



Department of Local Government Finance

Abatements – Common Problems & Options Available to Solve Them

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Agenda

- Common problems.
- Problem solving options for consideration.
 - NOTE: This handout is designed for a one and a half hour presentation which is a part of a three-hour course that covers the total abatement process. To see the handout for the full course, go to the link below.
 - <https://www.in.gov/dlgef/files/2021-presentations/210430-McKinney-Presentation-The-Abatement-Process.pdf>



Basic Definitions

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



Real Property Abatements

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



Basic Definitions

- Economic Revitalization Area (“ERA”)
 - An area that is within the corporate limits of a city, town, or county that has become undesirable for, or impossible of, normal development and occupancy.
- It is a legal description for a piece of real estate.
- If ownership transfers, the designation transfers with the property, as long as the property continues to be used in compliance with the established standards.



Basic Definitions

- Designating body
 - Also called a “governing body” (Note: the term “governing body” does not appear in the statute).
 - For a county without a consolidated city, the designating body is the fiscal body of the city, town, or county. (i.e.–city council, town council, county council),
 - For a consolidated city, the designating body is the metropolitan redevelopment commission.
 - Ind. Code § 6-1.1-12.1-1(7)



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

- The Form SB-1/Real Property provides information on the proposed project and is an estimate of costs, jobs created, etc. This is done before the project begins. It could cover a single project or several projects over a number of years.
- The reason why the Form SB-1/Real Property is so important is because the designating body must determine if the totality of the benefits (number of jobs, salaries, & other benefits) is sufficient to justify the deduction. Ind. Code § 6-1.1-12.1-3



Resolution

- According to Ind. Code § 6-1.1-12.1-2.5, the resolution declares an area as an economic revitalization area.
- The resolution specifies the abatement schedule.
- The resolution could contain an expiration date when the designation ceases to exist or could contain other limitations, terms, or conditions.
- Minutes to a council meeting do not qualify as a resolution. A resolution is a legal document.



Unauthorized Facilities

Ind. Code § 6-1.1-12.1-3 (e)

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



Unauthorized Facilities

Ind. Code § 6-1.1-12.1-3 (e)

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



Unauthorized Facilities

Ind. Code § 6-1.1-12.1-3 (e)

- *Question: Can a single-family home built in a new housing addition qualify for a tax abatement?*
- Answer: Please consider the terms “facility” & “multi-family facility” contained in Ind. Code § 6-1.1-12.1-3(e) and terms “1 or 2 family dwellings” & “multifamily dwellings designed for up to 4 families” found in Ind. Code § 6-1.1-12.1-2 for residentially distressed areas.



Compliance with Statement of Benefits (Form CF-1/Real Property)

- Form CF-1/Real Property must be filed with the designating body and the county auditor where the abatement deduction is requested.
- Must be filed between January 1 and May 15 or the approved extension date which ties to the filing date of the taxpayer's personal property tax return.
- NOTE: The filing date was May 17, 2021 or May 16, 2022 because May 15 is on a weekend for those two years.



Compliance with Statement of Benefits (Form CF-1/Real Property)

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



Frequently Asked Question

- *Question: Should the Form CF-1 be approved by the designating body before the real property deduction is allowed?*
- Answer: Ind. Code § 6-1.1-12.1-5.9 (b) states that the designating body MAY determine whether the property owner is in substantial compliance within 45 days of receiving the form so it is possible that the Form CF-1 is never reviewed and signed by the designating body.



Frequently Asked Question

- *Question: If a Form CF-1 is not filed by the taxpayer, who makes the decision that they are not in compliance...the county auditor for real property abatements / the county assessor for personal property abatements or the designating body?*



Frequently Asked Question

- Answer: There are two types of compliance with this question. The statutory requirement to submit the CF-1 and the process of approving the CF-1 once received. The county auditor/county assessor has the authority to deny an abatement that is not in compliance with the statute and the designating body has the authority to approve or disapprove the CF-1 once received.
- When the CF-1 is not filed, it basically makes it an incomplete filing for a particular deduction year.



Deduction Application – Form 322/RE

- The Form 322/RE must be filed with the county auditor before May 10 or within 30 days of the mailing date of the Form 11 if mailed after April 10. Ind. Code § 6-1.1-12.1-5.
- *Question: What if the deduction application (Form 322/RE) is filed late? Does the taxpayer lose the deduction for that year?*
- Answer: Like other deductions, an untimely filing could result in the loss of the deduction; however, there is a process to forgive this mistake. (more details to follow)



Frequently Asked Question

- *Question: What if no Form 11 is given at all?*
- Answer: Ind. Code § 6-1.1-12.1-5(b) says that if no Form 11 is sent, the tax bill would then serve as the first notice so the taxpayer would have 30 days after receiving the tax bill to file for the deduction with the Form 322/RE. This means that the deduction would be given after budgets were approved and tax rates were set so if it was a sizable deduction, there could be issues with shortfalls (or a loss of revenue to the local units).



