

## RESOLUTION NO. 2019-01

### **A RESOLUTION OF THE ORANGE COUNTY DRAINAGE DISTRICT ESTABLISHING THE GUIDELINES AND CRITERIA FOR TAX ABATEMENT AGREEMENTS FOR USE IN THE DISTRICT'S TAX ABATEMENT PROGRAM TO PROMOTE DEVELOPMENT AND/OR REDEVELOPMENT IN CERTAIN AREAS OF THE COUNTY; FINDING THAT THE MEETING COMPLIES WITH THE OPEN MEETINGS ACT**

**WHEREAS**, the Orange County Drainage District (the "District") desires to promote and encourage the continued development and establishment of economic growth within Orange County;

**WHEREAS**, the District is authorized to enter into Tax Abatement Agreements as authorized by Chapter 312 of the Texas Property Code (the "Code");

**WHEREAS**, the District has determined that it shall become eligible to participate in tax abatements;

**WHEREAS**, the District desires to participate in tax abatement for creation, retention and diversification of job opportunities in Orange County, new construction and for the expansion or modernization of buildings and structures, tangible personal property as defined by the Code, including fixed machinery and equipment, which is likely to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment or enterprise zones that will be a benefit to Orange County and to the District, and which will contribute to the economic development within Orange County;

**WHEREAS**, the Code requires the District to establish guidelines and criteria for tax abatement agreements, which will be effective for two (2) years;

#### **NOW, THEREFORE, BE IT RESOLVED BY THE DISTRICT:**

1. **Adoption of Recitals.** The District finds that the recitals set forth above are incorporated herein for all purposes and are found to be true and correct.
2. **Election to Become Eligible to Participate in Tax Abatement.** The District hereby elects to become eligible to participate in tax abatement.
3. **Guidelines and Criteria Established and Renewed.** The District hereby establishes and adopts the guidelines and criteria for tax abatement agreements set forth in the Orange County Drainage District Uniform Tax Abatement Policy – 2019, attached hereto as Exhibit "A" (sometimes referred to herein as the "Guidelines"). The District affirmatively finds that the Guidelines are in the best interest of the District, are for the good of, and will benefit, the public, and are for a valid governmental purpose and will serve as an economic development tool of Orange County and of the District.

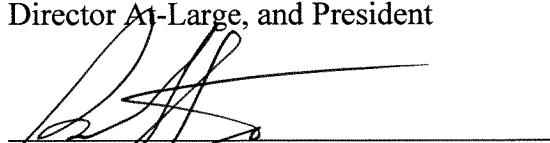
4. **Notice of Public Meeting.** It is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place and purpose of said meeting was given as required by law.

5. **Effective Date.** This Resolution shall take effect immediately upon its passage

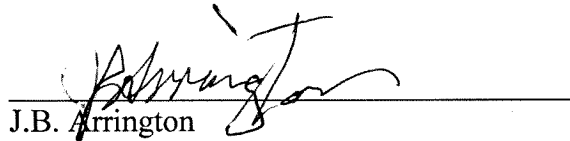
**PASSED, APPROVED and ADOPTED**, this the 12th day of March, 2019, at a Regular Meeting of the Board of Directors of the Orange County Drainage District.




Brent Peveto  
Director At-Large, and President



Russel Covington  
Director of Precinct No. 1, and  
Secretary/Treasurer



J.B. Arrington  
Director of Precinct No. 2



Randy Fuseler  
Director of Precinct No. 3



Hal LaPray  
Director of Precinct No. 4,  
and Vice-President

# **'Exhibit A'**

## **ORANGE COUNTY DRAINAGE DISTRICT UNIFORM TAX ABATEMENT POLICY**

### **2019 ADMONITORY PROVISIONS**

The final determination of value to be abated is vested with the Orange County Appraisal District ("OCAD"), an agency autonomous from the Orange County Drainage District ("District"). The Procedures used by OCAD are attached as Exhibit "A" and incorporated and adopted in this Abatement Policy for all purposes.

Each individual or business receiving an abatement retains the responsibility for annually applying to OCAD for recognition and implementation of such abatement agreement.

### **STATEMENT OF PURPOSE SECTION I**

(a) The Board of Directors of the District adopted this tax abatement policy to provide incentives to the owner of real property who proposes a Project to develop, redevelop or improve eligible facilities. The incentives will consist of a limited special exemption from ad valorem taxes provided that the Owner agrees to accept and abide by this Policy, and provided that the real property is located in a lawfully created Reinvestment or Enterprise Zone.

