HANDBOOK
Ohio County Commissioners
Published by: County Commissioners Association of Ohio

209 East State Street • Columbus, Ohio 43215-4309
Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

CHAPTER 15

TAX ABATEMENT

Last Revision

January 2016

STRUCTURE OF TAX ABATEMENT CHAPTER

The structure of the Tax Abatement Chapter of the *Handbook* is divided into five parts as follows:

- Part 1 – Introductory Material on Tax Abatement
- Part 2 – Community Reinvestment Area Tax Abatements
- Part 3 – Enterprise Zone Tax Exemptions
- Part 4 – Tax Increment Financing
- Part 5 – Other Tax Abatements and Incentives

QUICK REFERENCE GUIDE TO PART 1 OF CHAPTER 15

INTRODUCTORY MATERIAL ON TAX ABATEMENT

Topic	Page	Topic	Page
General Information on Tax Abatement	4	Magnitude of Tax Abatement in Ohio	7
Constitutional Basis for Tax Abatement	5	Required Disclosure of Tax Abatement Information on Financial Statements	8

QUICK REFERENCE GUIDE TO PART 2 OF CHAPTER 15
COMMUNITY REINVESTMENT AREA (CRA) TAX ABATEMENTS

QUICK REFERENCE GUIDE TO PART 3 OF CHAPTER 15
ENTERPRISE ZONE TAX EXEMPTIONS

QUICK REFERENCE GUIDE TO PART 4 OF CHAPTER 15

TAX INCREMENT FINANCING (TIF)

QUICK REFERENCE GUIDE TO PART 5 OF CHAPTER 15

OTHER TAX ABATEMENTS AND INCENTIVES

PART 1

INTRODUCTORY MATERIAL ON TAX ABATEMENT

15.01 GENERAL INFORMATION ON TAX ABATEMENT

Property tax abatement is a tool which has been provided to counties, townships and municipalities to promote economic development, promote urban renewal and revitalization activities and encourage the retention and creation of jobs. The General Assembly has authorized five major local tax abatement programs, three of which are available for use by county commissioners. The five types of tax abatement authority granted to local government by the Legislature are summarized in the following table:

Type of Tax Abatement	Eligible Local Government	ORC Sections
Community Reinvestment Area (CRA) Abatements	County Municipality	3735.65-3735.70 5709.82 5709.83 5709.85
Enterprise Zone (EZ) Abatements	County Municipality	5709.61-5709.72 5709.82 5709.83 5709.85
Tax Increment Financing (TIF)	County Municipality Township	307.081; 307.082; 5709.77-5709.82 5709.40-5709.43 5709.73-5709.75
Municipal Urban Renewal Abatements	Municipality	ORC Chapter 725
Community Urban Redevelopment Corporation Abatements	Municipality	ORC Chapter 1728

Tax abatement can be a controversial and contentious issue at the local level. Existing local business and industry may feel that public incentives are being used to create additional competition, especially where local businesses have contributed to the community for a long period of time. Tax abatements can also create intergovernmental conflicts where one political subdivision may be a beneficiary at the expense of the county or one of its neighboring subdivisions. This is especially true in the case of lost revenue for county human service levy funded agencies.

One argument in favor of tax abatement is that no political subdivision really loses revenue with new tax abatements because the existing tax base is not reduced, only the increase in value that results from future development. On the other hand, given the fact that tax reduction factors reduce effective millage rates, the primary way political subdivisions that rely on the property tax can achieve revenue growth is from new development or improvements to existing property.

This is particularly true in the case of school districts and various county levy funded agencies which rely heavily on property taxes. In the case of counties and municipalities, property tax abatements may have a minimal impact on overall general fund revenue given that the abatement may encourage economic activity that could yield significantly more revenue from county sales taxes and municipal income taxes than is lost from the potential growth in property tax revenue.

While this Chapter of the *Handbook* will focus on tax abatement from the perspective of county commissioners, it will include selected information on municipal and township tax abatement authority and some special provisions related to these other political subdivisions that will impact counties or county levy funded agencies.

As it relates to the procedures specified in this Chapter, effort has been taken to tailor the provisions of Ohio law written to apply to all political subdivisions to the county context with the commissioners as the legislative authority. In the case of charter counties where references are made to the board of commissioners or the commissioners, this power generally rests with county council.

15.02 CONSTITUTIONAL BASIS FOR TAX ABATEMENT

Prior to 1965, property exempt from taxation had been generally interpreted by the courts to allow exemptions only for the five specific exempt types of property specified in the Constitution:

1. Cemeteries

2. Public Schools

3. Houses used exclusively for public worship

4. Institutions used exclusively for charitable purposes, and

5. Public property used exclusively for public purposes.

Starting in 1851, the Ohio Supreme Court decided over 120 cases dealing with most of these constitutionally exempt types of property. While the cases addressed a wide variety of specific fact situations, a significant body of case law developed which was used by courts and administrative agencies, such as the Board of Tax Appeals, when ruling on exemption applications. Many questions on exempt property had been resolved given the large body of case law. This resulted in what many thought was a "uniform and consistent policy with respect to real property tax exemptions."[1]

Before 1965, the Constitution and laws had generally been interpreted . . ."to require, without exception, that property be used for an exempt purpose in order to be exempt from taxation."[2] This precedent was reversed, as was much of the extensive body of case law, in the 1965 case of *Dennison University v. Board of Tax Appeals* (2 Ohio St. 2d 17).

Article XII, Section 2 of the Ohio Constitution provides that:

> Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

In interpreting this clause the court found that because of a Constitutional Amendment in 1931, that the General Assembly has the power to determine exemptions from property taxation. This power limited only by the provisions of Article I of the Constitution, the Bill of Rights, which includes such provisions as equal protection under the law.

The Court ruled that the 1931 Amendment had removed the restrictions placed on the General Assembly when this section was last amended in 1912. The court's holding appears to be the result of a 1931 amendment to Article XII, section 2 of Ohio's Constitution which removed the restrictions that the 1912 amendment had placed on the General Assembly's power to grant exemptions.

As it relates specifically to tax exemptions delegated to local governments through statutes, the Supreme Court affirmed this authority in a City of Dayton case dealing with

[1] Coriell, Karen Bond. *Chaos, Contradiction and Confusion: Ohio's Real Property Tax Exemptions.* Ohio State Law Journal. Winter, 1992 (53 Ohio St. L. J. 265)
[2] Ibid.

tax exemptions under ORC Chapter 725, the Municipal Urban Renewal Tax Abatement Act (*City of Dayton v Cloud*, (30 Ohio St. 2d 295).

15.03 THE MAGNITUDE OF TAX ABATEMENT IN OHIO

Tax abatement is considered as a type of tax exempt property as explained in the previous section. For example, in CY 2011, the assessed value of all real property in Ohio was $276.4 billion. Of this total value, however, only $231.3 billion of the assessed real property value was taxable. Approximately $45.1 billion, or 16.3% of total assessed real property value, was exempt from taxation in 2011.

Also, refer to Exhibit 14-10 in Chapter 14 for additional information on the amount of tax exempt real property by class or type of exemption in 2009. What is evident from this table is that the amount of tax exempt property resulting from tax abatements was $9.4 billion of the total exempt property from all classes of $45 billion. This is equal to over 21% of all exempt property. In comparison with other exempt categories, the amount of exempt property attributable to tax abatement is nearly equal to all exempt property owned by counties ($2.6 billion) and municipalities ($6.9 billion) combined.

The following table shows that of the total of $9.9 billion in assessed value reduced as a result of tax abatements in 2014, $5.0 billion, or 51% of the total is attributable to TIF's. The next largest amount of assessed value reduction ($2.9 billion) is from CRA abatements, or 29% of total tax abated property.

Type of Tax Abatement	Value of Tax Abatements (in dollars)	% of Total Tax Abatements
Tax Increment Financing	5.1 billion	50.5
Community Reinvestment Area	2.9 billion	29.3
Other—Primarily Enterprise Zones	1.6 billion	16.2
Municipal Urban Renewal	203.7 million	2.1
Community Urban Redevelopment Corporation	92.9 million	.9
TOTALS	9.9 billion	99.0

15.031 REQUIRED DISCLOSURE OF TAX ABATEMENT INFORMATION ON FINANCIAL STATEMENTS

One of the more recent developments concerning tax abatements involves new requirements that governments, including counties, must disclose information on tax abatements on their financial statements prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) issued final guidance that requires state and local governments to disclose information about tax abatement agreements. The new disclosure requirements are contained in GASB Statement #77, *Tax Abatement Disclosures*. The requirements of this Statement are effective for financial statements for periods beginning after December 15, 2015. The purpose of Statement #77 is to provide financial statement users with essential information about these agreements and the impact they have on a government's finances.

GASB noted that governments often agree to abate or reduce the taxes of individuals and entities to promote economic development, job growth, redevelopment of blighted or underdeveloped areas and other actions that are beneficial to the government or its citizens. According to GASB, tax abatements may have a substantial effect on the financial health and ability of state and local governments to raise revenue. GASB also believes that current financial statements make it difficult to determine the extent and nature of the impact of tax abatements.

The new Statement #77 addresses two general types of tax abatement that must be disclosed separately on financial statements. In the case of counties, the two general types of tax abatement which must be separately disclosed on financial statements are those that are granted by the county and those that are granted by other governments.

The new disclosures on county financial statements about tax abatements granted by or agreements entered into by the county include:

1. Brief descriptive information such as the authority under which the tax abatement is granted, eligibility criteria and the mechanism by which taxes are abated

2. Tax being abated

3. Dollar amount of taxes abated

4. Provisions for recapturing abated taxes

5. Types of commitments made by tax abatement recipients

6. Other commitments made by a government in tax abatement agreements, such as to build infrastructure assets

In the case where the tax abatements are granted by or agreements entered into by other governments, county financial statements must include the following disclosures:

1. Name of the other government granting the tax abatement

2. Tax being abated

3. Dollar amount of the county's taxes abated

Because these requirements are so new very little guidance is yet available on compliance or how to obtain the information required in the disclosures. The National Association of Counties (NACo) and other major local government associations were opposed to the new requirements. The primary point of opposition centered on the degree of difficulty many governments will face complying with the new reporting standards due to the sheer volume of information required. There also is concern that the enhanced information will provide a misleading impression of the overall impact of a government's tax abatement programs by not taking into account the anticipated return on investment.

PART 2

COMMUNITY REINVESTMENT AREA (CRA) TAX ABATEMENTS

15.04 GENERAL INFORMATION ON CRA'S

The Community Reinvestment Area (CRA) tax abatement program was first authorized in 1977 and was the first tax abatement authority granted to county commissioners. Community Reinvestment Areas are specific geographic areas in the unincorporated area of the county and specific areas of a city or village where property owners can receive real property tax exemptions for making real property improvements.

The areas designated by the county or municipality are areas where investment has proven difficult. The purpose of the CRA is to encourage revitalization of the existing housing and building stock and the construction of new structures. In order to qualify there must be a minimum of two structures within the area and one of the structures must be a residence at the time of the establishment of the CRA (See OAG 87-047). The program can provide real property tax benefits on renovations and new construction of residential, commercial and industrial buildings. The county authority is limited to establishing CRA's in the unincorporated area of one or more townships. Township trustees do not have the authority to establish CRA's.

Significant changes to the CRA law took place in 1994 resulting in two types of CRA's, those established before July, 1994 ("Pre-1994 CRA's") and those established after this date (“Post-1994 CRA’s”). Most of the legal provisions for Pre-1994 CRA’s were grandfathered when the law was amended.

15.041 PRE-1994 CRA’s

Pre-1994 CRA’s were established directly by counties or municipalities and were not subject to the current requirement that Post-1994 CRA’s be confirmed by the Director of the Ohio Development Services Agency (ODSA).

For Pre-1994 CRA’s the county does not possess as much flexibility as it has for Post-1994 CRA’s. For example, a Pre-1994 CRA may not restrict the residential, commercial or industrial nature of the projects that are eligible for the tax exemption, whereas these types of restrictions are authorized for Post-1994 CRA’s. Likewise, the amount of tax exemption must be at the 100% level for Pre-1994 CRA’s; Post-1994 CRA’s may grant tax exemptions of less than 100%. Also, for Pre-1994 CRA’s require the housing officer to give a 14 day notice to school boards prior to certifying a tax exemption application to the county auditor.

Pre-1994 CRA’s must establish the maximum term for an exemption for all classes of property within the time limits specified in the statute in the resolution establishing the CRA. In the case of Post-1994 CRA’s, the term for commercial and industrial exemptions is subject to negotiation with the owner within the maximum time limits allowed under the law, although a maximum term for residential property must still be specified in the resolution establishing the CRA.

Pre-1994 CRA’s can be amended twice and still operate under the old rules. However, no amendment may extend the life of an old CRA by more than five years. Further amendments require the area to be re-established and confirmed by ODSA. The re-established area would then operate under Post-1994 rules. For additional information on amendments to a CRA refer to ORC Section 3735.661.

15.042 PRE AND POST-1994 EXEMPTION LEVELS AND TERM OF EXEMPTION

The law and certain grandfathered provisions of the former law specify the terms and conditions on the percentage of real property tax exemption that is available and the term or length of time an exemption may be granted. The following table shows the maximum exemption percentage and term of an exemption, and the ORC Section for the various types of properties for which real property tax exemptions may be granted for properties in a CRA. Note that the ORC Section number specified in this table must be specified in documents submitted to the county auditor to finalize any exemption granted.

Type of Exemption	% of Real Property Tax Exemption		Term of Exemption		ORC Section
	Pre-1994	Post-1994	Pre-1994	Post-1994	
Residential Remodeling; 2 units or less; $2,500 minimum	Must be 100%	Up to 100%	Up to 10 years as specified in the resolution establishing the CRA	Up to 10 years as specified in the resolution establishing the CRA	[3735.67(D)(1)](3735.67(D)(1))
Residential Remodeling; more than 2 units; $5,000 minimum	Must be 100%	Up to 100%	Up to 12 years as specified in the resolution establishing the CRA	Up to 12 years as specified in the resolution establishing the CRA	[3735.67(D)(2)](3735.67(D)(2))
New Residential Construction	Must be 100%	Up to 100%	Up to 15 years as specified in the resolution establishing the CRA	Up to 15 years as specified in the resolution establishing the CRA	[3735.67(D)(4)](3735.67(D)(4))
Commercial & Industrial Remodeling	Must be 100%	Up to 100%	Up to 12 years as specified in the resolution establishing the CRA	Up to 12 years as negotiated in a CRA agreement	[3735.67(D)(2)](3735.67(D)(2))
New Commercial & Industrial	Must be 100%	Up to 100%	Up to 15 years as specified in the resolution establishing the CRA	Up to 15 years as negotiated in a CRA agreement	[3735.67(D)(4)](3735.67(D)(4))

It should be noted that for certain residential structures the term of the exemption may be extended by an additional 10 years. To qualify for the extension, ORC Section 3735.67(D)(4) requires the structure to be one of historical or architectural significance. In order to extend the period of exemption for such a structure action must be taken by the commissioners and the structure must be certified as a historic structure; be subject to a federal historic preservation tax credits; and, units in the structure must have been leased to individual tenants for at least five consecutive years.

15.043 ESTABLISHING A CRA

To establish a Community Reinvestment Area the board of county commissioners must adopt a resolution that describes the boundaries of the CRA. The resolution must also find that the area included is an area where "housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged."

In order to make this finding in the resolution a housing survey must be conducted prior to the adoption of the resolution. The resolution should include the conditions shown in the survey that allows the commissioners to make the finding specified in the preceding paragraph. Essentially what the housing survey should show is that structures are not well maintained which might include evidence of poor roofing, siding falling off, and porches coming off houses. Once the housing survey is completed the county should prepare a narrative describing the conditions in the area and include photos and addresses of the structures that need repairs for submission to the Ohio Development Services Agency (ODSA).

