

GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENT IN COLORADO COUNTY

Section 1 – DEFINITIONS.

(a) “Abatement” means the full or partial exemption from ad valorem taxes of certain real property by the County to promote economic development.

(b) “Aquaculture/Agriculture Facility” means buildings, structures and major earth structure improvements, including fixed machinery and equipment, the primary purpose of which is the hatching, incubation, nursing, maturing and/or processing to marketable size aquatic culture in commercially marketable quantities or the processing, refining, packaging, and distribution of food and/or fiber products in commercially marketable quantities.

(c) “Affected jurisdiction” means Colorado County which levies ad valorem taxes upon and/or provides services to property located and specified in the abatement application.

(d) “Agreement” means a contractual agreement between a property owner and/or lessee and the affected jurisdiction for the purpose of tax abatement.

(e) “Base year value” means the assessed value of eligible property on 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.

(f) “Deferred maintenance” means improvements necessary for continued operations which do not improve productivity or alter the process technology.

(g) “Distribution Center Facility” means buildings and structures, including machinery and equipment, used or to be used primary to receive, store, service or distribute goods or materials owned by the facility, from which a majority of revenues generated by activity at the facility are derived from outside of Colorado County.

(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) “Manufacturing Facility” means buildings and structures, including machinery and equipment, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.

(k) "Modernization" means the upgrading and/or replacement of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. 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 or repairing.

(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) "Office Building" means a new office building.

(n) "Other Basic Industry" means buildings and structures including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services which serve a market primarily outside the County and result in the creation of new permanent jobs and create new wealth in the county.

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

(p) "Regional Entertainment/Tourism Facility" means buildings and structures, including fixed machinery and equipment, used or to be used to provide entertainment and/or tourism related services, from which a majority of revenues generated by activity at the facility are derived from outside Colorado County.

(q) "Research Facility" means buildings and structures, including machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

(r) "Regional Service Facility" means building and structures, including fixed machinery and equipment, used or to be used to provide a service, from which a majority of revenues generated by activity at the facility are derived from outside Colorado County.

Section 2 – ABATEMENT AUTHORIZED.

(a) Authorized Facility: A facility may be eligible for abatement if it is an Aquaculture/Agriculture Facility, a Distribution Center Facility, a Manufacturing Facility, an office building, a Regional Entertainment/Tourism Facility, a Research Facility, a Regional Service Facility, a hotel/motel, or Other Basic Industry.

(b) Authorized Date. A facility shall be eligible for tax abatement if it has applied for such abatement prior to the commencement of construction; provided, that

such facility meets the criteria granting tax abatement in Colorado County pursuant to these guidelines and criteria.

(c) **Creation of New Value.** Abatement may only be granted for the additional value of eligible property improvements made subsequent to and specified in an abatement agreement between the County and the property owner or lessee and lessor, subject to such limitations as the Guidelines and Criteria may require.

(d) **New and Existing Facilities.** Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.

(e) **Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility.

(f) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for abatement: land, inventories, supplies, tools, furnishings and other forms of movable personal property, vehicles, vessels, aircraft, housing or residential property, retail facilities, deferred maintenance investments, property to be rented or leased except as provided in Section 2(g), improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion, any improvements including those to produce, store or distribute natural gas or fluids or gases that are not integral to the operation of the facility, 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.

(g) **Owned/Leased Facilities.** If a leased facility is granted abatement, the agreement shall be executed with the lessor.

(h) **Value and Term of Abatement.** Abatement shall be granted effective with the January 1, valuation date immediately following the date of execution of the agreement. The value of new eligible properties shall be abated according to one of the two tables below.

TIER 1: \$250,000.00 to \$999,999.99 Improvements

Year 1 --- 100% Abatement
Year 2 --- 80% Abatement
Year 3 --- 60% Abatement
Year 4 --- 40% Abatement
Year 5 --- 20% Abatement

**TIER 2: \$1,000,000.00+ Improvements and
Prevention or Creation of 10 Jobs**

- Year 1 --- 100% Abatement
- Year 2 --- 100% Abatement
- Year 3 --- 75% Abatement
- Year 4 --- 50% Abatement
- Year 5 --- 25% Abatement

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 units(s).

(i) Other Economic Qualifications. In order to be eligible for tax abatement the planned improvement:

(1) Tier 2 applications must prevent the loss of not less than 10 employees or create employment for not less than 10 persons associated with the production of goods and services at the authorized facility on a full-time permanent basis in Colorado County. Two or more part-time permanent employees totaling an average of not less than 40 hours per week may be considered as one full time permanent employee.

(2) Must not have the effect of transferring employment from one part of Colorado County to another.

(3) Must be necessary because capacity cannot be provided efficiently utilizing existing improved property.

(j) Taxability. From the execution of the abatement contract to the end of the agreement period, taxes shall be payable as follows:

(1) The value of ineligible property as provided in Section 2(f) shall be fully taxable.

(2) The base year value of existing eligible property as determined each year shall be fully taxable.

(3) The additional value of new eligible property shall be taxable in the manner described in Section 2(h).

(k) Tier II application must agree to remain in production for at least three (3) years after the abatement is complete or the applicant shall reimburse the County for 100% of the taxes for years 3, 4 and 5 of the abatement.

Section 3 – APPLICATION.

(a) Any present or potential owner of taxable property in Colorado County may request tax abatement by filing written request with the County, and have it filed with the County Clerk of the County.

(b) The application shall consist of a completed application form accompanied by:

(1) a general descriptive of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken;

(2) a description list of the improvements which will be a part of the facility;

(3) a map and property description;

(4) a time schedule for undertaking and completing the planned improvements;

(5) in the case of modernizing, 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; and,

(6) the application form may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors of the application.

