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OPINION COMMITTEE

FILE # ML-46006-09
I.D. # 46006

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February 11, 2009

Hon. Greg Abbott
Office of the Attorney General
ATTN: Nancy Fuller
Chair, Opinion Committee
P. O. 12548
Austin, Texas 78711-2548

RQ-0784-GA

Re: Tax Code §.312.204 – Calculation of Period of Maximum Time allowable for Tax Abatement

Dear General Abbott:

On behalf of the Sabine Neches Navigation District we have been asked to request your opinion concerning the proper interpretation of Texas Tax Code § 312.204(a). Specifically at issue is the proper calculation of the maximum term of abatement allowable in a proposed agreement authorized by this section. More particularly, may the 10-year maximum allowable term of abatement begin at the date of "substantial completion of the project" or must the 10-year term begin as of the date of execution of the agreement providing for the abatement?

BRIEF OF APPLICABLE AUTHORITY

The Sabine Neches Navigation District was created by the 77th Legislature, HB 3653 as renamed by HB 3634 created to accomplish the purposes of Section 59, Article XVI, Texas Constitution and is a taxing unit within the meaning of Texas Tax Code § 312.002. The directors of the district have been approached by entities interested in making qualifying investments in the district and are seeking tax abatement proposals. There is a disagreement as to the maximum length of abatement that may be granted depending on whether the effective date of the abatement is coincident with the date of the agreement or may run from the date of substantial completion of the proposed improvements.

Prior to the 79th Legislature Section 312.204(a) contained the following language:

"The agreement may take effect on January 1 of the next tax year after the date the improvements or repairs are substantially completed."

This language was removed by the 79th Legislature, SB 1652, Section 16 with the notation that "Section 312.204 . . . is reenacted to read as follows:" The "reenactment" omitted the sentence quoted above. The omission was done despite the bill analysis from the Senate and House Research Centers suggesting that Section 16 of SB 1652 (reinacting section 312.204(a)) "makes no changes to existing text."

We do not believe that the precise question has been addressed either by the Attorney General or the courts. The Attorney General in JC-0133 did conclude that an agreement made pursuant to Chapter 312 of the Tax Code may not exceed ten years but did not directly address when the 10 year period was to begin. We see nothing inconsistent with JC-0133 and the notion that (as the statute then provided) that the abatement period is limited to 10 years regardless of when the contract may have been signed.

As a complicating factor the legislature elected to use the length of "agreement" verbiage in Section 312.208 saying: "The original agreement may not be modified to extend beyond 10 years from the date of the original agreement." See also, *Calhoun, I.S.D. v. Meno,* 102 S.W.2d 748 (Tex.App. –Austin, 1995).

The rational for limiting the length of discretion afforded local decision makers in granting abatements is that at some point the property ought to be on the tax rolls and that point is 10 years. The improvements can't be on the tax rolls prior to substantial completion regardless of the date an abatement agreement was reached though abatement for real property and existing improvements can be immediate and dependent on improvements agreed to be made.

We seek your opinion that the law limits the time period available for abatement under Chapter 312 to a maximum of 10 years from the date of the contract.

Sincerely,

Tom Rugg

Encl.
Attachments

FILE COPY

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November 22, 2008

Mr. Thomas Rugg
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Civil Division
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Beaumont, TX 77704-2553

Re: Sabine Neches Navigation District – Request for Attorney General Opinion regarding Length of Abatement; Tax Code 312.04

Dear Tom:

As General Counsel of the Sabine Neches Navigation District, I have been asked by Board of Commissioners of the Sabine Neches Navigation District to request your assistance in obtaining an Attorney General's opinion in regard to the length (term) of an ad valorem tax abatement allowed under Chapter 312 of the Taxation Code.

THE DISTRICT

The Sabine Neches Navigation District is an Article XVI, Section 59 Navigation District created pursuant to HB3653 of the 77R Legislature (Attachment 1), as amended by House Bill 3634 of the 80R Legislature (Attachment 2). Under its prior name, Jefferson County Waterway and Navigation District, the District had previously requested and obtained an Attorney General Opinion) through your office. RequestRQ0243-GA (Attachment 3) and Opinion GA0284 (Attachment 4

THE ABATEMENT

Jefferson County has been blessed by an influx of massive refinery heavy construction projects. The Navigation District generally feels that tax abatements have been an asset in obtaining this economic development. The issue has arisen however, about the length of time for which an abatement can be given. Two industries have requested Tax Code §312.206 abatements, each for a period of ten (10) years after "substantial completion of the project". Our research indicates that the agreement can not be longer than ten (10) years and in our opinion that to get the full benefit of the ten (10) years, the abatement should include the amount of time used during construction. Several members of our Board feel that ten years after substantial completion of the construction, some three years in the future, is too long.

Our research indicates a prior Attorney General's opinion, a court case and the statute itself that would seem to limit the tax abatement itself to a maximum term of ten years after the passage of the agreement, i.e. that it could not be for the ten years after substantial completion of the project as the agreement to abate can only be given for ten years as it must be given before construction starts..

Attorney General John Cornyn's Opinion 0133 would indicate that the maximum duration of abatement agreements would be ten years and "insure that the abated property becomes a part of the local property tax base". (Attachment 5)

Next, the case of *Calhoun County ISD vs. Meno*, 902 SW 748, 749 indicates that the abatement agreement cannot extend beyond ten years from the date of the original agreement. (Attachment 6)

Third, the abatement statute indicates in § 312.204 that the agreement "shall not be for a period to exceed ten years" and this is confirmed by Section 312.206, and 312.208, that talks about the modification of the term of the agreement and points out the original agreement may not be modified to extend beyond ten years from the date of the original agreement. (Attachment 7)

Finally, Section 312.204 at one time was amended to include this "the agreement may take effect on January 1st or the next tax year after the date the improvements or repairs are substantially completed" by HB3001, "Effective Date For Tax Abatement", 2001 Vernon's Texas Session Law Ch. 560, 79th Texas Legislature.(Attachment 8)

However, this particular sentence has been deleted in the current version of this section that is now effective, from our research since 2005., Vernon's Texas Session Law 2005, Chapter 412, a copy of which is attached that deletes the "substantial completion" sentence.(Attachment9). Compare §312.204 in attachments 7,8,9. The District's abatement authority comes from §312.206 through §312.204.

In our most recent abatement request, the Board was not in favor of extending the agreements longer than ten years including construction, but we have passed an earlier abatement this past year which included the terms "beginning on the January 1st valuation date immediately following the substantial completion of the PROJECT" [Attachment 10].

The question we ask the opinion of the Attorney General's is "Can a qualifying entity grant an abatement that will last over 10 years in the future to begin after substantial completion of the project? Or is the wording contained in Attorney General Cornyn's #0133, *Calhoun County ISD vs. Meno*, the statute change and the statute itself, that an abatement cannot extend beyond ten years from the date of the original agreement correct?

Thanking you for your attention to this matter.

With best regards, I remain,

Very truly yours,

SABINE NECHES NAVIGATION DISTRICT

By: _____
Hubert Oxford, III
General Counsel for
Sabine Neches Navigation District

HO/bjb
CC:
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Mr. C.L. 'Sonny' Sherman
2970 Washington Boulevard

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AN ACT

relating to the creation, administration, powers, duties, operation, and financing of the Jefferson County Waterway and Navigation District and the merger of the Jefferson County Navigation District with that district.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. CREATION. (a) A navigation district, to be known as the Jefferson County Waterway and Navigation District, is created in Jefferson County, subject to approval at a confirmation election under Section 10 of this Act. The district is a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

SECTION 2. DEFINITIONS. In this Act:

(1) "Commissioners court" means the Jefferson County Commissioners Court.

(2) "District" means the Jefferson County Waterway and Navigation District.

SECTION 3. BOUNDARIES. The boundaries of the district are coextensive with the boundaries of Jefferson County, Texas.

SECTION 4. FINDING OF BENEFIT. All of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

SECTION 5. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49, 60, and 62, Water Code, applicable to navigation districts created under Section 59, Article XVI, Texas Constitution. This Act prevails over any provision of general law that is in conflict or inconsistent with this Act.

SECTION 6. ADDITIONAL POWERS. (a) The district may operate, develop, and improve ship channels and waterways within its boundaries and outside but adjacent to its boundaries and extending into the Gulf of Mexico or may act as local sponsor for such projects developed by the federal government.

(b) The district may:

(1) acquire land or interests in land within or outside its boundaries by purchase, lease, or otherwise;

(2) convey land or interests in land by lease, installment sale, or otherwise; and

(3) purchase, construct, enlarge, extend, repair, maintain, operate, develop, sell by installment sale or otherwise, and lease as lessor or as lessee any other facility or aid incidental to or useful in the operation or development of ports adjacent to the ship channels and waterways that the district develops or federal developments for which the district acts as local sponsor, or in aid of navigation and navigation-related commerce in those ship channels, for those ports, and in those waterways, including navigation locks and saltwater barriers.

SECTION 7. RELATIONSHIP OF DISTRICT TO EXISTING DISTRICTS IN AREA. The district is created in addition to all other existing conservation and reclamation districts in Jefferson County. The district's powers are concurrent with, but do not supersede, the powers exercised by the existing Port of Beaumont Navigation District of Jefferson County, Texas, the existing Port of Port Arthur Navigation District of Jefferson County, Texas, and the

existing Sabine Pass Port Authority over territory those districts have in common with the district. The district and each of the other navigation districts may contract with each other or with other entities as necessary to provide for division of jurisdiction or for responsibility for the joint development, operation, or maintenance and funding of new or existing projects. Each district may levy its maintenance taxes to the extent required to satisfy its obligations under such a contract.

SECTION 8. NAVIGATION AND CANAL COMMISSION. (a) The district is governed by five navigation and canal commissioners appointed by the commissioners court.

(b) Chapter 62, Water Code, governs the qualifications, appointment, terms, and removal of commissioners.

(c) Three commissioners constitute a quorum. The concurrence of three commissioners is required to conduct the business of the district.

SECTION 9. APPOINTMENT OF COMMISSIONERS. As soon as practicable after the confirmation of the district at an election held as provided by Section 10 of this Act, the commissioners court shall appoint five initial navigation and canal commissioners to terms that comply with Chapter 62, Water Code.

SECTION 10. CONFIRMATION ELECTION. (a) At any time after the effective date of this Act, the commissioners court may call an election to confirm establishment of the district, to approve the merger of the Jefferson County Navigation District with the district, and to approve the levy and collection, by the commissioners court on behalf of the district, of a maintenance and operations tax at a rate not to exceed 10 cents for each $100 valuation of taxable property in the district.

(b) The ballot must provide for voting for or against the proposition: "The creation of the Jefferson County Waterway and Navigation District, the merger of the existing Jefferson County Navigation District with the new district, and the levy and collection, by the commissioners court on behalf of the new district, of a maintenance and operations tax at a rate not to exceed 10 cents for each $100 valuation of taxable property in the new district."

(c) If a majority of qualified voters in the district voting in the election vote in favor of the proposition, the creation of the district is confirmed, the Jefferson County Navigation District is merged with the district on the date determined as provided by Section 11 of this Act, and the commissioners court is authorized, on the date determined as provided by Section 11 of this Act, to levy and collect a maintenance and operations tax on behalf of the district not to exceed the specified rate.

(d) If a majority of the qualified voters in the district voting in the election vote against the proposition, the proposition fails. If the proposition fails, the commissioners court may resubmit the proposition at an election held as provided by this section.

(e) Section 41.001(a), Election Code, does not apply to a confirmation election held as provided by this section.

(f) Except as provided by this section, a confirmation election must be conducted as provided by Sections 62.031-62.035, Water Code, and the Election Code.

SECTION 11. MERGER. (a) The commissioners court by order shall set the effective date of the merger so as to avoid disruption in the levy and collection of maintenance and operations taxes.

(b) On the effective date of the merger:

(1) the Jefferson County Navigation District is merged into the district;

(2) all powers, duties, rights, and obligations of the Jefferson County Navigation District, including all powers and rights granted the Jefferson County Navigation District under general or special law, are the powers, duties, rights, and obligations of the district;

(3) all assets, personnel, equipment, data, documents, facilities, and other items of the Jefferson County Navigation District are transferred to the district; and

(4) the commissioners court may levy and collect a maintenance and operations tax on behalf of the district.

(c) After the date of merger, the commissioners court shall levy and collect, in addition to any other maintenance and operations tax that may be levied on behalf of the district, a maintenance and operations tax sufficient to provide for timely payment or satisfaction of all obligations of the Jefferson County Navigation District assumed by the district, the total maintenance and operations tax not to exceed the rate specified in Section 10(a) of this Act.

SECTION 12. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. (a) The proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 13. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

_____ President of the Senate

_____ Speaker of the House

I certify that H.B. No. 3653 was passed by the House on May 5, 2001, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

_____ Chief Clerk of the House

I certify that H.B. No. 3653 was passed by the Senate on May 22, 2001, by the following vote: Yeas 30, Nays 0, 1 present, not voting.

_____ Secretary of the Senate

APPROVED:

_____ Date

_____ Governor

AN ACT

relating to the name and powers of the Jefferson County Waterway and Navigation District.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1472, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Section 1A to read as follows:

Sec. 1A. NAME OF DISTRICT. (a) The name of the Jefferson County Waterway and Navigation District is changed to the "Sabine-Neches Navigation District of Jefferson County, Texas."

(b) A reference in law to the Jefferson County Waterway and Navigation District means the Sabine-Neches Navigation District of Jefferson County, Texas.

SECTION 2. Section 2, Chapter 1472, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 2. DEFINITIONS. In this Act:

(1) "Commission" means the navigation and canal commission of the district.

(2) "Commissioners court" means the Jefferson County Commissioners Court.

(3) [~~(2)~~] "District" means the Sabine-Neches Navigation District of Jefferson County, Texas [~~Waterway and Navigation District~~].

SECTION 3. Chapter 1472, Acts of the 77th Legislature,

Regular Session, 2001, is amended by adding Section 6A to read as follows:

Sec. 6A. SECURITY AND LAW ENFORCEMENT. (a) The commission may adopt, amend, repeal, and enforce an ordinance, rule, or police regulation necessary to:

(1) protect, secure, and defend the ship channels and waterways in the jurisdiction of the district and facilities served by those ship channels and waterways;

(2) promote the health, safety, and general welfare of any person using the ship channels and waterways in the jurisdiction of the district; and

(3) comply with a federal law or regulation or implement a directive or standard of the federal government, including the United States Department of Homeland Security and the United States Coast Guard, relating to securing ship channels and waterways and facilities served by ship channels and waterways and preventing terrorist attacks on ship channels, waterways, associated maritime facilities, and other facilities served by ship channels and waterways.

(b) In the enforcement of a district ordinance, rule, or police regulation, a sheriff, constable, or other duly constituted peace officer of this state or a peace officer employed or appointed by the commission may make arrests, serve criminal warrants, subpoenas, or writs, and perform any other service or duty that may be performed by any sheriff, constable, or other duly constituted peace officer of this state in enforcing other laws of this state.

(c) In adopting an ordinance, rule, or police regulation

under Subsection (a) of this section, the commission shall comply with the procedures provided by Sections 60.074 and 60.075, Water Code.

(d) The district may enter into an interlocal agreement with this state or a county, municipality, or other political subdivision of this state to jointly provide, and share the costs of, security for the ship channels and waterways in the jurisdiction of the district.

(e) To protect the public interest, the district may contract with a qualified party, including the federal government or Jefferson County, for the provision of law enforcement services in all or part of the jurisdiction of the district for a fee. The district may establish fees, charges, and tolls to offset the cost of law enforcement services provided under a contract.

(f) To cover the costs incurred by the district in providing security for the ship channels and waterways in the jurisdiction of the district, the district may:

(1) except as provided by Subsection (g) of this section, impose fees, charges, and tolls for the use of those channels and waterways; or

(2) use other revenues or funds of the district.