The resolution may specify whether new construction or remodeling, or both, will be eligible for an exemption from real property taxes. The resolution also may specify whether commercial, industrial, or residential structures will be eligible for exemption. If the resolution does not include such a specification, then all classes of property are eligible for exemption when either new construction or remodeling occurs.

If the resolution allows residential property to be exempt from taxation, the resolution must include a percentage of the assessed value that will be exempted. This percent can be up to 100% and is the percent that will apply to all residential construction or remodeling. Likewise the resolution must include the number of years residential property may be exempt from taxation up to the maximums allowed by law as specified in the table in the previous section of this Chapter.

The resolution may also include a stipulation that requires the classification of structures or remodeling eligible for tax exemption must comply with any county or township zoning regulations in effect. In the event this provision is not included in the resolution, this provision still applies as a matter of state law.

The resolution may also require the payment of an annual administrative fee to the county. This fee will be discussed in greater detail later in this Chapter.

As it relates to multi-family residential uses, the resolution may specify if the construction or remodeling of such uses is a commercial or residential class for the purposes of tax exemption. If the resolution is silent on this issue it will be determined by applicable provisions of county or township zoning.

If the commissioners create a CRA and all or a part of the land is later annexed to a municipality new tax exemptions cannot be granted to the annexed territory. The administration of previously granted tax exemptions, however, remains the responsibility of the county (OAG 96-030).

The following outline provides a procedural checklist for establishing a CRA program.

1. Housing survey completed that documents criteria met to establish CRA

2. Prepare narrative describing conditions in the area and include photos and addresses of structures in need of repairs.

3. Make decisions necessary to prepare a resolution
    a. Eligibility criteria
        i. New construction
        ii. Remodeling
        iii. Both
        iv. Commercial
        v. Industrial
        vi. Renovation (% of assesses value examples and number of years)
    b. ID stipulations for complying with zoning (optional)
    c. Annual administrative fee
4. Make important implementation decisions
    a. ID housing officer
    b. Decide appointments to CRA Housing Council
    c. Make sure tax incentive review council is in place
    d. ID process for HO to accept CRA agreements from eligible owners
5. Adopt resolution creating CRA
6. Publish resolution in newspaper once a week for 2 weeks
7. Petition ODSA Director to confirm findings in resolution that CRA criteria are met within 15 days of adopting resolution petition to include:
    a. Copy of resolution
    b. Detailed map showing boundaries and zoning restrictions applicable to CRA
    c. Written description of area

d. Narrative describing conditions in area that summarizes housing survey results

e. Photos of structures in need of repair (optional, but recommended)

15.044 PUBLICATION OF RESOLUTION IN NEWSPAPER

Upon the adoption of the resolution establishing the CRA, the entire resolution must be published in a newspaper of general circulation. It must be published once a week for two consecutive weeks, or as provided for in ORC Section 7.16. This section permits, as an alternative, for the entire resolution to be published the first time and a second abbreviated public notice, provided the first notice is published on the state public notice website and other requirements of this section are met. For additional information, refer to County Advisory Bulletin 2012-01, *Public Notice Reform.*

15.045 DESIGNATION AND RESPONSIBILITIES OF HOUSING OFFICER

The commissioners must designate a housing officer for each CRA which may be an individual or a county agency. The individual or agency may be assigned to more than one CRA in the county. The housing officer can be named in the resolution establishing a CRA, or by other resolution of the commissioners, however, this is generally done in the resolution establishing the CRA. It is the responsibility of the housing officer to administer ORC Sections 3735.65-3735.69.

The housing officer has the general administrative responsibility for the CRA which includes the following functions:

1. To accept and act on applications from property owners within the CRA for tax exemption. This includes the responsibility to assure that the application is in conformance with the resolution establishing the CRA and with any agreement between commercial and industrial property owners and the board of county commissioners.

2. To certify applications for tax exemption to the county auditor.

3. To accept and act on complaints challenging that exempted property in a CRA is no longer entitled to the exemption. These complaints can be filed by any person who is authorized to file complaints with the county board of revision. Such complaints must be filed by December 31 of the tax year. If the housing officer finds that the property is no longer eligible for exemption, the county auditor is then notified (ORC 3735.67(E)).

4. To provide required notices to school districts when required (ORC 5709.83).

5. To make annual inspections of new and remodeled structures which have been exempted from taxation in the CRA. If the inspection reveals that the property has not been properly maintained or repaired, the tax exemption can be revoked and notice must be sent to the community reinvestment area housing council and the tax incentive review council (TIRC) (ORC 3735.68).

15.046 ESTABLISHMENT & RESPONSIBILITIES OF COMMUNITY REINVESTMENT AREA HOUSING COUNCIL

County commissioners must appoint a community reinvestment area housing council for each CRA that is established. The council includes seven members and members are appointed for three year terms. Each commissioner appoints two members; the county planning commission appoints two members; and, these five members appoint two other members.

Those members appointed by county commissioners must be from the CRA area. The law is silent on where the members appointed by the planning commission must reside, and it thus appears they can be from anywhere in the county. Likewise, the two members appointed by the other five members must reside in the county and may be from either the unincorporated area of the county or from a municipal corporation in the county even though the CRA can only include unincorporated property. In the event there are not adequate residents of the CRA willing to serve on the council consult with the prosecutor and refer to OAG Opinion 87-047 which allows the housing council to operate with fewer than the statutorily required number of members if it is impossible to meet the statutory requirement.

The council has the following primary responsibilities:

1. To make an annual inspection of properties within the CRA for which a property tax exemption has been granted.

2. To hear appeals from the housing officer pursuant to ORC Section 3735.70.

3. To submit a status report which summarizes activities and project for which an exemption has been granted to the ODSA. This report is due no later than March 31 each year.

15.047 ESTABLISHMENT AND RESPONSIBILITIES OF TAX INCENTIVE REVIEW COUNCIL (TIRC)

County commissioners must establish tax incentive review council that is responsible for reviewing CRA, enterprise zone agreements and TIF projects. Members of the tax incentive review council include:

1. Three members appointed by the board of county commissioners

2. Two members from each municipal corporation to which the instrument granting the tax exemption applies, appointed by the chief executive officer with the concurrence of the legislative authority of the respective municipal corporations

3. Two members of each township to which the instrument granting the tax exemption applies, appointed by the board of township trustees of the respective townships

4. The county auditor or the county auditor's designee, who serves as the chair

5. An individual appointed by the board of education of each city, local, exempted village, and joint vocational school district to which the instrument, such as a CRA agreement, granting the tax exemption applies

No fewer than two members must be residents of municipalities or townships to which the instrument granting the tax exemption applies. The county auditor serves as the chair of the council and meetings are at the call of the county auditor.

The TIRC is required to annually review all CRA agreements, other instruments granting tax abatement, and any other performance or audit reports the agreement may require to be submitted. The TIRC is to determine if the owner has complied with the agreement, and may consider business cycle fluctuations when making this determination.

The TIRC then submits a recommendation to the county commissioners regarding the continuation, modification, or cancellation of all CRA agreements. A recommendation to modify or cancel the agreement should be accompanied by specific reasons. These recommendations must be submitted to the commissioners no later than September 1 of each year, and a copy should be sent to ODSA.

The TIRC may request information from the county auditor, the housing officer, county commissioners, and property owners whose properties have been exempted from taxation that may be necessary to perform its responsibilities. In the case of property owners, the request must be sent by certified mail and the owner has 10 days to respond to the request.

The TIRC must also review compliance of each recipient of a tax exemption with the nondiscriminatory hiring policies developed by the county under ORC Section 5709.832. These policies are developed to ensure that those receiving a tax exemption practices nondiscriminatory hiring in its operations on the basis of race, religion, sex, disability, color, national origin, or ancestry. On the basis of this review, the council may submit recommendations to the commissioners for enhancing compliance with nondiscriminatory hiring policies.

Upon receipt of written recommendations from the TIRC the commissioners must, at a session of the board, vote to accept, reject or modify the recommendations. This action must be taken with 60 days following receipt of the recommendations.

15.048 PETITION TO OHIO DEVELOPMENT SERVICES AGENCY AND ACTION BY DIRECTOR

After the adoption of a resolution creating the CRA the commissioners must petition the director of the Ohio Development Services Agency (ODSA) to confirm the finding in the resolution that "housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged." This is done on the basis of the housing survey. The resolution must be submitted within 15 days after its adoption. The petition includes a copy of the resolution establishing the CRA; a detailed map showing boundaries and zoning restrictions applicable to the CRA; a written description of the area; and, a narrative that summarizes the housing survey.

The ODSA must confirm that the characteristics required by law are consistent with the findings in the resolution and whether the classification of structures or remodeling eligible for exemption are consistent with county or township zoning regulations. The director of ODSA must make a determination within 30 days after receiving the petition and also assigns the CRA a number used for identification and reporting purposes. If approved, ODSA sends a CRA Confirmation Certificate to the county.

15.049 TAX EXEMPTION AFTER CREATION OF A CRA

After the establishment of a CRA and receipt of the CRA Confirmation Certificate from ODSA, an eligible owner may apply for a percentage exemption of real property taxes related to new construction or remodeling. The application is filed with the housing officer. If the application is for residential property, the housing officer must verify the costs of a new structure or improvements and remodeling of an existing structure and must also assure that other parts of the application are correct. If a structure is a historical structure or one that is architecturally significant, other special provisions apply that will be explained later in section 15.052 of this Chapter. The housing officer then approves or denies the application.

If the new structure or remodeling is to be used for commercial or industrial purposes, the commissioners and the owner must enter into a written CRA agreement pursuant to ORC Section 3735.671 prior to the commencement of any construction or remodeling. If the agreement needs school board approval the agreement cannot be formally approved by the commissioners until the school board acts. This will be explained in a subsequent section.

An approved application is certified to the county auditor. The certification must include a specification of the specific division (See table in Section 15.042) of ORC Section

3735.67 that the exemption is being approved under; the term of the exemption; and, the percentage of the exemption. Again, in the case of residential exemptions the percentage and term of the exemption is determined in the resolution establishing the CRA and is the same for all residential properties. In the case of commercial and industrial properties the percentage to be exempted and the term of the exemption is subject to negotiation and must be included in the CRA agreement. The tax exemption will become effective in the following tax year.

15.050 ADMINISTRATIVE FEES RELATED TO CRA's

There are two types of administrative fees associated with the processing of CRA tax exemption applications and for the subsequent administration, monitoring and reporting after approval of the tax exemption.

1. **State ODSA Fee** – The first fee is the state fee. The county collects it for ODSA at the time an application for tax exemption is made. The amount of this fee is $750. The ODSA Director establishes the fee by rule to help defray the cost of administration of the CRA program. The fees are deposited in ODSA's business assistance fund.

2. **County Fee** – The second fee is a fee paid annually by the property owner to the county. This fee, which must be included in the CRA agreement, is equal to 1% of the amount of taxes exempted under the agreement, but not less than $500. If the value of the exempted property exceeds $250,000 the fee is capped at $2,500. Commissioners must deposit these fees in a special fund to be used only for the purpose of complying with the annual reporting requirement and for use of the tax incentive review council to perform its duties. Commissioners may waive or reduce the fees at their discretion if they are included in the CRA agreement. This fee is payable each year at the time specified in the agreement.

15.051 PROCESS AND CONTENTS OF A NEGOTIATED CRA AGREEMENT

The percent of tax exemption and the term of the exemption for tax exemptions of commercial and industrial properties are to be included in a CRA agreement. Thus they may not be uniform and must be included in the resolution creating the CRA as is the case for residential properties.

The content of the agreement is set forth in Divisions B and C of ORC Section 3735.671. Please refer to this section for the details of what must be included in the CRA agreement.

The agreement may include other items not specified in the law that are negotiated between the county and the owner. If the county intends to collect an annual administrative fee as explained in the previous section, this should also be included in the agreement. Likewise, a CRA agreement may include a provision providing for reimbursement of forgone taxes by an owner if at some future date the exemption is revoked. Without such a provision in the initial agreement no such reimbursement is possible.

With certain exceptions, the agreement cannot be approved by the commissioners unless the school board approves the agreement as will be explained later in this Chapter. The commissioners must submit a copy of the approved CRA agreement to the director of ODSA. This must be done within 15 days after the agreement becomes final.

15.052 STRUCTURES OF HISTORIC AND ARCHITECTURAL SIGNIFICANCE

The CRA law provides special incentives for historically and architecturally significant structures. These structures are designated by the commissioners, by resolution, on the basis of age, rarity, architectural quality or because they were previously so designated by another agency such as a historical society.

These structures can qualify for a longer term of tax exemption under some circumstances and also must go through a more rigorous review process prior to approval of a tax exemption by the housing officer. In the case of these structures, the housing officer may not determine if the remodeling meets the requirements for the tax exemption until the entity that designated the structure certifies the appropriateness of the remodeling to the housing officer.

15.053 NOTICE REQUIREMENTS TO SCHOOL BOARDS

Before commissioners take action to enter into a CRA agreement with a commercial or industrial property owner to grant a property tax exemption and before the housing officer transmits an approved application for residential property to the county auditor, notice must be sent to school boards in the area. The notice must be sent to each city, local, exempted village, or joint vocational school district in which the proposed property is located.

The notice must include a copy of the CRA agreement or the tax exemption application in the case of residential properties. The notice must be delivered not later than 14 days in advance of the day the commissioners plan to take final action on the agreement or the housing officer intends to transmit the tax exemption application to the county auditor.

If the board of education provides comments on the agreement or the application those comments must be considered by the commissioners or the housing officer. Any school board may also request a meeting with the commissioners or the housing officer. If such a request is made a meeting must take place with a representative of the school board to discuss the terms of the CRA agreement or the tax exemption application.

This notice is not required if the school board adopts a resolution which waives the right of the board to receive such notices. The school board must certify a copy of the resolution to the commissioners. The school board may later rescind the previous resolution and certify this fact to the commissioners.

15.054 SCHOOL BOARD APPROVAL OF CERTAIN AGREEMENTS

Generally, no CRA agreement may be approved by the commissioners unless the school board of a city, local, or exempted village district approves of the agreement. Commissioners must certify a copy of the agreement to school boards at least 45 days before approving the CRA agreement. A school board may, by resolution, shorten the 45 days required by the statute. Such a resolution must be certified to the commissioners. Such a resolution may be rescinded by the school board to return to the 45 day notice requirement.

The school board must adopt a resolution at least 14 days before the date the commissioners plan to approve the CRA agreement as specified in the notice provided to the school board.

The school board resolution may include conditions under which the school board would approve the CRA agreement. Commissioners may approve an agreement at any time after the receipt of the resolution from the school board. If the school board included conditions in its resolution commissioners may conditionally approve the agreement contingent upon meeting the conditions specified in the school board's resolution.

Approval by the school board is not required under the following circumstances:

1. If, for each tax year real property is exempted from taxation, the sum of the following amounts equals or exceeds 50% of the estimated amount of taxes that would be due if the property would not receive the tax exemption.

    a. The amount of taxes due on any portion of the new structure or remodeling that will not be exempt under the CRA agreement;

    b. The amount of tangible personal property taxes due from personal property located on the premises of the remodeled or new structure. Note that this provision has no application any longer because of the repeal of the tangible personal property tax.

    c. The amount of any cash payment to the school district by the owner(s) of the new or remodeled structures as agreed to between the owners of the structures and the school board. The cash payment may include cash, property, and services provided by the owner and any payment by the county pursuant to ORC Section 5709.82.

