

# Red River County, Texas

## GUIDELINES AND CRITERIA FOR GRANTING TAX ABATEMENTS

### I. PURPOSE

Red River County, Texas hereinafter referred to as "County" is committed to the promotion of quality development in all parts of the County and to improving the quality of life for its citizens. In order to help meet these goals, the County will consider recommending tax incentives, which may include the designation of reinvestment zones, application for tax abatements, and entering into tax abatement agreements to stimulate growth and development.

It is the intent of the County that such incentives will be provided in accordance with the procedures and criteria outlined in this document and in Chapter 312 of the Texas Tax Code. However, nothing in these Guidelines and Criteria shall imply or be construed to imply or suggest that the County is under any obligation to provide any incentives to any applicant. All applicants for tax incentives shall be considered on an individual basis for both the qualification for tax abatement and the amount of any tax abatement. The adoption of these Guidelines and Criteria shall not create any property, contract, or other legal right in any person to have the County consider or grant a specific application or request for tax abatement.

Only that increase in the fair market value of the property directly resultant from the development, redevelopment, and improvement specified in the contract will be eligible for abatement. All abatement contracts will be for a term no longer than allowed by law. Additionally, the Red River County Commissioners Court reserves the right to negotiate a tax abatement agreement in order to compete favorably with other communities.

### II. DEFINITIONS

The attached Glossary is a list of words with their definitions that are found in this document, and the Glossary is incorporated herein by ref

### III. GUIDELINES AND CRITERIA

In order to be eligible for designation as a reinvestment zone and to receive tax abatement, the planned improvement as a minimum must meet the following:

- (a) Be an authorized Facility. A facility may be eligible for abatement if it is a:

Aquaculture/Agriculture Facility,

Distribution Center Facility,  
Manufacturing Facility,  
Office Building,  
Regional Entertainment/Tourism Facility,  
Research Facility,  
Regional Service Facility,  
Historic Building in designated area,  
Renewable Energy Facility, or  
Other Basic Industry

(b) The project must be reasonably expected to have an increase in positive net economic benefit to Red River County of at least \$15,000,000.00, or a minimum of five full-time employees, over the life of the abatement, computed to include (but not limited to) new sustaining payroll and capital improvement. In consideration of the request for designation as a reinvestment zone and to receive tax abatement, the following factors will also be considered:

- (1) Jobs. The projected New Jobs created including the number of jobs, the retention of existing jobs, the type of jobs, the average payroll, the total payroll and the number of local persons hired.
- (2) Fiscal Impact. The amount of real and personal property value that will be added to the tax roll for both eligible and ineligible property, the amount of direct sales tax that will be generated, the infrastructure improvements by the County that will be required by the facility, the infrastructure improvements made by the facility, and the compatibility of the project with the County's development goals.
- (3) Community Impact, including:
  - i. The pollution, if any, as well as other negative environmental impacts affecting the health and safety of the community that will be created by the project;
  - ii. The revitalization of a depressed area;
  - iii. The business opportunities of existing local vendors;
  - iv. The alternative development possibilities for proposed site;
  - v. The impact on other taxing entities, including the use of municipal or county infrastructure; and/or
  - vi. Whether the improvement is expected to solely or primarily have the effect of transferring employment from one part of Red River County to another.

#### IV. ABATEMENT AUTHORIZED

- (a) Authorized Date. A facility may be eligible for tax abatement for a period not to exceed ten years if it has applied for such abatement prior to the commencement of construction provided that such facility meets the criteria granting tax abatement in reinvestment zones created in Red River County pursuant to these Guidelines and Criteria.