(g) The district may not impose a fee, charge, or toll under Subsection (f)(1) of this section on an oceangoing vessel docking at a public dock of either of the following navigation districts unless approved by the board of port commissioners of the navigation district at which the vessel docks:

(1) the Port of Beaumont Navigation District of

Jefferson County, Texas; or

(2) the Port of Port Arthur Navigation District of Jefferson County, Texas.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 3634 was passed by the House on April 27, 2007, by the following vote: Yeas 133, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3634 was passed by the Senate on May 18, 2007, by the following vote: Yeas 29, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

ED SHETTLE
First Assistant
Criminal Division

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RECEIVED
JUN 28 2004
OPINION COMMITTEE

RQ-0243-GA

June 23, 2004

Texas Attorney General Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43782-04
I.D. # 43782

Re: Request for an Opinion

Dear General Abbott:

The Board of the Jefferson County Waterway and Navigation District is interested in obtaining health and retirement benefits for its District Commissioners. We have been asked to seek an Opinion on issues impacting such participation:

1. Would such benefits first have to be approved by the Jefferson County Commissioners Court?

2. Are the District Commissioners officers and/or employees of the District?

3. May the appropriate authority also approve payment for a portion of dependent coverage if the District Commissioners are eligible for health benefits?

I.

First, would such benefits have to be approved by the Jefferson County Commissioners Court because of both the statute creating the District and Section 62.070 of the Water Code?

In 2001 H.B. No.3653 authorized the creation of the Jefferson County Waterway and Navigation District and the merger of the Jefferson County Navigation District with that district. A confirmation election was held November 6, 2001 and the creation of the District was approved by the voters. On January 7, 2002 the Jefferson County Commissioners Court approved the merger of the Jefferson County Navigation District into the newly created Jefferson County Waterway and Navigation District effective January 15, 2002 at 12:01 a.m. Section 8(a) of H.B. No. 3653 reads as follows:

> The district is governed by five navigation and canal commissioners appointed by the commissioners court.

The Jefferson County Commissioners Court appointed Commissioners, whose compensation is determined by the Jefferson County Commissioners Court pursuant to Section 62.070 of the Water Code:

> Each commissioner shall receive for his services the compensation determined by the commissioners court of the county of jurisdiction.

Are health and retirement benefits included under the term "compensation" which must be determined by the Jefferson County Commissioners Court? Or may the Jefferson County Waterway and Navigation District Commissioners act on their own to obtain benefits?

II.

Are the Jefferson County Waterway and Navigation District Commissioners "district officers and/or employees under the law?

The Jefferson County Waterway and Navigation "is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution." (H.B. 3653 Section 1.(b)). Title 4 of the Water Code

concerns General Law District. Section 49.001(1) specifies in part that:

> "District" means any district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created.

Section 49.069 provides for employee benefits for General Law Districts:

> (a) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the districts.
>
> (b) The board may establish a public retirement system in accordance with the provisions of Chapter 810, Government Code. The board may also provide for a deferred compensation plan described by Section 457 of the Internal Revenue Code of 1986 (26 V.S.C. Section 457).
>
> (c) The board may include hospitalization and medical benefits to its employees as part of the compensation paid to the officers and employees and adopt any plan, rule, or regulation in connection with it and amend or change the plan, rule, or regulation as it may determine.

If the term "district officers" merely included the Board president and secretary, then all district commissioners would not be included. If the term "officer" means the manager, then none of the district commissioners would appear to be eligible. If the district commissioners are employees, then they apparently are included under this statute.

Further, under Sec. 60.014 of the Water Code the commission of a General Law District has the following authority:

> (a) The commission may include hospitalization and medical benefits for officers and employees as part of the compensation paid to the officers and employees.
>
> (b) The commission may provide for the benefits in Subsection (a) of this section by plan, rule, or regulation, and may change any plan, rule or regulation from time to time.

Section 172.002 of the Local Government Code establishes that one of

the reasons for setting up political subdivision uniform group benefits is to:

> (6) recognize the service to political subdivisions by elected officials and employees of affiliated service contractors by extending to them the same accident and heath benefits coverages as are provided for political subdivision employees

The issue of whether or not the district commissioners are "officers" is also important when considering Section 810.001 of the Government Code, which deals with the establishment of a public retirement system. It defines a "public entity" in part as a water district "or other special purpose district or authority that is created pursuant to state law and that is not an agency of the state." Section 810.001(b) reads in part:

> The governing body of a political entity may establish and maintain a public retirement system for its appointive officers and employees and determine the benefits, funding source and amount and administration of the system.

III.

The third issue is whether the appropriate authority, either the Jefferson County Commissioners Court or the Jefferson County Waterway and Navigation District, may also approve payment for a portion of dependent coverage for the district commissioners. Section 172.004(c) of the Local Government reads:

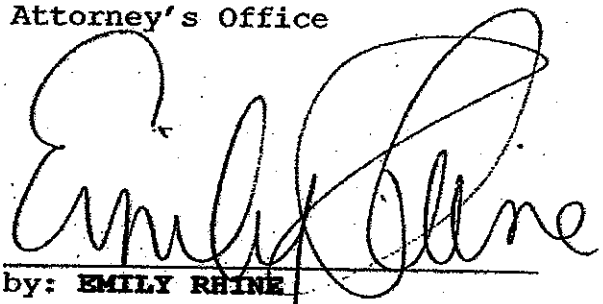
> A political subdivision also may include under the coverage dependents of the officers, employees, and retirees."

Once again, the issue of whether or not a district commissioner is an officer or employee would seem to be the determining factor as to whether the dependents of district commissioners are eligible for inclusion in a benefits plan.

Respectfully submitted,

TOM MANESS
Criminal District Attorney
Jefferson County, Texas

TOM RUGG
First Assistant Civil Division
Jefferson County Criminal District
Attorney's Office



by: **EMILY RHINE**
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ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2004

The Honorable Tom Maness Jefferson County Criminal District Attorney Post Office Box 2553 Beaumont, Texas 77704	Opinion No. GA-0284 Re: Which entity has authority to approve retirement and medical benefits for the Jefferson County Waterway and Navigation District Board members: the Jefferson County Commissioners Court or the Waterway and Navigation District Board (RQ-0243-GA)

Dear Mr. Maness:

You ask which entity has authority to approve retirement and medical benefits for the Jefferson County Waterway and Navigation District Board members: the Jefferson County Commissioners Court (the "Commissioners Court") or the Waterway and Navigation District Board (the "District Board"). [(1)] You specifically ask, first, whether "such benefits [must] be approved by the . . . Commissioners Court"; and second, whether "the District Commissioners [are] officers and/or employees of the District" for the purposes of statutes authorizing the provision of retirement and medical benefits for the officers of districts such as the Jefferson County Waterway and Navigation District (the "District"). Request Letter, *supra* note 1, at 1.

The District was created in 2001 as a conservation and reclamation district under article XVI, section 59 of the Texas Constitution and merged with the Jefferson County Navigation District [(2)] in 2002. *See* Tex. Const. art. XVI, § 59; Act of May 22, 2001, 77th Leg., R.S., ch. 1472, §§ 1, 11, 2001 Tex. Gen. Laws 5235, 5235, 5237; Request Letter, *supra* note 1, at 2. The special law providing for the district's creation states that the District is governed by a board of five "navigation and canal commissioners appointed by the commissioners court." Act of May 22, 2001, 77th Leg., R.S., ch. 1472, § 8(a), 2001 Tex. Gen. Laws 5235, 5236. Under section 5 of the District's enabling act, the district "has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49, 60, and 62, Water Code, applicable to navigation districts." *Id.* § 5, 2001 Tex. Gen. Laws 5235, 5235. The special law does not expressly address medical and retirement benefits for District commissioners. [(3)]

You cite provisions in each of the general laws listed--Water Code chapters 49, 60, and 62--that you believe are relevant. *See generally* Request Letter, *supra* note 1. Chapter 49 of the Water Code, which applies to all general law districts and which applies to the District by virtue of section 5 of its enabling act, provides for certain benefits in section 49.069. Section 49.069(a) authorizes a general law district board to "provide for and administer retirement, disability, and death compensation funds for" district employees. Tex. Water Code Ann. § 49.069(a) (Vernon 2000). Subsection (b) authorizes a board to "establish a public retirement system" under Government Code chapter 810. [(4)] *Id.* § 49.069(b); *see* Tex. Gov't Code Ann. § 810.001 (Vernon Supp. 2004-05); *supra* note 4 (summarizing section 810.001, Government Code). Subsection (c) authorizes a district to "include hospitalization and medical benefits to its employees as part of the compensation paid to the officers and employees." Tex. Water Code Ann. § 49.069(c) (Vernon 2000).

Chapter 60 contains general provisions for navigation districts, and it, too, applies to the District by virtue of section 5 of the District's enabling act. Section 60.011 authorizes "[t]he commission of any district created under this code or by special law [to] provide for . . . a retirement . . . compensation fund for district officers." *Id.* § 60.011(a) (Vernon 2004). Section 60.014 authorizes the commission of a navigation district organized under article XVI, section 59 of the Texas Constitution to "include hospitalization and medical benefits for officers . . . as part of the compensation paid to the officers." *Id.* § 60.014(a).

Chapter 62 of the Water Code, also applicable to the District by virtue of section 5 of the enabling act, provides for navigation districts as well. *See id.* § 62.021. Section 62.070 provides for commissioners' compensation: "Each commissioner shall receive for his services the compensation determined by the commissioners court of the county of jurisdiction." *Id.* § 62.070.

Sections 49.069, 60.011, and 60.014 all refer to officers, and you query whether District Board members are officers. *See* Tex. Water Code Ann. §§ 49.069(c) (Vernon 2000), 60.011(a), 60.014(a) (Vernon 2004); Request Letter, *supra* note 1, at 1. Because they exercise sovereign functions largely independent of others' control, *see Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955); *see also* Act of May 22, 2001, 77th Leg., R.S., ch. 1472, § 6, 2001 Tex. Gen. Laws 5235, 5236 (authorizing the District to operate certain ship channels and to acquire land or interests in land), they are officers.

You wish to know whether section 62.070, authorizing a commissioners court to determine district board members' "compensation," includes authority to determine the members' benefits and, if so, whether it prevails over a district board's authority to determine benefits under section 49.069 or sections 60.011 and 60.014. *See* Request Letter, *supra* note 1, at 1-2. We consider first whether sections 60.011 and 60.014 authorize a district board to determine retirement and medical benefits. *See* Tex. Water Code Ann. §§ 60.011(a), .014(a) (Vernon 2004).

We conclude that sections 60.011 and 60.014 authorize the district board to determine retirement and medical benefits. On its face, section 60.011 authorizes a district board to "provide for . . . a retirement, disability, and death compensation fund for district officers." *Id.* § 60.011(a). Section 60.014 plainly authorizes a district board to "include hospitalization and medical benefits for officers . . . as part of the compensation paid to the officers." *Id.* § 60.014(a). The District may exercise those powers that the legislature has delegated to it, and under the enabling act's plain language, the District has all of the powers Water Code chapter 60 provides, as well as the powers chapters 49 and 62 provide. *See* Act of May 22, 2001, 77th Leg., R.S., ch. 1472, § 5, 2001 Tex. Gen. Laws 5235, 5235; Tex. Att'y Gen. Op. No. JC-0354 (2001) at 1 (stating that a navigation district has "'only those powers that are expressly delegated to it by statute or that are clearly implied from its express powers'") (quoting *Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940)); *see also Harlingen Irrigation Dist. Cameron County No. 1 v. Caprock Communications Corp.*, 49 S.W.3d 520, 536 (Tex. App.-Corpus Christi 2001, pet. denied) (stating that an irrigation district, created under article XVI, section 59 of the Texas Constitution, may exercise those powers granted it by statute as well as those necessarily implied from the express powers).

In addition, we construe section 62.070 so that it does not conflict with sections 60.011 and 60.014. Under section 62.070, it is a commissioners court that sets the compensation for district board members. *See* Tex. Water Code Ann. § 62.070 (Vernon 2004). The term "compensation" typically "includes benefits, such as insurance" and pension. Tex. Att'y Gen. Op. No. GA-0130 (2003) at 2; *see Friedman v. Am. Sur. of N.Y.*, 151 S.W.2d 570, 577 (Tex. 1941) (stating that the right to receive unemployment benefits is part of employees' "compensation"); *Byrd v. City of Dallas*, 6 S.W.2d 738, 740 (Tex. 1928) (stating that pension is part of employees' "compensation"); Tex. Att'y Gen. Op. No. WW-731 (1959) at 3-4 (stating that the provision of hospital insurance may be part of "compensation"); Tex. Att'y Gen. LO-97-100, at 2 (stating that hospitalization insurance provided to an officer is an emolument within article XVI, section 40 of the Texas Constitution). Because section 60.014 expressly places the decision whether officers' compensation should include medical benefits with a district board, while section 62.070 places the decision as to the compensation district officers will receive with the county commissioners court, section 62.070 appears to conflict with section 60.014. But where it is possible to do so, we are to harmonize statutes. *See, e.g.*, Tex. Gov't Code Ann. §§ 311.025-.026 (Vernon 1998) (encouraging a construer to interpret statutes so that they harmonize or create limited exceptions). By construing the word "compensation" in section 62.070 to encompass only monetary compensation, sections 60.011, 60.014, and 62.070 can be harmonized so that a county commissioners court determines the district board members' compensation, but the board members themselves establish benefits.

Construing the word "compensation" in section 62.070 not to include retirement and medical benefits comports with the legislative history of sections 60.011, 60.014, and 62.070. Section 62.070 and its statutory predecessor have provided since 1929 that the commissioners court must set navigation district commissioners' "compensation." *See* Act approved May 23, 1929, 41st Leg., 1st C.S., ch. 103, § 5, 1929 Tex. Gen. Laws 246, 251. The statutory predecessors to sections 60.011 and 60.014 both were adopted later, in 1955. *See* Act of Apr. 29, 1955, 54th Leg., R.S., ch. 252, §§ 1, 3, 1955 Tex. Gen. Laws 701, 701-02. The 1955 legislation made it clear that existing statutes did not grant sufficient authority for providing retirement and medical benefits: "The fact that present Statutes relating to navigation districts

do not specifically authorize retirement, disability, death compensation, hospitalization or medical benefits . . . making it difficult for such navigation districts to secure and retain competent employees . . . create[s] an emergency . . . ." *Id.* § 5, 1955 Tex. Gen. Laws at 702-03.

We consequently conclude it is within the District Board's discretion to determine whether the District will provide District Board members retirement benefits under section 60.011 and medical benefits under section 60.014. The Commissioners Court has no authority to make or participate in the decision.

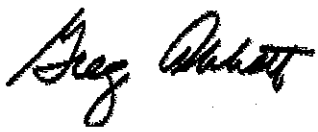
You also ask whether the District Board may approve payment for a portion of the coverage of District commissioners' dependents. *See* Request Letter, *supra* note 1, at 4. You draw our attention to section 172.004 of the Local Government Code, which authorizes a "political subdivision . . . directly or through a risk pool" to "provide health and accident coverage for political subdivision officials." Tex. Loc. Gov't Code Ann. § 172.004(a) (Vernon Supp. 2004-05). Subsection (c) further authorizes a political subdivision to include the officers' dependents under the coverage. *See id.* § 172.004(c).

Section 172.003, which defines various terms for use in chapter 172, defines the term "political subdivision" to include a "special district . . . or other political subdivision of the state." *Id.* § 172.003(3). A navigation district is a political subdivision of the state for purposes of section 172.004. *See Smith v. Harris County-Houston Ship Channel Nav. Dist.*, 330 S.W.2d 672, 674 (Tex. Civ. App.-Fort Worth 1959, no writ) (and cases cited therein) (noting well-settled law that public districts created by constitutional and statutory authority, such as navigation districts, are political subdivisions of state). Accordingly, the District Board may approve the payment of dependent coverage under section 172.004.

SUMMARY

Section 62.070 of the Water Code, which authorizes a county commissioners court to determine "compensation" for navigation district commissioners, pertains only to monetary compensation. The navigation district may determine whether to provide district commissioners with retirement and medical benefits under sections 60.011 and 60.014 of the Water Code. The navigation district board also may determine whether to pay a portion of the commissioners' dependents' coverage under section 172.004 of the Local Government Code.