2. If a school board adopts a resolution waiving its right to approve agreements. If such a resolution is adopted by a school board it must certify the resolution to the commissioners. If the school board later rescinds the resolution waiving its right to approve agreements, this resolution must also be certified to the commissioners.

15.055 NEGOTIATION AND COMPENSATION AGREEMENTS WITH SCHOOL DISTRICTS AND OTHER TAXING DISTRICTS

ORC Section 5709.82 authorizes commissioners who enter into a CRA Agreement to enter into a compensation agreement with any city, local, exempted village, or joint vocational school district for compensation for foregone tax revenue resulting from a tax exemption. If the county enters into a compensation agreement with more than one school district or other taxing district each agreement must provide for the same percentage of foregone revenue for all such contracts, unless a school district or other taxing district agrees to a lesser percentage.

The percentage is based on both the amounts paid by the county and other amounts paid by an owner of tax exempt property if the owner becomes a party to the a compensation agreement or by executing a separate compensation agreement with school districts and other taxing districts. Compensation paid by the owner may be in the form of cash or providing property or services.

In addition, for municipal CRA's the law ORC 5709.82(C) requires a municipality that levies an income tax and the payroll resulting from the exemption is $1 million or more in any tax year to attempt to negotiate a compensation agreement for all or a portion of the foregone revenue. This negotiation must be conducted, however, only with city, local and exempted village districts. The municipal compensation agreement may include the owner of exempted property. Payments by the owner can be in the form of cash, property or services.

If no such agreement has been executed within six months after approval of the tax exemption, then a revenue sharing default provision is triggered. Under the default revenue sharing provision, the municipality would be required to pay the school districts 50% of the income tax collected on new employees minus the amount spent in that year for certain infrastructure costs. Such infrastructure costs may be not more than 35% of the taxes the school district would otherwise be entitled to receive. These payments are made annually on December 31.

Finally, it should be noted that if tax abatement was granted by the commissioners to a company with over $1 million in payroll and the land is later annexed into a municipality the school board has no mandatory right to compensation under this provision of law (OAG 96-030).

15.056 RESTRICTIONS ON OWNERS WHO DISCONTINUE OPERATIONS PRIOR TO THE EXPIRATION OF A CRA AGREEMENT

If the owner of a commercial or industrial property who has received tax exemption discontinues operations in the structure that received the exemption before the end of the term of the agreement, the owner is prohibited from receiving tax abatement anywhere in the state in the future. The restriction applies to future tax abatements under the CRA program and enterprise zones under ORC Sections 5709.62, 5709.63 and 5709.632. Likewise, no county or municipality may enter into such an agreement with any such owner, successor to the owner or a related party. This prohibition is in effect for a five year period after the discontinuance of operations.

If, in the review of CRA agreements by ODSA, it is determined that the commissioners have entered into an agreement with a company that had discontinued operations during the last five years, the director will notify the commissioners and the commissioners must immediately revoke the exemption.

15.057 REVOCATION OF TAX EXEMPTION

The tax exemption granted to properties can be revoked upon complaint or as a part of an annual inspection process by the housing officer. The housing officer is required to annually inspect tax exempted properties. If the property has not been properly maintained or repaired due to neglect by the owner the housing officer may revoke the exemption. This can only be done after the first year of the exemption.

In the case of exempted commercial or industrial property the exemption can be revoked if the owner has not met obligations specified in the CRA agreement or if the owner has discontinued operations in the exempted structure prior to the expiration of the agreement. In this case, the commissioners must take the action to revoke the exemption and such action can likewise only be taken after the first year.

In both cases the housing officer or the commissioners then notify the county auditor and the owner that the tax exemption no longer applies. The housing officer then sends a report of the revocation to the community reinvestment area housing council and to the tax incentive review council. The report must state the reason for the revocation and contain a statement of the findings relating to the maintenance and repair of the structure, the failures to meet the obligations of the CRA agreement, or that operations have been discontinued at the structure.

The county may require commercial and industrial owners to reimburse taxing authorities for the foregone taxes, but only if the CRA agreement includes a provision that directly provides for such reimbursement.

15.058 APPEALS FROM DECISIONS OF THE HOUSING OFFICER

ORC Section 3735.70 allows any person aggrieved by a decision of the housing officer to appeal to the community reinvestment housing council. The council has the authority to overrule any decision of the housing officer. Appeals from the council may be taken to the common pleas court.

Appeals from decisions of the housing officer would be for such actions as denial of an application for a tax exemption after the CRA is established and confirmed by DSA. Another appealable action would be the revocation of a previously granted tax exemption by the housing officer. It does not appear that a revocation of an exemption by the commissioners is appealable to the community reinvestment area housing council, but only to common pleas court.

15.059 PROVISIONS CONCERNING RELOCATION OF COMMERCIAL AND INDUSTRIAL OPERATIONS

Special notice provisions apply when a commercial or industrial company currently operating in Ohio intends to relocate all or part of its operations to another county or municipality (ORC 3735.673). These provisions only apply where the relocation would result in a reduction in employment or the cessation of operations. The provision applies only when such a company has entered into a CRA agreement, or intends to enter into a CRA agreement, with another municipality or county.

The commissioners or municipal council where the company proposes to relocate must provide notice of the company's intention to relocate to the commissioners or municipal council of the county or municipality from which the relocation will occur. The notice must include a copy of the CRA agreement to be entered into, or already executed, along with a statement of the company's reasons for relocating.

This notice must also be sent to the director of ODSA. Both notices must be served by personal service or by certified mail, return receipt requested. The notices must be sent at least 30 days before the first public meeting when the CRA Agreement will be on the agenda of the commissioners or municipal council. The Director may approve a change in service date if it is determined that earlier notice is not possible or could jeopardize the project. If the county or municipality fails to provide service, then the CRA agreement cannot be executed. For additional information refer to Ohio Administrative Code 122:9-1-02.

15.060 ANNUAL REPORT

Commissioners must prepare an annual report on all CRA's that were established and for which a CRA Agreement was executed during the preceding year. The annual report must be submitted to the director of ODSA and impacted school boards by March 31 of each year. For additional information on the required content of the annual report refer to ORC Section 3735.672.

If the annual report is not filed by March 31 then no new commercial or industrial CRA agreements may be executed until the report is filed. In addition, for each month the annual report is delinquent a late fee of $500 is levied on the county by ODSA. This late fee can be collected by ordering the county auditor to withhold the funds from real property tax distributions or from the undivided local government fund.

PART 3

ENTERPRISE ZONE TAX EXEMPTIONS

15.070 THE DEVELOPMENT OF THE ENTERPRISE ZONE CONCEPT

The concept of enterprise zones was first developed by British academics in the 1970's. Some were impressed with the rapid economic growth occurring at the so called "free ports" of Hong Kong, Singapore and Taiwan. It was believed that much of this growth was the result of low taxes and the relative lack of governmental interference in their economies. Prime Minister Margaret Thatcher embraced the concept as one that showed promise to resurrect neighborhoods in failing British cities. Parliament enacted Britain's Enterprise Zone law in 1980.

The idea then spread to the U.S. where Congressman Jack Kemp introduced federal legislation in 1981. The Reagan Administration also introduced its own version of enterprise zone legislation later in 1981 and again in 1982. The federal legislation was conceived as a program to target inner-city areas to increase job opportunities and income for disadvantaged residents. Federal enterprise zone legislation never made it out of committee for a variety of reasons.

Enterprise zone action then moved to the states where it became what has been referred to as a "central pillar"[3] for economic development in many states. While enterprise zones were originally intended to provide "tax incentives to businesses for locating in impoverished neighborhoods, virtually all programs have changed their zone designation rules to permit the designation as non-distressed areas."[4]

15.071 HISTORY OF OHIO'S ENTERPRISE ZONE LAW

Ohio enacted it first enterprise zone law in 1982. HB 351 of the 114th General Assembly authorized select areas of municipalities to be designated as urban jobs and

---

[3] Peters, Alan H., and Peter S. Fisher. 2002. *The Effectiveness of State Enterprise Zones*. Employment Research 9(4): 1–3. http://research.upjohn.org/empl_research/vol9/iss4/1

[4] Turner, Robert & Cassell, Mark. *Who Benefits When Enterprise Zones Are Zoned Out? The Case of the Ohio Enterprise Zone Program.* Paper prepared for the 2005 Southern Political Science Association Annual Conference, 2005.
http://www.skidmore.edu/~bturner/tenure/Who%20Benefits%20When%20Enterprise%20Zones%20Are%20Zoned-Out.pdf

enterprise zones. The law took effect of March 17, 1982 and included a sunset clause terminating the program on December 31, 1987. Sunset clauses have become a standard feature of Ohio's enterprise zone law, the current law sunsets on October 15, 2017.

Two types of zones were allowed under the original legislation. First, the law authorized zones within the largest municipality within a county, or within other municipalities in a county if the population of the other municipality was within 20,000 of the largest municipality. In these cases, however, only those municipalities located in a county with relatively high "welfare" expenditures qualified to establish a zone. Specifically, in order to be eligible, county expenditures for Aid for Dependent Children (AFDC) (now Temporary Assistance for Needy Families or TANF) and Food Stamps (now Supplemental Food Assistance Program or SNAP) had to equal 1¼% of such expenditures by all 88 counties during the last year. In these cases, the municipal legislative authority designated the zones who could grant tax exemptions of up to 100% for not more than ten years.

Second, the law authorized zones within any other municipality or within contiguous municipalities, but not in the unincorporated area of the county. These zones were designated by the county commissioners with the approval of the municipal legislative authority. In these zones, the maximum tax abatement allowed was 50% for not more than ten years. These county designated zones were not required to meet the threshold for "welfare" expenditures as did zones designated by a municipality.

In addition, eligibility for either type of enterprise zone required the area within the municipality to have a population of at least 4,000 people and also had to meet a host of definitive distress criteria.

The original enterprise zone law focused on distressed communities and provided higher tax exemption percentages to zones located in counties with higher relative welfare expenditures. As such, Ohio's original enterprise zone law was based on the Reagan/Kemp vision of a program to target inner-city areas to increase job opportunities and income for disadvantaged residents.

The basic tenet of Ohio's original enterprise zone law—to target distressed communities—would, however, not survive long. The watering down of distress criteria began just two months later. The vehicle for the changes was legislation (HB 536) renaming the Department of Economic and Community Development, established under the Administration of Governor John Gilligan, the Department name reverted to simply the Department of Development, as it had been when "Rhodes Raiders" promoted development during the four terms Jim Rhodes served as Governor.

HB 536 became effective on May 13, 1982 and modified the original law to eliminate some of the eligibility criteria, while retaining the distinction between municipally and county designated zones. It should be noted that zones still could not include land in the unincorporated area of a county; however, this change was on the horizon.

The enactment of SB 9 and HB 153 by the 117th General Assembly made significant changes to Ohio's enterprise zone law. Under amended law, enterprise zones could be established in the unincorporated area of the county with the approval of township trustees. Thus, rural enterprise zones came into existence in counties with a population of 150,000 or less and the area of the zone had a minimum population of at least 1,000. The bills also permitted county designated zones to include contiguous land within a municipality and the unincorporated area of a township. The combined changes also allowed county designated zones within municipalities to offer 100% tax exemption, an increase from the 50% previously authorized. In the case of rural enterprise zones designated in the unincorporated area of the county, the maximum tax exemption percentage was 75%.

However, perhaps an even more significant change was a modification to the distress criteria used to determine basic eligibility. The law was amended to add a new "vacant and undeveloped" land criterion. Under this change, if the director of Development determined that the area "contains substantial portions of vacant or undeveloped lands" and determines that the development of these lands would "create and preserve employment opportunities" and "would improve the economic climate" of the area, then zones could be designated. This change allowed for the designation of many more zones. Some argued that removal of the targeting concept simply turned the urban and rural enterprise zone law into a general tax abatement law.

There have been a number of other changes to the law since 1987 including increasing the population threshold for rural zones in 1989 and requiring notices to school boards in 1991. The next major change, however, occurred in 1994 when SB 19 was enacted by the 120th General Assembly. This legislation eliminated the urban and rural enterprise zone designation; established special provisions for the remediation of brownfield sites and large manufacturing facilities; addressed the issue of relocating operations between communities and within Ohio; required reimbursements to school districts when projects located in municipalities generated over $1 million in new payroll; and, included provisions relating to non-discriminatory hiring practices, internships and scholarships. Of special significance were requirements that tax exemption percentages were limited to 75% or 60%, depending on the nature of the zones, without approval of affected city, local and exempted village school boards. In addition, SB 19 again modified the importance of former distress criteria continuing the retrenchment from the original focus of enterprise zones.

With the elimination of the tangible personal property tax in 2005, some now question the need for enterprise zones. From a county perspective, the enterprise zones can be an effective tool in promoting economic development. On the other hand, when municipalities use the tool, it can create revenue problems for counties and particularly for county levy funded health and human service agencies. The law now addresses the revenue concerns of schools to a much greater extent than it does for other political subdivisions, such as county health and human service agencies operating primarily on property tax levies.

15.072 OHIO'S CURRENT ENTERPRISE ZONE LAW

Ohio's enterprise zone program offers companies tax incentives in the form of property tax exemptions on eligible new investment. The program provides two types of tax exemptions, those on real property and those on tangible personal property (TPP). Unlike Ohio's community reinvestment area (CRA) law, no exemptions may be granted for residential projects, only commercial and industrial properties qualify. In addition, retail business is not eligible unless the property is located in an "impacted city" as defined in ORC Section 1728.01(C). Retail businesses, however, are eligible under tax increment financing as will be discussed later in this Chapter. With the repeal of the general business tangible personal property tax in 2005, however, the program has become less popular than in earlier years.

For example, from 2006-2011 only three new enterprise zones were established, although some have been amended. Likewise, the number of enterprise zone Agreements has decreased considerably since the repeal of the TPP. During the four year period from 2002-2005 an average of 264 enterprise zone agreements were approved annually. During the four year period from 2008-2011 the annual average number of new agreements dropped to 49.

Thus, the enterprise zone program now exists primarily to provide real property tax exemptions and to allow certain firms to qualify for additional state income related tax incentives. However, these state tax incentive programs are also less attractive as a result of the 2005 tax reform initiatives which also included a phase out of the corporate franchise tax. The program also may exempt qualifying portions of the public utility tangible personal property tax, the only personal property tax still charged in Ohio.

The 2011 Enterprise Zone Program Annual Report shows the important role county commissioners play in cooperation with municipalities and townships to form enterprise zones and to negotiate agreements to create and retain jobs and enhance economic opportunities in the county.

Since 1982, 409 enterprise zones have been established in Ohio. In 2011, 363 of these zones remain active. Of these 363 zones, over 92% are formed under the authority of the board of county commissioners, collaborating with municipal and township partners. The remaining zones were established by city councils of principal cities within metropolitan statistical areas or by designated "urban cluster" cities as will be explained later in this Chapter.

The report also shows that since the program was established over 6,000 enterprise zone agreements resulted in the establishment or retention of over 750,000 jobs and the creation or retention of over $33.0 billion in payroll for Ohio workers. The program has also resulted in an investment of nearly $14 billion in new real property improvements and over $47 billion of new investment in personal property. Considering only the agreements executed in 2011, ODSA estimates that the new taxes charged will total $47 million over a ten year period. Of this total, approximately $27 million will be exempted, while $20 million in new taxes will be collected over that ten year period, or approximately 42% of new taxes charged.

The following sections of this Chapter will discuss the details of the enterprise zone program. The sections will deal primarily with the responsibilities of county commissioners and other county officials in the establishment and administration of zones, however, important issues related to municipal zones will also be covered. Also to be discussed are eligibility for tax exemption, amounts of tax exemption authorized, the process for establishing and amending zones, notice and reporting requirements, the role of school districts and revenue sharing with school districts, intrastate relocation issues, other state tax incentives tied to enterprise zones, and reporting requirements.