(b) This policy is intended to improve the quality of life in economically depressed areas and throughout Orange County by stimulating industrial development, and job creation and retention.

### **DEFINITIONS SECTION II**

(a) **"Abatement"** means the full or partial exemption from ad valorem taxes of certain real property values and/or tangible personal property values in a reinvestment or enterprise zone designated by Orange County or a municipality within Orange County for economic development purposes.

(b) **"Agreement"** means a contractual agreement between a property owner and/or lessee and the District.

(c) **"Base Year"** means the calendar year in which the abatement contract is executed (signed).

(d) **"Base Year Value"** means the assessed taxable value of eligible property as of January 1 preceding the execution of the Agreement, plus the value of eligible property improvements and Tangible Personal Property made after January 1, but before the execution of the Agreement, and which property is owned by the owner, co-owner, its parent companies, subsidiaries, partners, joint venturers, or any entity exercising control over the owner or subject to control by the owner.

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(e) **"Deferred Maintenance"** means improvements necessary for continued operation which do not improve productivity, or alter the process technology, reduce pollution or conserve resources.

(f) **"Eligible Facilities"** means new, expanded or modernized buildings and structures, tangible personal property as defined in the Texas Tax Code, including fixed machinery and equipment, which is reasonably likely as a result of granting abatement to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment or enterprise zone that would be a benefit to the property and that would contribute to the economic development within the Orange County, but does not include facilities which are intended primarily to provide goods or services to residents or existing businesses located in Orange County such as, but not limited to, restaurants and retail sales establishments. Eligible facilities may include, but shall not be limited to, industrial buildings and warehouses. Eligible facilities may also include facilities designed to serve a regional population greater than the County for medical, scientific, recreational or other purposes.

(g) **"Expansion"** means the addition of buildings, structures, machinery, tangible personal property, equipment, payroll or other taxable value for purposes of increasing production capacity.

(h) **"Facility"** means property improvements completed or in the process of construction which together comprise an integral whole.

(i) **"Modernization"** means a complete or partial demolition of facilities and the complete or partial reconstruction or installation of a facility of similar or expanded production capacity. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery, equipment, pollution control devices or resource conservation equipment.

(j) **"New Facility"** means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion or Modernization.

(k) **"Productive Life"** means the number of years a property improvement is expected to be in service in a facility.

(l) **"Tangible Personal Property"** means tangible personal property classified as such under state law, but excluding inventory and/or supplies and tangible personal property that was located in the investment or enterprise zone at any time before the period covered by the agreement with the District.

### **WHEN ABATEMENT MAY BE AUTHORIZED SECTION III**

(a) **Eligible Facilities.** Upon application, Eligible Facilities shall be considered for tax abatement as hereinafter provided.

(b) **Creation of New Value.** Abatement may only be granted for the additional value of eligible facilities made subsequent to and specified in an abatement agreement

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between the District and the property owner or lessee, subject to such limitations as the District may require.

**(c) New and Existing Facilities.** Abatement may be granted for new facilities and improvements to existing facilities for purposes of modernization or expansion.

**(d) Eligible Property.** Abatement may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements, and related fixed improvements necessary to the operation and administration of the facility.

**(e) Ineligible Property.** The following types of property shall be fully taxable and ineligible for tax abatement: land, supplies, inventory, deferred maintenance, vehicles, vessels, property to be rented or leased (except as provided in Section III(f)), property which has a productive life of less than ten years, or any other property for which abatement is not allowed by state law.

**(f) Owned/Leased Facilities.** If a leased facility is granted abatement, both the owner/lessor and the lessee shall be parties to the abatement agreement with the District.

**(g) Economic Qualification.** In order for an Eligible Facility to receive tax abatement the planned improvement:

- (1)** Must be expected to have an increased appraised ad valorem tax value based upon the Orange County Appraisal District's assessment of the eligible property;
- (2)** Must be expected to prevent the loss of payroll or retain, increase or create payroll on a permanent basis in Orange County; and
- (3)** Must not have the effect of displacing workers or transferring employment from one part of Orange County to another.