Very truly yours,



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Footnotes

1. *See* Letter from Honorable Tom Maness, Jefferson County Criminal District Attorney, to Honorable Greg Abbott, Texas Attorney General, at 1 (June 23, 2004) (on file with the Opinion Committee; *also available at* http://www.oag.state.tx.us) [hereinafter Request Letter].

2. In 1987 the name of the Beaumont Navigation District was changed to the Jefferson County Navigation District. *See* Act of July 18, 1987, 70th Leg., 2d C.S., ch. 10, § 1, 1987 Tex. Gen. Laws 45, 45. We have been unable to locate special laws creating the Beaumont Navigation District.

3. The special laws pertaining to the predecessor district, the Jefferson County Navigation District, also

do not address the provision of benefits to commissioners. *See* Act of May 15, 1989, 71st Leg., R.S., ch. 765, 1989 Tex. Gen. Laws 3364, 3364-65; Act of July 18, 1987, 70th Leg., 2d C.S., ch. 10, 1987 Tex. Gen. Laws 45, 45.

4. Section 810.001 of the Government Code, to which Water Code section 49.069(b) refers, authorizes the governing body of a political entity, including a "water district . . . or other special purpose district," to "establish and maintain a public retirement system for its appointive officers and employees." Tex. Gov't Code Ann. § 810.001(a)(1), (b) (Vernon Supp. 2004-05); *see also id.* § 810.001(2) (defining "public retirement system"). This authority does not apply to a political entity that is "required to establish or participate exclusively in a particular public retirement system" or "prohibited from establishing or participating in any public retirement system or in a particular retirement system." *Id.* § 810.001(d). But the authority to establish a public retirement system under Government Code section 810.001 is cumulative of other statutory authority a political entity may have to provide a public retirement system or programs. *See id.* § 810.001(e).

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OFFICE OF THE ATTORNEY GENERAL • STATE OF TEXAS
JOHN CORNYN

October 28, 1999

The Honorable Sonya Letson
Potter County Attorney
500 South Fillmore, Room 303
Amarillo, Texas 79101

Opinion No. JC-0133

Re: Whether tax abatement may be granted to owner of property that was subject of a previous ten-year tax abatement agreement under chapter 312 of the Tax Code, and related question (RQ-0077-JC)

Dear Ms. Letson:

Chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act, authorizes municipalities and other local taxing units to grant tax abatements to property owners, under certain circumstances, for the purpose of economic development of property located in a reinvestment zone. You ask two questions regarding the allowable duration of tax abatement agreements under chapter 312.

A tax abatement agreement made pursuant to chapter 312 of the Tax Code may not exceed ten years: "The governing body of a municipality . . . may agree in writing with the owner of taxable real property . . . to exempt from taxation a portion of the value of the real property . . . for a period not to exceed 10 years . . . ." TEX. TAX CODE ANN. § 312.204(a) (Vernon 1992). An agreement may be modified to extend its duration at any time before the expiration of the agreement. *Id.* § 312.208(a). However, the original agreement may not be modified to extend beyond ten years from the date of the original agreement. *Id.*

Before September 1, 1989, tax abatement agreements could be made for a period of up to fifteen years. In 1989, the legislature amended chapter 312 to shorten the maximum duration of a tax abatement agreement from fifteen years to the current ten years. *See* Act of May 24, 1989, 71st Leg., R.S., ch. 1137, §§ 7, 10, 1989 Tex. Gen. Laws 4683, 4685-87. The change became effective on September 1, 1989. *Id.* § 29 at 4692-93. Agreements entered into before the effective date of the amendment were not affected. *Id.*

You tell us that in 1988 the City of Amarillo entered into a tax abatement agreement with the owner of certain real property located in a reinvestment zone. *See* Letter from Honorable Sonya Letson, Potter County Attorney, to Honorable John Cornyn, Attorney General (June 10, 1999) [hereinafter "Request Letter"]. At that time, section 312.204 of the Tax Code allowed tax abatement agreements to last as long as fifteen years. The initial term of the agreement was five years, beginning on January 1, 1989. *Id.* at 1. But the agreement was "renewable" for two additional

periods of five years, for a total of fifteen years, if the property owner met certain employment goals. *Id.*

The property owner met its employment goals, and the tax abatement agreement was extended for a second period of five years, beginning on January 1, 1994. *Id.* Again, the agreement set certain employment goals for the property owner which, if met, would allow the agreement to be extended for an additional five-year period. *Id.* at 2.

The employment goals were met again by the end of the second five-year period. *Id.* However, the property that was the subject of the agreement had a new owner. *Id.* You describe the new owner as the "successor in interest" to the previous owner, but you also say that there is a possibility that the two owners are the same entity. *Id.* In any event, in 1998 the City entered into a new tax abatement agreement with the new owner of the property. You tell us that the agreement is "new" but that its preamble states that it "is for the general purpose of continuing a tax abatement agreement on improvements constructed on the herein-described property." *Id.* The agreement is for a five-year period beginning January 1, 1999. *Id.* You inform us that Potter County and other taxing entities entered into tax abatement agreements with the new owner under the same terms. *Id.*

You ask whether a governmental entity may grant a tax abatement to the owner of property that was previously the subject of a ten-year tax abatement agreement. We conclude that it may not. We do not decide, however, whether such a tax abatement agreement was entered into in the particular case that you describe.

Section 312.204 of the Tax Code limits a tax abatement agreement with a property owner to ten years. TEX. TAX CODE ANN. § 312.204(a) (Vernon 1992). It does not expressly prohibit subsequent ten-year agreements with respect to the same property. Thus, as your letter points out, it might be argued that after the expiration of one ten-year tax abatement agreement, a governmental body may enter into subsequent tax abatement agreements with the property owner provided no single agreement is for a period of more than ten years. We disagree with this argument.

In interpreting a statute, we presume that the legislature intended to give effect to the entire statute, to promote a just and reasonable result, and to favor the public interest over any private interest. TEX. GOV'T CODE ANN. § 311.021 (Vernon 1998). If section 312.204 were construed to permit subsequent tax abatement agreements on the same piece of property, it would allow ten-year agreements to be entered into one after the other, potentially resulting in taxes being abated on a piece of property for an unlimited length of time. We do not believe that the legislature intended such a result.

The constitutional provision authorizing the Property Redevelopment and Tax Abatement Act states that tax relief may be provided "for the purpose of encouraging development or redevelopment and improvement" of property. TEX. CONST. art. VIII, § 1-g(a). In our view, the purpose of the Act is to spur economic development in an area: to give the area an economic boost,

so to speak. The statute's ultimate goal is to increase an area's tax base, not to remove taxable property from it.

When the maximum duration of a tax abatement agreement was changed from fifteen years to ten years, supporters of the change argued that the shorter period would more quickly return the property to the tax rolls:

> Shortening the maximum duration of abatement agreements would ensure that abated property finds its way onto the tax rolls before depreciation makes the property obsolete. The ten-year limit would bring Texas in line with a majority of other states and ensure that the abated property eventually becomes a part of the local property tax base.

HOUSE RESEARCH ORG., BILL ANALYSIS, Tex. H.B. 2392, 71st Leg., R.S. 3 (May 11, 1989) (companion to S.B. 1312). Similarly, a court of appeals described chapter 312 tax abatements as increasing the local tax base in the long run and decreasing tax revenue only in the short run. *See Calhoun County Indep. Sch. Dist. v. Meno*, 902 S.W.2d 748, 749 (Tex. App.–Austin 1995, writ denied). We likewise find no purpose for the ten-year limit other than to make certain that the property is returned to the tax rolls. Allowing successive ten-year agreements on the same property would defeat this purpose.

You point out that because section 312.204 refers to tax abatement agreements with the *owner* of taxable real property, it might be argued that following a ten-year agreement with the owner of a piece of property, a governmental body may enter into a new ten-year agreement with a new owner of the same property. We also find this argument incompatible with the purpose of the tax abatement law. Such a construction could result in successive abatement agreements on the same piece of property, provided each agreement is with a different owner. Again, it has the potential of forestalling indefinitely the return of property to the tax rolls. Accordingly, we conclude that a governmental entity may not grant a tax abatement to a new owner of the same property that previously received a ten-year tax abatement.

You also ask whether the 1989 amendment to section 312.204 of the Tax Code, changing the maximum duration of a tax abatement agreement from fifteen years to ten years, prohibits the City of Amarillo from granting a tax abatement for a total of fifteen years pursuant to the agreement described in your letter. We conclude that section 312.204 permits a city to complete the terms of a fifteen-year tax abatement agreement executed prior to September 1, 1989, the effective date of the amendment. We do not decide, however, whether the agreement about which you ask is a fifteen-year agreement executed prior to September 1, 1989.

The act adopting the ten-year limit on tax abatement agreements provides that it does not affect agreements executed before the act's effective date:

> The change in law made by this Act to Section 312.204, Tax Code, relating to the duration of a tax abatement agreement applies only to an agreement executed on or after the effective date of this Act. An agreement executed before the effective date of this Act is governed by Section 312.204, Tax Code, or by former Article 1066f, Vernon's Texas Civil Statutes, as applicable, as the law existed when the agreement was executed.

Act of May 24, 1989, 71st Leg., R.S., ch. 1137, § 29(b), 1989 Tex. Gen. Laws 4683, 4692. Thus, a governmental body could honor the terms of a fifteen-year tax abatement agreement executed before September 1, 1989.

A tax abatement agreement executed prior to the effective date of the new law could be modified to extend beyond ten years, but only if the modification occurred before the effective date of the new law:

> The change in law made by this Act to Subsection (a), Section 312.208, Tax Code, relating to the extension of a tax abatement agreement applies to an extension of an agreement that occurs on or after the effective date of this Act even if the agreement was originally executed before the effective date. The change in Subsection (a), Section 312.208, Tax Code, made by this Act does *not affect the validity of an extension made before the effective date.*

Id. § 29(c), at 4692. Thus, a tax abatement agreement could last for as many as fifteen years if the agreement was entered into or modified to establish that length before September 1, 1989. Modifications made after September 1, 1989, are governed by the new law and thus are limited to ten years.

You tell us that the City of Amarillo entered into a tax abatement agreement in 1988 that was for an initial period of five years, but which was "renewable" to last as many as fifteen years if certain conditions were met. *See* Request Letter, *supra*, at 1. Then, you tell us that the original agreement was "extended" for a second period of five years, beginning on January 1, 1994. *Id.* Finally, you tell us that in 1998, the city entered into a "new" five-year tax abatement agreement with the new owner of the property, although the agreement's preamble states that it "is for the general purpose of continuing a tax abatement [agreement] on improvements constructed on the herein-described property." *Id.* at 2.

It is unclear to us whether the original agreement you describe was a five-year agreement or a fifteen-year agreement. In order for the original agreement to have been a fifteen-year agreement,

it would have to have bound the City to the tax abatement for fifteen years if the conditions of the agreement were met by the property owner. If the City had the option of ending the agreement after five years, even if the conditions were met, then the city was bound for only five years and the agreement was a five-year agreement.

If the original 1988 agreement was a fifteen-year agreement and the 1998 agreement is merely a continuation of the agreement, then it is not affected by the change in the law, because the new ten-year limitation did not affect agreements in existence before September 1, 1989. However, if the 1988 agreement was a five-year agreement that could be extended or renewed twice, then the 1998 agreement is invalid because it would extend the tax abatement on the property to a period of more than ten years from the original agreement, and the extension was not made before September 1, 1989. Likewise, if the 1998 agreement is a completely new agreement for the same property, it is also invalid, since it would constitute a new agreement on property that was previously the subject of a ten-year tax abatement.

In sum, in order for a piece of property to receive fifteen years of tax abatement pursuant to chapter 312 of the Tax Code, the agreement for the fifteen-year abatement must have been executed prior to September 1, 1989. The factual matters surrounding the tax abatement agreement you describe are unclear, and normally this office neither determines facts nor construes contracts. Therefore, we do not determine whether the particular tax abatement agreement about which you ask is valid.

SUMMARY

A tax abatement agreement made pursuant to chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act, may not exceed ten years. A governmental entity may not grant a tax abatement for property that previously received a ten-year tax abatement. In order for property to receive more than ten years of tax abatement, the agreement for the abatement must have been made prior to September 1, 1989.

Yours very truly,

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

CLARK KENT ERVIN
Deputy Attorney General - General Counsel

ELIZABETH ROBINSON
Chair, Opinion Committee

Barbara Griffin
Assistant Attorney General - Opinion Committee

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The act adopting the ten-year limit on tax abatement agreements provides that it does not affect agreements executed before the act's effective date:

> The change in law made by this Act to Section 312.204, Tax Code, relating to the duration of a tax abatement agreement applies only to an agreement executed on or after the effective date of this Act. An agreement executed before the effective date of this Act is governed by Section 312.204, Tax Code, or by former Article 1066f, Vernon's Texas Civil Statutes, as applicable, as the law existed when the agreement was executed.

Act of May 24, 1989, 71st Leg., R.S., ch. 1137, § 29(b), 1989 Tex. Gen. Laws 4683, 4692. Thus, a governmental body could honor the terms of a fifteen-year tax abatement agreement executed before September 1, 1989.

A tax abatement agreement executed prior to the effective date of the new law could be modified to extend beyond ten years, but only if the modification occurred before the effective date of the new law:

> The change in law made by this Act to Subsection (a), Section 312.208, Tax Code, relating to the extension of a tax abatement agreement applies to an extension of an agreement that occurs on or after the effective date of this Act even if the agreement was originally executed before the effective date. The change in Subsection (a), Section 312.208, Tax Code, made by this Act does not affect the validity of an extension made before the effective date.

Id. § 29(c), at 4692. Thus, a tax abatement agreement could last for as many as fifteen years if the agreement was entered into or modified to establish that length before September 1, 1989. Modifications made after September 1, 1989, are governed by the new law and thus are limited to ten years.

You tell us that the City of Amarillo entered into a tax abatement agreement in 1988 that was for an initial period of five years, but which was "renewable" to last as many as fifteen years if certain conditions were met. *See* Request Letter, *supra*, at 1. Then, you tell us that the original agreement was "extended" for a second period of five years, beginning on January 1, 1994. *Id.* Finally, you tell us that in 1998, the city entered into a "new" five-year tax abatement agreement with the new owner of the property, although the agreement's preamble states that it "is for the general purpose of continuing a tax abatement [agreement] on improvements constructed on the herein-described property." *Id.* at 2.

It is unclear to us whether the original agreement you describe was a five-year agreement or a fifteen-year agreement. In order for the original agreement to have been a fifteen-year agreement,

it would have to have bound the City to the tax abatement for fifteen years if the conditions of the agreement were met by the property owner. If the City had the option of ending the agreement after five years, even if the conditions were met, then the city was bound for only five years and the agreement was a five-year agreement.

If the original 1988 agreement was a fifteen-year agreement and the 1998 agreement is merely a continuation of the agreement, then it is not affected by the change in the law, because the new ten-year limitation did not affect agreements in existence before September 1, 1989. However, if the 1988 agreement was a five-year agreement that could be extended or renewed twice, then the 1998 agreement is invalid because it would extend the tax abatement on the property to a period of more than ten years from the original agreement, and the extension was not made before September 1, 1989. Likewise, if the 1998 agreement is a completely new agreement for the same property, it is also invalid, since it would constitute a new agreement on property that was previously the subject of a ten-year tax abatement.

In sum, in order for a piece of property to receive fifteen years of tax abatement pursuant to chapter 312 of the Tax Code, the agreement for the fifteen-year abatement must have been executed prior to September 1, 1989. The factual matters surrounding the tax abatement agreement you describe are unclear, and normally this office neither determines facts nor construes contracts. Therefore, we do not determine whether the particular tax abatement agreement about which you ask is valid.

SUMMARY

A tax abatement agreement made pursuant to chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act, may not exceed ten years. A governmental entity may not grant a tax abatement for property that previously received a ten-year tax abatement. In order for property to receive more than ten years of tax abatement, the agreement for the abatement must have been made prior to September 1, 1989.

