

**State of Texas**

**Kendall County**

**RESOLUTION NO. 05-26-2009 B**

**ADOPTING GUIDELINES AND CRITERIA FOR TAX ABATEMENT**

**WHEREAS**, the Commissioners Court of Kendall County has the authority pursuant to the Property Redevelopment and Tax Abatement Act, Chapter 312, Texas Tax Code, to adopt a tax abatement policy and enter into tax abatement agreements with eligible entities; and

**WHEREAS**, the Commissioners Court finds that tax abatement within certain guidelines and criteria will attract and/or retain desirable commercial enterprises in Kendall County with the result that existing jobs will remain in the county and new jobs will be created in the county; and

**WHEREAS**, tax abatement provides a valuable economic tool for use by the County and others interested in supporting and creating jobs in Kendall County; and

**WHEREAS**, the Commissioners Court finds that a tax abatement policy is in the public interest and will contribute to the economic development of the County; and

**WHEREAS**, pursuant to section 312.002, Texas Tax Code, Kendall County may not enter into a tax abatement agreement unless the Commissioners Court establishes guidelines and criteria governing tax abatement agreements and, by resolution, elects to become eligible to participate in tax abatement;

**NOW, THEREFORE BE IT RESOLVED** that the Commissioners Court of Kendall County, Texas duly convened and acting in its capacity as the governing body of Kendall County, hereby elects to become eligible to participate in tax abatement and hereby adopts the following guidelines and criteria for tax abatement agreements:

**SECTION 1. PURPOSE**

The purpose of the Kendall County tax abatement policy is to provide an incentive for current and future commercial property owners and/or leaseholders to invest in Kendall County and provide increased job opportunities in the county thereby contributing to

**COPY**

*original - at Clerk's office*

responsible economic growth of the county. These guidelines and criteria are a part of the overall incentive program of Kendall County. In granting tax abatements and entering into tax abatement agreements, the Commissioners Court shall take into consideration any other incentives provided by the county in order to assure that the overall incentive package is in the best interests of the citizens of Kendall County.

## **SECTION 2. DEFINITIONS**

- a. "Abatement" as used herein means the partial exemption from ad valorem taxes of certain real property and/or improvements located in a reinvestment zone.
- b. "Base Year Value" as used herein means the assessed value of eligible property on the 1<sup>st</sup> of January preceding the execution of a tax abatement agreement.
- c. "County Attorney" as used herein means the County Attorney or his duly appointed designee.
- d. "Modernization" as used herein means the replacement or upgrading of existing facilities which increases the productive input or output, updates the technology or substantially lowers the cost of operation. Modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery or equipment. It shall not include reconditioning, refurbishing, or repairing.
- e. "Real Property" as used herein means land.
- f. "Reinvestment Zone" as used herein means an area within the county that has been designated by a governmental entity as an enterprise zone under Chapter 2303, Government Code, or is designated as a reinvestment zone pursuant to the provisions of Chapter 312, Local Government Code.

## **SECTION 3. LIMITATIONS**

- a. Adoption of the guidelines and criteria does not:
  - (1) limit the discretion of the Commissioners Court to decide whether to enter into a tax abatement agreement; or
  - (2) create new property, contract, or other legal right in any person to have the Commissioners Court consider or grant a specific application or request for abatement.
- b. No tax abatement will be granted that will have the effect of reducing current ad valorem revenues.
- c. The County shall not enter into a tax abatement agreement if the Commissioners Court find that the application for tax abatement was filed after the commencement of construction, expansion or modernization.
- d. Guidelines and criteria adopted herein shall be effective for two years from the date of adoption or until May 26, 2011.

#### **SECTION 4. TAX ABATEMENT GUIDELINES AND CRITERIA**

- a. The Commissioners Court may enter into a tax abatement agreement with the owner of taxable real property located in a reinvestment zone, but that is not 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, or both, for a period not to exceed seven years, on the condition that the owner of the property make specific improvements to the property subject to the guidelines and criteria set out herein.
- b. The Commissioners Court may enter into a tax abatement agreement with the owner of a leasehold interest in tax-exempt real property that is located in a reinvestment zone, but that is not 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 seven years, on the condition that the owner of the leasehold interest make specific improvements to the real property subject to the guidelines and criteria set out herein.
- c. Creation of New Value. Tax abatement may be granted for the additional value of eligible improvements subject to such limitations as the Commissioners Court may require, and;
  - (1) shall be reasonably expected to increase the appraised value of the improved property; and
  - (2) shall be expected to promote increased employment opportunities based on the number of permanent jobs created and sustained in each year of the abatement; and
  - (3) shall not have the effect of merely transferring existing employment from one part of the county to another without demonstration of increased future investment (Dollars or Jobs) or unusual circumstances whereby, without such a move, employment is likely to be reduced; and
  - (4) no tax exemption shall be granted for tangible personal property located on the subject real property at any time prior to the period covered by the tax abatement agreement, including inventory and supplies.
- d. Enterprises Eligible for Tax Abatement: Tax abatement may be considered for the following types of enterprises if the location of a new enterprise or the expansion of an existing enterprise will create substantial capital improvements within the county and increase employment opportunities:
  - (1) Manufacturing Facilities;
  - (2) Corporate Offices;
  - (3) Research Parks;
  - (4) Resort Hotel/Conference Center;

(5) Advanced Technology/Emerging Technology Facilities.

