

February 27, 2008

**RECEIVED**

FEB 28 2008

**RQ-0684-GA**

OPINION COMMITTEE

The Honorable Greg Abbott  
Attorney General of Texas  
209 W. 14th Street  
Austin, Texas 78701

FILE # AL-45575-08I.D. # 45575

Dear Attorney General Abbott:

As the Comptroller of Public Accounts, I ask your opinion concerning the Texas Economic Development Act, Tax Code §313.021(2) (all references to sections in Chapter 313 are to the Tax Code).

School districts, which usually have the highest local property tax rates, are prohibited by Tax Code §312.002(f) from entering into tax abatements. The Texas Economic Development Act was enacted to give school districts the ability to provide property tax relief for state and local economic development purposes. This tax relief is in the form of a limit on the appraised property value of the applicant's property and payment of tax credits.

Section 313.031(a)(1) requires this agency to "adopt rules and forms necessary to implement and administer" the chapter. The agency adopted an administrative rule, 34 T.A.C. §9.107, immediately after Chapter 313 went into effect on January 1, 2002. On December 20, 2007, we repealed the original Chapter 313 rule and adopted new rules 34 T.A.C. §§9.1051-9.1058. We adopted new rules to address many issues that were not addressed by the repealed rule.

The proposed new rules included a provision stating that a person with an ownership interest in land, including leasehold interest that is coextensive with the limitation agreement, is an "owner" for purposes of §313.021(2), which defines "qualified property." We included this provision in our Chapter 313 rules because we recognized that many school districts had approved applications submitted under Chapter 313 by entities that leased the land on which the qualified property would be placed, and we believed that there was no disagreement about the construction of this statute.

During the 30-day public comment period required by §2001.029, Government Code, a public comment was submitted objecting to the leasehold interest provision. The commenter opposed adoption of the provision and cited Att'y Gen. Op. No. JC-300 (2000), which held that a tax abatement under Chapter 312, Tax Code, could not be granted to an entity that owned a leasehold interest in tax-exempt property. Although the cited opinion concerns Tax Code Chapter 312 and the peculiarities of property tax law involving leaseholds in tax-exempt property, the comment revealed the existence of disagreement concerning leasehold interests.



---

Because the proposed subsection generated opposition, we did not adopt it when we adopted the new rules. The adoption preamble stated that further clarification was necessary and this opinion request seeks to obtain your guidance on this issue.

Our question is whether an applicant who has a leasehold interest in qualified property as defined in §313.021(2) is eligible under §313.025(a) to apply for a limitation on the appraised value of the qualified property. The following is a short explanation of the application process, the school board's role, the agency's role, and the provisions in Chapter 313 that generated our question.

Under §313.025, application is made to the governing body of the school district in which the qualified property will be located. After an eligible entity applies for the limitation, §313.025(b) requires the school district to forward a copy to our agency. The agency is required by §313.025(d) to submit to the school district a recommendation whether the application should be approved or disapproved. Section 313.026(b) originally required the agency to use the criteria specified by §313.026(a) to form the recommendation, which limited the agency's review to criteria concerning the economic impact of Chapter 313. The 80<sup>th</sup> Legislature amended §313.026(b) to expand the evaluation criteria to "...any other information available to the comptroller..."

After receiving the recommendation, the school district may consider approving or disapproving the application. The law does not require the school district to take the action the comptroller recommends. Before it approves an application, however, the governing body is required to make certain findings, including a finding that the application is true and correct, that the applicant is eligible, and that approving the application is in the school district's best interest.

Section 313.025(a) states that the "*owner of qualified property* may apply...for a limitation on the appraised value ... *for the person's qualified property*" (emphasis added). "Qualified property" is defined by § 313.021(2), which states that:

'Qualified property' means:

(A) land:

- (i) that is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Chapter 2303, Government Code;
- (ii) on which a person proposes to construct a new building or erect or affix a new improvement that does not exist before the date the owner applies for a limitation on appraised value under this subchapter;
- (iii) that is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and



---

(iv) on which, in connection with the new building or new improvement described by Subparagraph (ii), *the owner of the land proposes to:*

(a) make a qualified investment in an amount equal to at least the minimum amount required by Section 313.023; and

(b) create at least 25 new jobs;

(B) the new building or other new improvement described by Paragraph (A)(ii); and

(C) tangible personal property that:


(i) is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(ii) except for new equipment described in Section 151.318(q) or (q-1), is first placed in service in the new building or in or on the new improvement described by Paragraph (A)(ii), or on the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business conducted in that new building or in or on that new improvement.

(emphasis added)

The above summary is not intended to present a rationale supporting or opposing the position that the owner of a leasehold interest is eligible to apply. These arguments will be presented in briefs by interested parties. This letter simply frames our question, and I look forward to your opinion on this matter.

Sincerely,



Martin A. Hubert  
Deputy Comptroller

cc: Martin Cherry  
Robert Wood