15.073 THE USE OF ENTERPRISE ZONES

As was noted earlier, since the enactment of tax reforms in 2005 resulted in fewer enterprise zones being created than during earlier years. This trend is not unexpected given the repeal of the general business tangible personal property tax. Yet enterprise zones, when used prudently, can be an important tool to promote county job growth and economic activity.

Tax abatement can be a controversial issue with schools, local governments, levy funded agencies and with existing local businesses. The Ohio Development Services Agency (ODSA) encourages the use of tax incentives “as a tool of last resort” because of the “far-reaching effects of tax incentives.” While ODSA also advises that enterprise zone agreements “should be negotiated carefully”, it is always difficult for those who negotiate agreements to determine exactly how important the property tax burden is to a company looking to move or expand. Perhaps ODSA said it best:

> The basic theory is that providing a short-term tax incentive can result in long-term tax revenue gains. The tax incentive is used to induce a business to invest at a particular location. The Enterprise Zone incentives should be the last incentive offered to a business and only when it is deemed absolutely necessary to induce the commitment to move forward with a specified project.

15.074 DEVELOPMENT & ADOPTION OF ENTERPRISE ZONE GUIDELINES

The ODSA recommends that counties develop guidelines for the operation of an enterprise zone program. These guidelines should be adopted by the commissioners and define the broad parameters for the negotiation process and other details of the program after a zone is established. The guidelines should include a description of the process and procedure that will be used to approve tax exemption requests, including the composition of a negotiating team if one is going to be utilized. The guidelines should be consistent with any county plans and development goals and could include elements such as:

1. Eligibility criteria, including the types of business and projects which are eligible. For example, a county could use the zone for industrial, high tech or distribution facilities, but not for other commercial businesses. Retail businesses are not eligible unless they are located in an impacted city pursuant to ORC Chapter 1728. In addition, residential is not eligible.

2. Minimum investment criteria.

3. Minimum job creation levels, including local hiring standards. For example, the guidelines could require that a certain percentage of new jobs created would be for women or minorities. Job goals could also be established for those with developmental disabilities. The guidelines could also require that a specified percentage of jobs created be reserved for residents of the zone or of a municipality or township within the county or that preference be given to such individuals.

4. Provisions for the repayment of exempted taxes often referred to as a “claw back penalty”, in the event of the revocation of an agreement.

5. Provisions for the company to provide certain data annually if the project will involve $1 million or more in annual payroll to assist in the determination of mandatory revenue sharing between a municipality and school district.

6. Provisions dealing with temporary internship positions and scholarships for students at specified educational institutions.

7. Minimum new tax revenue standards.

8. A summary of the various notice requirements under the law, including notices to school boards and to other political subdivisions if an intrastate relocation is proposed in conjunction with the tax exemption request.

9. Itemization of the amount of the state application fee and annual monitoring fees.

15.075 TYPES OF ENTERPRISE ZONES

Ohio law provides for two types of enterprise zones, distress based zones and non-distress based zones. Distress based zones are also referred to as “full authority zones” and non-distress based zones are also called “limited authority zones.”

With distress based zones allow counties to grant tax abatement for any eligible project. In the case of non-distress based zones, tax abatements cannot be granted if the project involves the relocation of business resources within the state, unless the county obtains a waiver from the Ohio Development Services Agency (ODSA). Currently there are four categories of enterprise zones as follows:

Type of Zone	Full or Limited Authority*	ORC Section
MSA Principal City or Designated Urban Cluster City	Full Authority	5709.62
County Designated	Full Authority	5709.63
MSA Principal City or Designated Urban Cluster City	Limited Authority	5709.632(A)(1)
County Designated	Limited Authority	5709.632(A)(2)

*Full Authority Zone is also known as a Distress Based Zone. Limited Authority Zone is also known as a Non-Distress Based Zone or Pre-1994 Zone.

It should be noted that the General Assembly granted authority for designated "urban cluster" cities to establish enterprise zones from June 26, 2003 to May 6, 2005. Specifically, HB 95 of the 125th General Assembly allowed "a city designated as an urban cluster in a rural statistical area" to establish enterprise zones within such cities and to enter into enterprise zone agreements after the zones were certified by DSA. Prior to this time, the only cities that could establish enterprise zones were those that were "defined by the United States office of management and budget as a central city of a metropolitan statistical area." All other municipal zones had to be established by county commissioners with the consent of municipalities.

The provisions of HB 95 were the result of issues in some counties where commissioners evidently would not approve enterprise zones under any circumstances. However, the statutory authority for the establishment of enterprise zones by designated "urban cluster" cities was repealed two years later. HB 16, effective May 6, 2005, repealed the same language that was enacted in HB 95 earlier.

The Act repealing the authority to establish new zones, however, provided in the case of zones established and certified by ODSA from June 26, 2003 to May 6, 2005, that those designated "urban cluster" cities could continue to enter into enterprise zone agreements within those zones (See uncodified section 41.01 of HB 16 of the 126th General Assembly). New enterprise zones, however, could only be established within those municipalities by the county commissioners. While ODSA does not have a list of those municipalities, the number of cities that took advantage of this time-limited law appears to be limited to a couple of cities in Wayne County and the City of Fostoria, and possibly a few others.

Of the 363 active zones in 2011, 336 were established by county commissioners and 27 were established by MSA principal cities or designated urban cluster cities. In the case of county established zones only 15% were full authority or distress based zones, in comparison to 67% of those established by principal cities or urban cluster cities. Thus, of the 363 active zones in Ohio less than 20% are based on distress criteria.

15.076 PRE-1994 ENTERPRISE ZONES

While enterprise zones were authorized in 1982, significant changes took place in 1994 with the enactment of SB 19 of the 120th General Assembly. As a result of these changes, zones established prior to July, 1994 continue to exist with a more limited tax exemption authority.

All zones established prior to July, 1994 are considered limited authority enterprise zones unless the zone is recertified by ODSA as a distress based zone. Enterprise zone agreements entered into in such zones generally cannot involve a business or industry which is relocating from elsewhere in Ohio, unless a waiver is granted by ODSA. Thus, these pre-existing limited authority enterprise zones can only enter into agreements involving the following types of projects (ORC 5709.63(D)):

1. A business establishing its first Ohio facility

2. An existing Ohio business establishing a new facility that does not result in employment reduction or asset relocation at another Ohio site

3. A relocation of an out-of-state facility to Ohio

4. An expansion of a business at its existing Ohio site

5. An intrastate business relocation project which has received a waiver from ODSA pursuant to ORC Section 5709.633(B)

15.077 DISTRESS CRITERIA REQUIREMENTS

Eligibility for designation as a distress based zone requires evidence of specific levels of distress within the designated zone. In the case of MSA principal cities and Appalachian counties, only one of the six distress criteria must be met. In the case of all other evidence of at least two must be shown. The following table details the six statutorily established qualifying distress criteria, which must be itemized when applying to ODSA for certification of the enterprise zone: (ORC 5709.61(A)):

Statutory Distress Criterion	ORC Section
125% of the state average unemployment during the most recent 12 months	5709.61(A)(1)(c)
Prevalence (minimum of 5%) of vacant or demolished commercial or industrial facilities	5709.61(A)(1)(d)
At least 10% population loss between 1980 and 2000	5709.61(A)(1)(e)
51% of the population is below 80% of the area's median income	5709.61(A)(1)(f)
Specific vacant industrial facilities (zone applies to only those facilities)	5709.61(A)(1)(g)
Tax capacity of school district is less than 70% of the state average weighted for per capita income	5709.61(A)(1)(h)

In the case of a limited authority or non-distress enterprise zone no, evidence of distress is required. Remember, however, that such zones may not enter into enterprise zone agreements with companies where a relocation of assets from another Ohio community is involved unless a waiver is granted by ODSA.

15.078 GEOGRAPHY & POPULATION STANDARDS FOR ENTERPRISE ZONES

The boundaries of an enterprise zone must have a single continuous boundary and meet a minimum population threshold. In a county with a population of 300,000 or more, the zone must have a minimum population of 4,000. In counties with a population under 300,000, the minimum requirement is 1,000.

All of the property inside of the boundaries must be included in the zone. No municipalities or townships within the perimeter can be excluded from the zone. No "doughnut" shaped zones are permitted. The area also should include appropriate areas for economic development and areas that meet the statutory distress criteria specified in the previous section. ODSA suggests that the zone be based on census tracts or census block groups so that the population and evidence of distress can be more easily verified. In the event census tracts or block groups are not used, the county must provide some other method to substantiate the necessary data.

15.079 TAX EXEMPTION PERCENTAGE AND TERM OF EXEMPTION

The enterprise zone law allows tax exemption of real and personal property up to certain percentages. Again, note that with the repeal of the general business tangible personal property tax in 2005, most tax exemptions are now only for real property unless the project is one for which the public utility tangible personal property tax applies. Following are the maximum levels of tax exemption that can be granted:

1. Inside a Municipality – The maximum exemption is 75% of the assessed value of qualifying new real and personal property for up to ten years, or an average of 60% over the term of the enterprise zone agreement.

2. In the Unincorporated Area of the County – The maximum exemption is 60% of the assessed value of qualifying real and personal property for up to ten years, or an average of 50% over the term of the enterprise zone agreement.

The maximum percentage levels specified above can only be exceeded with the approval of the school board. School board approval allows for the maximum exemption percentage may be 100% and the term of the exemption may be for up to 15 years.

The property exempted from taxation is only on new buildings, improvements to existing land and buildings and any qualifying taxable public utility personal property. The existing value of land and buildings or current personal property is not eligible for exemption with one exception. The exception is for a large manufacturing facility or properties located in a brownfield site.

15.080 BUSINESSES AND INDUSTRIES ELIGIBLE FOR TAX EXEMPTION

In order for a business or industry to be eligible for a tax exemption, it must qualify by financial responsibility and business experience to create and preserve jobs within the zone. The company must also make a "substantial investment". While substantial investment is defined in the statute, commissioners have a great deal of flexibility to make basic eligibility determinations. Commissioners may also develop minimum required investment amounts in enterprise zone guidelines and limit the type of businesses and projects which are eligible for tax exemption.

Eligible projects must meet one of the following definitions as provided for in ORC Section 5709.01:

1. Establish – This means the creation of a facility which is determined to entail a significant investment in real and/or personal property, other than inventory, at a location where the business had not previously operated.

2. Expand – This means to make expenditures to acquire additional land, buildings,

machinery, equipment or other materials, except inventory, to a facility that equals at least 10% of market value of the facility prior to such expenditures.

3. Renovate – This means to make expenditures to alter or repair a facility that equal at least 50% percent of the market value of the facility prior to such expenditures.

4. Occupy – This means to make expenditures to alter or repair a vacant facility equal to at least 20% of the market value of the facility prior to such expenditures.

Note that enterprise zone tax abatements are targeted to business and industry and residential properties are not eligible. Retail businesses are only eligible if located within an impacted city under ORC Chapter 1728.

15.081 ENTERPRISE ZONE MANAGERS

County commissioners must designate an enterprise zone manager for each enterprise zone. The name of this individual must be included in the petition required to be submitted to the Ohio Development Services Agency (ODSA) and some counties designate the manager in the resolution establishing the zone. The manager serves as the primary contact with ODSA, receives most communications from the state, and is the general administrator for the zone.

The ODSA suggests that an elected official should not serve this role and that a person involved in local economic development activities is preferable. Following are the primary responsibilities of the manager:

1. To serve as the primary contact with the ODSA

2. To maintain and update distress data

3. To assure that the various notices to school boards and others are provided as required by law and to assure that comments from school districts are provided to the commissioners prior to formal approval of any enterprise zone agreement

4. To ensure that copies of enterprise zone agreements contain the information required by law and are filed with ODSA, Ohio Department of Taxation and the county auditor

5. To assist in the establishment and operation of the tax incentive review council (TIRC)

6. To maintain close contact with and assist the enterprise zone agreement negotiating team, if one is utilized

7. To maintain centralized records of all activity relating to an enterprise zone, including copies of agreements, roster of members of the TIRC, records of required notices provided and a summary of the TIRC'S annual review of each enterprise zone agreement

8. To prepare and submit the required annual report to ODSA

9. To perform such other duties as designated by the commissioners, including serving as the contact for inquiries from business and industry representatives and assisting with tax exemption negotiations

15.082 TAX INCENTIVE REVIEW COUNCIL (TIRC)

County commissioners must establish a tax incentive review council (TIRC) that has responsibilities for not only enterprise zones, but also for community reinvestment area (CRA) tax abatements and for tax increment financing (TIF) projects. Members of the TIRC include:

1. Three members appointed by the board of county commissioners

2. Two members from each municipal corporation to which the enterprise zone agreement applies, appointed by the chief executive officer with the concurrence of the legislative authority of the respective municipal corporations

3. Two members of each township to which the enterprise zone agreement applies, appointed by the board of township trustees of the respective townships

4. The county auditor or the county auditor's designee, who serves as the chair

5. An individual appointed by the board of education of each city, local, exempted village, and joint vocational school district to which the enterprise zone agreement applies

No fewer than two members must be residents of municipalities or townships to which the enterprise zone agreement applies. Thus, in the case of an enterprise zone located entirely within a municipality or township, only the municipal or township representatives are members of the TIRC which annually reviews the project. If the zone includes a combination of municipal and township territory, then both municipal and township representatives would serve on the TIRC which annually reviews such a project. Thus, township representatives on the TIRC do not participate in the review of agreements that only involve municipal land. Likewise, municipal representatives do not participate and vote on recommendations for zones located in a township. The county auditor serves as the chair of the council and meetings are at the call of the county auditor.

The TIRC is required to annually review all enterprise zone agreements and any other performance or audit reports the agreement may require to be submitted. The TIRC is to determine if the owner has complied with the agreement, and may consider business cycle fluctuations when making this determination. It is suggested that the enterprise zone manager staff the TIRC and provide members with status report information. In addition, it is always a good idea to invite company representatives, especially if it appears that compliance issues will be discussed.

The TIRC then submits a recommendation to the county commissioners or the township or municipality if commissioners delegated responsibility for negotiating the agreement, regarding the continuation, modification or cancellation of enterprise zone agreements. A recommendation to modify or cancel the agreement should be accompanied by specific reasons. These recommendations must be submitted no later than September 1 of each year, and a copy should be sent to ODSA (OAC 122:4-1-08).

The TIRC may request information from the county auditor, county commissioners, and property owners whose properties have been exempted from taxation that may be necessary to perform its responsibilities. In the case of property owners, the request must be sent by certified mail and the owner has ten days to respond to the request.

The TIRC must also review compliance of each recipient of a tax exemption with the nondiscriminatory hiring policies developed by the county under ORC Section 5709.832. These policies are developed to ensure that those receiving a tax exemption practices nondiscriminatory hiring in their operations on the basis of race, religion, sex, disability, color, national origin or ancestry. On the basis of this review, the council may submit recommendations to the commissioners for enhancing compliance with the nondiscriminatory hiring policies.

The commissioners must, at a session of the board, vote to accept, reject or modify the written recommendations of the TIRC. This action must be taken within 60 days following receipt of the recommendations. The recommendation should be submitted to the municipality or township if the county delegated the negotiation responsibility.

15.083 CREATION OF ENTERPRISE ZONES BY COUNTY COMMISSIONERS

The board of county commissioners must work with municipalities and townships in the county to establish an enterprise zone and then submit a petition to the director of the Ohio Development Services Agency (ODSA) for certification by the director.