Yours very truly,

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

CLARK KENT ERVIN
Deputy Attorney General - General Counsel

ELIZABETH ROBINSON
Chair, Opinion Committee

Barbara Griffin
Assistant Attorney General - Opinion Committee

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Research Information

Service: Table of Contents Search
Print Request: All Documents 1-3
Source: TX - Texas Statutes & Codes Annotated by LexisNexis
Search Terms: No Terms Specified

Note: Tax Code 312.204,.206,.208

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TEXAS STATUTES AND CODES ANNOTATED BY LEXISNEXIS(R)

*** CURRENT THROUGH THE 2007 REGULAR SESSION ***
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TAX CODE
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CHAPTER 312. PROPERTY REDEVELOPMENT AND TAX ABATEMENT ACT
SUBCHAPTER B. TAX ABATEMENT IN MUNICIPAL REINVESTMENT ZONE

GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Tax Code § 312.204 (2007)

§ 312.204. Municipal Tax Abatement Agreement

(a) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of taxable real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property located on the real property, or both, for a period not to exceed 10 years, on the condition that the owner of the property make specific improvements or repairs to the property. The governing body of an eligible municipality may agree in writing with the owner of a leasehold interest in tax-exempt real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt a portion of the value of property subject to ad valorem taxation, including the leasehold interest, improvements, or tangible personal property located on the real property, for a period not to exceed 10 years, on the condition that the owner of the leasehold interest make specific improvements or repairs to the real property. A tax abatement agreement under this section is subject to the rights of holders of outstanding bonds of the municipality. An agreement exempting taxable real property or leasehold interests or improvements on tax-exempt real property may provide for the exemption of such taxable interests in each year covered by the agreement only to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement exempting tangible personal property located on taxable or tax-exempt real property may provide for the exemption of tangible personal property located on the real property in each year covered by the agreement other than tangible personal property that was located on the real property at any time before the period covered by the agreement with the municipality, including inventory and supplies. In a municipality that has a comprehensive zoning ordinance, an improvement, repair, development, or redevelopment taking place under an agreement under this section must conform to the comprehensive zoning ordinance.

(b) The 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. For purposes of this subsection, if agreements made with the owners of property in a reinvestment zone before September 1, 1989, exceed 10 years in duration, agreements made with owners of property in the zone on or after that date must have a duration of 10 years.

(c) The property subject to an agreement made under this section may be located in the extraterritorial jurisdiction of the municipality. In that event, the agreement applies to taxes of the municipality if the municipality annexes the property during the period specified in the agreement.

(d) Except as otherwise provided by this subsection, property that is in a reinvestment zone and that is owned or leased by a person who is a member of the governing body of the municipality or a member of a zoning or planning board or commission of the municipality is excluded from property tax abatement or tax increment financing. Property that is subject to a tax abatement agreement in effect when the person becomes a member of the governing body or of the zoning or planning board or commission does not cease to be eligible for property tax abatement under that agreement because of the person's membership on the governing body, board, or commission. Property that is subject to tax

increment financing when the person becomes a member of the governing body or of the zoning or planning board or commission does not become ineligible for tax increment financing in the same reinvestment zone because of the person's membership on the governing body, board, or commission.

(e) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner or lessee of real property that is located in a reinvestment zone to exempt from taxation for a period not to exceed 10 years a portion of the value of the real property or of personal property, or both, located within the zone and owned or leased by a certificated air carrier, on the condition that the certificated air carrier make specific real property improvements or lease for a term of 10 years or more real property improvements located within the reinvestment zone. An agreement may provide for the exemption of the real property in each year covered by the agreement to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement may provide for the exemption of the personal property owned or leased by a certificated air carrier located within the reinvestment zone in each year covered by the agreement other than specific personal property that was located within the reinvestment zone at any time before the period covered by the agreement with the municipality.

(f) The agreements made with owners of property in an enterprise zone that is also designated as a reinvestment zone are not required to contain identical terms for the portion of the value of property that is to be exempt and the duration of the agreement.

(g) Notwithstanding the other provisions of this chapter, the governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of real property that is located in a reinvestment zone to exempt from taxation for a period not to exceed five years a portion of the value of the real property or of tangible personal property located on the real property, or both, that is used to provide housing for military personnel employed at a military facility located in or near the municipality. An agreement may provide for the exemption of the real property in each year covered by the agreement only to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement may provide for the exemption of tangible personal property located on the real property in each year covered by the agreement other than tangible personal property that was located on the real property at any time before the period covered by the agreement with the municipality and other than inventory or supplies. The governing body of the municipality may adopt guidelines and criteria for tax abatement agreements entered into under this subsection that are different from the guidelines and criteria that apply to tax abatement agreements entered into under another provision of this section. Tax abatement agreements entered into under this subsection are not required to contain identical terms for the portion of the value of the property that is to be exempt or for the duration of the exemption as tax abatement agreements entered into with the owners of property in the reinvestment zone under another provision of this section.

(h) The Texas Department of Economic Development or its successor may recommend that a taxing unit enter into a tax abatement agreement with a person under this chapter. In determining whether to enter into a tax abatement agreement under this section, the governing body of a municipality shall consider any recommendation made by the Texas Department of Economic Development or its successor.

HISTORY: Stats. 1995 74th Leg. Sess. Ch. 985; Stats. 2001 77th Leg. Sess. Ch. 560, 765, 1016, effective September 1, 2001, Ch. 640, effective June 13, 2001, Ch. 1258, effective June 15, 2001; Stats. 2003 78th Leg. Sess. Ch. 149, effective May 27, 2003, Ch. 978, effective September 1, 2003; Stats. 2005 79th Leg. Sess., Ch. 412 (S.B. 1652), § 16, effective September 1, 2005; Stats. 2005 79th Leg. Sess., Ch. 728 (H.B. 2018), § 23.001(82), effective September 1, 2005.

NOTES:

2005 amendments.

Acts 2005, 79th Leg., Ch. 412 (S.B. 1652) reenacted multiple versions of (a) as one version.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018) relettered former Subsection (g), as added by Chapter 978, Acts of the 78th Legislature, Regular Session, 2003, as Subsection (h).

LexisNexis (R) Notes:

LAW REVIEWS

1. *49 SMU L. Rev. 1331,* ANNUAL SURVEY OF TEXAS LAW: ARTICLE: Taxation, May / June, 1996.

2. *52 SMU L. Rev. 1453,* ARTICLE: Taxation, Summer, 1999.

3. *54 SMU L. Rev. 1595,* ARTICLE: Taxation, Summer, 2001.

4. *55 SMU L. Rev. 1315,* ARTICLE: Taxation, Summer, 2002.

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GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Tax Code § 312.206 (2007)

§ 312.206. Tax Abatement by Other Taxing Units

(a) If property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made under Section 312.204 or 312. 211, the governing body of each other taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written tax abatement agreement with the owner of the property. The agreement is not required to contain terms identical to those contained in the agreement with the municipality. The execution, duration, and other terms of an agreement made under this section are governed by the provisions of Sections 312.204, 312.205, and 312.211 applicable to a municipality. If the governing body of the taxing unit by official action at any time before the execution of the municipal agreement expresses an intent to be bound by the terms of the municipal agreement if the municipality enters into an agreement under Section 312.204 or 312.211 with the owner relating to the property, the terms of the municipal agreement regarding the share of the property to be exempt in each year of the municipal agreement apply to the taxation of the property by the taxing unit.

(b) If property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made by the municipality before September 1, 1989, the terms of the agreement with the municipality regarding the share of the property that is to be exempt in each year of the agreement apply to the taxation of the property by every other taxing unit, other than a county or school district, in which the property is located. If the agreement was made before September 1, 1987, the terms regarding the share of the property to be exempt in each year of the agreement also apply to the taxation of the property by a county or school district.

(c) If the governing body of a municipality designates a reinvestment zone that includes property in the extraterritorial jurisdiction of the municipality, the governing body of a taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written agreement with the owner of the property to exempt from its property taxes all or part of the value of the property in the same manner and subject to the same restrictions as provided by Section 312.204 or 312.211 for a municipality. The taxing unit may execute an agreement even if the municipality does not execute an agreement for the property, and the terms of the agreement are

not required to be identical to the terms of a municipal agreement. However, if the governing body of another eligible taxing unit has previously executed an agreement to exempt all or part of the value of the property and that agreement is still in effect, the terms of the subsequent agreement relating to the share of the property that is to be exempt in each year that the existing agreement remains in effect must be identical to those of the existing agreement.

(d) If property taxes are abated on property in the extraterritorial jurisdiction of a municipality due to an agreement with a county or school district made before September 1, 1989, the terms of the agreement with the county or school district relating to the share of the property that is to be exempt in each year of the agreement apply to the taxation of the property by every other taxing unit, other than a municipality, school district, or county, in which the property is located.

(e) If property taxes on property located in an enterprise zone are abated under this chapter, the governing body of each taxing jurisdiction may execute a written agreement with the owner of the property not later than the 90th day after the date the municipal or county agreement is executed, whichever is later. The agreement may, but is not required to, contain terms that are identical to those contained in the agreement with the municipality, county, or both, whichever applies, and the only terms of the agreement that may vary are the portion of the property that is to be exempt from taxation under the agreement and the duration of the agreement.

HISTORY: Stats. 1995 74th Leg. Sess. Ch. 985, Stats. 1997 75th Leg. Sess. Ch. 855, effective September 1, 1997, Ch. 1333, effective September 1, 1997; Stats. 1999 76th Leg. Sess. Ch. 1039, effective September 1, 1999; Stats. 2001 77th Leg. Sess. Ch. 765, effective September 1, 2001.

NOTES:

1999 Note:

(a) Ch. 1039 applies only to a tax abatement agreement entered into on or after the effective date of this Act. A tax abatement agreement entered into before the effective date of this Act is governed by the law as it existed on the date the tax abatement agreement was entered into, and that law is continued in effect for that purpose.

(b) This Act applies only to ad valorem taxes imposed on or after January 1, 2000. Acts 1999 76th Leg., Ch. 1039 § 3.

LexisNexis (R) Notes:

LAW REVIEWS

1. *53 SMU L. Rev. 1297,* ANNUAL SURVEY OF TEXAS LAW ARTICLE: Taxation, Summer, 2000.

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Tex. Tax Code § 312.208

§ 312.208. Modification or Termination of Agreement

(a) At any time before the expiration of an agreement made under this subchapter, the agreement may be modified by the parties to the agreement to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. The modification must be made by the same procedure by which the original agreement was approved and executed. The original agreement may not be modified to extend beyond 10 years from the date of the original agreement.

(b) An agreement made under this subchapter may be terminated by the mutual consent of the parties in the same manner that the agreement was approved and executed.

LexisNexis (R) Notes:

CASE NOTES

1. Where, after May 31, 1993, a school district proposed an extension of a tax abatement agreement pursuant to Tex. *Tax Code Ann. § 312.208(a)*, the state comptroller was not permitted to exclude the abated value from computation of the district's total taxable value, beyond the original expiration date of the abatement. *Calhoun County Indep. Sch. Dist. v. Meno, 902 S.W.2d 748, 1995 Tex. App. LEXIS 1532 (Tex. App. Austin 1995).*

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Research Information

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LEXSEE 902 SW2D 748

Calhoun County Independent School District, Appellant v. Lionel R. Meno, et al., Appellees

NO. 03-94-00443-CV

COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AUSTIN

902 S.W.2d 748; 1995 Tex. App. LEXIS 1532

July 12, 1995, Filed

SUBSEQUENT HISTORY: [**1] Motion for Rehearing Overruled August 16, 1995. Released for Publication August 16, 1995.

PRIOR HISTORY: FROM THE DISTRICT COURT OF TRAVIS COUNTY, 250TH JUDICIAL DISTRICT. NO. 362,516, HONORABLE F. SCOTT MCCOWN, JUDGE PRESIDING.

DISPOSITION: Affirmed

COUNSEL: For Appellant: Mr. Tom Garner, Jr., Garner, Roberts & Roberts, L.L.P., Port Lavaca, TX.

For Appellees: Mr. Roger Moore, Gray & Becker, P.C., Austin, TX. The Honorable Dan Morales, Attorney General, Ms. Toni Hunter, Assistant Attorney General, General Litigation Division, Austin, TX.

JUDGES: Before Chief Justice Carroll, Justices Aboussie and Jones

OPINION BY: J. Woodfin Jones

OPINION

[*749] Appellees Alvarado Independent School District and ninety-one other school districts (collectively "Alvarado ISD") intervened in the pending school-finance suit seeking declaratory and injunctive relief against appellant Calhoun County Independent School District and appellees Lionel R. Meno, State Commissioner of Education, and John Sharp, State Comptroller. Alvarado ISD sought such relief to prevent Calhoun County ISD from obtaining an extended reduction in the taxable value of the district's property by lengthening the duration of an existing tax-abatement agreement with a commercial entity. The district court granted the requested declaratory relief. Calhoun County [**2] ISD appeals, asserting that the district court misconstrued the relevant statutes. We will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In order to determine how much money a school district will receive from the state's general tax revenues, the Comptroller annually certifies to the Commissioner of Education the district's total taxable property wealth. *Tex. Educ. Code Ann. § 11.86* (West Supp. 1995). The Commissioner of Education then uses that figure to calculate the amount of local tax revenue the district will be able to raise at its current tax rate. Educ. Code §§ 16.252, .302 (West Supp. 1995). The difference between projected local revenue (plus revenue allocated from the "available school fund") and the revenue level that the state is willing to guarantee is then made up by the state from general tax revenues. *Educ. Code § 16.254(a), (c), (d).*

School districts and other local governmental entities are authorized under certain circumstances to grant tax abatements to property owners for the purpose of reinvestment and redevelopment of property. *Tex. Tax Code Ann. §§ 312.001-.402* (West 1992 & Supp. 1995). The Tax Code permits modification of tax-abatement agreements at [**3] any time before the agreement expires, as long as the modification does not extend the agreement beyond ten years from the date of the original agreement. *Tax Code § 312.208(a).* Tax abatements are generally used as incentives to encourage businesses to locate within the boundaries of the district. In theory, such tax abatements will benefit the district in the long run, because the new businesses will increase the value of the district's local tax base. In the short run, of course, the district receives less local property tax revenue than would have been due without the abatement.

Before 1993, the Comptroller was directed to exclude from the calculation of a school district's local property wealth the value of all property on which taxes

were currently exempted pursuant to an abatement agreement. Specifically, former *section 11.86(a)(2)(2) of the Education Code* instructed the Comptroller to deduct from taxable value "the total dollar amount of any exemptions granted within a reinvestment zone under agreements authorized by the Property Redevelopment and Tax Abatement Act (Chapter 312, Tax Code)." Act of May 24, 1991, 72d Leg., R.S., ch. 843, § 2, 1991 Tex. Gen. Laws 2905, 2906 [**4] (*Educ. Code § 11.86(a)(2)(2)*, since amended). Because any such abatement agreement temporarily decreased the amount of local revenue the district could generate, any district granting an abatement received a greater amount of state aid under the formulas described above.

In May 1993 the legislature passed an act, usually referred to as Senate Bill 7, which significantly amended the Education Code. *See* Act of May 28, 1993, 73d Leg., R.S., ch. 347, §§ 1.01-9.02, 1993 Tex. Gen. Laws 1479. Senate Bill 7, the state's fourth attempt to correct problems in the school-finance system, was passed in response to the mandates of the Texas Supreme Court in *Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District, 826 S.W.2d 489 (Tex. 1992)*. The provisions of Senate Bill 7 evidence a strong public policy favoring equal access to similar educational resources for all school children, regardless of where they live in the state.

Newly enacted chapter 36 of the Education Code, which was at the heart of Senate Bill 7, is designed to equalize the wealth per student in all Texas school districts. *Educ. Code* [*750] *§§ 36.001-.257* (West Supp. 1995). Under that chapter, [**5] the Comptroller uses the district's taxable property value to determine the district's "wealth per student." *Educ. Code §§ 36.001(2)*, .004. A school district's wealth per student exceeding $ 280,000 is considered wealth available to the state system, rather than to the individual school district. Educ. Code § 36.002(a). School districts with per-student wealth levels exceeding $ 280,000 may choose from a list of options to bring their wealth level within the mandate. These options include: (1) consolidation with another district; (2) detachment of territory; (3) purchase of average daily attendance credit; (4) contracting for the education of nonresident students; and (5) tax base consolidation with another district. Educ. Code § 36.003. Tax abatements are not listed as an option available to school districts to achieve the equalized wealth level. If a district with wealth per student exceeding the equalized wealth level has not chosen one of the foregoing options by September 1 of a given year, the Commissioner of Education must detach property from that district to bring its wealth per student to within $ 10,000 of the equalized wealth level. Educ. Code §§ 36.205, .206. If detaching [**6] property will not suffice, the Commissioner must consolidate the wealthy district with one or more poorer school districts. Educ. Code §§ 36.251, .252.