**(h) Standards For Tax Abatement.** The following non-exclusive factors, among others, shall be considered in determining whether to grant tax abatements for an Eligible Facility or Project, and if so, the percentage of value to be abated and the duration of the tax abatement:

- (1)** Existing improvements, if any;
- (2)** Type and value of proposed improvements;
- (3)** Productive life of proposed improvements;
- (4)** Number of existing jobs to be retained by proposed improvements;
- (5)** Number and types of new jobs to be created by proposed improvements;

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- (6) The extent to which new jobs to be created will be filled by persons who are economically disadvantaged, including residents of a Reinvestment or Enterprise Zone;
- (7) The extent to which local labor or local subcontractors will be used in the construction phase of the project;
- (8) The amount of local taxes to be generated directly;
- (9) The amount the property tax base valuation will be increased during the term of abatement and after abatement;
- (10) The costs to be incurred by the District to provide facilities or services directly resulting from the new improvements;
- (11) The amount of ad valorem taxes to be paid to the District during the abatement period considering (a) the existing values; (b) the percentage of new value abated; (c) the abatement period; and (d) the value after expiration of the abatement period;
- (12) The population growth of Orange County projected to occur directly as a result of new improvements;
- (13) The types and values of public improvements, if any, to be made by the applicant seeking abatement;
- (14) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- (15) The impact on the business opportunities of existing businesses;
- (16) The attraction of other new businesses to the area as a result of the project;
- (17) The overall compatibility with the zoning ordinances and comprehensive plan for the area;
- (18) Whether the project is environmentally compatible with no negative impact on quality of life perceptions;
- (19) The extent to which local vendors and suppliers will be used in the construction phase of the project.

Each application for tax abatement shall be reviewed on its merits utilizing the factors provided above. After such review, abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.

**(i) Local Employment.** For purposes of evaluating Section III(h)(7), Local labor is defined as those laborers or skilled craftsmen who reside in a nine county region comprised of Jefferson, Orange, Hardin, Jasper, Newton, Liberty, Tyler and Chambers counties, as well as the Bolivar Peninsula area of Galveston County.

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**(j) Denial of Abatement.** Neither a reinvestment or enterprise zone nor abatement agreement shall be authorized if it is determined that:

- (1)** There would be a substantial adverse effect on the provision of government service or tax base;
- (2)** The applicant has insufficient financial capacity;
- (3)** Planned or potential use of the property would constitute a hazard to public safety, health or morals;
- (4)** The project would cause a violation of state or federal laws; or
- (5)** Any other reason deemed appropriate by the District .

**(k) "Taxability"** From the execution of the abatement agreement to the end of the agreement period, taxes shall be payable as follows:

- (1)** The value of ineligible property as provided in Section II(e) shall be fully taxable; and
- (2)** The base year value of existing eligible property as determined each year shall be fully taxable.

### **APPLICATION PROCESS SECTION IV**

**(a)** After the proper creation or adoption of a reinvestment or enterprise zone by Orange County, or by a municipality within Orange County, any present owner, potential owner, or Lessee of taxable property in Orange County may request a tax abatement by filing a written request with the General Manager of the District. The application shall consist of a completed application form which shall provide detailed information on the items described in Section III(h) hereof; a map and property description with specific metes and bounds; a time schedule for undertaking and completing the planned improvements. In the case of modernization, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.

**(b)** The District shall make every reasonable effort to either approve or disapprove the application for tax abatement within forty-five (45) days after receipt of the application. The District shall notify the applicant of approval or disapproval.

**(c)** The District shall not enter into an abatement agreement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation or improvements related to a proposed modernization, expansion or new facility.

**(d)** Information that is provided to the District in connection with an application or request for tax abatement and that describes the specific processes or business activities

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to be conducted or the equipment or other property to be located on the property for which a tax abatement agreement is requested is confidential and not subject to public disclosure pursuant to the Texas Public Information Act until the tax abatement agreement is executed. That information in the possession of the District after the agreement is executed is not confidential and is subject to disclosure.

### **AGREEMENT SECTION V**

After approval, the District shall formally pass a resolution and execute an agreement with the owner of the facility and lessee, as the case may be, which shall include at least the following terms:

- (1) Estimated value to be abated and the base year value;
- (2) Percent of value to be abated each year as provided in Section III(g);
- (3) The commencement date and the termination date of abatement;
- (4) The proposed use of the facility, nature of construction, time schedule, map, property description and improvement list as provided in the application, Section IV(b);
- (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, or assignment;
- (6) Provision for access to and authorization for inspection of the property by the District's employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;
- (7) Limitations on the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect;
- (8) Provision for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;
- (9) Contain each and every term agreed to by the owner of the property;
- (10) Requirement that the owner or lessee of the property certify annually to the governing body of each taxing unit that the owner or lessee is in compliance with each applicable term of the agreement; and
- (11) All terms required by Texas Tax Code §312.205, as amended; Such agreement shall normally be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to the District.



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### **RECAPTURE SECTION VI**

(a) In the event that the company or individual (1) allows its ad valorem taxes owed the District to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or (2) violates any of the terms and conditions of the abatement agreement; and fails to cure during the cure period, the agreement then may be terminated and all taxes previously abated by virtue of the agreement will be recaptured and paid within thirty (30) days of the termination.