- e. **Minimum Investment Required.** To be eligible for tax abatement, the proposed project must provide for capital expenditures of at least 5.0 million dollars for a new business or 2.5 million dollars for the expansion or modernization of an existing business.
- f. **Groundwater Usage.** The Hill Country area, which includes Kendall County, has been designated as a "Primary Groundwater Management Area" by the Texas Commission on Environmental Quality. Consistent with this designation, an applicant's current water consumption, projected consumption and proposals directed at saving and recycling water will be a critical factor in evaluating an application for tax abatement.

**SECTION 5. ALLOWABLE TAX ABATEMENT**

The allowable tax abatement shall be for a period of seven years and shall be based solely on the cost of capital improvements. Table 1 below establishes the level of capital improvements required and the abatement percentages to be allowed. No tax abatement shall exceed 50% of the appraised value of the improvements.

<b>Table 1</b>			
<b>Standard 7-Year Tax Abatement</b>			
<b>Minimum Capital Cost of the Projected Improvements</b>		<b>Eligible Abatement</b>	
<b>New Business</b>	<b>Expansion of Existing Business</b>	<b>Years</b>	<b>Percentage</b>
\$5,000,000	\$2,500,000	1-3	50%
		4-5	40%
		6-7	25%

**SECTION 6. APPLICATION PROCEDURES**

- a. The applicant shall submit an application to the office of the County Judge providing the following information:
  - (1) Name of the enterprise seeking tax abatement, identifying whether the entity is a sole proprietorship, corporation, or partnership; the identity of the owners, (or if a public corporation, the names of the President and Secretary of the corporation); the principal office of the enterprise and the location in Kendall County where the enterprise does business or is planning to locate a business; and the primary business activities of the entity seeking tax abatement;
  - (2) a general description of the project to be undertaken, including overall project costs;
  - (3) a descriptive list of the proposed construction and/or improvements for which tax abatement is requested, including estimated costs for each item to be constructed or installed ;
  - (4) a map or plat with a property description indicating the location or proposed location of the proposed improvements;
  - (5) a copy of the current Kendall Appraisal District's appraisal of the subject property or the tax receipt for the prior year indicating the appraised value of the subject property and the tax number of the property; and

- (6) the guidelines and criteria under which the tax abatement is requested - \$5,000,000 or more for new construction or \$2,500,000 or more for expansion of an existing business.
- b. After determining that the application contains all of the necessary information, the County Judge shall forward the application and any accompanying documents to the County Attorney.
    - (1) The County Attorney shall review the application for completeness and may forward copies of the application to appropriate officers and staff of Kendall County, the City of Boerne and other affected entities for review and comments.
    - (2) After all comments and recommendations have been received, the County Attorney shall provide copies of the application and supporting documents to the members of the Commissioners Court with comments and/or recommendations. (Note: The County Attorney may also return the application to the applicant for additional information, if necessary.)
  - c. After the County Attorney has provided copies of the application to the members of the Commissioners Court, the County Judge shall place the application on the agenda of the next meeting of the Commissioners Court for consideration and action. If permitted by the Open Meetings Act, some of the deliberation concerning the application may be discussed in executive session. In order to enter into a tax abatement agreement, the Commissioners Court of Kendall County must find that the terms of the proposed agreement meet the guidelines and criteria set out herein and that:
    - (1) there will be no adverse effect on the provision of County's services to the citizens of the county as the result of the granting of the tax abatement; and
    - (2) the planned use of the property will not constitute a hazard to public health, safety, or morals (Note: Tax abatement is not available to projects wherein the primary purpose of the business is serving alcoholic beverages or where a sexually oriented business is involved.); and
    - (3) there will be no adverse effect on the financial condition of the county as the result of the granting of the tax abatement.
  - d. If the Commissioners Court determine that the application has merit, the commissioners Court may approve the application for tax abatement as submitted or as modified by the court and authorize the County Attorney to prepare an abatement agreement consistent with the court's determination.