To deal specifically with the effect of tax-abatement agreements on school-district wealth computation, Senate Bill 7 amended *section 11.86 of the Education Code* to require that the Comptroller deduct from a district's taxable value "the total dollar amount of any *abatements granted before May 31, 1993*, within a reinvestment zone under agreements authorized by the Property Redevelopment and Tax Abatement Act (Chapter 312, Tax Code)." *Educ. Code § 11.86(a)(2)(2)* (emphasis added). In addition, newly enacted section 36.008 of the Education Code provides that "the commissioner shall determine the wealth per student of a school district under this chapter as if any tax abatement agreement executed by a school district on or after May 31, 1993, had not been executed." Educ. Code § 36.008(b). These provisions evidence a clear legislative intent to freeze, beginning May 31, 1993, the effect such abatements have on the computation of a school district's wealth.

In the present ease, Calhoun County ISD proposed (after May 31, 1993) to [**7] extend from seven to ten years the duration of three existing tax-abatement agreements with Formosa Plastics Corporation in exchange for Formosa's agreement to make a donation to the school district at the end of the original tax-abatement period. Calhoun County ISD intended that, during the period of extension, the Comptroller would continue to exclude the value of Formosa's property when calculating the school district's total taxable property value. Various newspapers announced Calhoun County ISD's intention.

Alvarado ISD intervened in the pending school-finance suit seeking injunctive and declaratory relief. On motion of Alvarado ISD, the district court declared:

> Although *Texas Education Code, § 11.86*, as amended by S.B. No. 7 does not prohibit a school district from granting tax abatements after May 31, 1993, any such abatement granted after that date may not be excluded by the Comptroller for purposes of calculation of the School District's total taxable value. In addition, *Texas Education Code, § 11.86*, as amended by S.B. No. 7, does not prohibit an otherwise legal extension or modification of all [sic] existing tax abatement, nor does it prohibit the Comptroller [**8] from excluding the value of an existing tax abatement covered by a modification that neither increases the percentage or

> amount of property value abated nor extends the period of time for which the abatement was granted. However, *Educ. Code § 11.86* does not permit the Comptroller to exclude for purposes of calculation of the school district's total taxable value the additional percentage or value of any property covered by a modification of an abatement or the additional period of time covered by an extension of such an abatement. All such extensions or modifications entered into after May 31, 1993 must be included by the Comptroller for purposes of calculation of the school district's total taxable value.

[*751] The district court also ordered Calhoun County ISD to pay attorney's fees to Alvarado ISD. All issues relating to Alvarado ISD's request for declaratory and injunctive relief were then severed from other proceedings and issues that remained pending in the suit.

DISCUSSION

This case presents the question of whether a post-May 31, 1993 extension of a pre-May 31, 1993 tax-abatement agreement constitutes a "new" tax abatement subject to amended *section 11.86 of the Education* [**9] *Code* and the other provisions of Senate Bill 7. We conclude that it does.

Section 312.208 of the Tax Code is a general statute dealing with any modification of a tax-abatement agreement. The district court's declaratory judgment does not invoke *section 312.208* because that provision does not restrict Calhoun County ISD from modifying its tax-abatement agreement with Formosa. *Section 11.86 of the Education Code*, on the other hand, is a specific provision mandating how the Comptroller must report school district property values to the Commissioner of Education and allowing only the dollar amount of an abatement granted before May 31, 1993 to be deducted from the taxable value of the district's property. Generally, a specific statute will control over a statute of more general application. *Stinnett v. Williamson County Sheriff's Dep't, 858 S.W.2d 573, 576* (Tex. App.--Austin 1993, writ denied); *Mai v. Mai, 853 S.W.2d 615, 622* (Tex. App.--Houston [1st Dist.] 1993, no writ).

Legislative intent to immunize the school-finance system from future tax-abatement agreements was reiterated in section 36.008 of the Education Code, which requires the Commissioner of Education to determine [**10] the district wealth as if any tax abatement granted on or after May 31, 1993 had not been executed. Giving effect to the newer and more specific *sections 11.86* and 36.008 of the Education Code is not inconsistent with Chapter 312 of the Tax Code. Calhoun County ISD's interpretation of *section 312.208 of the Tax Code*, however, would permit property-rich school districts to evade the clear intent of Senate Bill 7 and effectively undermine *sections 11.86* and 36.008 of the Education Code. This Court is loath to put an individual school district's interest over the state's interest in the school-finance system as a whole.

Calhoun County ISD also argues that correspondence from the Comptroller to Arlington Independent School District shows that an extension of an existing tax abatement is not a new tax-abatement agreement subject to Senate Bill 7. We disagree. Arlington ISD requested advice from the Comptroller regarding whether a renegotiated tax abatement agreement constitutes a new tax abatement subject to the provisions of amended *section 11.86(a)(2)(2) of the Education Code*. The request involved the *reduction* of a previously granted tax abatement. In that instance, the Comptroller [**11] responded by a letter dated October 4, 1993 that Arlington ISD's modification of an existing agreement to effect a reduction of an abatement did not create a new tax abatement agreement for purposes of Senate Bill 7.

We believe the Comptroller was simply attempting to reconcile *section 312.208 of the Tax Code*, which allows modifications of existing agreements, with the provisions of Senate Bill 7, which does not permit a deduction of value for tax abatements granted after May 31, 1993. The situation addressed in the Comptroller's letter does not resemble the situation presented by Calhoun County ISD here. Rather than reducing an existing tax abatement, Calhoun County ISD proposed to *extend* (to the maximum ten years) three existing seven-year tax-abatement agreements it had previously entered into with Formosa Plastics. In exchange, Formosa would make a donation to Calhoun County ISD at the end of the original tax-break period. This modification would clearly increase the total dollar amount of Calhoun County ISD's existing agreements with Formosa by lengthening the time that Calhoun County ISD's taxable value was reduced, effectively taking millions of dollars off the district's [**12] tax rolls and making less money available to the statewide school-finance system.

[*752] Calhoun County ISD next argues that because the Comptroller's office is the administrative agency charged with enforcement of *section 11.86 of the Education Code*, this Court should defer to the Comptroller's interpretation in his October 4, 1993 letter to Arlington ISD. In light of the particular situation addressed by the Comptroller's letter, however, we do not believe its conclusion is inconsistent with the result we reach here. The letter's language, while broad, should not be taken out of context or divorced from the specific

factual setting being addressed by the Comptroller. In any event, an administrative agency's interpretation of a statute is never absolutely binding on this Court, *Bullock v. Ramada Tex., Inc., 609 S.W.2d 537, 539 (Tex. 1980)*, and will not be followed "when contrary to the intention of the legislature as disclosed by the provisions of the act," *Lyon v. State, 766 S.W.2d 879, 884* (Tex. App.--Austin 1989, pet. ref'd).

Finally, in support of its position, Calhoun County ISD quotes a remark made to the district court by an attorney for the Comptroller and Commissioner [**13] of Education as evidence of legislative intent that tax abatements can be used to equalize wealth. We do not believe, however, that such statements are entitled to any significant weight in this context. Since the intent or opinion of an individual legislator, even an act's principal author, does not control the construction to be given the statute, *General Chemical Corp. v. De La Lastra, 852 S.W.2d 916, 923* (Tex.), *cert. dism'd, 114 S. Ct. 490 (1993)*, certainly any discussion between the district court and an attorney representing the state cannot be controlling.

In interpreting a statute, we presume that the legislature intended to give effect to the entire statute, to promote a just and reasonable result, and to favor the public interest over any private interest. *Tex. Gov't Code Ann. § 311.021* (West 1988). Allowing Calhoun County ISD to circumvent Senate Bill 7 and the state's school-finance plan by having the value of Formosa's property excluded from the district's total taxable value during the period of the extension of the tax-abatement agreement would not produce a just and reasonable result and would not favor the public interest. Treating a post-May 31, 1993 extension [**14] as a pre-May 31, 1993 abatement agreement would contradict the intent of Chapter 36 of the Education Code by allowing property-rich districts to circumvent, at least temporarily, the policies and procedures that were established by Senate Bill 7 to equalize the wealth of school districts in this state. It is inconceivable that the legislature intended such a result. We conclude that the district court correctly held that the Comptroller may not, when determining a school district's total taxable value, use an abatement extension granted after May 31, 1993 as a basis for excluding the value of the subject property during the period of extension. We overrule point of error one.

In its second point of error, Calhoun County ISD argues that the trial court abused its discretion by ordering it to pay Alvarado ISD's attorney's fees. In light of our disposition of the first point of error, and in light of the fact that Calhoun County ISD does not challenge the amount of attorney's fees awarded, we overrule point of error two.

CONCLUSION

We affirm the judgment of the district court.

J. Woodfin Jones, Justice

Before Chief Justice Carroll, Justices Aboussie and Jones

Affirmed

[**15] Filed: July 12, 1995

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Time of Request: Tuesday, November 11, 2008 16:05:19 EST
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Research Information

Service: Table of Contents Search
Print Request: All Documents 1-3
Source: TX - Texas Statutes & Codes Annotated by LexisNexis
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Send to: OXFORD, HUBERT
BENCKENSTEIN & OXFORD LLP
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BEAUMONT, TX 77706-5025

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GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Tax Code § 312.204 (2007)

§ 312.204. Municipal Tax Abatement Agreement

(a) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of taxable real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property located on the real property, or both, for a period not to exceed 10 years, on the condition that the owner of the property make specific improvements or repairs to the property. The governing body of an eligible municipality may agree in writing with the owner of a leasehold interest in tax-exempt real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt a portion of the value of property subject to ad valorem taxation, including the leasehold interest, improvements, or tangible personal property located on the real property, for a period not to exceed 10 years, on the condition that the owner of the leasehold interest make specific improvements or repairs to the real property. A tax abatement agreement under this section is subject to the rights of holders of outstanding bonds of the municipality. An agreement exempting taxable real property or leasehold interests or improvements on tax-exempt real property may provide for the exemption of such taxable interests in each year covered by the agreement only to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement exempting tangible personal property located on taxable or tax-exempt real property may provide for the exemption of tangible personal property located on the real property in each year covered by the agreement other than tangible personal property that was located on the real property at any time before the period covered by the agreement with the municipality, including inventory and supplies. In a municipality that has a comprehensive zoning ordinance, an improvement, repair, development, or redevelopment taking place under an agreement under this section must conform to the comprehensive zoning ordinance.

(b) The 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. For purposes of this subsection, if agreements made with the owners of property in a reinvestment zone before September 1, 1989, exceed 10 years in duration, agreements made with owners of property in the zone on or after that date must have a duration of 10 years.

(c) The property subject to an agreement made under this section may be located in the extraterritorial jurisdiction of the municipality. In that event, the agreement applies to taxes of the municipality if the municipality annexes the property during the period specified in the agreement.

(d) Except as otherwise provided by this subsection, property that is in a reinvestment zone and that is owned or leased by a person who is a member of the governing body of the municipality or a member of a zoning or planning board or commission of the municipality is excluded from property tax abatement or tax increment financing. Property that is subject to a tax abatement agreement in effect when the person becomes a member of the governing body or of the zoning or planning board or commission does not cease to be eligible for property tax abatement under that agreement because of the person's membership on the governing body, board, or commission. Property that is subject to tax

increment financing when the person becomes a member of the governing body or of the zoning or planning board or commission does not become ineligible for tax increment financing in the same reinvestment zone because of the person's membership on the governing body, board, or commission.

(e) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner or lessee of real property that is located in a reinvestment zone to exempt from taxation for a period not to exceed 10 years a portion of the value of the real property or of personal property, or both, located within the zone and owned or leased by a certificated air carrier, on the condition that the certificated air carrier make specific real property improvements or lease for a term of 10 years or more real property improvements located within the reinvestment zone. An agreement may provide for the exemption of the real property in each year covered by the agreement to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement may provide for the exemption of the personal property owned or leased by a certificated air carrier located within the reinvestment zone in each year covered by the agreement other than specific personal property that was located within the reinvestment zone at any time before the period covered by the agreement with the municipality.

(f) The agreements made with owners of property in an enterprise zone that is also designated as a reinvestment zone are not required to contain identical terms for the portion of the value of property that is to be exempt and the duration of the agreement.

(g) Notwithstanding the other provisions of this chapter, the governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of real property that is located in a reinvestment zone to exempt from taxation for a period not to exceed five years a portion of the value of the real property or of tangible personal property located on the real property, or both, that is used to provide housing for military personnel employed at a military facility located in or near the municipality. An agreement may provide for the exemption of the real property in each year covered by the agreement only to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement may provide for the exemption of tangible personal property located on the real property in each year covered by the agreement other than tangible personal property that was located on the real property at any time before the period covered by the agreement with the municipality and other than inventory or supplies. The governing body of the municipality may adopt guidelines and criteria for tax abatement agreements entered into under this subsection that are different from the guidelines and criteria that apply to tax abatement agreements entered into under another provision of this section. Tax abatement agreements entered into under this subsection are not required to contain identical terms for the portion of the value of the property that is to be exempt or for the duration of the exemption as tax abatement agreements entered into with the owners of property in the reinvestment zone under another provision of this section.

(h) The Texas Department of Economic Development or its successor may recommend that a taxing unit enter into a tax abatement agreement with a person under this chapter. In determining whether to enter into a tax abatement agreement under this section, the governing body of a municipality shall consider any recommendation made by the Texas Department of Economic Development or its successor.

HISTORY: Stats. 1995 74th Leg. Sess. Ch. 985; Stats. 2001 77th Leg. Sess. Ch. 560, 765, 1016, effective September 1, 2001, Ch. 640, effective June 13, 2001, Ch. 1258, effective June 15, 2001; Stats. 2003 78th Leg. Sess. Ch. 149, effective May 27, 2003, Ch. 978, effective September 1, 2003; Stats. 2005 79th Leg. Sess., Ch. 412 (S.B. 1652), § 16, effective September 1, 2005; Stats. 2005 79th Leg. Sess., Ch. 728 (H.B. 2018), § 23.001(82), effective September 1, 2005.

NOTES:

2005 amendments.

Acts 2005, 79th Leg., Ch. 412 (S.B. 1652) reenacted multiple versions of (a) as one version.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018) relettered former Subsection (g), as added by Chapter 978, Acts of the 78th Legislature, Regular Session, 2003, as Subsection (h).

LexisNexis (R) Notes:

LAW REVIEWS

1. *49 SMU L. Rev. 1331,* ANNUAL SURVEY OF TEXAS LAW: ARTICLE: Taxation, May / June, 1996.

2. *52 SMU L. Rev. 1453,* ARTICLE: Taxation, Summer, 1999.

3. *54 SMU L. Rev. 1595,* ARTICLE: Taxation, Summer, 2001.

4. *55 SMU L. Rev. 1315,* ARTICLE: Taxation, Summer, 2002.

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GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Tax Code § 312.206 (2007)

§ 312.206. Tax Abatement by Other Taxing Units

(a) If property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made under Section 312.204 or 312. 211, the governing body of each other taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written tax abatement agreement with the owner of the property. The agreement is not required to contain terms identical to those contained in the agreement with the municipality. The execution, duration, and other terms of an agreement made under this section are governed by the provisions of Sections 312.204, 312.205, and 312.211 applicable to a municipality. If the governing body of the taxing unit by official action at any time before the execution of the municipal agreement expresses an intent to be bound by the terms of the municipal agreement if the municipality enters into an agreement under Section 312.204 or 312.211 with the owner relating to the property, the terms of the municipal agreement regarding the share of the property to be exempt in each year of the municipal agreement apply to the taxation of the property by the taxing unit.