Frequently Asked Question

- *Question: Can a taxpayer file the Form 322/RE before the Form 11 is mailed? Should I accept it? (They are concerned and trying to avoid any potential problems.)*
- Answer: The Department gives great deference to local control and will allow the county auditor to consider all of the facts before he/she makes that decision. There is nothing in the statutes that would prevent the county auditor from accepting it.



Solving Problems That May Arise During The Review Process Done By Local Officials



Incomplete Filing

- What if the filing is not complete? For example, what if the Form SB-1 or CF-1 is missing?
- Working with the assessor, the county auditor could deny the deduction or perhaps the form exists but has been misplaced so the auditor could send a request for the information and give the taxpayer 10 days to provide it. If not received, the claim for the deduction could then be denied. This determination is fact sensitive & a local control matter.



Late Filing of the Deduction Application (Form 322/RE)

- Ind. Code § 6-1.1-12.1-5 states the taxpayer, who desires to obtain the deduction, must file a timely deduction application with the county auditor.
- If the deduction application is filed late, the county auditor should deny the deduction in every case. This is because the statute allows the designating body to forgive this mistake, not the county auditor.
- So, will the taxpayer lose his Year #1 deduction?



Waiver of Noncompliance

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



Waiver of Noncompliance

- If the designating body wishes to waive non-compliance, they shall conduct a public hearing and then would adopt a resolution. Ind. Code § 6-1.1-12.1-11.3
- During the public hearing, the decision to grant, deny, or partially grant a waiver of non-compliance rests on the shoulders of the designating body.
- Could the designating body refuse to even hold a public hearing? Sure, if they have no desire to consider it.



Waiver of Noncompliance

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



Waiver of Noncompliance

- Ind. Code § 6-1.1-12.1-11.3 covers:
 - Failure to make the required findings of fact before designating the area.
 - Failure to file a timely application.
 - Failure to file a complete application.
- NOTE: It does not give the designating body the authority to grant abatements on assets that do not qualify for the deduction.



Frequently Asked Question

- *Question: Can a member of the designating body order the county auditor to bypass the waiver of noncompliance process and allow the deduction without “jumping through all of those hoops”?*
- Answer: The statutes provide clear guidelines on the process. If the designating body wishes to waive non-compliance, they shall conduct a public hearing and then adopt a resolution. Ind. Code § 6-1.1-12.1-11.3



Waiver of Noncompliance

- Ind. Code § 6-1.1-12.1-9.5 covers:
 - Correction of clerical errors such as mathematical errors or omitted signatures.
 - The adoption of a waiver of non-compliance resolution is the remedy to correct these issues as well.
 - NOTE: The statutory language contained in Ind. Code § 6-1.1-11.3 covers the waiver process for the vast majority of noncompliance issues and this section is rarely used.



Frequently Asked Question

- *Question: If the taxpayer fails to claim an abatement for the first three years of the ten-year abatement cycle, could we begin the first year of the abatement deduction cycle in the approved project's fourth year of being assessed?*
- Answer: No, the tax abatement deduction cycle begins when the approved project is first assessed. In this example, the taxpayer can claim the abatement in the fourth year of the ten-year cycle or request a waiver of non-compliance from the designating body for the past unclaimed deductions.



Frequently Asked Question

- *Question: But won't granting a waiver of non-compliance on unclaimed deductions create shortfalls?*
- Answer: Yes, most likely shortfalls in the budget could be created so the designating body should consider the facts and their options before making a decision. This issue is fact sensitive and case specific so there is not a one-size-fits-all answer. This is a local matter, and the designating body may feel that the taxpayer deserves the deduction.



Local Control

- There are many scenarios when it comes to dealing with tax abatement issues.
- The facts for each situation will need to be reviewed by either the designating body or the elected official (auditor or assessor) in charge of determining the deduction. Everyone has the option of getting legal advice from their attorney.
- Tax abatements are given locally and local control prevails when resolving these issues.



Real Property Abatements

- A timely deduction application must be filed one time in order to receive the deduction. Note - A second deduction application is needed if there is a change of ownership. (Form 322/RE or Form 322/VBD)
- The Form CF-1/Real Property (or CF-1/VBD) is required to be filed for each year that the deduction is requested.
- The county auditor has the authority to approve, deny, or alter a real property abatement deduction.



Real Property Abatements

- For personal property, the annual recalculation of the deduction is done by the taxpayer when he files his personal property tax return. It's reviewed/approved by the county assessor. The auditor simply posts the A/V.
- For real property, the county auditor calculates the abatement deduction. Sometimes, it can be quite complex with annual trending, general reassessments, appeals, or multi-year projects being built in phases.



Real Property Abatements

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



Real Property Abatements

- *Question: How do you handle an abatement when the building is 70% complete on the assessment date?*
- Answer: The property owner would file a Form 322/RE to claim a deduction on that portion of the assessed value and then file a second Form 322/RE for the remaining portion the following year so you would have two deduction layers on the same building. Each layer would independently run through its own deduction cycle.



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