

Chapter 312: Property Tax Abatements

The Issue

Cities, counties, and special districts often use tax abatements to attract new businesses and keep existing ones. According to a Texas Comptroller report, in 2018 there were 780 reported active abatements.

The Texas Legislature authorizes local governments to administer property tax abatements under Chapter 312 of the Tax Code, which was renewed in 2019 through September 1, 2029. The 86th Legislature added several transparency requirements to the renewal.

In order to offer tax abatements under Chapter 312, a local government must first pass a resolution to “opt into” the tax abatement and then pass a set of guidelines for their tax abatement policy, which in turn must be renewed every 2 years. These guidelines are allowed to be as broad as the local government desires, ensuring a great deal of flexibility on what kind of abatements may be offered. Since September 1, 2019, taxing units that maintain a website must post online the current guidelines and criteria governing their tax abatement agreements. Most importantly, before a taxing unit can adopt, amend, repeal, or renew such guidelines and criteria, it must now hold a public hearing during which the public can be heard on such move from their taxing unit.

Tax abatements are only able to be offered in a “reinvestment zone,” which may encompass a number of properties. However, these boundaries are often drawn to only include the property of a single private entity for which an abatement is being sought. A Chapter 312 abatement may last up to 10 years in duration and must be conditioned upon improvements being made to the property. Tax abatements are only valid for increases in the value of the property and cannot include existing value of the property prior to improvement.

For example, let's say a city decides to enact a tax abatement agreement on a particular property in order to encourage a large out-of-town developer to purchase the property and develop it. The city must have previously opted into tax abatements and must also maintain current tax abatement guidelines. The agreement entered into with the developer might look something like this: abatement of 90% of new taxable value the first year, 80% the second year, 70% the third year, and so on until the property is taxed at full value in year 10 of the agreement.

To make the process more transparent, the 86th Legislature required that taxing units give a 30-day public notice of a meeting during which a taxing unit plans to consider the approval of a tax abatement agreement. The notice must include the names of the property owner and the applicant for the agreement, the name and location of the relevant reinvestment zone, and a general description of the nature and costs of the improvements or repairs included in the agreement.

Finally, the chief appraiser of a taxing unit that enters into such tax abatement agreements must now report to the Comptroller the appraised value of the properties that were subject to such agreements the first 3 years after the agreements have expired. This provision will allow the Comptroller and taxpayers to have better visibility on the real benefits, if any, of these tax agreements.

Tax abatements may owe some of their popularity to the common perception that they have no downside and cost taxpayers nothing. Because tax abatements only abate property taxes for improvements on top of existing property value, it may appear to policymakers that the tax abatements are leading to improvements and capturing some value that otherwise would not exist. Put another way, the perception is that abatements are “free”—free to taxpayers and free to the local government.

In spite of this perception, tax abatements have many downsides that are hidden from local officials deciding whether or not to use them, and from the citizens they represent.

First among these is the opportunity cost of tax abatements to attract a particular kind of development to a particular property or properties. By removing the property from the market via targeted abatement strategy to incentivize a firm to build, the local government is in essence declaring that the use of the property is in fact the highest value use. Yet there is no way to measure what the potential highest value of a property is. What can be known is that by choosing a particular use via political considerations as opposed to market-based means, the city, county, or special district offering the abatement is shutting the door of opportunity for potential higher value uses in the future. Governments do not generally distribute resources more efficiently than the market.

Further, a burden shift occurs with properties benefiting from abatements, which may also be seen as a short-run subsidy. The beneficiary property may not pay the share of taxes needed to cover the services it uses because of the abatement.

It is this burden shift that may be overlooked by local officials eager to attract new businesses to their community. Ultimately, every property under the jurisdiction of a local government has a cost associated with it to cover the essential public safety, transportation, and other governmental functions. As the population and investment in a community grows, governments usually respond by expanding their services to accommodate the new growth. Thus, every taxpayer can be said to bear their “share” of the local government's revenue stream.

Finally, the Texas Open Meetings Act and the Texas Public Information Act exempt discussions and information of economic development matters involving negotiations with business prospects from some of their requirements, meaning that most of the deliberations regarding tax abatements are done behind closed

doors. This provides for a less-than-ideal environment that shuts taxpayers out of much of the process.

The Facts

- There were more than 700 active tax abatements agreements in 2018.
- Despite added transparency to the application process for Chapter 312 tax abatements during the last legislative session, taxpayers remain mostly in the dark regarding negotiations between their taxing units and businesses looking to benefit from abatements.
- While the potential benefits of tax abatements are often highlighted by their supporters and beneficiaries, their opportunity cost is rarely considered.

Recommendations

- Require that Chapter 312 agreements include the necessary creation of at least some jobs, mirroring Chapter 313 requirements without the possibility for taxing units to waive the requirement.
- Require that local governments maintain on the entity's website active economic development agreements that are accessible to all.
- Consider restricting or repealing Section 551.087 of the Texas Open Meetings Act and Section 552.131 of the Texas Public Information Act.
- Allow Chapter 312 property tax abatements to expire in 2029.

Resources

[*Purpose-Driven Economic Development A Guide to Reforming Chapters 312 and 313*](#) by Jess Fields, Texas Public Policy Foundation (May 2019).

[*Biennial Registries of Reinvestment Zones for Tax Abatements and Tax Increment Financing 2018*](#), Texas Comptroller of Public Accounts (Dec. 2018).

[*"Property Tax Abatement Act, Tax Code Chapter 312 Overview,"*](#) Comptroller.Texas.gov (Accessed June 10, 2020).

[*HB 3143*](#). Enrolled. 86th Texas Legislature. Regular (2019).