Counties are encouraged to contact the ODSA early in the process. The Agency has detailed knowledge of the program and experienced staff to provide assistance. Their web site includes written summaries on important parts of the law; sample forms; model resolutions for use by counties, townships and municipalities; and, a sample enterprise zone agreement.

Counties must obtain the consent and agreement of all municipalities and townships having territory within the boundaries of the enterprise zone. The process of establishment can occur in two ways. First, the commissioners may take the initiative and approach a municipality or township requesting that all or a portion of their land be included in the zone. Second, a municipality of township may approach the county to establish a zone including all or part of their territory.

Townships do not have independent authority to establish zones. In addition, no township may have land included in more than one zone. In the case of municipalities, only those that are principal cities within a MSA may establish their own zones. All other municipalities can only be located in zones established by county commissioners.

In both of these cases, the township trustees or city or village council must adopt a resolution or ordinance agreeing to be included in the zone. After these resolutions and ordinances are adopted, county commissioners also must adopt such a resolution. Sample copies of resolutions and ordinances are available on the ODSA web site under the tab “Sample Documents”.

The resolutions of all three entities must clearly specify which entity will have primary responsibility for negotiating with businesses for tax exemptions and will be responsible for the administration of the zone and agreement after it is executed. There are two options which must be agreed to and must be consistent in the county, municipal, and township resolutions or ordinances as follows:

1. The county delegates the responsibility to negotiate the enterprise zone agreement to the municipality or township. In this case, the resolution should also specify that the municipality or township will assist the county in the administration of the zone and will approve the agreements prior to submission to the commissioners.

2. The county will have the primary responsibility for the negotiation of agreements and administration of the enterprise zone, with the understanding that the commissioners will involve municipalities and townships in the negotiation process and will obtain their consent prior to formal approval of an enterprise zone agreement by the commissioners.

While not required by the statute, ODSA suggests that a letter be sent to school boards within the proposed enterprise zone which includes those portions of Ohio enterprise zone law relating to school districts, especially ORC Sections 5709.63 or 5709.632 depending on the type of zone proposed and ORC Sections 5709.82-5709.85. DSA has drafted a sample letter which is available on their web site.

After the consent resolutions or ordinances are approved by townships and municipalities and the county has adopted its resolution, a petition can be submitted to DSA. The petition form is available on the ODSA web site.

15.084 AMENDMENTS TO AN ENTERPRISE ZONE

Changes to the boundaries of enterprise zones can be made by repeating the processes required for the original establishment of the zone and submitting a new petition to the director of ODSA. In the case where township territory not included in a zone is annexed by a municipality that is part of an enterprise zone, the land annexed is not automatically included in the zone. An amendment must be requested to include the new territory in the zone.

15.085 APPROVAL AND CERTIFICATION BY DIRECTOR OF DSA

Upon submission of the petition for the establishment or amendment of an enterprise zone to the director of ODSA, it is reviewed by staff. If the petition meets the legal requirements, the director will issue an Ohio enterprise zone program certification or an amended certification. The director will also assign a number to the enterprise zone for identification and reporting purposes. The director has 60 days to review and act on the petition. The county can begin tax exemption discussions and negotiations with eligible companies upon receipt of the director's certification.

15.086 ADMINISTRATIVE FEES RELATED TO ENTERPRISE ZONES

There are two types of administrative fees associated with the processing of enterprise zone tax exemption applications and for the subsequent administration, monitoring and reporting after approval of the tax exemption. The first is a fee that the county collects for ODSA at the time an application for tax exemption is made. The amount of this fee is $750. The ODSA director establishes the fee by rule to help defray the cost of administration of the enterprise zone program. The fees are deposited in ODSA's business assistance fund. If a tax exemption is not granted, this fee is returned to the applicant.

The second fee is a monitoring fee paid annually by the business to the county. This fee, which should be included in the enterprise zone agreement and guidelines, is equal to 1% of the amount of taxes exempted under the agreement, but not less than $500. If the value of the exempted property exceeds $250,000, the fee is capped at $2,500. By including the fee in enterprise zone guidelines and the agreement, it is assured that the business is aware of this fee prior to the execution of the agreement.

Counties need to determine, in cooperation with townships and municipalities, which unit of government will receive these fees or how they will be shared. The fees must be deposited to a special fund to be used only for the purpose of complying with the annual reporting requirements and for use of the tax incentive review council to perform its duties. Commissioners may waive or reduce the fees at their discretion. This fee is payable each year at the time specified in the agreement.

15.087 ESTABLISHMENT OF NEGOTIATING TEAMS FOR ENTERPRISE ZONE TAX EXEMPTIONS

The ODSA recommends counties consider the establishment of a negotiation team when negotiating tax exemptions with a business or industry to assure "that a balance of opinions and viewpoints are represented". It is suggested that the team would be comprised of no more than three persons: one representing the county; one representing the impacted school board; and one representing either the municipality or township, depending on the proposed location of the business. This requires a willingness to participate on the part of the school boards and other political subdivisions. Having two commissioners on a negotiating team creates practical open meeting or sunshine law issues and should be avoided. If a negotiation team approach is used, it should also be included in locally adopted enterprise zone guidelines.

15.088 PROCESS AND CONTENTS OF A NEGOTIATED ENTERPRISE ZONE AGREEMENT

Negotiations can occur with eligible companies for a tax exemption after certification. No work on the proposed project may begin until an agreement is finalized and approved by the municipal council, township trustees and county commissioners. The enterprise zone agreement is a legal contract between the county and the company.

Recall that the resolution establishing the enterprise zone must specify whether the county, township or municipality will have primary responsibility for negotiating tax exemptions with companies. Also, if a negotiating team approach is used as encouraged by ODSA, this should be included in the guidelines as specified in previous sections.

The content of an enterprise zone agreement is set forth in ORC Section 5709.631. It is recommended that this Section be read in its entirety by commissioners as it includes many important details relating to enterprise zones that are too detailed to repeat in this Chapter. A sample copy of the agreement is also available on the DSA web site under the "Sample Documents" tab.

The process of negotiating an agreement begins with the business submitting an application for tax incentives to the official or team responsible for negotiations. While the major issues to be negotiated are the percentage and term of the tax exemption, other items are also subject to negotiation, some of which have been discussed in Section 15.073 of this Chapter dealing with enterprise zone guidelines. If the county intends to collect an annual monitoring fee, as explained in a previous section, this should also be included in the agreement. Likewise, the agreement may include a provision providing for reimbursement of forgone taxes (a "claw back" provision) by an owner if, at some future date, the exemption is revoked. No such reimbursement is possible without such a "claw back" provision in the initial agreement.

It should be noted that an enterprise zone agreement cannot include a provision providing for payment in lieu of taxes by the business or industry (OAG 89-013). Any such agreement must be separate from the enterprise zone agreement. This ruling by the attorney general, however, does not invalidate voluntary compensation agreements by the county authorized pursuant to ORC Section 5709.82 which will be explained later in this Chapter.

Once those responsible for the negotiations have come to closure on the terms of the agreement, it must first be submitted to the municipality or township for approval by the municipal council or the township trustees. After these approvals have been provided, the commissioners must also adopt a resolution approving the agreement. The agreement is then executed. A copy of the executed agreement must be submitted to ODSA and the tax commissioner within 15 days. A copy must also be sent to the county auditor.

Care should be taken that required notices are provided to school boards as will be discussed in a subsequent section. The involvement of the enterprise zone manager during tax exemption negotiations is suggested to assure that notice requirements and other legal obligations are met.

15.089 SUBMISSION OF ENTERPRISE ZONE AGREEMENT TO ODSA

The enterprise zone manager must be sure that the final enterprise zone agreement is submitted to ODSA, the tax commissioner and the county auditor once approval is achieved by all political subdivisions. In addition to the final agreement, the following items must be submitted to ODSA:

1. A copy of the original application for tax incentives as proposed by the business at the beginning of the negotiation process

2. Evidence of municipal or township approval

3. Evidence of county approval

4. Documentation of compliance with school board notification requirements (optional)

5. An analysis of the project's tax implications for both the business and local governments (optional)

15.090 AMENDMENTS TO AN ENTERPRISE ZONE AGREEMENT

Amendments to an enterprise zone agreement can be made after execution of the agreement and approval by the necessary parties. The assignment of an agreement to a new business is considered to be an amendment. In order to amend an enterprise zone agreement, all of the parties that originally approved the agreement must approve the amendments. This would include the municipality or township and the county commissioners. Generally, the same procedures used when executing the original agreement must be followed.

15.091 NOTICE REQUIREMENTS TO SCHOOL BOARDS

Notice must be provided to school boards in the area before any municipality, township or the county commissioners take action to enter into an enterprise zone agreement. Note that notice must be given by all three of these entities irrespective of who has primary responsibility for negotiation of the agreement. It is also possible to provide only one notice as long as this notice includes the required details of any meeting of the county, municipality, or township. The enterprise zone manager often coordinates these notices to assure the statutory requirement is met. The notice must be sent to each city, local, exempted village, or joint vocational school district which has property in the zone.

The notice must include a copy of the original application for tax incentives submitted by the company at the beginning of the negotiations and the proposed enterprise zone agreement. The notice must be delivered not later than 14 days before action by any municipality, township, or the county.

If the board of education provides comments on the agreement, either in person or in writing, those comments must be considered by the municipality, township and county prior to taking action to approve the agreement. No agreement can be executed until the school board notice is provided. Any school board may also request a meeting with the approving authorities if such a request is made. A meeting must take place with a representative of the school board to discuss the terms of the enterprise zone agreement.

In addition, the school board may, by resolution, expressly waive all or part of the notice period, either in general or on a case-by-case basis. This notice is not required if the school board adopts a resolution which waives the right of the board to receive such notices. The school board must certify a copy of the resolution to the commissioners. The school board may later rescind the previous resolution waiving notice and certify this fact to the commissioners, municipality or township.

15.092 REQUIRED APPROVAL OF CERTAIN AGREEMENTS BY SCHOOL BOARDS

Agreements which propose a property tax exemption percentage greater than 75% in municipalities and 60% in unincorporated areas, or an average of 60% and 50% respectively, over the life of the agreement, require approval of affected school boards. This approval is required of city, local and exempted village districts, but not joint vocational districts. Such approval is also required if the term of the agreement exceeds 10 years.

The notice must be sent 45 days prior to the date the municipality, township, or county are scheduled to approve the agreement when school board approval is required. The school board must take formal action to approve, disapprove, or approve with conditions at least 14 days prior to the scheduled action. If the school board does not take formal action, the county, township or municipality may proceed as if approval by the school board was granted.

15.093 NEGOTIATION AND COMPENSATION AGREEMENTS WITH SCHOOL DISTRICTS AND OTHER TAXING DISTRICTS

ORC Section 5709.82 authorizes counties and municipalities who enter into an enterprise zone agreement to also enter into a compensation agreement with any city, local, exempted village, joint vocational school district or with other political subdivisions for compensation of foregone tax revenue resulting from a tax exemption. If the county enters into a compensation agreement with more than one school district or other taxing district, each agreement must provide for the same percentage of foregone revenue for all such subdivisions, unless a school district or other taxing district agrees to a lesser percentage.

The percentage is based on both the amounts paid by the county and other amounts paid by an owner of tax exempt property if the company becomes a party to the a compensation agreement or if the company executes a separate compensation agreement with school districts and other taxing districts. Compensation paid by the company may be in the form of cash or providing property or services.

In addition, ORC 5709.82(C) requires that if the tax exemption occurs in a municipality that levies an income tax and the payroll resulting from the exemption is $1 million or more, efforts to negotiate a compensation agreement for all or a portion of the foregone revenue is required. This provision also applies in each subsequent year where the new annual payroll exceeds $1 million. In this case, the municipality and school board should develop a procedure to verify eligible income tax revenues, and this may require the provision of other data from the business. The enterprise zone agreement might need to include a provision requiring the company to submit additional data. This negotiation must be conducted, however, only with city, local and exempted village districts. The municipal compensation agreement may include the company that will receive the exemption. Payments by a company can be in the form of cash, property or services.

If no such agreement has been executed within six months after approval of the tax exemption, then a revenue sharing default provision is triggered. Under the default revenue sharing provision, the municipality would be required to pay the school districts 50% of the income tax collected on new employees. The municipality, however, is entitled to a credit for costs incurred for infrastructure costs that will directly benefit the project and result in the issuance of debt. The credit or offset is equal to 35% of the new local income tax revenue generated or the actual annual debt service costs. These payments are made annually on December 31.

Finally, it should be noted that if tax abatement was granted by the commissioners to a company with over $1 million in payroll and the land is later annexed into a municipality, the school board then has no mandatory right to compensation under this provision of law (OAG 96-030).

15.094 PROVISIONS CONCERNING RELOCATION OF BUSINESSES WITHIN OHIO

Special notice provisions apply and in certain circumstances a waiver may have to be obtained from the director of ODSA if a company currently operating in Ohio intends to relocate all or part of its operations to another county or municipality in Ohio. In the case of a non-distress based (limited authority) enterprise zone, a waiver must be obtained from ODSA before any tax exemption involving an intrastate relocation may be granted. In the case of distress based (full authority) zones, no waiver is required. However, the notice provisions still apply.

Notice must be given to the county if the current location is in the unincorporated area or to the municipality from which the business intends to depart and to ODSA. This notification must be provided 30 days before any municipality, township, or the county takes action to approve a tax exemption by either personal service or certified mail, return receipt requested.

The company that submits an application for tax exemption must state on the application form whether the proposal includes an intrastate relocation which triggers the required notices. The notice must include a copy of the application form, a draft copy of an enterprise zone agreement, and a statement of the company's reasons for the relocation. Simply providing the application form submitted by the company and the statement may not meet the requirements of the law.

The ODSA director may reduce the notice period from 30 days to not less than 15 days if it is determined that "earlier notice is not possible or would be likely to jeopardize realization of the project." No enterprise zone agreement may be executed unless this notice is provided.

Waivers may also be granted by ODSA in a situation where an owner of a previously granted exemption desires to expand, relocate, or discontinue operations prior to the expiration of the enterprise zone agreement. In this case no agreement may be entered into for a period of five years after the expansion, relocation or discontinuance, as will be explained in Section 15.097.

15.095 PROCEDURE TO OBTAIN A RELOCATION WAIVER FROM ODSA

When an enterprise zone tax exemption involves an intrastate relocation in a limited authority (non-distress based), enterprise zone, a waiver must be obtained from the director of ODSA. In order to obtain a waiver, a written request must be submitted by the county or municipality on a form provided by ODSA that includes the following:

1. Evidence that notice to the communities which will be negatively affected by the proposed relocation has been provided

2. A copy of the application form that contains the details of the requested tax exemption

3. A copy of the “draft” actual enterprise zone agreement

The form must be signed by the company and the entity responsible for the negotiations with the company. ODSA will verify that the notice has been issued to the appropriate local representative. The notices should be sent to impacted municipalities or, in the case where the company is relocating from a township, the county. ODSA uses the following procedure to review such waivers:

1. ODSA conducts a preliminary review to verify the proposal is an eligible enterprise zone project.

2. ODSA contacts the county or municipality requesting the waiver to set up a site visit to the company’s existing and proposed sites. The agency contacts and invites the CEO of the company and development officials from the communities negatively affected by the proposed relocation to the site visit. Under certain circumstances ODSA may determine that a site visit is not needed.

3. If a site visit is conducted it is an open public forum that must comply with the Open Meeting Act. ODSA investigates the company’s reasons why relocation is needed, including factors relating to space requirements, market conditions, and consolidation requirements.

4. During the site visit, ODSA investigates whether a waiver is “absolutely necessary” for the company to create or retain employment opportunities in Ohio. This investigation occurs with the company and other participants present, and there is an opportunity for community participants to also ask questions.

