

## **OHIO ENTERPRISE ZONE PROGRAM AGREEMENT PROCESS**

Any business seeking tax incentive benefits must enter into an agreement with the appropriate municipal and/or county authority. As part of the establishment of the Enterprise Zone, the local municipality or unincorporated area either requested the responsibility to negotiate Enterprise Zone Agreements or acknowledged that the county would negotiate on their behalf. Only the designated authority which is identified in the local Enterprise Zone legislation can negotiate agreements.

The Enterprise Zone Agreement is the legal contract which outlines the responsibilities and expectations of both the business and the community. Basically, the business is committing to new investment and new or retained employment opportunities if they receive specific levels of tax incentives from the local and county taxing jurisdictions. While the Enterprise Zone law considers most types of businesses to be eligible for the local tax incentives on new investment, communities must establish local guidelines to determine which businesses will be considered for these benefits. For example, a community may consider tax incentives for industrial, high tech, or distribution facilities, but not for commercial or other businesses unless commercial development is a specific local development goal. Retail activities, which are defined very broadly, is not eligible except in areas which are also designated as Impacted Cities. The community's guidelines may also require that a certain percentage of the new jobs created go to women or minorities. Additionally, the guidelines may require that a certain percentage of the new jobs created be reserved for residents of the zone, municipality, township, or the county.

The process for an Enterprise Zone Agreement starts with whoever has the power to negotiate the agreement. It is a good policy to formally identify the people with negotiating authority and to formally note the limits of their authority. If, for instance, the county commissioners have delegated the power to negotiate to the municipality, then the mayor or the municipality's designated agent would negotiate with the business. Ohio Development Services Agency (ODSA) suggests a three-member negotiation team consisting of a representative of the municipality or township, a representative of the county and a representative of the affected city, local or exempted village Board of Education. The business must submit to the municipality an Ohio Enterprise Zone Program Proposed Agreement. This will provide the general parameters of the project to the municipality in writing. The local jurisdiction must determine whether the proposal is an eligible project within the definitions included in the Ohio Enterprise Zone law.

Eligible projects include the Establishment of a new facility, Expansion of an existing facility (minimum 10% investment), Occupation of a vacant facility (minimum 20% investment), or Renovation of an existing facility (minimum 50% investment). The local jurisdiction must also determine early on whether the proposed project will result in the relocation of assets or the reduction of employment from another facility. Relocation projects are restricted and special documentation is required. Once eligibility is determined, the mayor or designated representatives and the business will continue to discuss the acceptable level and term of tax incentives. The municipality should provide only the tax relief relevant to the successful implementation of the project. The business and municipality must recognize that some projects will require increases in local infrastructure and educational services, which in turn require a stable municipal tax base. To achieve that goal, the final negotiations should reflect a fair assessment of both the municipality's needs and the needs of the business. Once the levels and term of the tax incentive are agreed to, the municipality and business must enter into a formal agreement (see attached sample).

This agreement must be authorized by the municipal council in the form of an ordinance or resolution and

by a resolution of the County Commissioners to become an approved Enterprise Zone Agreement. Those cities designated as a "Metropolitan Statistical Area" Principal City, and certified as an Enterprise Zone under Ohio Revised Code 5709.62 or 5709.632 (A)(1), are not required to obtain County Commissioner approval of an individual Enterprise Zone Agreement. This process will be replicated for a township if that jurisdiction held the negotiation responsibility. Please note that counties must be party to any agreement executed within a township jurisdiction. Both the Township and the County must legislatively approve the agreement.

A minimum of 14 calendar days prior to a local government taking formal action, the affected school board must be notified of the tax exemption request, given a copy of the application for exemptions and given an opportunity to comment upon the proposal. If the school board does comment, the local government shall consider the comments during its review. If the board of education requests, the local governmental jurisdiction must meet in person with a representative designated by the board of education to discuss the terms of the proposal. No agreement can be reached prior to compliance with this notification requirement. Agreements which require approval by both the local jurisdiction and the Board of County Commissioners must provide notice of both scheduled review meetings. Proposals which exceed the stated incentive limits of 75% in municipalities and 60% in unincorporated areas require approval of the affected board of education to be valid. In these situations, the required board of education notice period is extended from 14 days to 45 business days. The board of education must respond to the specific request no later than 14 days prior to the scheduled review. Upon formal approval of the board of education, the local jurisdictions may immediately proceed with the local review meetings. In addition, the board of education may by resolution expressly waive all or part of the notice period, either in general or on a case-by-case basis. Formal action by the board of education disapproving the project is required to reject the proposal.

