the municipality aware of any concerns/changes prior to a final action by the municipality.

7.03 Application Process

The applicant shall submit a letter of application for tax abatement to the County Judge for submission to the Commissioners' Court. The application must:

- a) Give a detailed explanation of the proposed project (improvements to real property) with a description of creation/addition/retention of expected jobs;
- b) Address all criteria questions and information outlined in Section 5 above;
- c) Attach a current survey of the real property depicting the precise location of all proposed improvements and additions, along with a legal description of the real property where all improvements/additions will be located;
- d) Provide the name, address, telephone number, fax number and email address of the applicants as well as the contact persons, for purposes of the applications;
- e) Identify the type of business organization of the applicant (i.e. sole proprietorship, partnership, corporation, etc.) and any assumed or a trade name under which applicant operates. Is the company in good standing and licensed to do business in Texas? If the company has an assumed name, where is the assumed name filed?
- f) Provide documentation of the feasibility of the project (financing, etc.). All applications will be reviewed by the Commissioners' Court's designee or designees for accuracy and completeness, and the applicant shall provide all verification of information provided or additional information requested by the Commissioners' Court or its designee. When all such needed information has been provided, the application will be placed on the agenda for a meeting of the Commissioners' Court for consideration.

7.04 The application shall be considered at a meeting of the Commissioners' Court held in compliance with the Texas Open Meetings Act. If the abatement would involve the creation or expansion of a Reinvestment Zone, a public hearing must first be held in accordance with the procedures and notice required in Chapter 312 of the Property Tax Code. No applicant has a legal right or expectation to a favorable determination by the Commissioners' Court.

7.05 The abatement, if granted, must be made pursuant to a tax abatement agreement which meets all of the requirements of law and is acceptable to the Commissioners' Court. A tax abatement agreement must be approved by the Commissioners' Court for execution by the County Judge before it can be effective. Any abatement is for County taxes only, and does not provide abatement from taxation by other entities in whose taxing jurisdiction the property may be located unless otherwise provided by state law.

- 7.06 The tax abatement agreement must contain all of the requirements of §312.402 of the Property Tax Code (V.T.C.A.), as amended.
- 7.07 Property owned or leased by a member of the Commissioners' Court is not eligible for tax abatement.
- 7.08 A tax abatement granted by Ellis County to an applicant pursuant to this order may not be assigned to another person or entity seeking tax abatement without the approval of the Ellis County Commissioners Court. An application for an assignment of tax abatement must be supported by a financial statement of the new person or entity seeking tax abatement.

SECTION 8
CERTIFICATION BY APPLICANT,
COMPLIANCE AUDITS, REVIEWS AND INSPECTIONS

- 8.01 Beginning on or before December 31st of the year which establishes "Base Year Value" for the agreement, and throughout the term of such agreement, the Owner will submit to the Ellis County judge and the Ellis Central Appraisal District a statement annually, preferably on or before December 31st of each year, but no later than fifteen (15) days prior to the last date on which the Ellis Central Appraisal District may remove property from the tax rolls for exemption purposes, which provides the names and addresses of employees, number of jobs, dollar amount of payroll, type of equipment (if applicable) and the square footage of qualified facilities in the zone and all other information necessary to show compliance with the tax abatement agreement and the requirements of these Guidelines. This statement must also contain a certification by the Owner that all terms of the tax abatement and these Guidelines have been met by the Owner. The County shall have the right if it deems necessary to examine the Owner's appropriate records and to renegotiate or adjust the abatement based on the verified information provided by applicant's statement.
- 8.02 The County and/or the Ellis Central Appraisal District shall have the right to review compliance for full or partial recapture in the event that the applicant fails to perform in "good faith". If a project is not completed as specified in the tax abatement agreement, the County has the right to cancel the abatement agreement and abated taxes shall become due to the County and other affected taxing units as provided by law. If any of the provisions contained in the tax abatement agreement, i.e., employment, amount of investment, etc., are not met, the County shall have the right to reduce or cancel the abatement agreement. If a project granted a tax abatement ceases to operate or is no longer in conformance with the tax abatement agreement, the agreement shall not be in effect for the period of time during which the project is not operating or is not in conformance.
- 8.03 Violations of the terms of the tax abatement agreement by the tax abatement recipient may result in the full or partial loss of the abatement and give rise to a right of the County to recoup taxes abated. Commissioners' Court may cancel the entire agreement, or modify it if the owner fails to comply with the terms of the agreement.

