



The Tax Abatement Process – County Auditor’s Conference

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Basic Definitions

- Real property abatement
 - A property tax deduction from the assessed valuation granted by the designating body for the construction of a new structure or a rehabilitation of property in an ERA. (It does not include land.)



Real Property Abatements

- Eligible property includes construction of new structures, additions to existing structures, or betterments if it increases the assessed value.
- Taxpayers need to understand that their real property abatement will be based on the increase to their assessed value because of that project and not the actual cost from their books for the building project.



Frequently Asked Question

- Question: Can an asphalt parking lot qualify as eligible property?
- Answer: IC 6-1.1-12.1-1 (6) defines the term “rehabilitation” and includes language on betterments of the property. A parking lot would qualify as a betterment to the land.



Basic Definitions

- Economic Revitalization Area (ERA)
 - An area that is within the corporate limits of a city, town, or county that has become undesirable for, or impossible of, normal development and occupancy.
- It is a legal description for a piece of real estate.
- If ownership transfers, the designation transfers with the property. IC 6-1.1-12.1-5(g)



Basic Definitions

- Designating body
 - Also called a “governing body.”
 - For a county without a consolidated city, the designating body is the fiscal body of the city, town, or county.
 - For a consolidated city, the designating body is the metropolitan redevelopment commission.



Steps in Establishing an Economic Revitalization Area



Establishing An ERA

- Designating body can designate an ERA on its own or upon application of a property owner.
- If a designating body works on its own, no Statement of Benefits (SB-1) is necessary for a preliminary designation; however one will be required later when finalizing the details for a new business that desires to locate there.
- If the property owner asks for an ERA designation, a Form SB-1 must be filed.



Establishing An ERA - Fees

- Designating body may impose a fee for filing a deduction application. This one-time fee may be sufficient to defray actual processing and administrative costs. IC 6-1.1-12.1-2(h)
- Designating body may also impose an annual fee with the consent of the property owner.
- This fee is based on a percentage not to exceed 15% of the tax savings and is used to promote economic development. IC 6-1.1-12.1-14



Abatements Versus Tax Caps

- Question: Is it possible that the constitutional tax cap could override the tax abatement deduction on a company's tax bill?
- Answer: Yes, the calculation of the tax cap on the tax bill is separate from the calculation of the assessed value less any deductions on the tax bill. The amount actually due on the tax bill reflects the lesser of these two numbers.



Statement of Benefits (Form SB-1/Real Property)

- The Form SB-1 provides information on the proposed project and is an estimate of costs, jobs created, etc. This is done before the project begins.
- A taxpayer could have a single Form SB-1 or multiple Form SB-1's which could cover several projects over a number of years.



Statement of Benefits (Form SB-1/Real Property)

- The reason why the Form SB-1/Real Property is so important is because the designating body must determine if the totality of the benefits (number of jobs, salaries, & other benefits) is sufficient to justify the deduction.

IC 6-1.1-12.1-3



Statement of Benefits (Form SB-1/Real Property)

- Page 1 is completed and signed by the taxpayer.
- Page 2 is completed and signed by the designating body. It sets the terms, limits, & guidelines for the abatement.



Abatement Deduction Schedule IC 6-1.1-12.1-17

- Sec. 17. (a) A designating body may provide to a business that is established in or relocated to a revitalization area and that receives a deduction under section 4 or 4.5 of this chapter an abatement schedule based on the following factors:



Abatement Deduction Schedule IC 6-1.1-12.1-17

- (1) The total amount of the taxpayer's investment in real and personal property.
- (2) The number of new full-time equivalent jobs created.
- (3) The average wage of the new employees compared to the state minimum wage.
- (4) The infrastructure requirements for the taxpayer's investment.



Abatement Schedule IC 6-1.1-12.1-17 IC 6-1.1-12.1-17

- IC 6-1.1-12.1-17(b) For a statement of benefits (Form SB-1) approved after June 30, 2013, the designating body shall establish an abatement schedule for each deduction. An abatement schedule may not exceed ten (10) years.



Abatement Schedule IC 6-1.1-12.1-17

- IC 6-1.1-12.1-17 (c) For a statement of benefits (Form SB-1) approved before July 1, 2013, the abatement schedule approved for that particular taxpayer remains in effect until the terms of the resolution or Form SB-1 expire.



Unauthorized Facilities IC 6-1.1-12.1-3 (e)

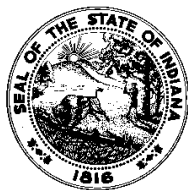
- The following facilities are not authorized to receive a deduction:
 - Golf courses; country clubs; massage parlors; tennis clubs; skating facilities; handball or racquetball facilities; hot tub facilities; suntan facilities; racetracks;
 - any facility that has a primary purpose of retail food and beverage, automobile sales and service, or other retail unless...