The formal Enterprise Zone Agreement must be executed prior to allowing the business to begin the project. Written agreements should be executed as soon as possible after the local governments give authorization. Relying on prior verbal commitments will increase the risk that interpretation problems or invalidation of the Enterprise Zone Agreement may occur. The validity of verbal agreements will be determined on a case-by-case basis (AG Opinion 89-013) prior to April 1, 1994. No agreement reached after March 27, 1991 is valid unless the affected board of education received the appropriate notification and had the ability to have comments considered by the local jurisdictions reviewing the tax incentive request. All Enterprise Zone Agreements made after **April 1, 1994** must be in writing.

The Enterprise Zone Agreement must contain the following specific information about the company's project (see Ohio Revised Code Section 5709.631):

- 1.) Names of all parties to the agreement.
- 2.) A description of the investments to be made. This should provide adequate detail as to the location of the site, the type of activities to be undertaken, the size or quantity of activities such as building and/or improvements, machinery and equipment and inventory to be acquired or improved, and the value of each of the project's activities. This includes a description of project assets that are not to be exempted from taxation.
- 3.) The scheduled starting and completion dates of the project's investments.

**Note:** ODSA recommends a maximum project period of three years. Project periods beyond three years should document the special circumstances requiring the extended time. Remember, the project period may control the length of time the granted exemptions remain

in effect.

- 4.) The number of employee positions to be created and/or retained itemized as to the number of full-time, part-time, permanent or temporary positions. In addition, the agreement must include a specific schedule outlining the number of new employees to be hired for each year in which the agreement is in effect.
- 5.) The estimated payroll attributed to the itemized categories outlined in #4 above.
- 6.) The property to be exempted, the percentage of the assessed value to be exempted, the term of the exemptions stated in tax years, and the required language designating the commencement and ending date of both the real and personal property tax exemptions.
- 7.) A description of project assets that are not to be exempted from taxation;
- 8.) If the project involves a relocation and a waiver is required, the agreement must include the required language concerning the waiver and the conditions on which it was based.
- 9.) The required language detailing the commitment by the enterprise to file all tax reports and returns and to pay non-exempted taxes.
- 10.) The required language citing the enterprise's certification that the enterprise does not owe any delinquent real or personal property taxes to any taxing authority in Ohio.
- 11.) The required language detailing the commitment of the local governments to perform reasonably necessary acts to effect the tax exemptions.
- 12.) The required language citing the continuation of the terms of the agreement regardless of whether the zone continues.
- 13.) The required language citing the local government's authority to terminate or modify the agreement for non-compliance.
- 14.) The required language ensuring the enterprise will provide any information reasonably necessary for the Tax Incentive Review Council to make a compliance determination.
- 15.) The required language acknowledging the necessity of formal local governmental approvals.
- 16.) The required language prohibiting transferability and assignability without local governmental approvals.
- 17.) The required language acknowledging revocation of the agreement if the enterprise violates the probation of relocating all or a portion of a facility receiving a previous tax exemption within five years following the term of the exemption period without an express waiver by the ODOD.

In addition to these minimum requirements, the community can, as noted above, negotiate for other commitments from the company to be incorporated within the Enterprise Zone Agreement. However, an agreement for payment in lieu of taxes cannot be a binding consideration for an enterprise zone agreement (see Attorney General Opinion #89-013 - item 2). Any agreement of this nature must be separate in nature and form. It is strongly suggested that the Enterprise Zone Manager review the Attorney General's opinion and make a copy available to the community's legal counsel. All agreements should incorporate the elements of this opinion. The exception to this interpretation are compensation arrangements directed to affected boards of education pursuant to Ohio Revised Code Section 5709.82. Still, a community can negotiate for additional obligations from the business. For example, one final Enterprise Zone Agreement includes the following statement: "The company shall be a member of the chamber of commerce during the ten-year life of the agreement."

A copy of the Enterprise Zone Agreement must be sent to ODSA within 15 days of entering into the agreement. The package must include:

- 1.) A copy of the "Final Enterprise Zone Agreement;"
- 2.) A copy of the Proposed Enterprise Zone Agreement attached as Exhibit A to the agreement;
- 3.) Evidence of local, municipal, or township approval;
- 4.) Evidence of county approval;
- 5.) Documentation of compliance with the Board of Education notification requirements (optional); and
- 6.) An analysis of the project's tax implication for both the enterprise and the local governments (optional).

In addition, copies of the agreement must be sent to the Ohio Department of Taxation and the County Auditor.