After the site visit, ODSA staff completes its analysis of the waiver request using information obtained at the site visit and from the waiver request documents. Staff then prepares a memo which includes a recommendation for the ODSA legal staff. A final decision is made by the ODSA Director and notice is given to the company and impacted local governments. If the waiver is granted, ODSA monitors the project to ensure that appropriate provisions are included in the final enterprise zone agreement. If a waiver is granted by ODSA, it must be included in the enterprise zone agreement and included as an exhibit to the agreement.

For additional information refer to Ohio Administrative Code 122:9-1-02.

15.096 REASONS FOR RELOCATION WAIVER

ORC Section 5709.633(B) provides the statutory basis for ODSA to grant relocation waivers. Relocation waivers can be granted only for one of the following reasons:

1. The business cannot physically expand at its current location to the extent necessary for the proposed expansion; or

2. Certain market conditions, such as just-in-time supply, changes in production methods, changes in special contract provisions, or ownership changes, necessitate the relocation; or

3. The relocation is necessary because of a proposed consolidation of business operations.

Proposals which involve at least one out-of-state facility must demonstrate a 25% increase in total Ohio employment and a 25% increase in total real and personal property investment. For those projects that involve all Ohio facilities, an increase of 25% of total Ohio employment and a 50% increase in total real and personal property investment must be demonstrated to be eligible for a waiver.

15.097 RESTRICTIONS ON OWNERS WHO DISCONTINUE OPERATIONS PRIOR TO THE EXPIRATION OF AN ENTERPRISE ZONE AGREEMENT

If an owner granted an enterprise zone tax exemption discontinues operations in the structure that received the exemption before the end of the term of the original agreement, the owner is prohibited from receiving any new enterprise zone tax exemptions in the state for a period of five years from the date of the discontinuance. This provision also applies to intrastate relocations and expansions which result in a reduction of operations at any other Ohio location.

Likewise, no county or municipality may enter into an enterprise zone agreement with any such owner, successor to the owner, or a related party. If, in the review of enterprise zone agreements by ODSA, it is determined that the commissioners have entered into an agreement with a company that had expanded, relocated, or discontinued operations as specified above, the director will notify the commissioners who must immediately revoke the exemption.

15.098 REVOCATION OF TAX EXEMPTION

An enterprise zone tax exemption granted to companies can be revoked upon complaint or as a part of an annual review by the Tax Incentive Review Council (TIRC). The exemption can be revoked if the company has not met obligations specified in the enterprise zone agreement or if the owner has discontinued operations in the exempted structure prior to the expiration of the agreement. Commissioners may only take action to revoke an exemption in the first year after an owner has discontinued operations.

The enterprise zone manager or the commissioners must then notify the county auditor and the owner that the tax exemption no longer applies. The manager then sends a report of the revocation to the TIRC. The report must state the reason for the revocation and the terms of the agreement that were violated, or that operations have been discontinued.

The county may require the owner to reimburse taxing authorities for the foregone taxes, but only if the enterprise zone agreement includes a provision that directly provides for such reimbursement. This is referred to as a “claw back” provision which should also be incorporated into enterprise zone guidelines.

15.099 ANNUAL REPORT

The enterprise zone manager coordinates the collection of information needed to prepare an annual report on the status of all enterprise zone activities and conditions as of December 31 of the preceding year. The annual report must be submitted electronically to the director of ODSA and to impacted school boards by March 31 of each year. ORC Section 5709.68 contains details about annual report requirements.

Portions of this report must be certified to the tax commissioner by June 30 of each year by ODSA. The tax commissioner is required to then submit a report to the governor and legislators showing the amount of state and local taxes not paid because of the tax exemptions and the amount of additional taxes paid on the payroll of new employees. This data must be detailed for each enterprise zone.

If the annual report is not filed with ODSA by March 31, then new enterprise zone agreements may not be executed until the report is filed. In addition, for each month the annual report is delinquent or incomplete, a late fee of $1000 is levied on the county by ODSA. This late fee can be collected by ordering the county auditor to withhold the funds from real property tax distributions or from the undivided local government fund.

15.010 OTHER STATE TAX INCENTIVES ASSOCIATED WITH ENTERPRISE ZONES

Because of the enactment of tax reforms in 2005, the primary reason for the program now is to provide real property tax exemptions and to qualify those in zones for certain state income tax incentives. There are two state tax incentive programs which are tied to enterprise zones. These programs, which do not impact county revenue, are administered by ODSA.

The first state tax incentive program allows companies in enterprise zones to apply for tax incentive qualification certificates pursuant to ORC Section 5709.65. Those awarded such certificates can reduce any corporate franchise tax, or income tax liability for subchapter s-corporations, by reducing the amounts included in certain calculations that determine tax liability.

The second state tax incentive tied to enterprise zones is the Ohio Job Creation Tax Credit Program. This program is authorized by ORC Section 5709.66. However, this incentive has not been used since 1996.

PART 4

TAX INCREMENT FINANCING (TIF)

15.101 THE TAX INCREMENT FINANCING: CONCEPT & HISTORY

Tax increment financing (TIF), which has been referred to as the most widely used local government program for financing economic development in the United States[5], was first used in California in the early 1950's to raise local match for the federal urban renewal program.

The use of TIFs grew slowly. By 1970, only seven states authorized TIFs. With the withdrawal of federal urban development programs during the Nixon Administration, and other tax and expenditure limitations in other states, the use of TIF's increased significantly.

TIF enabling legislation had been enacted by 28 states by 1984, 33 states by 1987, and 44 states by 1992. By the early 1990's, 56 percent of cities with populations over 100,000 had used TIF.[6] Tax increment financing is now authorized in all states with the exception of Arizona. In some states, TIFs can redirect taxes not only from property taxes, but also from sales taxes.

TIFs, like enterprise zones, were originally developed as a mechanism to redevelop depressed central city areas. As such, in order to qualify for a TIF, evidence of distress or other indices of blight had to be present. Also like enterprise zones, the thrust of the

---

[5] Briffault, Richard. Professor of Legislation, Columbia Law School. The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government. University of Chicago Law Review. Winter2010, Vol. 77 Issue 1, p65. https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/77.1/77-1-TaxIncrementFinancing-Richard%20Briffault.pdf

[6] Ibid, page 70

program has changed from a focus on “redevelopment” to one of simply “development”. Evidence of “blight” or “distress” as a precondition for the utilization of TIF has been eliminated in a number of states. Under state enabling laws in effect in 2010, approximately 16 states do not require local governments to show evidence of blight or distress to use TIFs. Nationally, “the overall pattern of state TIF legislation has been to make TIF more widely available and not concentrated on the poorest areas”.[7] Indeed, some observers note that the use of TIF is more prevalent in “greenfield” sites than in “brownfield” sites.

TIFs differ from enterprise zones and community reinvestment areas because a TIF is not strictly a tax exemption program in the traditional sense. Under a TIF taxes are not reduced, but the taxes are “diverted” or “redirected” and used to make public infrastructure improvements to assist and support development. In many cases this public investment will reduce the capital cost otherwise incurred by the developer or company. Whether this indirect subsidy to the company is more attractive than traditional tax abatements is a matter subject to debate. A TIF does not involve a tax rate increase, a new tax or any new fees or assessments on the general public or on the company or the developer.

Likewise, a TIF does not reduce current taxes received by the political subdivision enacting the TIF, nor to overlapping political subdivisions that also may levy taxes on properties within the TIF area. The only revenue captured for public infrastructure is from valuation increases which occur after the establishment of the TIF. Thus, tax yields from the old or “base year” valuation is not diverted or redirected to other purposes. Yet, TIF’s do “take” tax revenue generated from incremental valuation increases after the base year when the TIF was established for eligible public infrastructure improvements rather than for the original purpose of the tax levy.

15.102 TAX INCREMENT FINANCING IN OHIO

Tax increment financing has become an increasingly popular economic development tool in Ohio since its enactment in 1976. Data from the Ohio Department of Taxation reveals that TIF’s are the leading type of tax abatement used with over $45 million in property tax exemptions granted, or over 45% of all tax abatements. Some of Ohio’s best known projects that have used TIFs include the Polaris and Easton developments in Columbus, the Rock and Roll Hall of Fame in Cleveland and the Nationwide Area in Columbus. The Ohio Development Services Agency maintains a list of active TIF projects.

A TIF project may encompass virtually any type of development - industrial, commercial, or residential.

[7] Ibid, page 91

Municipalities were the first local governments authorized to use tax increment financing under Ohio law. While the use of payments in-lieu of taxes was authorized prior to 1976 under the Municipal Urban Renewal Law (ORC Chapter 725, 1968) and the Community Urban Redevelopment Corporation law (ORC Chapter 1728, 1963), the general authority for municipal TIF's was established in HB 1328 in 1976. Townships were granted the authority to implement TIFs in 1987 (HB 390, effective 10-20-87) followed by counties in 1990 (HB 213, effective 7-27-90).

TIFs provided a method to generate revenue to develop needed infrastructure to serve parcels to be developed and exempted those parcels from taxation. While taxes were exempted, the property owner still paid an equivalent amount in payments in-lieu of taxes (PILOT). These PILOT payments were not distributed as were regular tax collections but were diverted to a separate fund and used to invest in needed infrastructure to service the new development and to make debt payments for the infrastructure, if necessary.

Original TIF laws generally required the infrastructure improvements to benefit the specific parcel exempted from taxation. However, beginning with legislative changes enacted in 1996, the original requirement that specific parcels exempted from taxation had to directly benefit from the infrastructure improvements were modified and softened. Some believe that the TIF law now is too often used as a general community infrastructure funding program more than a specific targeted economic development tool as it was originally conceived.

This policy change was most prominently evidenced with the enactment of HB 405 in 2001. This legislation authorized the establishment of a new form of TIF—the TIF incentive district. TIF incentive districts, unlike specific parcel TIF's, had to meet at least one of six statutory distress criteria, but as the Representative Bill Seitz wrote "Five of these were truly emblematic of 'distress' . . . but one was a loophole of substantial dimension. . ."[i] similar to the watered-down criteria previously discussed for Enterprise Zones.

The distress criteria in HB 405 required for the establishment of TIF incentive districts allowed their establishment with relative ease. Coupled with a provision that TIF incentive districts could be used for housing in areas of up to 300 acres and that application for the tax exemption could be made by the political subdivision, instead of the property owner, the use of districts blossomed and became controversial. Rep. Seitz characterized these TIFs as "essentially a 'rob-Peter-to-pay-Paul scheme".[ii]

After creation of a TIF incentive district (PILOT) payments could be used to make infrastructure improvements virtually anywhere in the district, instead of improvements directly benefiting only specific parcels. The legislation also allowed PILOT payments previously made to a township to be used for infrastructure not originally designated in the resolution establishing a parcel TIF. This served as another example of how TIFs appeared to be turning into a program for the general infrastructure needs of the entity entering into agreements with business, industry, and especially homebuilders.

The Legislature responded to some of the criticisms of TIFs in 2004 with the enactment of HB 427. This law required a public hearing when TIF incentive districts were established if the political subdivision was the applicant for tax exemption. It also required the jurisdiction creating the district to hold other jurisdictions harmless from 50% of the increase in revenue attributable to inside millage resulting from reappraisals. The General Assembly again responded to some of the abuses that were evident in HB 66, a state budget bill. The law included a series of other restrictions on TIF Incentive Districts including a requirement that at least one specific infrastructure project be designated when establishing the district, eliminating the use of PILOT payments for police and fire equipment and limitations on how much of the entities total taxable value can be subject to a TIF. The law also provided that if a new TIF district was established after January 1, 2006 and a voted levy was approved for boards of developmental disabilities, hospitals, senior citizens, alcohol, drug and mental health, children services, and libraries that the levy funds would not be diverted to the jurisdiction establishing the district. This list of levies to be held harmless was expanded in later years.

All three general purpose units of local government have been granted tax increment financing authority under state law as is shown in the following table:

Political Subdivision	**ORC Sections**
Counties	5709.40-5709.43
Municipalities*	5709.77-5709.81
Townships	5709.73-5709.75

*Municipalities also have similar authority pursuant to ORC Chapter 725 and 1728

15.103 THE FUNDAMENTALS OF TAX INCREMENT FINANCING

A TIF can be structured to capture all, or just a portion, of the taxes associated with increased valuations resulting from an economic development project. The base year assessed value of the property is determined with the help of the county auditor in the year the TIF is created. All taxes associated with increases in the assessed value after the base year—the tax increment—is then diverted to a special fund to make payments for eligible infrastructure improvements or housing renovations instead of being distributed to local governments like revenues derived from the base valuations. Those who favor TIFs argue that no political subdivision loses any existing taxes as a result of the creation of a TIF. The base year taxes are essentially locked in for taxing districts and cannot be diverted or redirected.

When a TIF is created, a full or partial exemption from taxes is given for the increase in assessed value over the base year level. However, instead of making tax payments, the owner of the property makes service payments in lieu of taxes (PILOT), or service payments, which equal the amount of the taxes that would have been paid if the TIF did not exist. The PILOT payments can be used to pay for eligible infrastructure improvements and housing renovations; debt service on bonds issued by the political subdivision to pay for the improvements; and, to reimburse certain taxing districts for foregone revenue. Parcels of land located in a new community district cannot be exempted under the TIF program if the district imposes a community development charge on the parcel (ORC 5709.78(J)).

The taxpayer does not receive a net reduction in taxes as the taxpayer does in the case of CRA's or enterprise zones. The tax increment instead is diverted from schools, other local governments and special district levies to pay for infrastructure improvements needed to attract or service the new or expanded development. The PILOT payment is collected by the county treasurer in the same manner as real property taxes are paid, but PILOT payments are not distributed to local governments as are regular taxes. Instead the county treasurer deposits PILOT payments into a public improvement tax increment equivalent fund where the monies may only be spent on eligible infrastructure and housing renovation costs. A separate tax equivalent fund or account must be established for each TIF.

15.104 COUNTY REVIEW AND ANALYSIS PRIOR TO INITIATING TIF's

Tax increment financing is a very complex economic development tool. Not only is the resolution establishing a TIF relatively complex, many TIFs may also involve the issuance of debt to pay for the public infrastructure improvements or housing renovations. In addition, legal advice is vital when entering into a TIF agreement with certain parcel owners to ensure that PILOT payments will be adequate to meet the financing requirements for the public infrastructure improvements and housing renovations specified in the TIF resolution and agreement. Thus, it is essential for counties to obtain experienced legal counsel early in the process and before the resolution establishing the parcel TIF or TIF incentive district.

In addition, the Ohio Development Services Agency (ODSA) is a resource that should be used. The agency recommends a detailed evaluation of a project prior to the establishment of the TIF. ODSA recommends that this evaluation include the following elements:

1. Determination of the market value of proposed improvements to real property to be exempted from taxation by working with the county auditor.

2. The taxable value of the real property improvements. This can be computed by multiplying the projected market value of improvements by the standard 35 percent assessment rate.

3. The county's real property tax rate. This information will assist in determining the projected revenues available to finance public infrastructure improvements or housing renovations by multiplying the local rate by the taxable value of the private improvements.

4. The public infrastructure costs associated with the project.

5. The value of the proposed exemptions. The county must ensure that the proposed exemptions will generate the revenue necessary to finance public infrastructure improvements or housing renovations under the TIF.

15.105 TYPES OF TIF's

Ohio law provides for two types of TIF's: 1) general purpose, or parcel TIFs, and; 2) TIF incentive districts. The ability to establish TIF incentive districts were authorized on December 13, 2001, thus all TIF exemptions granted prior to this date are parcel TIFs. The following sections will describe and distinguish parcel TIFs and TIF incentive districts. While these types of TIFs are available to municipalities, townships, and counties, we will focus on county responsibilities under the law, although we will also discuss the responsibility of municipalities and townships to counties when they create TIFs that impact the county.