(b) Should the District determine that the company or individual is in default according to the terms and conditions of its agreement, the District shall notify the company or individual of such default in writing at the address stated in the agreement; and if such is not cured within thirty (30) days from the date of such notice ("Cure Period"), then the agreement may be terminated.

### **ADMINISTRATION SECTION VII**

(a) The Chief Appraiser of the Orange County Appraisal District will annually determine an assessment of the real and personal property subject to each abatement agreement. Each year, the company or individual receiving abatement shall furnish the appraiser with such information as may be necessary to determine compliance with the abatement agreement. Once value has been established, the Chief Appraiser will notify the District of the amount of the assessment.

(b) The abatement agreement shall stipulate that employees and/or designated representatives of the District will have access to the facility during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.

(c) Upon completion of construction, the designated representative of the District may annually evaluate each facility receiving abatement to insure compliance with the agreement, and a formal report may be made to the District.

(d) The Chief Appraiser of the Orange County Appraisal District shall timely file with the Texas Department of Economic Development and the State Property Tax Board all information required by the Tax Code.

### **AGREEMENT SECTION VIII**

The abatement agreement may be transferred and assigned in whole or in part by the holder to a new owner or lessee of the same facility upon the approval by resolution of the District's Board of Directors, subject to the financial capacity of the assignee and provided that all conditions and obligations in the abatement agreement are assumed. No assignment or transfer shall be approved if the parties to the existing agreement, the new

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owner or new lessee are liable to any jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld. As a condition of transfer, an assignment processing fee of \$1,000.00 may be required.

### **APPLICATION FEE SECTION IX**

The District may impose an application fee of up to one thousand dollars (\$1,000). This fee will be due and payable at the time of application.

### **DISCRETION OF THE DISTRICT SECTION X**

The adoption of these guidelines and criteria by the District does not:

- (1) Limit the discretion of the District to decide whether to enter into a specific tax abatement agreement;
- (2) Limit the discretion of the District to delegate to its employees the authority to determine whether or not the District should consider a particular application or request for tax abatement; or
- (3) Create any property, contract, or other legal rights in any person to have the District consider or grant a specific application or request for tax abatement.

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### **QUESTIONS TO BE ANSWERED IN ORDER TO DEVELOP AN APPLICATION AND ECONOMIC IMPACT STATEMENT FOR VALUE ADDED TAX ABATEMENTS IN ORANGE COUNTY**

#### **General**

The District may provide a representative to assist in preparation and presentation of all documents and to guide the applicant through the abatement process.

#### **Opening Paragraph**

The application should include a summary statement about the company and its operations. This information can come from an annual report, corporate 10K or other document provided by the company. (Please include these documents with this questionnaire.)

#### **Maps and Plats**

Provide maps, plats, and drawings necessary to establish the location of the improvements and their relationships to the boundaries of cities, ETJ's, and reinvestment or enterprise zone boundaries.

#### **Questions to be Answered**

- (1) Is your project within a city limit? \_\_\_\_\_. Name of City \_\_\_\_\_
- (2) Is your project within an ETJ? \_\_\_\_\_. Name of City \_\_\_\_\_
- (3) Is your project within an Enterprise or Reinvestment Zone? \_\_\_\_\_ Which? \_\_\_\_\_
- (4) Will you own the realty or lease the realty? \_\_\_\_\_
- (5) Present Appraisal District value of land and any EXISTING improvements owned by the OWNER: \_\_\_\_\_  
(Answer this question based on Appraisal District records for the specific site you select.)  
Number of Acres: \_\_\_\_\_ or Square Feet: \_\_\_\_\_
- (6) Type and value of proposed improvements:  
Type of construction: \_\_\_\_\_  
(Tiltwall, Build-Out of Existing Facility, Etc.)  
Value of Construction: \_\_\_\_\_  
Value of Equipment: \_\_\_\_\_

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Value of Personal Property: \_\_\_\_\_