(b) If property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made by the municipality before September 1, 1989, the terms of the agreement with the municipality regarding the share of the property that is to be exempt in each year of the agreement apply to the taxation of the property by every other taxing unit, other than a county or school district, in which the property is located. If the agreement was made before September 1, 1987, the terms regarding the share of the property to be exempt in each year of the agreement also apply to the taxation of the property by a county or school district.

(c) If the governing body of a municipality designates a reinvestment zone that includes property in the extraterritorial jurisdiction of the municipality, the governing body of a taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written agreement with the owner of the property to exempt from its property taxes all or part of the value of the property in the same manner and subject to the same restrictions as provided by Section 312.204 or 312.211 for a municipality. The taxing unit may execute an agreement even if the municipality does not execute an agreement for the property, and the terms of the agreement are

not required to be identical to the terms of a municipal agreement. However, if the governing body of another eligible taxing unit has previously executed an agreement to exempt all or part of the value of the property and that agreement is still in effect, the terms of the subsequent agreement relating to the share of the property that is to be exempt in each year that the existing agreement remains in effect must be identical to those of the existing agreement.

(d) If property taxes are abated on property in the extraterritorial jurisdiction of a municipality due to an agreement with a county or school district made before September 1, 1989, the terms of the agreement with the county or school district relating to the share of the property that is to be exempt in each year of the agreement apply to the taxation of the property by every other taxing unit, other than a municipality, school district, or county, in which the property is located.

(e) If property taxes on property located in an enterprise zone are abated under this chapter, the governing body of each taxing jurisdiction may execute a written agreement with the owner of the property not later than the 90th day after the date the municipal or county agreement is executed, whichever is later. The agreement may, but is not required to, contain terms that are identical to those contained in the agreement with the municipality, county, or both, whichever applies, and the only terms of the agreement that may vary are the portion of the property that is to be exempt from taxation under the agreement and the duration of the agreement.

HISTORY: Stats. 1995 74th Leg. Sess. Ch. 985, Stats. 1997 75th Leg. Sess. Ch. 855, effective September 1, 1997, Ch. 1333, effective September 1, 1997; Stats. 1999 76th Leg. Sess. Ch. 1039, effective September 1, 1999; Stats. 2001 77th Leg. Sess. Ch. 765, effective September 1, 2001.

NOTES:

1999 Note:

(a) Ch. 1039 applies only to a tax abatement agreement entered into on or after the effective date of this Act. A tax abatement agreement entered into before the effective date of this Act is governed by the law as it existed on the date the tax abatement agreement was entered into, and that law is continued in effect for that purpose.

(b) This Act applies only to ad valorem taxes imposed on or after January 1, 2000. Acts 1999 76th Leg., Ch. 1039 § 3.

LexisNexis (R) Notes:

LAW REVIEWS

1. *53 SMU L. Rev. 1297,* ANNUAL SURVEY OF TEXAS LAW ARTICLE: Taxation, Summer, 2000.

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GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Tax Code § 312.208 (2007)

§ 312.208. Modification or Termination of Agreement

(a) At any time before the expiration of an agreement made under this subchapter, the agreement may be modified by the parties to the agreement to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. The modification must be made by the same procedure by which the original agreement was approved and executed. The original agreement may not be modified to extend beyond 10 years from the date of the original agreement.

(b) An agreement made under this subchapter may be terminated by the mutual consent of the parties in the same manner that the agreement was approved and executed.

LexisNexis (R) Notes:

CASE NOTES

1. Where, after May 31, 1993, a school district proposed an extension of a tax abatement agreement pursuant to Tex. *Tax Code Ann. § 312.208(a)*, the state comptroller was not permitted to exclude the abated value from computation of the district's total taxable value, beyond the original expiration date of the abatement. *Calhoun County Indep. Sch. Dist. v. Meno, 902 S.W.2d 748, 1995 Tex. App. LEXIS 1532 (Tex. App. Austin 1995).*

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As of Last Complete Printing
Number of Pages: 6
Number of Words: 2,530 (approx.)
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AN ACT

relating to effective dates for tax abatements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 312.204(a), Tax Code, is amended to read as follows:

(a) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of taxable real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property located on the real property, or both, for a period not to exceed 10 years, subject to the rights of holders of outstanding bonds of the municipality, on the condition that the owner of the property make specific improvements or repairs to the property. An agreement may provide for the exemption of the real property in each year covered by the agreement only to the extent its value for that year exceeds its value for the year in which the agreement is executed. The agreement may take effect on January 1 of the next tax year after the date the improvements or repairs are substantially completed. An agreement may provide for the exemption of tangible personal property located on the real property in each year covered by the agreement other than tangible personal property that was located on the real property at any time before the period covered by the agreement with the municipality, and other than inventory or supplies. In a municipality that has a comprehensive zoning ordinance, an improvement, repair, development, or redevelopment taking place under an agreement under this section must conform to the comprehensive zoning ordinance.

SECTION 2. This Act takes effect September 1, 2001.

President of the Senate Speaker of the House

I certify that H.B. No. 3001 was passed by the House on May 11, 2001, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 3001 was passed by the Senate on May 22, 2001, by the following vote: Yeas 30, Nays 0, 1 present, not voting.

Secretary of the Senate

APPROVED: _____

Date

Governor

STATE OF TEXAS §
§
COUNTY OF JEFFERSON §

THE MOTIVA ENTERPRISES LLC TAX ABATEMENT AGREEMENT FOR PROPERTY LOCATED IN THE MOTIVA ENTERPRISES LLC REINVESTMENT ZONE

This Tax Abatement Agreement (hereinafter referred to as this "AGREEMENT") is made and entered into by and between the Jefferson County Waterway and Navigation District (hereinafter referred to as the "DISTRICT"), and MOTIVA ENTERPRISES LLC (hereinafter referred to as "OWNER"). OWNER possesses interests in taxable real property located within the 2003 Motiva Enterprises LLC Reinvestment Zone (hereinafter referred to as the "REINVESTMENT ZONE"). This AGREEMENT is limited to the planned expansion of the OWNER'S Port Arthur Refinery facilities and associated piping and equipment to be constructed and known as the Port Arthur Refinery Expansion Project (hereinafter referred to as the "PROJECT"). The REINVESTMENT ZONE is an area within Jefferson County, Texas, generally described as the 2003 Motiva Enterprises LLC Reinvestment Zone. The legal description of the REINVESTMENT ZONE is attached hereto as Exhibit A.

I. AUTHORIZATION

This AGREEMENT is authorized by the Texas Property Redevelopment and Tax Abatement Act, Tex. Tax Code Chapter 312, as amended and by Resolution of the Jefferson County Waterway and Navigation District adopting the "JEFFERSON COUNTY UNIFORM TAX ABATEMENT POLICY - 2003", and by the Resolution passing the JEFFERSON COUNTY WATERWAY AND NAVIGATION DISTRICT UNIFORM TAX ABATEMENT POLICY 2006.

II. DEFINITIONS

For purposes of this AGREEMENT, the following terms shall have the meanings set forth below:

1. "Certified Appraised Value" means the appraised value of the property within the REINVESTMENT ZONE as certified by the Jefferson County Appraisal District as of the January 1st valuation date.

2. "Abatement" means the full or partial exemption from ad valorem taxes of the value of certain property in the REINVESTMENT ZONE designated for economic development purposes.

3. "Ineligible Property" is fully taxable and ineligible for tax abatement and includes land, supplies, inventory, deferred maintenance, property to be rented or leased and property which has a productive life of less than ten years, or any other property for which abatement is not allowed by state law.

4. "Eligible Property" means the buildings, structures, fixed machinery and equipment, process units including all integral components necessary for operations, site improvements, infrastructure, and that office space and related fixed improvements necessary to the operation and administration of the PROJECT.

5. "New Eligible Property" means Eligible Property the construction of which commences subsequent to June 30 2006. During the construction phase of the New Eligible Property, the OWNER may make such change orders to the New Eligible Property as are reasonably necessary to accomplish its intended use.

6. "Taxable Value" means the Certified Appraised Value, as determined by the Jefferson County Appraisal District, of all industrial realty improvements, excluding the exempt value of pollution control devices, as determined by the Texas Commission on Environmental Quality, owned by OWNER and located within the DISTRICT, minus the abated value of all industrial realty improvements of the OWNER located within the DISTRICT.

7. "Base Year Value" means the "Taxable Value" of all industrial realty improvements of the OWNER located within the DISTRICT as of the January 1,

2006, minus the abated value of all industrial realty improvements of the OWNER located in the DISTRICT, but not the PROJECT for which this AGREEMENT relates including the abated value of all other projects, of the OWNER granted by the DISTRICT and in existence for that "Base Year".

8. "Direct Hire of Local Labor" shall mean the hiring of labor through a local hiring office which is not operated by a "Local Subcontractor".

9. "Local Subcontractor" shall mean any contractor whose principal Corporate Offices are located in an eight county region comprising Jefferson, Orange, Hardin, Jasper, Newton, Liberty, Tyler, and Chambers Counties or a Texas Historically Underutilized Businesses (HUBs) (also known as Disadvantaged Business Enterprises, or DBEs) as defined in Paragraph III.

10. "Affiliate" shall mean, as to the person specified, any person (a) controlling, controlled by or under common control with such specified person, or (b) which beneficially owns or holds fifty percent (50%) or more of any class of stock or other equity interest of such specified person, or (c) fifty percent (50%) or more of any class of whose stock or equity interest is beneficially owned or held by such specified person and its Affiliates. For purposes of this definition "control" means the power to direct the management and policies of the person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

11. "PROJECT" is MOTIVA'S expansion of the refining operations at the Port Arthur Refinery, as herein described

12. "BOARD" the board of the Jefferson County Waterway and Navigation District

III MOTIVA REPRESENTATIONS/OBLIGATIONS

MOTIVA agrees as a result of the PROJECT:

1. To maintain an employment level of not less than 300 full-time employees (including full-time contract employees) in the new units listed in item 3, below;

2. To report and certify the requisite employment levels to the COUNTY within 30 days after the end of each calendar quarter during the periods of this AGREEMENT.

3. To expand the Port Arthur refinery crude oil throughput from its current capacity of 275,000BPSD to as much as 600,000BPSD. To accomplish this expansion, the OWNER will construct a new Crude Unit, Vacuum Unit, Delayed Coker, Hydrotreater, Reformer, Isomerization Unit, Hydrocracker, Diesel Hydrotreater, Cat Feed Hydrotreater, and Sulfur Recovery Unit. Additionally, OWNER will upgrade or revamp existing units and offsite utilities and infrastructure directly related to the integration of the new units to the existing site.

4. To report and certify to the DISTRICT BOARD the requisite cost of the improvements made within sixty days after the completion of the improvements (or 60 days after the Effective Date, whichever is later).

5. To make a good faith effort to identify and ensure that local vendors, suppliers and sub-contractors are given the opportunity to bid on contracts for the purchase of supplies and services in connection with construction of the PROJECT.

6. To encourage and promote the utilization of Texas Historically Underutilized Businesses (HUBs) (also known as Disadvantaged Business Enterprises, or DBEs) by the general contractor by ensuring a good faith effort is made to give HUB vendors and contractors an opportunity to bid on contracts for supplies and services.

a. A HUB is a Texas business owned or controlled by Socially and Economically Disadvantaged Individuals as defined by all applicable federal or state laws and local policies, including Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women and individuals with disabilities.

b. A HUB is one that is at least 51 percent owned or controlled by one or more women or Socially and Economically Disadvantaged Individuals or, in the case of a publicly owned business, one that at least 51 percent of the stock of which is controlled by one or more women or Socially and Economically Disadvantaged Individuals.

c. A business that has been certified as a HUB/DBE by an agency of the federal government or the State of Texas is presumed to be a HUB/DBE for purposes of this policy.

d. Only a HUB/DBE with its principal office in the State of Texas will be recognized as a HUB/DBE for purposes of this policy. Such HUB/DBE will be considered "Local Subcontractors" for purposes of this agreement.

As to the use of local and HUB vendors, suppliers and sub-contractors, good faith effort will include, at a minimum:

a. consultation with chambers of commerce, trade associations and other regional economic development organizations to identify local and HUB vendors, suppliers and sub-contractors,

b. notifying a reasonable number of local and HUB vendors, suppliers and sub-contractors, allowing sufficient time for effective participation of the planned work to be sub-contracted or materials, supplies or equipment to be purchased;

c. providing local and HUB vendors, suppliers and sub-contractors who are interested in bidding on a subcontract or contract for materials, supplies or equipment, adequate information regarding the project (i.e., plans, specifications, scope of work, bonding and insurance requirements, and a point of contract within the Prime Contractor;

d. negotiating in good faith with interested local and HUB vendors, suppliers or sub-contractors, and awarding sub-contracts or contracts for materials, supplies or equipment to local or HUB vendors, suppliers or sub-contractors when they are the lowest responsive bidder.

IV VALUE AND TERM OF ABATEMENT

This AGREEMENT shall be effective for the Abatement of the value as determined by the Jefferson County Appraisal District of New Eligible Property beginning on the January 1st valuation date immediately following the substantial completion of the PROJECT.

The OWNER shall have the option of performing the construction by Direct Hire of Local Labor, Local Subcontractor, or any other method he may select. OWNER agrees to utilize its best efforts to employee Local Labor and Local Subcontractors where possible. While no abatement will be granted for the portion of the value of New Eligible Property which is not attributable to the use of Direct Hire of Local Labor or Local Subcontractors, this exclusion shall not apply to the portion of work not performed by Local Labor or Local Subcontractors if the BOARD determines they are not qualified or willing to perform the work required in a competitive manner. In the case were Local Labor or Local Subcontractors are not employed

due to the fact they are not competitive, that portion of the value shall be treated as though it were provided by Local Labor and be eligible for abatement. To qualify for work not performed by Local Labor or Local Subcontractors the OWNER shall and shall furnish or make available for inspection the following information or written statements to the DISTRICT at least every six (6)months during the construction period of capital improvements:

(1) Statement by OWNER describing the status of construction of the contemplated improvements, percentage of construction completed, construction schedule and Owner's estimate of taxable value of constructed improvements on the date of the statement; and

(2) All material, evidence and data necessary for the Board to decide if the OWNER qualifies for Non Local Labor or Non Local Subcontractors abatement including but not limited to the OWNER'S efforts to comply with Section III, IV and XI.

(3) Any information, documents or records of any kind reasonably necessary for the DISTRICT'S evaluation of OWNER'S compliance with the terms and conditions of this Agreement and the DISTRICT'S guidelines, provided that OWNER shall not be required to furnish any information, documents, or records which a reasonable prudent OWNER under the same or similar circumstances would consider to be harmful to its business operations.

OWNER'S statements described above shall be certified and verified by OWNER'S project manager or other appropriate representative.

A Preliminary Abatement Percentage (PAP) shall be granted based on the following schedules. This shall apply to the portion of value attributable to the use of Direct Hire of Local Labor (LL), the portion of value attributable to the use of Local Subcontractors (LS)and the value attributable to the work determined by the BOARD that is attributable to the work done by contractors or labor that there is not Local Labor or Local Subcontractors qualified or willing to perform the work(NAL)..

For the portion of the value of New Eligible Property provided by Direct Hire of Local Labor, Local Subcontractors, or otherwise eligible for abatement.:

YEAR OF ABATEMENT	PRELIMINARY ABATEMENT PERCENTAGE (PAP)
YEAR 1 – 10	100%

When construction of the PROJECT is completed, the DISTRICT shall receive the total value of New Eligible Property from the Jefferson County Appraisal District and appoint a committee consisting of appropriate persons from the DISTRICT and the OWNER to determine:

(a) the total value of New Eligible Property attributable to the Direct Hire of Local Labor (LL);

(b) the total value of New Eligible Property attributable to Local Subcontractors(LS);

(c) the total value of New Eligible Property not attributable to Local Labor or Local Subcontractors but still eligible for abatement as Local Labor(NAL); and

(d) the total value of New Eligible Property for which no abatement will be granted (Ineligible Property).