(c) Upon receipt of a completed application, the County Clerk receiving such application shall notify in writing the presiding officer of the Commissioners' Court. Before acting upon the application, the County receiving such application shall through public hearings afford the applicant an opportunity to show cause why the abatement should or should not be granted. Notice of the public hearing shall be clearly identified on an agenda of the Commissioners' Court receiving such application to be posted at least 20 days prior to the hearing.

(d) The County in receiving the application shall, not more than 60 days after receipt of the application, approve or disapprove the application for tax abatement. The presiding officer of the Commissioners' Court receiving such application shall notify the applicant of approval or disapproval promptly thereafter.

(e) A request for a tax abatement shall not be granted if the County in receiving the application finds that 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.

(f) Variance. Requests for variance from the provisions of Subsections (a) and (e) of Section 3 may be made in written form to the presiding officer of the Commissioners' Court receiving the application. Such request shall include a complete description of the circumstances explaining why the applicant should be granted a variance. Approval of a request for variance requires a three-fourths (3/4) vote of the governing body of the County.

Section 4 – PUBLIC HEARING.

(a) Should the County be able to show cause in the public hearing why the granting of abatement will have substantial adverse effect on its bonds, tax revenue, service capacity or the provision of service, that showing shall be reason for the County receiving the application to deny any granting of abatements.

(b) No abatement agreement shall be authorized if it is determined that:

(1) There would be a substantial adverse affect on the provision of a government service or tax base of the County.

(2) The applicant has insufficient financial capacity.

(3) Planned or potential use of the property would constitute a hazard to public safety, health or morals.

(4) Planned or potential use of the property violates other codes or laws.

Section 5 – AGREEMENT.

(a) After approval for tax abatement, the County shall execute an agreement with the owner of the facility, and if applicable, the lessee involved, which shall include:

(1) Estimated value to be abated and the base year value.

(2) Percent of value to be abated each year as provided in Section 2(h).

(3) The commencement date and the termination date of abatement.

(4) The proposed use of the facility, nature of construction, time schedule for undertaking and completing the planned improvements, map, property description and improvements list as provided in Application, Section 3(b).

(5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided in Sections 2(a), 2(h), 6, 7 and 8, and other provisions that may be required for uniformity or by state law.

(6) Amount of investment and average number of jobs involved for the period of abatement.

(b) Such agreement shall be executed within 60 days after the applicant has forwarded all necessary information and documentation to the County receiving the application, unless the governing taxing authority executing the agreement waives the sixty (60) day requirement.

Section 6 – RECAPTURE.

(a) In the event that the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty or accident or natural disaster for a period of more than one (1) year during the abatement period, then the agreement shall terminate and so shall the abatement of taxes for the calendar year during which the facility no longer produces. The taxes otherwise abated for that calendar year shall be paid to the County within sixty (60) days from the date of termination.

(b) Should the County establishing a tax abatement agreement determine that a company or individual is in default according to the terms and conditions of its agreement, the 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 shall be terminated.

(c) In the event that the company or individual

(1) allows its ad valorem taxes owed the County or an affected jurisdiction 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 same during the Cure Period, the agreement shall be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the expiration of the "Cure Period".

Section 7 – ADMINISTRATION.

(a) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property listed on the application. Each year the company or individual receiving abatement shall furnish the assessor with such information as may be necessary for abatement, including the number of new or retained employees associated with the facility. Once value has been established the Chief Appraiser shall notify the affected jurisdictions which levies taxes on the amount of the assessment.

(b) The agreement shall stipulate that employees and/or designated representatives of the jurisdiction entering into a tax abatement agreement will have access to the property 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 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 its safety standards.

(c) Upon completion of construction the jurisdiction establishing the tax abatement agreement shall annually evaluate each facility and report possible violations of the contract and/or agreement to the Commissioners' Court.

(d) All proprietary information acquired by the County for purposes of monitoring compliance with the terms and conditions of an abatement agreement shall be considered confidential.

Section 8 – ASSIGNMENT.

(a) Abatement may be transferred and assigned by the holder to a new owner of the same facility upon the approval by resolution of Commissioners' Court, subject to the financial capacity of the assignee and provided that all conditions and obligations in the abatement agreement are guaranteed by the execution of a new contractual agreement with Colorado County.

(b) The contractual agreement with the new owner shall not exceed the termination date of the abatement agreement with the original owner.

(c) No assignment or transfer shall be approved if the parties to the existing agreement, are liable to the County for outstanding taxes or other obligations.

(d) Approval shall not be unreasonably withheld.

Section 9 – SUNSET PROVISION.

(a) These Guidelines and Criteria are effective upon the date of the adoption and will remain in force for two (2) years, at which time all tax abatement contracts created pursuant to its provisions will be reviewed by Colorado County's Commissioners' Court to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria may be modified, renewed or eliminated, providing that such actions shall not affect existing contracts.

(b) This policy is mutually exclusive of any existing Industrial District Contracts and owners of real property in areas deserving of specific attention as agreed by Colorado County's Commissioners' Court.

(c) Prior to the date for review, as defined above, these "Guidelines and Criteria" may be modified by a two-thirds vote of the Commissioners' Court authorities, as provided for under the laws of the State of Texas.

Section 10 – SEVERABILITY AND LIMITATIONS.

(a) In the event that any section, clause, sentence, paragraph or any part of these Guidelines and Criteria shall, for any reason be adjudged by any court of competent jurisdiction to be invalid such invalidity shall not affect, impair, or invalidate the remainder of these Guidelines and Criteria.

(b) If these Guidelines and Criteria have omitted any mandatory requirements of the applicable tax abatement laws of the State of Texas, then such requirements are hereby incorporated as a part of these Guidelines and Criteria.