



NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER

GUIDELINE - PROPERTY TAX: INCENTIVES FOR NEW OR EXPANDING BUSINESSES

North Dakota Century Code (N.D.C.C.) Ch. 40-57.1 provides incentives in the form of property tax exemptions, payments in lieu of taxes, or a combination of both to a qualifying business. The incentives are granted at the discretion of the city or county in which the property is located.

Before a municipality may grant a property tax exemption under N.D.C.C. § 40-57.1-03, the project must be certified as a primary sector business by the Commerce Department.

A city or county with fewer than 40,000 population may grant an exemption to a project operating in the retail sector if the governing body has obtained approval from a majority of the qualified electors voting on the question at a city or county election held in conjunction with a statewide general election and If that governing body has established by resolution or ordinance the criteria that will be applied by the governing body to determine whether it is appropriate to grant an exemption for a project operating in the retail sector. Minimum criteria are specified in N.D.C.C. § 40-57.1-03(1). A city or county may not supersede or expand the provisions of this section under home rule authority.

Before a city grants a property tax incentive on a parcel that is anticipated to receive a property tax incentive for more than five years, the governing body of the city is required to send a letter, by certified mail, to the chairman of each county commission and the president of each school district affected by the tax incentive. The letter must provide terms of the proposed property tax incentive.

Within 30 days of receipt of the notice, each affected county and school district must notify the city, in writing, whether it elects to participate in granting the tax incentive on the county or school district portion of the property tax. If no letter is received, the city must treat each county or school district as participating in the property tax incentive.

DEFINITIONS

1. Commencement of construction means the building or erecting of any improvements other than site preparation or excavation.
2. Commencement of project operation means "the date the plant actually goes into its planned operations. For example, if a manufacturing plant actually begins manufacturing of its products in December, 1970, that would be the date of commencement of project operations. The Act does not purport to authorize granting of tax exemptions for the time of construction of plants." 1969 N.D. Op. Att'y Gen. 415.
3. Local Development Organization means a profit or nonprofit corporation incorporated in this state for the purpose of furthering the economic development of a specified area in this state. (N.D.C.C. § 40-57.1-02(1))
4. Municipality means a city or a county.
5. Primary sector means a business that adds value to a product, process, or service that results in the creation of new wealth. New wealth means revenues to a North Dakota business generated by sales of products or services to customers outside North Dakota, or revenues to a North Dakota business from sales in North Dakota, if the product or service was previously unavailable or difficult to obtain. (N.D.C.C. § 01-01-49(13))

6. Project means any revenue-producing enterprise, or combination of two or more of these enterprises, or an expansion to an existing business.
7. Project operator means the individual, partnership, limited liability company (LLC), corporation, or association that owns or operates the project.
8. Statewide general election, as provided in N.D.C.C. § 16.1-13-01, means the general election held on the first Tuesday after the first Monday in November of each even-numbered year.
9. Structure means any property where a business is conducted. The structure might be an entire building, if occupied by one business, or individual quarters within a larger building.

WHAT QUALIFIES

10. New and existing buildings, structures, fixtures, and improvements owned or leased by a qualifying project may receive property tax incentives. (N.D.C.C. § 40-57.1-03)
11. New buildings, structures, and improvements constructed and owned by a local development corporation may receive a partial or complete exemption from ad valorem taxation while unoccupied. Once occupied, the exemption continues until the next assessment date following the first occupancy. A qualifying project that locates in a building owned by a local development corporation qualifies for the property tax incentives, provided application is made and granted prior to occupancy. (N.D.C.C. §40-57.1-04.3)