SECTION 9
AUTHORIZATION TO MODIFY PROCEDURES WHERE TAX ABATEMENT IN QUESTION INVOLVES PROPERTY IN A MUNICIPAL INVESTMENT ZONE

- 9.01 When the abatement proposed involves property located within a municipal Reinvestment Zone for which the municipality has entered into a tax abatement agreement, the procedures for application, certification, review and audit may be modified by the County or its designee as follows:
- a) The County or its designee may allow the Owner/proponent's application to the municipality for tax abatement to be filed as that Owner/proponent's application to the County, if by a letter from the applicant requesting abatement and offering the municipal application as his/her information submittal. Of course, even if this is allowed, it will not bar the County or its designee from requesting additional information from the applicant where deemed necessary.
 - b) The municipality's review of the veracity of the information submitted may be relied upon by the County without the unnecessary expense of duplication of efforts.
 - c) The investigation and evaluation of the project, project feasibility and project benefits made by the municipality may be relied upon by the County without the unnecessary expense of duplication of efforts; and
 - d) Post-agreement reviews conducted by the municipality to determine compliance with the application may be relied upon by the County without the need of incurring the unnecessary expense of duplication of efforts.
- 9.02 Notwithstanding Section 9.01 above, the County does not waive its rights to conduct inspections, reviews, audits, or to request information with regard to an applicant or abatement recipient.
- 9.03 Notwithstanding anything to the contrary above, the abatement recipient must make the annual certifications to the County required by Section 8.01 above regardless of whether the abatement recipient is also making such certifications to the City.

SECTION 10
REPORTING REINVESTMENT ZONES AND TAX ABATEMENT AGREEMENTS NOTIFYING OTHER GOVERNMENTAL ENTITIES OF TAX ABATEMENT AGREEMENT, AND MISCELLANEOUS PROVISIONS

- 10.01 Pursuant to §312.005 of the Property Tax Code (V.T.C.A.), as amended, the County is required to deliver to the Texas Department of Commerce and to the State Comptroller before April 1 of the year following which a Reinvestment Zone is designated or a tax abatement agreement is executed a report providing all of the information required by §312.005. The County Judge or his designee is established as the County liaison with the State for this purpose.

- 10.02 Pursuant to §312.2041 of the Property Tax Code (V.T.C.A.), as amended, the County is required to, not later than the seventh (7th) day before the date on which Ellis County enters into a tax abatement agreement, deliver to the presiding officer of the governing body of each other taxing unit in which the property to be subject to the agreement is located a written notice that the County intends to enter into the agreement. The notice must include a copy of the proposed agreement.
- 10.03 Passage of these Tax Abatement Guidelines and Procedures shall amend and supersede all prior guidelines of the County, if any, governing this subject, but shall not affect the validity of tax abatement agreements of the County existing as of the date of the passage of these Tax Abatement Guidelines, Criteria and Procedures by the Commissioners' Court.
- 10.04 Any portion of these guidelines and procedures which shall be determined to be in violation of the Constitution or laws of this State or the United States shall not affect the remaining portion of the guidelines and procedures which shall remain in effect.

Approved by Commissioners Court
 On August 12, 1996
 Minute Order No. 96-188

Renewed, Reaffirmed, Reenacted
 On July 13, 1998
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Renewed, Reaffirmed, Reenacted
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PASSED AND APPROVED IN OPEN COURT on this the 25th day of August, 2011.



Carol Bush, County Judge



Commissioner Dennis Robinson, Precinct 1

absent

Commissioner Bill Dodson, Precinct 2



Commissioner Heath Sims, Precinct 3



Commissioner Ron Brown, Precinct 4

Attest:



Cindy Polley, County Clerk Deputy