- (b) **Creation of New Value.** Abatement may only be granted for the additional value of eligible property improvements made subsequent to the filing of an application for tax abatement and specified in the abatement agreement between the County and the owner or lessee (and lessor if required pursuant to IV(f)) of the facility or improvements receiving the abatement, all subject to such limitations as the Guidelines and Criteria may require.
- (c) **New and Existing Facilities.** Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion. If the 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).
- (d) **Eligible Property.** Abatement may be extended to the value of the following: new, expanded, replaced or modernized buildings and structures; fixed machinery and equipment; site improvements; office space and related fixed improvements necessary to the operation and administration of the facility; and all other real and tangible personal property as permitted by Chapter 312 of the Texas Tax Code.
- (c) **Ineligible Property.** The following types of property shall be fully taxable and ineligible for abatement:
  - i. Land,
  - ii. Animals,
  - iii. Inventories,
  - iv. Supplies,
  - v. Tools,
  - vi. Furnishings and other forms of movable personal property other than machinery and equipment that are an essential part of the facility or improvements receiving abatement,
  - vii. Vehicles,
  - viii. Vessels,
  - ix. Aircraft,
  - x. Housing or residential property,
  - xi. Fauna,
  - xii. Flora,
  - xiii. Deferred Maintenance investments,
  - xiv. Property to be rented or leased (except as provided in Part IV(f)),
  - xv. Property owned or used by the State of Texas or its political subdivision or by any organization owned, operated or directed by a political subdivision of the State of Texas.
- (f) **Owned/Leased Facilities.** If a leased facility or leased improvements are granted an abatement, the agreement shall be executed with the lessor and lessee of the facility or improvements. The owner of the real property where the facility or improvements are located is not required to execute the abatement agreement if it is not the lessor or lessee of the facility or improvements.
- (g) **Value and Term of Abatement.** Abatement shall be granted effective no earlier than the January 1 valuation date immediately following the date of execution of the agreement. The agreement may provide that the period for which the abatement applies will commence on a later date. The value of new eligible property shall be abated according

to the approved agreement between applicant and the governing body. The Red River County Commissioners Court, in its sole discretion, shall determine the amount of any abatement.

- (h) Taxability. From the execution of the abatement contract to the end of the period during which the abatement applies, taxes shall be payable as follows:
  - (1) The value of ineligible property as provided in Part IV(e) 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 described in the abatement agreement.

#### V. APPLICATION FOR TAX ABATEMENT

- (a) Any present or potential owner, assignee, or lessee of taxable property in Red River County may request the creation of a reinvestment zone and the consideration of a tax abatement agreement by filing written request with the County. The completed Application must be accompanied by the payment of a non-refundable application fee in the amount of one thousand dollars (\$1,000.00) for administrative costs associated with the processing of the tax abatement application.
- (b) The application shall consist of a completed application form (if provided by the County) accompanied by:
  - (1) A general description of the proposed use and the general nature and extent of the modernization, expansion, or new improvements to be undertaken;
  - (2) A descriptive list of the improvements which will be part of the facility;
  - (3) A map and property description or a site plan, including a map and legal description of the proposed reinvestment (if the designation of a reinvestment zone is requested);
  - (4) A time schedule for undertaking and completing the planned improvements; and
  - (5) In the case of modernizing or replacing existing facilities in whole or in part, a statement of the assessed value of the facility separately stated for real and personal property for the tax year immediately preceding the year in which the application is filed.

The County may require that the application be supplemented with such financial and other information as deemed appropriate for evaluating the financial capacity and other factors of the applicant.

- (c) Upon receipt of a completed application, the County shall, through public hearings, afford the applicant and the designated representative of any Affected Jurisdiction the

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 Red River County Commissioners Court to be posted at the time required for public hearings.

- (d) The County shall approve or disapprove the application for tax abatement within forty-five (45) days after receipt of the application and notify the applicant of the approval or disapproval promptly thereafter.
- (e) A request for the designation of a reinvestment zone shall not be granted by the County if the County 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. Before the Red River County Commissioners Court holds a public hearing to designate a reinvestment zone, it shall do the following:
  - (1) Not later than the seventh day before the date of the hearing, publish notice of the hearing in a newspaper having general circulation in the County; and
  - (2) Not later than the seventh day before the date of the hearing, deliver written notice of the hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries any real property that is to be included in the proposed reinvestment zone.
- (f) Requested Variances. Requests for variance from any provision of these Guidelines and Criteria may be made in written form to the Red River County Commissioners Court. 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 Red River County Commissioners Court.
- (g) Deemed Variances. The Red River County Commissioners Court may approve a tax abatement agreement that varies from any requirement in these Guidelines and Criteria so long as such variance is permitted by Chapter 312 of the Texas Tax Code. Any aspect of a tax abatement agreement duly authorized and approved by the Red River County Commissioners Court that varies in any respect from any requirement in these Guidelines and Criteria shall be deemed to have been granted a variance from the Guidelines and Criteria by the Court. It is the express intention of the Red River County Commissioners Court that no tax abatement agreement that has been duly authorized and approved by the Court shall be challenged or held to be invalid because such authorized and approved tax abatement agreement varies from any requirement contained in these Guidelines and Criteria.