Unauthorized Facilities

IC 6-1.1-12.1-3 (e)

- ...unless an economic development target area is established. (IC 6-1.1-12.1-7)
- Residential facilities may not be approved unless it is multifamily of which at least 20% of the units are for low – moderate income individuals OR the facility is in an economic development target area OR it is designated as a residentially distressed area.
- Or a package liquor store.



Filing Requirements for Taxpayers on Tax Abatements

Filing Requirement Basics



Compliance with Statement of Benefits (Form CF-1)

- Form CF-1/Real Property must be filed with the designating body and the county auditor each year an abatement deduction is requested.
- Must be filed between March 1 and May 15 or the approved extension date.



Compliance with Statement of Benefits (Form CF-1)

- The major difference between the Form SB-1 and the Form CF-1 is that one is an estimate of the project before it begins and the other is a summary of the actual information after the project has been completed.
- The Form SB-1 structures the deduction and the Form CF-1 is used to request & approve the deduction.



Frequently Asked Question

- Question: Should the Form CF-1 be signed and approved by the designating body before the real property deduction is allowed?



Frequently Asked Question

- Answer: IC 6-1.1-12.1-5.9 (b) states that the designating body MAY determine whether the property owner is in substantial compliance within 45 days of receiving the form so it is possible that the Form CF-1 is never reviewed and signed by the designating body.



Frequently Asked Question

- Question: If a Form CF-1/Real Property is not filed by the taxpayer, who makes the decision that they are not in compliance...the county auditor or the designating body?



Frequently Asked Question

- Answer: There are two types of compliance with this question. The statutory requirement to submit the CF-1 and the process of approving the CF-1 once received. The county auditor has the authority to deny an abatement that is not in compliance with the statute and the designating body has the authority to approve or disapprove the CF-1 once received.



Frequently Asked Question

- Question: When a city expands its borders through the re-annexation process, how do you handle the abatements that were given while the company was in the county's jurisdiction but is now in the city's jurisdiction?



Frequently Asked Question

- Answer: First, the abatement continues and is not affected by the re-annexation. The ERA designation was granted by the appropriate designating body at the time of the designation. It is also important to understand that each assessment year (or deduction year) stands alone.



Frequently Asked Question

- Answer: This means that the appropriate designating body for a particular jurisdiction will process the Form CF-1's for that deduction year even if they did not approve the Form SB-1 and adopt the resolution. They would simply review the SB-1 and the CF-1 and determine if the company is still in compliance for the deduction year in question.



Frequently Asked Question

- Answer: Future abatement requests would go to the designating body of the jurisdiction that the company is located in. If the company desired to remain working with the county council as they had done in the past, they should be directed to the city council.



Timeframe for Real Property

- The Form 322/RE must be filed with the county auditor before May 10 or within 30 days of the mailing date of the Form 11 if mailed after April 10. IC 6-1.1-12.1-5



Frequently Asked Question

- Question: What if no Form 11 is given?
- Answer: IC 6-1.1-15-13 says that if no Form 11 is sent, the tax bill would then serve as first notice so the taxpayer would have 30 days after receiving the tax bill to file the Form 322/RE.



Frequently Asked Question

- Answer: This means that the deduction would be given after budgets were approved and tax rates were set so if it was a sizable deduction, there could be issues with shortfalls (or a loss of revenue to the local units).



Solving Problems That May Arise



Incomplete Filing

- What if the filing is not complete? For example, what if the Form SB-1 or CF-1 is missing?
- The county auditor could deny it or could send a request for the information and give 10 days to provide it. If not received, the claim for the deduction could then be denied.



Late Filing

- IC 6-1.1-12.1-5 states that if a taxpayer desires to obtain an abatement deduction, he must file a deduction application before May 10 or 30 days after the Form 11 is mailed, if the Form 11 is not given to the owner before April 10.
- A deduction application filed late should be denied immediately.



Waiver of Noncompliance

- The taxpayer could accept the loss of Year #1 of the abatement and claim it for Year #2 through the remainder of the abatement's term or...
- The taxpayer could request a waiver of non-compliance through the designating body in order to forgive the mistake.



Waiver of Noncompliance

- If the designating body wishes to waive non-compliance, they shall conduct a public hearing and then may adopt a resolution.
IC 6-1.1-12.1-11.3
- The decision to grant, deny, or partially grant a waiver of non-compliance rests on the shoulders of the designating body.