Value of Pollution Control Devices: \_\_\_\_\_

- (7) Productive life of proposed improvements: \_\_\_\_\_ years, or term of initial lease: \_\_\_\_\_
- (8) Number of existing jobs to be retained by proposed improvements: \_\_\_\_\_  
(Answer only if the location is already in or near Orange County and now employs Orange County residents.)
- (9) Number and types of new jobs to be created by proposed improvements: \_\_\_\_\_
- (10) Amount of Annual local payroll to be created:  
During term of abatement: \_\_\_\_\_  
After term of Abatement: \_\_\_\_\_
- (11) What percentage and type of jobs to be created will local residents have the opportunity to fill? \_\_\_\_\_
- (12) Amount property tax base valuation will be increased:  
During term of abatement: \_\_\_\_\_  
After term of abatement: \_\_\_\_\_
- (13) The costs to be incurred by local government to provide facilities or services directly resulting from the new improvements: \_\_\_\_\_  
(Explain any costs for development or depletion of infrastructure the county or city is being asked to absorb, if any.)
- (14) The amount of ad valorem taxes to be paid to the District during the abatement period considering: (a) the existing values; (b) the percentage of new value abated; (c) the abatement period; and (d) the value after expiration of the abatement period.
- (15) The population growth of the county that will occur directly as a result of new improvements: \_\_\_\_\_  
(If you relocate to Orange County, how many of your employees do you anticipate to relocate?)
- (16) The types and values of public improvements, if any, to be made by applicant seeking abatement: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(List any facilities from which the public might benefit.)

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(17) Whether the proposed improvements compete with existing businesses to the detriment of the local economy: \_\_\_\_\_

(18) The impact on the business opportunities of existing businesses: \_\_\_\_\_

\_\_\_\_\_  
(Are there possibilities for local businesses to become suppliers? Any new retail opportunities?)

(19) The attraction of other new businesses to the area: \_\_\_\_\_

\_\_\_\_\_  
(Will any of your suppliers, customers, parent or sister companies relocate because of your relocation?)

(20) The overall compatibility with the zoning ordinances and comprehensive plan for the area: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(21) Describe, including the estimated value, all pollution control devices and other improvements for which you intend to seek TCEQ exemption from taxation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE: Failure to accurately disclose exempted property may result in a total default under the Abatement Contract, resulting in recapture of previously abated taxes and forfeiture of future abatement.**

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## **EXHIBIT “A”**

### **ORANGE COUNTY APPRAISAL DISTRICT PROCEDURE FOR CALCULATING ABATEMENTS**

#### **Purpose**

The purpose of this procedure is to clarify the method used in calculating the tax abatement under the attached Contract. This procedure requires calculation of the current Year Market Value, Base Year Value, and Taxable Value as these terms are defined below. In accordance with the Orange County Drainage District Uniform Tax Abatement Policy, the Real Property Owner's Current Taxable Value shall not be less than the Base Year Value in order for a project to receive the full amount of abatement.

#### **Calculation of “Current Market Value”**

“Current Market Value” is determined by calculating for that Tax Year the market value of all industrial realty improvements of a property owner that comprise the “Base Year Value” for each taxing entity.

#### **Calculation of “Base Year Value”**

“Base Year Value” for each taxing entity executing an abatement contract is the taxable value of all industrial realty improvements of a property owner located within that entity for the tax period defined as the “Base Year” less the abated value of all projects granted by that entity for the “Base year.” “Base year” is defined as the calendar year in which the abatement contract is executed (signed).

#### **Calculation of “Taxable Value”**

“Taxable Value” is determined by deducting from the appraised market value of all industrial realty improvements of a property owner the amount of any applicable abatements granted for that Tax Year.

#### **Calculation of Value Potentially Eligible for Abatement**

The following procedures are followed for each project for which a tax abatement contract has been executed.

- (1) The project base value, if applicable, is subtracted from the current year project value, and the percentage of abatement to be granted is then applied to the net amount to determine the project value subject to abatement.
- (2) The Base Year Value is subtracted from the current Market Value. If the difference is greater than zero (0), then the remaining value is the value potentially eligible for abatement to the extent that it does not exceed the project

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value subject to abatement. If the difference is zero (0) or less, then the project is not eligible for an abatement for that Tax Year.

### **Calculation of Abated Value**

Each project that remains potentially eligible for abatement is then tested for each taxing entity granting the abatement on an individual basis in chronological order based on the date the contract was executed.

(1) For the project being tested, the Base year Value plus the value potentially eligible for abatement for all other projects is subtracted from the Current Market Value. If the difference is greater than zero (0), then the remaining value is the value of the project to be abated to the extent that it does not exceed the project value subject to abatement for that year. If the difference is zero (0) or less, then the project is not eligible for an abatement for that Tax Year.

If a subsequent project being tested is determined to be ineligible for the full value potentially eligible for abatement calculated previously after performing the calculation stated above, then the test process must be redone for all prior projects using the actual value subject to abatement for the subsequent project to determine if there is any effect on the abatement for each project and each taxing entity for that Tax Year.