When the values have been determined for (a), (b), (c) of the preceding Paragraph, the Local Percentage (LP) shall be determined by dividing the total value of the New Eligible Property attributable to the Direct Hire of Local Labor(LL), Local Subcontractors(LS) and other eligible values due to unqualified or unavailability of Local Labor or Local Subcontractors(NAL) by the total value of the New Eligible Property Utilizing the information provided by OWNER pursuant to Article XI below, the Final Abatement Percentage (FAP) for each year of Abatement as set forth above, shall be determined by multiplying the LP and the PAP. The Final Abatement Percentage (FAP) shall be the percentage of the value of the New Eligible Property which will be abated subject to the other terms of this AGREEMENT, and specifically subject to the provisions relating to Adjustment for Base Year Value Decline (Article V) and Adjustment for Productive Lives (Article VI.). It is the intent of OWNER and DISTRICT that following the completion of the construction of the PROJECT, the LP and the FAP will be calculated and scheduled at that time for each succeeding year of abatement. Further analysis or review of such percentages is not anticipated or contemplated herein.

V. TAXABILITY

During the period that this AGREEMENT is effective, taxes shall be payable as follows:

a. The value of Ineligible Property shall be fully taxable;

b. The Taxable Value of existing Eligible Property as determined each year shall be fully taxable; and

c. The value of New Eligible Properties shall be abated as set forth in Article III, herein.

VI. ADJUSTMENTS TO ABATEMENT FOR BASE YEAR VALUE DECLINE

The Jefferson County Appraisal District has established the values as of January 1, 2006 as set forth on Exhibit B, attached and incorporated by reference herein for all purposes, and such values shall be the values used to calculate the Base Year Value as herein defined. If on January 1st of any tax year the Taxable Value of all realty improvements owned by the OWNER within the jurisdiction of the DISTRICT is less than the Base Year Value and/or in the event that the OWNER reduces its ad valorem taxes on personal property otherwise payable to the DISTRICT by participating in a foreign trade zone exemption from local property taxes without negotiating an agreement to do so with the DISTRICT, then the abatement of value otherwise available shall be reduced by one dollar for each dollar that the Taxable Value of realty improvements is less than the Base Year Value and, also, for each dollar of tax reduction attributable to special treatment from foreign trade zone exemption participation. The abatement value shall never be reduced to less than zero and there shall be no carry over from one year to another.

VII> ADJUSTMENT FOR PRODUCTIVE LIVES

If at any time it is determined that one-half (_) the estimated productive life of the improvements is less than the term of years of abatement under this AGREEMENT, the term of abatement shall be reduced to one-half (_) the productive life of the improvements and the OWNER shall pay to the DISTRICT the full amount of taxes otherwise abated in each year in which the term of abatement exceeded one-half (_) of the actual productive life of the PROJECT. If after the Project becomes operational, any improvement otherwise eligible for abatement

should prove to have a productive life less than one-half (_) the term of abatement because of obsolescence, wear, deterioration, damage or other reasons, and the improvement is immediately replaced with the same or better quality improvement, then in that event the improvement shall not be subject to the penalty of this Article. Any recapture hereunder shall be payable within sixty (60) days of written notice. OWNER shall certify by statement to the DISTRICT and the Jefferson County Appraisal District the predicted estimated productive life of improvements upon completion of the construction and each year thereafter.

VIII. CONTEMPLATED IMPROVEMENTS

OWNER represents that it will construct the PROJECT at an estimated cost of THREE BILLION- FIVE HUNDRED MILLION DOLLARS ($3,500,000,000), and with a productive life in excess of sixteen years. OWNER represents that it intends to request from the TCEQ exemption from ad valorem taxes with respect to the PROJECT for pollution control equipment with an estimated value not to exceed SIX HUNDRED MILLION DOLLARS ($600,000,000). OWNER acknowledges and understands that in the event the TCEQ exemption from ad valorem taxes with respect to the PROJECT exceeds $600,000,000 plus 10% the DISTRICT may assert that a material misrepresentation has occurred and the DISTRICT may declare a total default under the Abatement Contract, resulting in recapture of previously abated taxes and forfeiture of future abatement.

OWNER agrees and warrants that all improvements shall be completed in accordance with all applicable law. OWNER agrees and warrants, that it shall not make any use of the property that is inconsistent with the general purpose of encouraging development or redevelopment of the REINVESTMENT ZONE during the period that this AGREEMENT is in effect.

NOTE: Failure to accurately disclose exempted property within 60 days of such exemption being approved by the TCEQ after construction is complete may result in a total default under the Abatement Contract, resulting in recapture of previously abated taxes and forfeiture of future abatement.

IX. EVENT OF DEFAULT

During the abatement period covered by this AGREEMENT, the DISTRICT may declare a default hereunder by the OWNER if the OWNER fails to commence construction of the PROJECT within two (2) years from the effective date of this AGREEMENT, fails to construct the PROJECT, or refuses or neglects to comply with any of the terms of this AGREEMENT, or if any representation made by the OWNER in this AGREEMENT or to obtain the benefits of this AGREEMENT is false or misleading in any material respect, or if any representation regarding the value of the new eligible property for which exemption from the TCEQ is sought is materially incorrect.

Should the DISTRICT determine the OWNER to be in default in this AGREEMENT, the DISTRICT shall notify the OWNER in writing prior to the end of the abatement period, and if such default is not cured within sixty (60) days from the date of such notice ("Cure Period"), then this AGREEMENT may be terminated; provided, however, that in the case of a default that is caused by circumstances beyond OWNER'S reasonable control which cannot with due diligence be cured within such sixty-day period, the Cure Period shall be deemed extended if the OWNER immediately, upon the receipt of such notice, (i) advises the DISTRICT of OWNER'S intention to institute all steps necessary to cure such default and (ii) institutes and thereafter pursues to completion with reasonable dispatch all steps necessary to cure same.

In the event the OWNER allows their ad valorem taxes owed the DISTRICT to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or if the OWNER violates any of the terms and conditions of this AGREEMENT and fails to cure during the Cure Period, this AGREEMENT may then be terminated by a majority vote of the BOARD, and all taxes previously abated by virtue of this AGREEMENT shall be recaptured and become due and payable within sixty (60) days of the termination.

In the event the PROJECT contemplated herein is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty, accident or natural disaster, for a period of one year during the abatement period then this AGREEMENT may be terminated by majority vote of the BOARD. In the event of termination pursuant to the provisions of this paragraph, the abatement of the taxes for the calendar year during which the PROJECT no longer produces product or

service shall terminate and the taxes due shall be paid to the DISTRICT prior to the delinquency date for such year. In such event all taxes previously abated shall be recaptured and paid within sixty (60) days of the termination.

X. ADMINISTRATION

This AGREEMENT shall be administered on behalf of the DISTRICT by the Board of Directors (the "Board") and/or other persons appointed by the Board. The OWNER shall allow authorized employees and/or representatives of the DISTRICT who have been designated and approved by the Board to have access to this PROJECT during the term of this AGREEMENT to inspect the PROJECT to determine compliance with the terms and conditions of the AGREEMENT. All inspections will be made at a mutually agreeable time after the giving of reasonable prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the PROJECT. All inspections will be made with one or more representatives of the OWNER and in accordance with OWNER'S safety standards.

Upon completion of the PROJECT, the BOARD and/or other persons appointed by the Board shall annually evaluate the PROJECT to ensure compliance with the terms and provisions of this AGREEMENT.

The Chief Appraiser of the Jefferson County Appraisal District shall annually determine the taxable value of the real and personal property subject to this AGREEMENT. The Chief Appraiser shall record both the net taxable value after abatement and the full taxable value in the appraisal records. The full taxable value amount listed in the appraisal records shall be used to compute the amount of abated taxes that are required to be recaptured and paid in the event this AGREEMENT is terminated in a manner that results in recapture. Each year the OWNER shall furnish the Chief Appraiser with such information outlined in Chapter 22, V.A.T.S. Tax Code, as may be necessary for the administration of the abatement specified herein, and shall allow authorized employees and agents of the Jefferson County Appraisal District access to the OWNER'S property to inspect the property for purposes of making their determination of value.

If the DISTRICT terminates this AGREEMENT pursuant to any provision of this AGREEMENT, it shall provide OWNER written notice of such termination. If OWNER

believes that such termination is improper, OWNER may file suit in a court of competent jurisdiction in Jefferson County, Texas, appealing such termination within ninety (90) days after receipt from the DISTRICT of written notice of the termination. If an appeal suit is filed, OWNER shall remit to the DISTRICT, within sixty (60) days after receipt of the notice of termination, any additional and/or recaptured taxes as may be payable during the pendency of the litigation pursuant to the payment provisions of Section 42.08 V.A.T.S. Tax Code. If the final determination of the appeal increases OWNER tax liability above the amount of tax paid, OWNER shall remit the additional tax to the DISTRICT pursuant to Section 42.42, V.A.T.S. Tax Code. If the final determination of the appeal decreases OWNER'S tax liability, the DISTRICT shall refund to OWNER the difference between the amount of tax paid and the amount of tax for which OWNER is liable pursuant to Section 42.43, V.A.T.S. Tax Code.

XI. INFORMATION PROVIDED BY OWNER

OWNER agrees to annually furnish information necessary for the DISTRICT to evaluate OWNER compliance with the terms and conditions of this AGREEMENT. OWNER further agrees that on or before March 1st of each year of this AGREEMENT, excluding the initial March 1st, OWNER shall notice the DISTRICT with an annual report/statement of compliance with this AGREEMENT.

The OWNER shall certify the commencement and completion date of the contemplated improvements described in Article VII. Herein. Additionally, OWNER shall, within thirty (30) days following receipt of a written request from the DISTRICT, furnish or make available for inspection the following information or written statements to the DISTRICT at least every six months during the construction period of the PROJECT:

(1) Statement by OWNER describing the status of construction of the contemplated improvements, percentage of construction completed, construction schedule and OWNER'S estimate of taxable value of constructed improvements on the date of the statement; and

(2) Any information, documents or records of any kind reasonably necessary for the DISTRICT'S evaluation of OWNER'S compliance with the terms and conditions

of this AGREEMENT and the DISTRICT'S guidelines, provided that OWNER shall not be required to furnish any information, documents, or records which a reasonable prudent OWNER under the same or similar circumstances would consider to be harmful to its business operations.

OWNER'S statements described above shall be verified by OWNER'S project manager or other appropriate representative.

XII. INDEMNIFICATION

OWNER agrees to indemnify and hold harmless DISTRICT, its Board, officers and employees from and against all obligations, claims, demands and causes of action of every kind and character (including the amounts of judgments, penalties, interest, court costs and legal fees incurred in defense of the same) arising in favor of other governmental entities and agencies or third parties (including employees of OWNER) as a result of or arising out of, the covenants to be performed by OWNER under this AGREEMENT, or any rights and provisions granted in this AGREEMENT.

XIII. ASSIGNMENT

DISTRICT may assign this AGREEMENT, in whole or in part, to a new owner or OWNER of the same PROJECT, or a portion thereof, or to an Affiliate of OWNER upon written approval by resolution of the Board of such assignment, and approval shall not be unreasonably withheld or delayed. It shall not be unreasonable for the Board to withhold approval if OWNER or the proposed assignee are liable to the DISTRICT for outstanding taxes or other obligations.

XIV. MODIFICATION OR TERMINATION

At any time before the expiration of this AGREEMENT, the parties may, upon mutual consent, modify or terminate the original AGREEMENT. Such modification or termination shall be done in accordance with the , V.A.T.S. Tax Code Section 312.208.

XV. AUTHORITY OF AGENT

By acceptance of this AGREEMENT and/or any benefits conferred hereunder, OWNER represents and warrants that its undersigned agents have complete and unrestricted authority to enter into this AGREEMENT and to obligate and bind OWNER to all of the terms, covenants and conditions contained herein.

XVI. MERGER

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this AGREEMENT.

XVII. NOTICE

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

OWNER:

Tom Purves
MOTIVA Enterprises LLC
2555 Savanna Ave.
Port Arthur, Texas 77641
409-989-7001
409-989-7774 (facsimile)

With a copy to:

Shell Oil Tax Department
910 Louisiana
Houston, Texas 77002
713-241-3039
713-241-3095

To the DISTRICT:

JEFFERSON COUNTY WATERWAY AND NAVIGATION DISTRTICT
2348 HIGHWAY 69
P.O. BOX 778
NEDERLAND, TX 77627-0778
TEL. (409)7294588
FAX (409)7294377

XVII. APPLICABLE LAW AND VENUE

This AGREEMENT is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Jefferson County, Texas.

XIX. SEVERABILITY

In the event any provisions of this AGREEMENT is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the parties to this AGREEMENT that the lieu of each clause or provisions that is found to be illegal, invalid, or unenforceable, a provision be added to this AGREEMENT which is legal, valid and enforceable and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Executed in duplicate this the 13th day of June, 2006.

FOR THE DISTRICT:

[signature]

For OWNER:

[signature]
~~Tom Purves~~ TODD MONETTE
Plant Manager

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Citation: 2005 Tex. ALS 412

*2005 Tex. ALS 412, *; 2005 Tex. Gen. Laws 412;*
2005 Tex. Ch 412; 2005 Tex. SB 1652

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TEXAS 79TH LEGISLATURE

CHAPTER 412

SENATE BILL 1652

2005 Tex. ALS 412; 2005 Tex. Gen. Laws 412; 2005 Tex. Ch 412; 2005 Tex. SB 1652

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT relating to the administration of ad valorem taxation and to certain measures involving school district property values.

NOTICE:
[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED **<A]**
[D> Text within these symbols is deleted **<D]**

To view the next section, type .np* TRANSMIT.
To view a specific section, transmit p* and the section number. e.g. p*1

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

[*1] SECTION 1. Subsection (b), Section 403.303, Government Code, is amended to read as follows:

(b) After receipt of a petition, the comptroller shall hold a hearing. The comptroller has the burden to prove the accuracy of the findings. Until a final decision is made by the comptroller, the taxable value of property in the district is determined, with respect to property subject to the protest, according to the value claimed by the school district or property owner, except that the value to be used while a final decision is pending may not be less than the appraisal roll value for the year of the study. If after a hearing the comptroller concludes that the findings should be changed, the comptroller shall order the appropriate changes and shall certify **[D>** the changes **<D]** to the commissioner of education **[A>** THE CHANGES IN THE VALUES OF THE SCHOOL DISTRICT THAT BROUGHT THE PROTEST, THE VALUES OF THE SCHOOL DISTRICT NAMED BY THE PROPERTY OWNER WHO BROUGHT THE PROTEST, OR, IF THE COMPTROLLER BY RULE ALLOWS AN APPRAISAL DISTRICT TO BRING A PROTEST, THE VALUES OF THE SCHOOL DISTRICT NAMED BY THE APPRAISAL DISTRICT THAT BROUGHT THE PROTEST. THE COMPTROLLER MAY NOT ORDER A CHANGE IN THE VALUES OF A SCHOOL DISTRICT AS A RESULT OF A PROTEST BROUGHT BY ANOTHER SCHOOL DISTRICT, A PROPERTY OWNER IN THE OTHER SCHOOL DISTRICT, OR AN APPRAISAL DISTRICT THAT APPRAISES PROPERTY FOR THE OTHER SCHOOL DISTRICT **<A]** . The comptroller shall complete all protest hearings and certify all changes as necessary to comply with Chapter 42, Education Code. A hearing conducted under this subsection is not a contested case for purposes of Section 2001.003.

[*2] SECTION 2. Section 1.08, Tax Code, is amended to read as follows:

Sec. 1.08. TIMELINESS OF ACTION BY MAIL. When a property owner is required by this title to make a payment or to file or deliver a report, application, statement, or other document or paper **[A>** BY **<A] [D>** before **<D]** a specified **[A>** DUE **<A]** date, his action is timely if:

(1) it is sent by regular first-class mail, properly addressed with postage prepaid; and

(2) it bears a post office cancellation mark of a date earlier than **[A>** OR ON **<A]** the specified **[A>** DUE **<A]** date and within the specified period or the property owner furnishes satisfactory proof that it was deposited in the mail **[A>** ON OR **<A]** before the specified **[A>** DUE **<A]** date and within the specified period.

[*3] SECTION 3. Subsection (b), Section 1.085, Tax Code, as amended by Chapters 984 and 1173, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(b) An agreement between a chief appraiser and a property owner must:

(1) be in writing;

(2) be signed by the chief appraiser and the property owner; and

(3) specify:

(A) the medium of communication;

(B) the type of communication covered;

(C) the means for protecting the security of a communication;

(D) the means for confirming delivery of a communication; and

(E) the electronic mail address of the property owner or person designated to represent the property owner under Section 1.111, as applicable.