## **VI. PUBLIC HEARING**

- (a) Should any Affected Jurisdiction be able to show cause in the public hearing why the granting of abatement by the County will have a substantial adverse effect on its bonds, tax revenue, service incapacity or the provision of service, that showing shall be considered by the Red River County Commissioners Court when deciding to approve or disapprove of the application for tax abatement.
- (b) Neither a reinvestment zone nor an abatement shall be authorized if it is determined that:

- (1) There would be a substantial adverse effect on the provision of a government service or the tax base of an Affected Jurisdiction;
- (2) The applicant has insufficient financial capacity to construct and operate the proposed facility or improvements;
- (3) The planned or potential use of the property would constitute a hazard to public safety, health, or morals; or
- (4) The planned or potential use of the property violates other governmental codes or laws.

## VII. AGREEMENT

- (a) If an application for tax abatement is approved by the Red River County Commissioners Court, the Court shall formally pass a resolution and execute an agreement with the owner and/or lessee of the facility which shall include:
  - (1) The percentage of value to be abated each year as provided in Part IV(g) of these Guidelines and Criteria.
  - (2) The commencement date and the termination date of abatement.
  - (3) 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 Part V of these Guidelines and Criteria.
  - (4) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes recapture, administration and assignment (as provided in the agreement), and other provisions that may be required for uniformity or by state law or that are mutually agreed to by the County and the applicant.
  - (5) Amount of investment and/or average number of jobs applicant commits to create for the period of abatement (if a commitment to create jobs is agreed to by the applicant).
  - (6) Any other provisions required by Chapter 312 of the Texas Tax Code.
- (b) The County will use its best efforts to cause such agreement to be executed within thirty (30) days after the later of the date applicant has forwarded all necessary information to the jurisdiction receiving the application or the date of the approval of the application. Prior to the execution of the Agreement, the County will comply with the following notice requirement in Tax Code § 312.2041(a):

Not later than the seventh day before the date on which a municipality or county enters into an abatement agreement, the governing body of the municipality or county or a designated officer or employee of the municipality or county shall 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 municipality or county intends to enter into the agreement. The notice must include a copy of the proposed agreement.

- (c) Each other taxing unit that has jurisdiction over the facility or improvements for which the County approves or disapproves an application for tax abatement shall make its own determination of abatement which shall not bind any other Affected Jurisdiction.

#### VIII. RECAPTURE

- (a) In the event that the facility or improvements are completed and begin operating but subsequently discontinue operating for any reason excepting a force majeure event (as such event may be more specifically defined in the tax abatement agreement) for a period of more than one (1) year during the abatement period, then the abatement agreement shall terminate along with the abatement of taxes for the calendar year during which the agreement is terminated. The taxes otherwise abated for that calendar year shall be paid to the County within sixty (60) days from the date of termination. The County is permitted to enter into a tax abatement agreement that varies from the provisions of this paragraph without being deemed to be in violation of these Guidelines and Criteria so long as the agreement provides for the recapture of property taxes in the event that the approved facility or improvement discontinue operations during the period of tax abatement.
- (b) If the County determines that a party to a tax abatement agreement is in default according to the terms and conditions of its agreement, the County shall notify the party 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, then 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 termination. Further, it will be a default under a tax abatement granted pursuant to these Guidelines and Criteria if the owner of the eligible property subject to the abatement is delinquent in paying any undisputed taxes to any taxing authority in Red River County, Texas. The County is permitted to enter into a tax abatement agreement that varies from the provisions of this paragraph without being deemed to be in violation of these Guidelines and Criteria so long as the agreement provides for the recapture of property tax in the event that the applicant named in the tax abatement agreement defaults in its obligations under the agreement.

#### IX. ADMINISTRATION

- (a) The Chief Appraiser of the Red River County Appraisal District shall annually determine an assessment of any real and/or personal property that is the subject of a tax abatement agreement. Each party to a tax abatement agreement shall be required to furnish the assessor with such information as may be necessary to determine an assessment. Once a value has been established, the Chief Appraiser shall notify the Affected Jurisdictions of the appraised value.
- (b) The abatement agreement shall stipulate that employees and/or designated representatives of the County will have access to the facility or improvements that are the subject of the agreement during the term of the abatement to inspect the facility or improvements to determine if the terms and conditions of the agreement are being met.