## **SECTION 7. TAX ABATEMENT AGREEMENT**

- a. After approval of an application for tax abatement by the Commissioners Court, the County Attorney shall prepare an agreement with the applicant that shall include the following:
  - (1) a description of the proposed improvements and an estimate of the total cost;
  - (2) the appraised value of the subject property without the proposed improvements - the base year value;

- (3) the projected value of the property with the improvements;
  - (4) the abatement schedule, including the commencement date of abatement and the termination date of abatement;
  - (5) the proposed construction/modernization time schedule;
  - (6) a provision that the applicant will provide access to and authorize inspection by county officers and/or employees to insure that the improvements are being made according to the conditions and specifications of the agreement;
  - (7) the proposed use of the facility and a provision limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the reinvestment zone during the time that property tax abatements are in effect;
  - (8) a provision for recapturing property tax revenue lost as a result of the agreement if the applicant fails to make the improvements as provided by the agreement or otherwise violates the terms of the agreement;
  - (9) a requirement that the applicant certify annually to the Commissioners Court that the applicant is in full compliance with the agreement;
  - (10) a provision that the Commissioners Court may cancel or modify the agreement if the applicant fails to comply with the agreement;
  - (11) as an attachment, a map or approved plat of the a subject property and a property description; and
  - (12) usual contractual terms and conditions required for uniformity or by state law.
- b. The County Attorney shall provide the tax abatement agreement to the applicant for review and execution. Any tax abatement agreement not finalized within thirty (30) calendar days after being provided to the applicant shall expire and the court's approval of tax abatement shall be rescinded.

#### **SECTION 8. DEFAULT AND RECAPTURE**

- a. In the event of default of any term or condition of the agreement by the applicant or the applicant's successor or assign of the applicant, the Commissioners Court shall have the right to terminate the agreement and cease the abatement of taxes. Taxes based on the appraised value of the subject property with improvements will be due and payable for the year in which the agreement is terminated.
- b. In the event that the facility is completed and begins producing products or services, but subsequently ceases to produce products or services for any reason, (except for acts of God, war, riot, strike or natural catastrophe) for a period of one year during the abatement period, then the agreement shall terminate and no amount of taxes shall be abated for any calendar year during which the facility does not produce goods and services.

- c. In the event that the applicant fails to pay ad valorem taxes owed to Kendall County or any other taxing entity located in the county when due, or violates any of the terms or conditions of the agreement; or is in default with any other county-sponsored program; then the county shall have the right to terminate the tax abatement agreement, in which event, taxes based on the full value of the subject property with all improvements shall be immediately due and payable, including any amount of taxes abated during the calendar year in which the termination occurs and any amount of taxes abated during prior years of the agreement.
- d. In the event that the applicant, during the abatement period and for a period of four years following the abatement period, ceases to operate the facility for which abatement was granted, or moves the facility for which abatement was granted to a location outside of Kendall County, the Commissioners Court shall have the right to capture taxes abated during any previous years.

#### **SECTION 9. GENERAL ADMINISTRATION**

- a. Not later than the seventh day before the Commissioners Court enters into an agreement, the County Attorney shall deliver to the presiding officer of the governing body of each other taxing unit in Kendall County a written notice that the Commissioners Court intends to enter into the agreement.
- b. Following adoption of this Resolution, a copy of the Resolution shall be provided to the Chief Appraiser of the Kendall Appraisal District and to the presiding officer of the governing body of each other taxing unit in Kendall County.
- c. Following approval of a tax abatement agreement and execution of such agreement by the county and the applicant, a copy of the agreement shall be provided to the Chief Appraiser of the Kendall Appraisal District.
- d. The County Attorney shall retain administrative responsibility and control over all tax abatement agreements entered into by Kendall County.

#### **SECTION 10. ASSIGNMENT**

There shall be no assignment of tax abatement agreements unless such assignment is approved by the Commissioners Court.

#### **SECTION 11. SUNSET PROVISION**

- a. These guidelines and criteria are affective upon the date of their adoption and will remain in force for two years from the date of adoption. Prior to expiration of such two-year period, the Commissioners Court shall review the guidelines and criteria and either adopt the guidelines and criteria by resolution for another two-year period, adopt a resolution adopting revised guidelines and criteria, or terminate the tax abatement policy.
- b. During the two-year period following adoption of these guidelines and criteria, the guidelines and criteria may be amended or repealed only by a vote of three-fourths of the members of the Commissioners Court.

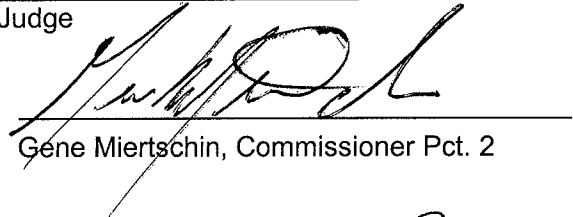
ADOPTED THIS THE 26<sup>th</sup> day of May 2009, by the Commissioners Court  
of Kendall County, Texas.



Gaylan Schroeder, County Judge



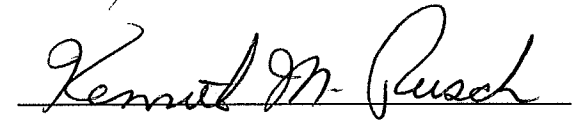
Ann Reissig, Commissioner Pct. 1



Gene Miertschin, Commissioner Pct. 2



Darrel Lux, Commissioner Pct. 3



Kenneth Rusch, Commissioner Pct. 4

Attest:   
Darlene Herrin, County Clerk