Waiver of Noncompliance

- IC 6-1.1-12.1-11.3 covers:
 - Failure to submit the Form SB-1 to the designating body before the hearing.
 - Failure to submit the Form SB-1 to the designating body before the project begins.
 - Failure to designate the ERA zone before the project begins.



Waiver of Noncompliance

- IC 6-1.1-12.1-11.3 covers:
 - Failure to make the required findings of fact before designating the area.
 - Failure to file a timely application.
 - Failure to file a complete application.
 - NOTE: It does not give the designating body the authority to grant abatements on assets that don't qualify.



Waiver of Noncompliance

- IC 6-1.1-12.1-9.5 covers:
 - Correction of clerical errors such as mathematical errors or omitted signatures.
 - The adoption of a waiver of non-compliance resolution is the remedy to correct these issues as well.



Frequently Asked Question

- Question: If the taxpayer fails to claim an abatement for the first three years of the ten year abatement cycle, could we begin the first year of the abatement cycle in the property's fourth year of being assessed?



Frequently Asked Question

- Answer: No, the tax abatement cycle begins when the new structure or rehabilitation of real property is first assessed. In this example, the taxpayer can claim the abatement in the fourth year of the ten year cycle or request a waiver of non-compliance from the designating body for the past unclaimed deductions.



Frequently Asked Question

- Question: But won't granting a waiver of non-compliance on unclaimed deductions create shortfalls?
- Answer: Yes, most likely shortfalls in the budget could be created so the designating body should consider the facts and their options before making a decision.



An Unclaimed Deduction, Waivers, & Amended Returns

- If a taxpayer fails to claim the abatement deduction in a timely manner, he could request a Waiver of Non-Compliance hearing after he receives his tax bill.
- To grant the waiver could mean a shortfall to the local units of government; however the designating body may feel that the taxpayer deserves the deduction.



Tax Abatements & TIF Areas

- IC 6-1.1-12.1-2(k) states that in addition to the other procedures required to approve an abatement if the property is located in an allocation area (or TIF area), the legislative body for that allocation area must also adopt a resolution that approves the Form SB-1.



Local Control

- There are many scenarios when it comes to dealing with tax abatement issues.
- The facts for each situation will need to be reviewed and discussed by the designating body who have the option of getting legal advice from their attorney.
- Tax abatements are given locally and local control prevails when resolving these issues.



Frequently Asked Question

- Question: What if I invest money in repairs to the building and the assessor determines that the assessed value should not increase because of it?
- Answer: The abatement deduction is based on the increase in assessed value so if there is no increase, there could be no deduction.



Real Property Abatements

- The annual recalculation of the deduction is done by the taxpayer for personal property while the assessor & the auditor work together to calculate the deduction for real property. This can become quite complex with layers of abatements (multi-year projects built in phases) combined with annual adjustments and general reassessments.



Real Property Abatements

- The Department recommends that the county auditor maintains a copy of the property record card (PRC) for each year that a taxpayer receives a deduction. Many times, the PRC contains the information necessary for the deduction to be calculated. If a question arises after reviewing the PRC, the auditor and the assessor can work together to determine the correct deduction.



Frequently Asked Question

- Question: How do you calculate an abatement deduction on a building that is assessed as partially complete one year and assessed as complete the next year?



Frequently Asked Question

- Answer: Since each year stands alone, the assessed value of the partially completed building would begin its abatement deduction cycle in that year with the additional assessed value from the completed building beginning its cycle in the following year. This means that you would have two deduction layers on the same building.



Frequently Asked Question

- Question: If a company moves out of a building in Year 3 of a ten-year abatement, can a new company move in and take over the previous company's abatement benefits?



Frequently Asked Question

- Answer: IC 6-1.1-12.1-5(g) states an abatement is not affected by a change of ownership if the new owner continues to use the property in a manner that satisfies the designating body and if the new owner files a deduction application. The deduction would not restart at Year 1.



Real Property Abatements

- The taxpayer has appeal rights if there are questions concerning the correct deduction amount. IC 6-1.1-12.1-5 (j)
- The designating body can consider adopting a waiver of non-compliance resolution to resolve certain issues while other issues are not covered under those provisions and would have to be addressed through the appeals process.



Annual Publication of Legal Ad

- IC 6-1.1-12.1-8 requires the county auditor to publish a legal ad in the newspaper by December 31 each year.
- This statute provides the information that must be included in it.
- A copy of this legal ad must be provided to the Department by December 31 through Gateway.



New Legislation

- Effective July 1, 2015, IC 6-1.1-12.1-18 allows the designating body to grant an enhanced abatement for up to twenty (20) years on certain business personal property. This option is for personal property only so county auditors should not be affected with this new legislation on real property abatements.



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