The terms, guidelines, and requirements concerning inspections shall be set forth in the abatement agreement.

- (c) After the period of abatement begins, the County shall annually evaluate each facility receiving abatement and report possible violations of the abatement agreement to the Red River County Commissioners Court. The abatement agreement may also require the party receiving the abatement to file annual certifications with the County.
- (d) All proprietary information acquired by the County for purposes monitoring compliance with the terms and conditions of an abatement agreement shall be considered confidential.

#### **X. ASSIGNMENT**

- (a) Except as otherwise provided in the abatement agreement, an abatement agreement may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of the Red River County 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 an assignment and assumption agreement between the holder of the agreement and the assignee. Approval shall not be unreasonably withheld. If agreed by the County, the abatement agreement may grant the applicant the right to assign the agreement to an affiliate or lender without the County's prior consent.
- (b) No assignment or transfer shall be approved if the party to the existing agreement or the proposed assignee is liable to any taxing jurisdiction for outstanding taxes or other obligations.

#### **XL SUNSET PROVISION**

- (a) These Guidelines and Criteria are effective upon the date of the adoption and will remain in force for two (2) years unless amended by three quarters vote of the Red River County Commissioners Court, at which time all reinvestment zones and tax abatement contracts created pursuant hereto will be reviewed by each Affected Jurisdiction to determine whether the goals have been achieved. Based on that review, these Guidelines and Criteria may be modified, renewed, or not renewed, providing that such actions shall not affect existing abatement agreements.
- (b) Prior to the date for review, as defined above, these Guidelines and Criteria may be modified by a two-thirds (2/3) vote of the County Commissioners as provided for under the laws of the State of Texas.

#### **XII. 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) Property that is located in a reinvestment zone and that is owned or leased by a person who is a member of the Commissioners Court may not be subject to a tax abatement agreement entered into with the County. This provision does not prohibit the County from entering into a tax abatement agreement with a party that is leasing property from a member of the Commissioners Court so long as the value of such member of the Commissioners Court's property is not being abated.
- (c) 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.

[end of document – Glossary follows]

APPROVED BY THE RED RIVER COUNTY COMMISSIONERS COURT ON THE 17<sup>TH</sup> DAY OF APRIL, 2019.

SIGNED: *L. D. Williamson*  
L. D. Williamson, County Judge

ATTEST:

*Shawn Weemes*  
Shawn Weemes, County Clerk



## GLOSSARY:

- (a) "Abatement" means the full or partial exemption from ad valorem taxes of certain real or tangible personal property in a reinvestment zone designated by the County or a municipality for economic development purposes.
- (b) "Aquaculture/Agriculture Facility" means building, structures and major earth structure improvements, including fixed machinery and equipment, the primary purpose of which is of food and/or fiber products in commercially marketable quantities.
- (c) "Affected Jurisdiction" means Red River County and any municipality, or school district, the majority of which is located in Red River County that levies ad valorem taxes upon and/or provides services to property located within the proposed or existing reinvestment zone designated by Red River County or any municipality.
- (d) "Agreement" means a contractual agreement between a property owner and/or lessee and the County 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 filing of an application for tax abatement.
- (f) "Deferred maintenance" means improvements necessary for continued operations which do not improve productivity or alter the process of technology.
- (g) "Distribution Center Facility" means building and structures, including machinery and equipment, used or to be used primarily to receive, store, service, or distribute goods or materials owned by the facility from which a majority of revenue generated by activity at the facility are derived from outside of Red River 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 improvements to real estate previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- (m) "New Jobs" means a newly created employment position on a full-time permanent basis. 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.
- (n) "Office Building" means a new office building.
- (o) "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 results in the creation of new permanent jobs and new wealth in the County.
- (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 Red River County.
- (q) "Research Facility" means buildings and structures, including fixed 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 process thereto.
- (r) "Regional Service Facility" means buildings 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 Red River County.
- (s) "Renewable Energy Facility" means buildings and structures, including but not limited to electricity generating equipment (such as wind turbines or photovoltaic solar panels), electric transmission lines, electric power substations, electrical gathering equipment, communications systems and roads, fixed machinery and equipment, used or to be used to provide electrical energy, and which meet the definition of "Renewable Energy Electric Generation" in Chapter 313 of the Texas Tax Code.