15.106 PARCEL TIF's

A board of county commissioners may establish a parcel TIF pursuant to ORC Section 5709.78(A). The commissioners must adopt a resolution which declares that improvements to certain parcels of property are a public purpose. The parcels can only be in the unincorporated area of the county. In addition the resolution must:

1. Designate the parcels for which private improvements are declared to be a public purpose.

2. Designate the specific public infrastructure improvements which have been made, will be made, or are in the process of being made which directly benefits the parcels of land. Note that the infrastructure must directly benefit the designated parcel or parcels, unlike the benefit requirement for TIF incentive districts.

3. Specify the percent of valuation of the improvements made to the parcels that will be exempt from taxation.

4. Specify the number of years, or term, of the exemption.

5. Require the owner of the exempted parcels to make service payments in lieu of taxes (PILOT) equal to the amount of the exempted taxes for any improvements made to the parcels. These payments are to be made to the county treasurer at the same time real property taxes are due.

6. Establish a redevelopment tax equivalent fund and a separate account into which service payments in lieu of taxes from the TIF will be deposited. In the event this fund has already been established the resolution should provide that the service payments from the TIF will be deposited in a separate account in the redevelopment tax equivalent fund.

While not required, resolutions establishing Parcel TIF's may include provisions dealing with when the tax exemption begins and ends. There are a variety of options in this regard and a default provision in state law in the event that resolution establishing the district does not directly address the issue. The resolution may also provide that the exemption from taxation will commence in different tax years for different parcels. This is discussed in greater detail later in Section 15.11 of this Chapter. Also refer to ORC Sections 5709.78(F) and 5709.79(B) for more information.

If the county intends to issue debt to finance public infrastructure improvements the resolution should also address this issue. See ORC Sections 307.081, 307.082, and 5709.81 for additional information.

Parcel TIF's can be used for any commercial or industrial use, but cannot be used for residential purposes. Municipalities may use parcel TIFs for residential purposes if the land is located in an impacted city area. Counties may, however, include residential uses in a TIF incentive district as will be explained in the following section.

15.107 TIF INCENTIVE DISTRICTS

A board of county commissioners may establish a TIF incentive district which includes multiple parcels of land in the unincorporated area of the county pursuant to ORC Section 5709.78(B). The district must be enclosed by a continuous boundary, cannot exceed 300 acres, and must possess one or more statutory distress characteristics (ORC 5709.40(A)(5)). A parcel already exempted from taxation by the county or township pursuant to previous TIF legislation may not be included in a newly established county district. In counties with a population of 25,000 or more the incentive district can only be established if the value of real property is not more than 25% of the total county real property valuation. This includes the incentive district proposed and all other incentive districts in the county whether established by the county, municipalities, and townships.

The commissioners must adopt a resolution which declares that private improvements to certain parcels of property are a public purpose. In addition the resolution must:

1. Delineate the boundary of the TIF incentive district.

2. Specifically identify each parcel of property within the district.

3. Designate the specific public infrastructure improvements which have been made, will be made, or are in the process of being made that will benefit or serve parcels of land in the district. Note that a direct benefit to each parcel in the district is not required in the case of parcel TIFs. This means that the PILOT funds can be used anywhere in the district to fund public infrastructure even if it does not directly benefit every parcel in the district.

4. Identify one or more projects which will be undertaken that will place additional demands on the public infrastructure improvements specified above.

5. Specify the specific distress characteristic which qualifies the district as specified in ORC Section 5709.40(A)(5), as explained in Section 15.109 of this Chapter.

6. Specify the percent of valuation of improvements made to the parcels that will be exempt from taxation.

7. Specify the number of years, or term, of the exemption.

8. Require the owner of the exempted parcels to make service payments in lieu of taxes (PILOT) equal to the amount of the exempted taxes for any improvements made to the parcels. These payments are to be made to the county treasurer at the same time real property taxes are due.

9. Establish a redevelopment tax equivalent fund and a separate account into which service payments in lieu of taxes from the TIF will be deposited. In the event this fund has already been established the resolution should provide that the service payments from the TIF will be deposited in a separate account in the redevelopment tax equivalent fund.

Unlike parcel TIFs, a TIF incentive district may allow PILOTs to be used for residential purposes. In order for housing renovations to be eligible, however, a project in the district must also involve commercial or industrial purposes. If such residential renovations are to be permitted in the district, the commissioners' resolution must include the following additional provisions:

1. Authorization to PILOT payments for housing renovations.

2. Specific designation of the parcels within the district that can be used for housing renovations.

3. Specify the amount or percent of the total PILOT payments that will be used for each public infrastructure improvement and for housing renovations.

While not required, resolutions establishing TIF incentive districts may include provisions dealing with when the tax exemption begins and ends. There are a variety of options in this regard and a default provision in state law in the event that resolution establishing the district does not directly address the issue. This will be discussed in greater detail later in this Chapter. Refer to ORC Section 5709.78(F) and 5709.79(B) for more information.

If the county intends to issue debt to finance public infrastructure improvements the resolution should also address this issue. See ORC Sections 307.081, 307.082, and 5709.81 for additional information.

Finally, the resolution may need to include provisions for statutory compensation to townships within TIF incentive districts in the event a township objects to the term or percentage of tax exemption and no compensation agreement is negotiated between the county and the township. These provisions are explained in greater detail in Section 15.121 of this Chapter. See also ORC Section 5709.78(D).

15.108 USE OF PILOT PAYMENTS FOR HOUSING RENOVATIONS IN TIF INCENTIVE DISTRICTS

As previously stated, service payments (PILOT) may be used for housing renovations in TIF Incentive Districts if the resolution establishing the TIF incentive district so provides. PILOTS for housing renovations in parcel TIFs are prohibited. The specific eligible uses for PILOT payments for housing renovations include funds used to finance or support loans, deferred loans, and grants (ORC 5709.78(B)(3)(b)).

15.109 PUBLIC HEARING ON ESTABLISHMENT OF TIF INCENTIVE DISTRICT REQUIRED IN CERTAIN CASES

After the establishment of a TIF, a tax exemption application must be filed with the county auditor and then submitted to the Department of Taxation for approval. The application for exemption can be made by the owner, the owner's representative, the county with the consent of the owner, or by the county without the consent of the owner.

If the county intends to apply for the property tax exemptions on behalf of the property owners when establishing a TIF incentive district, the commissioners must schedule a public hearing on the proposed district. The hearing must occur at least 30 days prior to the adoption of a resolution establishing the TIF incentive district, and may occur at a regular or special session of the commissioners. Notice of the hearing must be provided to all property owners in the proposed district at least 30 days prior to the hearing. The notice of the public hearing and of the proposed resolution establishing the district can be sent by first class mail and must also be sent to the fiscal officer of each township with territory in the proposed district. This hearing and notice requirement is not required of parcel TIFs.

15.110 TIF INCENTIVE DISTRICT DISTRESS CHARACTERISTICS

While a parcel TIF does not have to include evidence of distress, a TIF incentive district must meet at least one of the following characteristics of distress:

1. At least 51% of residents in district have incomes of less than 80% of median income of county residents

2. The average unemployment rate in the district is at least 150% of the Ohio rate during the last 12 month period

3. At least 20% of residents in the district are at or below the federal poverty level

4. The district is a blighted area as defined in ORC 1728.01

5. The district is in an area designated to be in situational distress by the director of DSA pursuant to ORC 122.23(F)

6. The public infrastructure serving the district is inadequate as shown in a district economic development plan adopted by the commissioners and certified by an engineer

7. The district is comprised entirely of unimproved land that is located in a distressed area as defined in ORC Section 122.23

15.111 TAX EXEMPTION PERCENTAGE AND TERM OF EXEMPTION

The maximum percentage of tax exemption for either type of TIF is 75% and the maximum term, or length, of tax exemption is ten years. In the event the exemption proposed exceeds 75% or ten years, the exemption can be for up to 100% and for not more than 30 years if the proposal is approved by the school board. Approval is required by any city, exempted village and local school district that would be impacted.

In addition, township trustees must be notified if the proposed exemption exceeds 75% or ten years and may object. While their objection and non-approval does not stop the TIF as it does for a school board, their objection triggers compensation negotiations with the township which includes default compensation provision in the event agreement cannot be reached. These issues will be discussed later in Section 15.122 of this Chapter.

15.112 ESTABLISHMENT OF REDEVELOPMENT TAX EQUIVALENT FUND

Commissioners who utilize TIF's must establish a redevelopment tax equivalent fund in the county treasury to receive all PILOT payments from parcel TIFs or TIF incentive districts. The fund is usually established when the first county TIF is authorized. The fund is comprised of separate accounts for each TIF resolution. After the initial establishment of the fund, each resolution establishing a TIF must establish a new account for the project. Thus, each parcel TIF and each TIF incentive district has its own account in the fund. In the case of a TIF incentive district which authorizes housing renovations, there must be separate accounts for infrastructure improvements and for housing renovations.

Each account is to pay for the cost of designated public infrastructure or housing renovations for the specific project. Payments from the accounts in the redevelopment tax equivalent fund can also be used for the following purposes:

1. To make bond or note debt service payments on bonds or notes issued to finance infrastructure pursuant or ORC Sections 307.082(B) and 5709.81(A) or to refund bonds previously issued.

2. To secure the payment of any other obligation of the county issued to finance any public infrastructure improvements pursuant to ORC Section 5709.81(B).

3. To distribute money to school districts where the tax exempt property is located as long as the amount is not greater than what the district would have received if no tax exemption was granted. The resolution establishing the account must include a percent of the maximum amount in the account to be distributed to the school district.

4. To a township or municipality in the amount that is owed to them pursuant to ORC 5709.78(D) under a negotiated compensation agreement.

5. To a township to pay for a portion of increases in revenue attributable from inside millage that result from the sexennial reappraisal or triennial update by the county auditor as required by ORC Section 5709.914.

The accounts in the county redevelopment tax equivalent fund are abolished when the infrastructure or housing authorized under the TIF is completed. Any incidental funds remaining are transferred to the county general fund.

15.113 EXECUTION OF TIF SERVICE PAYMENT CONTRACTS

While the law does not require the execution of TIF agreements or service payment Contracts, such agreements are beneficial from a county perspective. Generally¸ if such an agreement is entered into between the county and company it is done at the same time the TIF resolution is being adopted. The TIF agreement reflects the company obligation to remit service payments in lieu of taxes (PILOT) at the same time real property taxes are due. As mentioned earlier the advice of competent legal counsel is recommended in drafting these contracts. ODSA advises "that the agreement (contract) should contain guarantees from the parcel owner that sufficient funds will be available to the political subdivision (county) to retire debt incurred from the specified public infrastructure improvements." Copies of these contracts must also be filed with DSA 15 days after execution along with the TIF resolution.

Other items that can be included in a TIF agreement include:

1. Assurance that the requirement to make PILOT payments runs with the land in the case of sale.

2. Commitments from the company to make real property improvements

3. Agreement of who will formally apply for the tax exemption.

4. Other arrangements to secure any debt that will be issued for the public improvements and how some of the risk inherent in a TIF might be allocated between the county and the company.

15.114 APPLICATION FOR TAX EXEMPTION

An application for property tax exemption must still be approved by the Division of Tax Equalization of the Ohio Department of Taxation, after the creation of either a parcel TIF or a TIF incentive district granting tax exemptions and requiring PILOT payments.

The application for exemption can be made by the owner, the owner's representative, the county with the consent of the owner, or by the county without the consent of the owner. If the county intends to apply for the property tax exemptions on behalf of the property owners when establishing a TIF incentive district, the commissioners must schedule a public hearing on the proposed district prior to establishing the district as explained in Section 15.108.

The application is initially submitted to the county auditor who reviews the application and may make a recommendation and provide comments for consideration by the Division of Tax Equalization that has final approval authority. It is not unusual for the Division to take as long as six months to act on these applications.

ORC Section 5709.911 sets forth details relating to the exemption process, guidance in cases where parcels included in a TIF resolution are already tax exempt, and provisions relating to filing a notice with the county recorder for parcels sold to new owners and the obligation of new owners to continue to make PILOT payments. Also, for further information refer to Ohio Department of Taxation form DTE 24 which includes special instructions for TIF exemptions.

15.115 BEGINNING AND ENDING DATES OF TIF TAX EXEMPTION

Generally, an exemption begins with the tax year specified in the resolution. If the resolution specifies a tax year prior to the adoption of the resolution or omits the year, the exemption commences with the tax year in which an exempted improvement first appears on the county auditor's general tax list.

Commissioners may also include in the TIF resolution that the exemption begins in the tax year in which the value of an improvement exceeds a specified dollar amount or in which the construction of one or more improvements is completed. In the case of parcel TIFs, the exemption may begin in different years on a parcel-by-parcel basis and each parcel may have a distinct exemption term.

The property tax exemption ends on the date specified in the resolution as the date the improvement is no longer declared as a public purpose or the date of the expiration of the TIF incentive district. The exemption also ends when the county can no longer require PILOT payments. Finally, the county may not require PILOT payments after any of the following occurs:

1. If bonds or notes were not issued and if PILOT payments were not used to secure debt, the date the county has collected sufficient money in the appropriate account of the redevelopment tax equivalent fund to pay the cost of constructing or repairing the public infrastructure improvements or the housing renovations authorized in the resolution establishing the parcel TIF or TIF incentive district.

2. If PILOT payments were pledged to secure any county obligation issued to finance public infrastructure improvements and housing renovations, the date when the pledged payments were paid.

3. If bonds or notes were issued under ORC Sections 307.82 or 5709.81, the date the bonds and notes are paid in full.

Finally, if land is annexed to a municipality that was subject to a TIF exemption, the PILOT payments continue to be collected and distributed to the county redevelopment tax equivalent fund.

15.116 PROJECT COSTS ELIGIBLE FOR TAX EXEMPTION AND REDIRCTION TO INFRASTRUCTURE IMPROVEMENTS

The law defines the types of development activities which result in improvements to property that are included in the tax exemption and the redirection of taxes to the redevelopment tax equivalent fund. The eligible activities include, but are not limited to "construction, expansion and alteration of buildings and structures, demolition, remediation, site development, and any building or structure that results from those activities" (ORC 5709.40(A)(6)).

15.117 ELIGIBLE PUBLIC INFRASTRUCTURE IMPROVEMENTS

PILOT payments from both parcel TIFs and TIF incentive districts may be used for eligible public infrastructure improvements. Eligible uses include, but are not limited to, the following uses as defined in ORC 5709.40(A)(7):

1. Public roads and highways
2. Water and sewer lines
3. Environmental remediation
4. Land acquisition, including acquisition to assist industry, commerce, distribution, or research
5. Demolition, including demolition on private property when determined to be necessary for economic development purposes
6. Storm water and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety, and welfare
7. The provision of gas, electric and communications service facilities
8. The enhancement of public waterways through improvements that allow for greater public access

The statute clearly states that the uses specified above are not an all-inclusive list. In the case of TIF incentive districts, however, no PILOT payments may be used for police or fire equipment if the district was established after March 30, 2006 (ORC 5709.78(B)(3)(a)). The Council of Development Finance Agencies (CDFA) advises that the infrastructure improvements in the following table are also eligible.