ALLOWABLE INCENTIVES

12. A qualifying project may receive a complete or partial exemption from ad valorem taxation on structures used in or necessary to the operation of a project for up to five years following the commencement of project operations.
13. The exemption period begins with the assessment date immediately following the date of commencement of project operations.
14. Projects that produce or manufacture a product from agricultural commodities may receive a complete or partial property tax exemption on structures for up to 10 years.
15. A project located in a structure leased from a governmental entity and which received a five-year property tax exemption qualifies for additional exemptions for up to five years. For the additional exemptions, the municipality grants the exemption one year at a time upon annual application. (N.D.C.C. §40-57.1-04.1)
16. Payments in lieu of taxes may be used in place of, or in combination with, property tax exemptions for qualifying projects. The municipality and project operator negotiate the amount of annual payments, when the payments begin, and the ending date, which may be no later than twenty years from the date project operations began.
17. Payments in lieu of taxes are apportioned in the same manner as the general real estate taxes unless a taxing district enters into a written agreement for an alternate method. Any agreement entered into between the municipality and other taxing districts for an alternate method of apportioning the payments in lieu of taxes may not affect the apportionment to any taxing district that is not a party to the agreement.
18. The tax incentives are valid as long as the property is used for the purposes stated in the application. If there is a change in use or project operator, a new application for the incentives must be filed with and approved by the municipality to receive the remainder of the incentives.

LIMITATIONS

19. A project is not eligible for the property tax incentives if the project received a tax exemption under tax increment financing. (N.D.C.C. § 40-58-20(11))
20. The tax exemption and the payments in lieu of taxes are limited to the new or existing buildings or structures used in the qualifying project.
21. Tax incentives may not be granted for land.
22. Payments in lieu of taxes are not eligible for the 5% discount for early payment.

PROCEDURES

23. The project operator applies to the governing body of the municipality where the potential project is to be located. If the project will be within city limits, the project operator applies to the city governing body. If the project is outside city limits, application is made to the county commission.
24. The municipality forwards the application to the Department of Commerce, Division of Economic Development and Finance, P.O. Box 2057, Bismarck, ND 58502-2057, for its review and recommendation as to the eligibility of the project as a primary sector business.
25. Application for the property tax exemption must be made *and* granted prior to the commencement of construction if the project locates in a new structure. If the project locates in an existing structure, application must be made *and* granted before the structure is occupied.

For qualifying projects, applications for payments in lieu of property taxes may be made after construction or occupancy of the structure.

A representative appointed by the board of each affected school district and of each affected township is included as a non-voting member during the negotiation and deliberation of granting tax incentives.

26. The project operator publishes two notices to competitors of hearing on the application. The notices are published in the official newspaper of the city or county at least one week apart. The last notice must be published at least 15 days, but not more than 30 days, before the city or county considers the application. For example, notices published one week apart on May 1 and May 8 would be appropriate for a hearing scheduled any time between May 23 and June 7. An affidavit of publication is presented to the governing body prior to the hearing as proof of publication. Publication of notices is not required if the municipality determines that project competitors do not exist in the municipality.
27. The city or county holds a public hearing on the application and takes testimony both in favor of and in opposition to the granting of the tax incentives.
28. After the public hearing, the governing body determines the best interests of the municipality and approves or denies, in whole or in part, the application for tax incentives.
29. The municipality certifies the tax incentives granted by submitting a copy of the project operator's application with the attachments to the State Tax Commissioner and county director of tax equalization. The county director of tax equalization advises the local assessor when the property is taxable or exempt.
30. Political subdivision grantors shall maintain records of business incentives provided to recipients. They shall prepare an annual political subdivision grantor report to the Department of Commerce before April 1 each year that includes:

- The name of the business receiving business incentives during that year;
- The number of jobs expected to be created or retained by each business as a result of the business incentives;
- The average compensation expected to be provided by the employer for the jobs expected to be created or retained as a result of the business incentives, including identification of the average benefits and average earnings to be provided by the employer for these jobs; and
- The total dollar value of all business incentives provided by the political subdivision during that year.

ADDITIONAL CONDITIONS

North Dakota Century Code § 40-57.1-03 provides that the governing body of a municipality, before the beginning of a taxable year for which a property tax exemption or the option to make payments in lieu of taxes has previously been approved by the governing body, may revoke or reduce an exemption, or revoke or increase payments in lieu of taxes for that taxable year for reasons specified in a negotiated agreement or if the governing body finds that:

- a. Information provided by the project operator has proven to be inaccurate or untrue;
- b. Use of the property by the project operator does not comply with the reasonable expectations of the governing body at the time the property tax exemption or the option to make payments in lieu of taxes was approved;
- c. The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax exemption or the option to make payments in lieu of taxes was approved; or
- d. There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.

* Indicates significant change since last revised.