[*4] SECTION 4. Subsections (a) and (b), Section 5.05, Tax Code, are amended to read as follows:

(a) The comptroller **[A>** MAY **<A] [D>** shall **<D]** prepare and issue **[A>** PUBLICATIONS RELATING TO THE APPRAISAL OF PROPERTY AND THE ADMINISTRATION OF TAXES, OR MAY APPROVE OTHER PUBLICATIONS RELATING TO THOSE MATTERS, INCLUDING MATERIALS PUBLISHED BY THE APPRAISAL FOUNDATION, THE INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, OR OTHER PROFESSIONALLY RECOGNIZED ORGANIZATIONS, FOR USE IN THE ADMINISTRATION OF PROPERTY TAXES, INCLUDING **<A]** :

(1) a general appraisal manual;

(2) special appraisal manuals **[A>** AS AUTHORIZED BY LAW **<A]** ;

(3) cost, price, and depreciation schedules **[A>** AS AUTHORIZED BY LAW **<A] [D>** , with provision for inserting local market index factors and with a standard procedure for determining local market index factors **<D]** ;

(4) **[A>** PERIODIC **<A]** news and reference bulletins;

(5) **[A>** AN **<A]** annotated **[A>** VERSION OF THIS TITLE AND TITLE 3 **<A] [D>** digests of all laws relating to property taxation **<D]** ; and

(6) a handbook **[A>** CONTAINING SELECTED LAWS AND **<A] [D>** of **<D]** all rules promulgated by the comptroller relating to the property tax and its administration.

(b) The comptroller shall revise or supplement all materials **[A>** ISSUED BY THE COMPTROLLER OR APPROVE OTHER PUBLICATIONS **<A]** periodically as necessary to keep them current.

[*5] SECTION 5. Section 6.05, Tax Code, is amended by adding Subsection (i) to read as follows:

[A> (I) TO ENSURE ADHERENCE WITH GENERALLY ACCEPTED APPRAISAL PRACTICES, THE BOARD OF DIRECTORS OF AN APPRAISAL DISTRICT SHALL DEVELOP BIENNIALLY A WRITTEN PLAN FOR THE PERIODIC REAPPRAISAL OF ALL PROPERTY WITHIN THE BOUNDARIES OF THE DISTRICT ACCORDING TO THE REQUIREMENTS OF SECTION 25.18 AND SHALL HOLD A PUBLIC HEARING TO CONSIDER THE PROPOSED PLAN. NOT LATER THAN THE 10TH DAY BEFORE THE DATE OF THE HEARING, THE SECRETARY OF THE BOARD SHALL DELIVER TO THE PRESIDING OFFICER OF THE GOVERNING BODY OF EACH TAXING UNIT PARTICIPATING IN THE DISTRICT A WRITTEN NOTICE OF THE DATE, TIME, AND PLACE FOR THE HEARING. NOT LATER THAN SEPTEMBER 15 OF EACH EVEN-NUMBERED YEAR, THE BOARD SHALL COMPLETE ITS HEARINGS, MAKE ANY AMENDMENTS, AND BY RESOLUTION FINALLY APPROVE THE PLAN. COPIES OF THE APPROVED PLAN SHALL BE DISTRIBUTED TO THE PRESIDING OFFICER OF THE GOVERNING BODY OF EACH TAXING UNIT PARTICIPATING IN THE DISTRICT AND TO THE COMPTROLLER WITHIN 60 DAYS OF THE APPROVAL DATE. **<A]**

[*6] SECTION 6. Section 11.161, Tax Code, is amended to read as follows:

Sec. 11.161. IMPLEMENTS OF HUSBANDRY. **[A>** MACHINERY AND EQUIPMENT ITEMS **<A] [D>** Implements of husbandry **<D]** that are used in the production of farm or ranch products or of timber **[A>** , REGARDLESS OF THEIR PRIMARY DESIGN, ARE CONSIDERED TO BE IMPLEMENTS OF HUSBANDRY AND **<A]** are exempt from ad valorem taxation.

[*7] SECTION 7. Subsection (a), Section 11.439, Tax Code, is amended to read as follows:

(a) The chief appraiser shall accept and approve or deny an application for an exemption under Section 11.22 after the filing deadline provided by Section 11.43 if the application is filed not later than **[A>** ONE YEAR AFTER THE DELINQUENCY DATE FOR THE TAXES ON THE PROPERTY **<A] [D>** the first anniversary of the earlier of: **<D]**

[D> (1) the date the taxes on the property were paid; or **<D]**

[D> (2) the date the taxes became delinquent **<D]** .

[*8] SECTION 8. Section 21.02, Tax Code, is amended by adding Subsection (d) to read as follows:

[A> (D) A MOTOR VEHICLE DOES NOT HAVE TAXABLE SITUS IN A TAXING UNIT UNDER SUBSECTION (A)(1) IF, ON JANUARY 1, THE VEHICLE: **<A]**

[A> (1) HAS BEEN LOCATED FOR LESS THAN 60 DAYS AT A PLACE OF BUSINESS OF A PERSON WHO HOLDS A WHOLESALE MOTOR VEHICLE AUCTION GENERAL DISTINGUISHING NUMBER ISSUED BY THE TEXAS DEPARTMENT OF TRANSPORTATION UNDER CHAPTER 503, TRANSPORTATION CODE, FOR THAT PLACE OF BUSINESS; AND **<A]**

[A> (2) IS OFFERED FOR RESALE. <A]

[*9] SECTION 9. Section 22.04, Tax Code, is amended by adding Subsection (d) to read as follows:

[A> (D) THIS SECTION DOES NOT APPLY TO A MOTOR VEHICLE THAT ON JANUARY 1 IS LOCATED AT A PLACE OF BUSINESS OF A PERSON WHO HOLDS A WHOLESALE MOTOR VEHICLE AUCTION GENERAL DISTINGUISHING NUMBER ISSUED BY THE TEXAS DEPARTMENT OF TRANSPORTATION UNDER CHAPTER 503, TRANSPORTATION CODE, FOR THAT PLACE OF BUSINESS, AND THAT: <A]

[A> (1) HAS NOT ACQUIRED TAXABLE SITUS UNDER SECTION 21.02(A)(1) IN A TAXING UNIT THAT PARTICIPATES IN THE APPRAISAL DISTRICT BECAUSE THE VEHICLE IS DESCRIBED BY SECTION 21.02(D); <A]

[A> (2) IS OFFERED FOR SALE BY A DEALER WHO HOLDS A DEALER'S GENERAL DISTINGUISHING NUMBER ISSUED BY THE TEXAS DEPARTMENT OF TRANSPORTATION UNDER CHAPTER 503, TRANSPORTATION CODE, AND WHOSE INVENTORY OF MOTOR VEHICLES IS SUBJECT TO TAXATION IN THE MANNER PROVIDED BY SECTIONS 23.121 AND 23.122; OR <A]

[A> (3) IS COLLATERAL POSSESSED BY A LIENHOLDER AND OFFERED FOR SALE IN FORECLOSURE OF A SECURITY INTEREST. <A]

[*10] SECTION 10. Subsections (a) and (b), Section 25.18, Tax Code, are amended to read as follows:

(a) Each appraisal office shall implement [A> THE <A] [D> a <D] plan for periodic reappraisal of property [A> APPROVED BY THE BOARD OF DIRECTORS UNDER SECTION 6.05(I) <A] [D> to update appraised values <D] .

(b) The plan shall provide for [A> THE FOLLOWING <A] reappraisal [A> ACTIVITIES FOR <A] [D> of <D] all real [A> AND PERSONAL <A] property in the district at least once every three years [A> : <A]

[A> (1) IDENTIFYING PROPERTIES TO BE APPRAISED THROUGH PHYSICAL INSPECTION OR BY OTHER RELIABLE MEANS OF IDENTIFICATION, INCLUDING DEEDS OR OTHER LEGAL DOCUMENTATION, AERIAL PHOTOGRAPHS, LAND-BASED PHOTOGRAPHS, SURVEYS, MAPS, AND PROPERTY SKETCHES; <A]

[A> (2) IDENTIFYING AND UPDATING RELEVANT CHARACTERISTICS OF EACH PROPERTY IN THE APPRAISAL RECORDS; <A]

[A> (3) DEFINING MARKET AREAS IN THE DISTRICT; <A]

[A> (4) IDENTIFYING PROPERTY CHARACTERISTICS THAT AFFECT PROPERTY VALUE IN EACH MARKET AREA, INCLUDING: <A]

[A> (A) THE LOCATION AND MARKET AREA OF PROPERTY; <A]

[A> (B) PHYSICAL ATTRIBUTES OF PROPERTY, SUCH AS SIZE, AGE, AND CONDITION; <A]

[A> (C) LEGAL AND ECONOMIC ATTRIBUTES; AND <A]

[A> (D) EASEMENTS, COVENANTS, LEASES, RESERVATIONS, CONTRACTS, DECLARATIONS, SPECIAL ASSESSMENTS, ORDINANCES, OR LEGAL RESTRICTIONS; <A]

[A> (5) DEVELOPING AN APPRAISAL MODEL THAT REFLECTS THE RELATIONSHIP AMONG THE PROPERTY CHARACTERISTICS AFFECTING VALUE IN EACH MARKET AREA AND DETERMINES THE CONTRIBUTION OF INDIVIDUAL PROPERTY CHARACTERISTICS; <A]

[A> (6) APPLYING THE CONCLUSIONS REFLECTED IN THE MODEL TO THE CHARACTERISTICS OF THE PROPERTIES BEING APPRAISED; AND <A]

[A> (7) REVIEWING THE APPRAISAL RESULTS TO DETERMINE VALUE <A] .

[*11] SECTION 11. Subsection (b), Section 25.19, Tax Code, as amended by Chapters 1358 and 1517, Acts of the 76th Legislature, Regular Session, 1999, is reenacted to read as follows:

(b) The chief appraiser shall separate real from personal property and include in the notice for each:

(1) a list of the taxing units in which the property is taxable;

(2) the appraised value of the property in the preceding year;

(3) the taxable value of the property in the preceding year for each taxing unit taxing the property;

(4) the appraised value of the property for the current year and the kind and amount of each partial exemption, if any, approved for the current year;

(5) if the appraised value is greater than it was in the preceding year, the amount of tax that would be imposed on the property on the basis of the tax rate for the preceding year;

(6) in italic typeface, the following statement: "The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials";

(7) a detailed explanation of the time and procedure for protesting the value;

(8) the date and place the appraisal review board will begin hearing protests; and

(9) a brief explanation that the governing body of each taxing unit decides whether or not taxes on the property will increase and the appraisal district only determines the value of the property.

[*12] SECTION 12. Subsection (c), Section 25.19, Tax Code, is amended to read as follows:

(c) In the case of the residence homestead of a person 65 years of age or older **[A>** OR DISABLED **<A]** that is subject to the limitation on a tax increase over the preceding year for school tax purposes, the chief appraiser shall indicate on the notice that the preceding year's taxes may not be increased.

[*13] SECTION 13. Subsection (a), Section 26.05, Tax Code, is amended to read as follows:

(a) The governing body of each taxing unit, before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted. The tax rate consists of two components, each of which must be approved separately. The components are:

(1) **[A>** FOR A TAXING UNIT OTHER THAN A SCHOOL DISTRICT, **<A]** the rate that, if applied to the total taxable value, will impose the total amount published under Section 26.04(e)(3)(C), less any amount of additional sales and use tax revenue that will be used to pay debt service **[A>** , OR, FOR A SCHOOL DISTRICT, THE RATE PUBLISHED UNDER SECTION 44.004(C)(2)(A)(II)(B), EDUCATION CODE **<A]** ; and

(2) the rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the next year.

[*14] SECTION 14. Subsection (a), Section 111.301, Tax Code, is amended to read as follows:

(a) An eligible person is entitled to a refund of state sales and use taxes imposed under Chapter 151 and state franchise taxes imposed under Chapter 171 paid in a calendar year for which the person paid ad valorem taxes to a school district on property that in that year is:

(1) located in a reinvestment zone established under Chapter 312;

(2) exempt in whole or in part from the payment of ad valorem taxes imposed by a municipality or a county under a tax abatement agreement entered into with the municipality or county under Chapter 312; and

(3) not subject to a tax abatement agreement **[A>** OR AN AGREEMENT TO LIMIT THE APPRAISED VALUE OF PROPERTY UNDER CHAPTER 313 **<A]** entered into by the school district.

[*15] SECTION 15. Section 111.304, Tax Code, is amended to read as follows:

Sec. 111.304. EVALUATION; **[A>** BIENNIAL **<A] [D>** ANNUAL **<D]** REPORT. Not later than December **[A>** 31 **<A] [D>** 1 **<D]** of each **[A>** EVEN-NUMBERED **<A]** year, the comptroller shall submit **[A>** A **<A] [D>** an annual **<D]** report to the legislature. The report:

(1) must document the applications for refunds filed with the comptroller under this subchapter;

(2) must document the refunds paid by the comptroller under this chapter; and

(3) may include any other relevant information that the comptroller determines is applicable to this subchapter or to Chapter 312.

[*16] SECTION 16. Subsection (a), Section 312.204, Tax Code, as amended by Chapters 560, 640, and 1258, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(a) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of taxable real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property located on the real property, or both, for a period not to exceed 10 years, on the condition that the owner of the property make specific improvements or repairs to the property. The governing body of an eligible municipality may agree in writing with the owner of a leasehold interest in tax-exempt real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt a portion of the value of property subject to ad valorem taxation, including the leasehold interest, improvements, or tangible personal property located on the real property, for a period not to exceed 10 years, on the condition that the owner of the leasehold interest make specific improvements or repairs to the real property. A tax abatement agreement under this section is subject to the rights of holders of outstanding bonds of the municipality. An agreement exempting taxable real property or leasehold interests or improvements on tax-exempt real property may provide for the exemption of such taxable interests in each year covered by the agreement only to the extent its value for that year exceeds its value for the year in which the agreement is executed. An agreement exempting tangible personal property located on taxable or tax-exempt real property may provide for the exemption of tangible personal property located on the real property in each year covered by the agreement other than tangible personal property that was located on the real property at any time before the period covered by the agreement with the municipality, including inventory and supplies. In a municipality that has a comprehensive zoning ordinance, an improvement, repair, development, or redevelopment taking place under an agreement under this section must conform to the comprehensive zoning ordinance.

[*17] SECTION 17. Subsection (e), Section 39.903, Utilities Code, as amended by Chapters 1394, 1451, and 1466, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(e) Money in the system benefit fund may be appropriated to provide funding solely for the following regulatory purposes **[A>** , **<A] [D>** and **<D]** in the following order of priority:

(1) programs to assist low-income electric customers by providing the 10 percent reduced rate prescribed by Subsection (h);

(2) customer education programs, administrative expenses incurred by the commission in implementing and administering this chapter, and expenses incurred by the office under this chapter;

(3) programs to assist low-income electric customers by providing the targeted energy efficiency programs described by Subsection (f)(2);

(4) **[D>** the school funding loss mechanism provided by Section 39.901; **<D]**

[D> (5) **<D]** programs to assist low-income electric customers by providing the 20 percent reduced rate prescribed by Subsection (h); and

[A> (5) **<A] [D>** (6) **<D]** reimbursement to the commission and the **[A>** HEALTH AND HUMAN SERVICES COMMISSION **<A] [D>** Texas Department of Human Services **<D]** for expenses incurred in the implementation and administration of an integrated eligibility process created under Section 17.007 for customer service discounts relating to retail electric service, including outreach expenses the commission determines are reasonable and necessary.

[*18] SECTION 18. The following statutes are repealed:

(1) Subsections (e) and (f), Section 1.085, Tax Code, as added by Chapter 984, Acts of the 78th Legislature, Regular Session, 2003; and

(2) Section 39.901, Utilities Code.

[*19] SECTION 19. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) Section 6 of this Act takes effect January 1, 2006.

HISTORY:

Approved by the Governor June 17, 2005

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