Beautification components & related hardware	Pedestrian bridge systems that link commercial centers to transit systems
Bike lanes in street right of way	Pedestrian platforms for rail or light rail transit systems & similar facilities
Bridge construction & repair	Planning costs
Building acquisition	Public buildings
Convention centers	Public golf courses & buildings
Curb & sidewalk work	Public roads
Debt service	Public tunnel systems for private buildings

Decorative pavers	Publicly owned & maintained utilities
Demolition	Sanitary sewers
Drainage facilities	Sewer expansion & repair
Environmental remediation	Sewer pump stations & related equipment
Force mains	Sidewalks
Hiking & biking trails	Sky bridges that link public buildings
Land acquisition & relocation	Storm drainage
Landscaping	Street construction & expansion
Lift stations	Traffic signals & related equipment
Lighting	Transmission lines
Park improvements	Wastewater treatment facilities
Parking structures	Water supply
Pathways that facilitate intermodal transportation	

15.118 ISSUANCE OF TIF RELATED DEBT FOR PUBLIC IMPROVEMENTS

County commissioners are granted the authority to contract for the construction or repair of public infrastructure designated in a resolution establishing a TIF and which benefits a parcel included in the resolution. The resolution authorizing the issuance of notes must pledge monies from the appropriate account of the redevelopment tax equivalent fund and may not pledge ad valorem real property taxes for the repayment of the notes, but may pledge other available county funds for repayment (ORC 307.081 & 307.082).

Commissioners may also issue notes to finance the cost of these improvements pursuant to ORC Section 5709.81 at the same time they establish the TIF. These bonds and notes likewise can only pledge monies in the appropriate account of the redevelopment tax equivalent fund.

Finally, in the resolution establishing the TIF, commissioners may pledge the PILOT payments to secure payment of any county obligations issued to finance any of the public infrastructure improvements in the resolution, in lieu of issuing bond or notes ORC 5709.81(B).

15.119 DESIGNATION OF COUNTY TIF REPRESENTATIVE

The Ohio Development Services Agency (ODSA) recommends that each county that has established a TIF designate a person to serve as the county's TIF representative. DSA includes these names on their web site so that companies interested in TIF's have a local contact. While this is not required by statue as is the housing officer for CRA's or the enterprise zone manager for enterprise zones, designating such a contact can be helpful to the county. In a number of counties, the same person holds all three of these tax abatement related jobs.

15.120 ESTABLISHMENT AND RESPONSIBILITIES OF TAX INCENTIVE REVIEW COUNCIL (TIRC)

County commissioners must establish a Tax Incentive Review Council (TIRC) that has responsibilities for not only TIFs, but also for community reinvestment area (CRA) tax abatements and for enterprise zones.

No fewer than two members must be residents of townships to which the TIF applies. The county auditor serves as the chair of the council and meetings are at the call of the county auditor.

The TIRC is required to annually review all parcel TIFs and TIF incentive districts. The review includes a determination of the increase in true value of the parcels which were exempted, the value of improvements exempted, and the number of new employees or employees retained as a result of the exemption. Unlike in the case of CRA's or enterprise zones, the TIRC does not make a recommendation to the county commissioners regarding the continuation, modification, or cancellation of the TIF. The report must be submitted to the commissioners no later than September 1 of each year, and a copy should be sent to ODSA (OAC 122:4-1-08).

The TIRC may request information from the county auditor, county commissioners and property owners whose properties have been exempted from taxation that may be necessary to perform its responsibilities. In the case of property owners, the request must be sent by certified mail and the owner has ten days to respond to the request.

The TIRC must also review compliance of each recipient of a tax exemption with the nondiscriminatory hiring policies developed by the county under ORC Section 5709.832. These policies are developed to ensure that those receiving a tax exemption practices nondiscriminatory hiring in its operations on the basis of race, religion, sex, disability, color, national origin or ancestry. On the basis of this review, the council may submit recommendations to the commissioners for enhancing compliance with the nondiscriminatory hiring policies.

Upon receipt of written recommendations from the TIRC, the commissioners must vote to accept, reject or modify the recommendations, if the recommendations pertain to non-discriminatory hiring practices. This action must be taken within 60 days following receipt of the recommendations.

15.121 NOTICE REQUIREMENT AND APPROVAL OF CERTAIN TIF's BY SCHOOL DISTRICTS

When the commissioners intend to establish either a parcel TIF or a TIF incentive district, they must provide notice to city, local and exempted village school districts at least 14 days prior to the date the commissioners intend to consider the resolution establishing the TIF. County commissioners may also wish to send notice to other levy impacted agencies, but are not required to do so.

If the board of education provides comments on the TIF, either in person or in writing, those comments must be considered by the commissioners. Any school board may also request a meeting with the commissioners. A meeting must take place with a representative of the school board to discuss the TIF if such a request is made.

If the commissioners intend to provide for a tax exemption of greater than 10 years or 75%, the approval of school boards is required by state law. These provisions apply to both parcel TIFs and TIF incentive districts.

In these cases, the board of commissioners must provide any city, local, exempted village school, or joint vocational school board a notice stating its intent to adopt a resolution establishing a parcel TIF or a TIF incentive district. The notice must be provided at least 45 days before adopting the resolution establishing the parcel TIF or the TIF incentive district.

In the case of a parcel TIF the notice must:

1. Identify the parcels for which improvements will be exempted from taxation

2. Include an estimate of the true value the improvements to be exempted

3. Specify the period of time for which the improvements would be tax exempt

4. Specify the percentage of the improvements that would be tax exempt

5. Include the date when the commissioners intend to adopt the resolution establishing the parcel TIF

In the case of a TIF incentive district the notice must:

1. Delineate the boundaries of the district

2. Identify each parcel in the district

3. Identify each anticipated improvement in the district

4. Include an estimate of the true value of the improvements to be exempted

5. Specify the life of the district

6. Specify the percentage of improvements that would be tax exempt

7. Include the date when the commissioners intend to adopt the resolution establishing the TIF incentive district

The school board must adopt and certify to the commissioners a resolution at least 14 days prior to the date the commissioners plan to act on the TIF resolution. The school board has the following options in this resolution:

1. Approve the exemption for the term or percentage in the commissioners' notice.

2. Disapprove the exemption for the number of years included in the notice.

3. Disapprove the exemption for the percentage of the improvements to be exempted.

4. Disapprove the exemption for both the number of years and the exemption percentage.

5. Approve the exemption on the condition that the commissioners and the school board negotiate a compensation agreement. The agreement would provide compensation to the school district equal in value to a percentage of taxes exempted in the 11th year and thereafter. In the case where the exemption percentage exceeds 75% the agreement would provide compensation equal in value to a percentage of taxes in excess of 75%, or another mutually agreeable compensation.

If the school board and the commissioners do not execute a compensation agreement pursuant to ORC Section 5709.82 the commissioners cannot provide property exemptions for more than ten years for or for more than 75%. Refer to Section 15.093 of the chapter which explains the negotiation of compensation agreements with schools and other political subdivisions under the enterprise zone program for further information, as the same general rules apply to TIFs.

If a compensation agreement is negotiated with city, local and exempted village districts, the joint vocational district is entitled to the same rate of compensation and the same terms and conditions. Note also that there is no default statutory compensation for school districts as there is for townships.

While not directly impacting counties, the law also provides that for municipally established TIFs in municipalities which have enacted a local income tax special procedures apply when the new payroll from the project exceeds $1 million in any year. The law requires the municipality and the school board to attempt to negotiate a revenue sharing agreement. If, however, agreement cannot be reached within six months, state law requires that the new municipal income tax revenue must be shared equally between the municipality and the school board.

Under this default revenue sharing provision, the municipality would be required to pay the school districts 50% of the income tax collected on new employees minus the amount spent in that year for certain infrastructure costs. Such infrastructure costs may be not more than 35% of the taxes the school district would otherwise be entitled to receive. These payments are made annually on December 31.

It should also be noted that if tax exemption was granted by the commissioners to a company with over $1 million in payroll and the land is later annexed into a municipality, the school board has no mandatory right to compensation under this provision of law (OAG 96-030).

If the school board does not certify a resolution to the commissioners at least 14 days before the commissioners are scheduled to adopt the resolution, then the commissioner may act and the school district is not entitled to any compensation.

A school board may also adopt a resolution waiving its right to approve exemptions longer than ten years or 75%. In addition, a school board may adopt a resolution allowing the commissioners to deliver the required notice fewer than 45 days prior to the date the commissioners plan to adopt its TIF resolution. If such a resolution is certified to the commissioners, then they must provide notice as provided in the resolution of the school board. If a school board adopts such resolutions they may later modify or repeal them and certify this action to the commissioners.

15.122 NOTICE, OBJECTIONS AND COMPENSATION AGREEMENTS WITH TOWNSHIP TRUSTEES

The involvement of township trustees is required by state law if the commissioners intend to provide for a tax exemption of greater than ten years or 75% in a proposed TIF incentive district. These provisions do not apply to parcel TIFs.

The board of commissioners must provide the trustees with a notice stating its intent to adopt a resolution establishing a TIF incentive district. The notice must be provided at least 45 days before adopting the resolution establishing the district. The notice must:

1. Include a copy of the proposed resolution establishing the TIF incentive district
2. Identify the parcels for which improvements will be exempted from taxation
3. Include an estimate of the true value of the improvements to be exempted
4. Specify the period of time for which the improvements would be tax exempt
5. Specify the percentage of the improvements that would be tax exempt

6. Include the date when the commissioners intend to adopt the resolution establishing the TIF incentive district

The township trustees may adopt a resolution, within 30 days of receipt from the commissioners, objecting to the percentage or term of the exemption, or both. If the trustees object, they may negotiate a compensation agreement with the commissioners. If no compensation agreement is agreed to the trustees are entitled to default statutory compensation pursuant to ORC Section 5709.78(D)(2). If the trustees objected to the term of the exemption of greater than 10 years, the amount of the statutory compensation begins in the 11th year of the exemption and is equal to 50% of the taxes that the township would have received beginning in year 11, and thereafter. If the proposed exemption was for ten years or less and the trustees objected to the granting of an exemption of greater than 75%, the statutory compensation is 50% of the foregone taxes over 75%, or 12.5% (50% of 25%) of the foregone taxes.

If trustees do not certify a resolution objecting to the exemption within 30 days after receipt of the notice from the commissioners, no compensation is required. Also, if the trustees object and the county and township do not execute a compensation agreement, the commissioners' resolution establishing the district must include provisions providing for the statutory compensation.

Finally, it should be noted that these same provisions apply when a township or municipal TIF district is being established that proposes to grant tax exemptions in excess of ten years or 75%. In this case, the municipality and township must notify the county, who may negotiate a compensation agreement and are also entitled to the statutory compensation.

15.123 PAYMENTS TO TOWNSHIP FOR GROWTH ATTRIBUTABLE TO INSIDE MILLAGE

Special provisions in the law apply to the treatment of township inside property tax millage within a county TIF incentive district when property values increase because of the sexennial reappraisal or the triennial update. This provision does not apply to parcel TIFs and is also only required when the county applies for the tax exemption on behalf of the property owner.

Tax reduction factors are not applied to inside millage, and thus can grow with inflation, whereas voted levies are reduced to effective millage rates to remove the impact of inflationary increases in value. The increase in values resulting from appraisals and updates for inside millage is split equally between the township general fund and the county redevelopment tax equivalent fund, unless the township agrees for all taxes to be redirected to the account in the redevelopment tax equivalent fund or there is a compensation agreement executed between the county and the township. Commissioners are required to notify the county auditor if such an agreement is executed. See ORC Section 5709.914 for more information. Also note that similar provisions apply to county inside millage when the township establishes a TIF Incentive District (ORC 5709.913).

15.124 MANDATORY PILOT PAYMENTS TO CERTAIN TAXING DISTRICTS FOR SPECIFED LEVIES IN TIF INCENTIVE DISTRICTS ESTABLISHED IN 2006 OR LATER

ORC Section 5709.78(E) provides PILOT payments must be made to certain taxing districts for specified levies approved after January 1, 2006. This requirement only applies to TIF incentive districts, not to parcel TIFs, and only in districts established after January 1, 2006. In the case of the specified levies, which will be detailed in the following table, payments are to be made by the county treasurer from the redevelopment tax equivalent fund to the appropriate taxing district. This provision, however, only applies to new levies, replacement levies, and a renewal levy that also includes an increase in mills. For new levies, the amount of the PILOT payment is equal to the amount of the taxes. For renewal and replacement levies, the payment equals the increase in the effective millage rate. These provisions apply to the following levies:

Type of Levy	ORC Section
Developmental Disabilities Programs & Services	5705.19 5705.191
Providing and Maintaining Senior Citizen Services & Facilities	5705.19(Y)
County Hospitals	5705.22
Alcohol, Drug Addiction & Mental Health Services and Facilities	5705.19 5705.191 5705.221
Library Purposes	5705.23
Support of Children Services & the Placement and Care of Children	5705.24
Provision & Maintenance of Zoo Services and Facilities	5705.19(Z)
Support of Township Park Districts	511.27 5705.19(H)
Metro Park District Levies	1545.20 1545.21
Public Assistance; Human or Social Services; Public Relief; Public Welfare; Public Health & Hospitalization; Support of General Hospitals	5705.191

General Health District Levy	3709.29

15.125 SUBMISSION TO OHIO DEVELOPMENT SERVICES AGENCY (ODSA) AND ANNUAL REPORTING REQUIREMENT

After the adoption of a resolution establishing a parcel TIF or a TIF incentive district the commissioners must submit a copy of the resolution to the director of DSA. In addition, a TIF agreement (contract) executed between the county and the company should accompany the resolution. These must be submitted within 15 days after adoption of the resolution. ODSA provides a form to use when submitting TIF's as required by law. The ODSA will assign a project name to the TIF that will be used in the future for reporting purposes and will send a receipt for the submission if the county submits a self- addressed stamped envelope.

Each year commissioners must also submit an annual status report to ODSA by March 31. The report, which must be submitted electronically, shows the project's progress each year the tax exemption remains in effect. The status report must include:

1. A summary of the receipts from PILOT payments from each account in the redevelopment tax equivalent fund

2. A list of expenditures from each account in the redevelopment tax equivalent fund

3. A description of the public infrastructure improvements and housing renovations financed from the fund

4. A quantitative summary of changes in employment and private investment resulting from each project

PART 5

OTHER TAX ABATEMENTS AND INCENTIVES

15.13 SUMMARY OF OTHER TAX ABATEMENT PROGRAMS FOR COMMISSIONERS

While CRA's, enterprise zones, and TIFs are the major tax abatement programs used by county commissioners, there are other lesser used tax exemption programs that are used in some areas as follows:

1. Agricultural Security Area Tax Exemption—Authorized by ORC Section 5709.28 commissioners and township trustees can jointly exempt improvements to buildings or structures of at least $25,000 from property taxation. The amount of the exemption may not exceed 75% and the land must be enrolled in an Agricultural Security Area created in ORC Chapter 931 to be eligible.

2. Local Railroad Tax Exemption—Commissioners may declare certain properties as a public purpose and grant tax exemptions for up to 10 years. The exemption only applies to the part of the property that applies to local operations. In addition, the railroad must be replacing railroad service where the previous service was discontinued in 1980 or later. See ORC Section 5709.84 for more details. This authority also applies to municipalities and townships.

3. Remediated Brownfield Site Tax Exemptions—Commissioners and municipalities have authority to provide tax exemptions for certain contaminated properties that are in the Ohio EPA Voluntary Action Program which includes an Ohio EPA promise not to sue if the site is cleaned up under the program. The tax exemption must provide that the company will invest a minimum of 250% of the current value and the property has been certified by Ohio EPA. See ORC Sections 3746.12 and 5709.87-5709.883 for additional information.

---

[i] Seitz, William J. *The Tiff Over TIF's: Ohio's Legislative Fine-Tuning of Tax Increment Financing Law.* September 22, 2005
[ii] Ibid