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Industry Attraction Series

The Ohio Enterprise Zone Program

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Ohio's Enterprise Zone program offers local communities the opportunity to work directly with local companies to provide real estate tax incentives to encourage the retention and expansion of business.

History

The enterprise zone program began in 1982 with the passage of legislation designed to last for five years and provide tax exemptions for up to ten years in Ohio's urban areas. In 1987 the legislature extended the program until 1992 and expanded it to allow increased participation of rural areas within the state able to meet certain distress criteria. By the time the 1992 sunset date rolled around there was considerable debate in the state on the merits of the enterprise zone system, and the program went through a series of short-term extensions while the Ohio legislature debated the program. The enterprise zone program was extended in 1992 for one year. In 1993 an additional short-term extension was approved. A 1994 extension ran through 1997. In 1996 an eighteen-month extension was passed to run through mid-1999. In 1998 the program was once again extended until mid-2004. The program currently operates under an extension passed in 2002 and providing authority for the program through October 15, 2009.

The 2006 annual report issued by the Ohio Department of Development (ODOD) showed a total of 2,707 active agreements in 85 of Ohio's 88 counties or an average of nearly 32 agreements per county. Three counties—Geauga, Meigs, and Morgan—have zones but have never imple-

mented an agreement. Seven counties have county-wide zones. Fifteen counties, almost all in the Appalachian region of the state, have five or less current agreements. Four counties—Butler, Cuyahoga, Hamilton, and Montgomery—have in excess of 100 active agreements.

According to ODOD data, enterprise zone agreements have resulted in 235,763 retained and 111,448 new jobs in the state. Investments made as a result of EZ agreements have totaled \$8,764,289,000 in real property and \$27,894,322,000 in tangible personal property. Jobs created in the state have resulted in \$5,065,309,000 in new payroll.

The role of enterprise zones appears to be waning based on latest data from the Ohio Department of Development, which shows the level of enterprise zone activity down by 50 percent from 2005 to 2006. Much of this may be due to recent changes in the Ohio business tax code, which is phasing out tangible personal property taxes by 2009 and replacing these taxes with a commercial activities tax. This eliminated one of the two types of taxes that the enterprise zone incentives originally affected.

Eligibility to Form Zones

To be eligible to participate in the program, the local community must decide to form a zone, and then determine which type of zone they legally can form. Generally, the area proposed must have a minimum population of 4,000 in counties of 300,000 or more, and a minimum population of 1,000 or more in all other counties. The area chosen must have a single, continuous boundary.

Limited Versus Full Authority Zones

Revisions made to the program in 1994 provide for two types of zones: limited and full authority. Limited authority zones do not need to meet distress criteria. However, incentives cannot be granted to companies relocating operations from other locations within the state of Ohio to a limited authority zone without first obtaining a waiver from the ODOD. Waivers can be issued only under specific, narrow circumstances. Enterprise zones in existence at the time the 1994 revisions were made became limited authority zones. Zones eligible to become full authority zones were required to reapply to the state to receive that status. A full authority zone is authorized to approve intrastate relocations; however, intrastate relocations invoke special notification requirements. A minimum 30-day notice must be given to the county or municipality from which the business will relocate prior to the first public meeting at which an agreement is to be deliberated.

Full authority zones must meet two of six measurements of distress, unless the zone is located in one of Ohio's Appalachian counties or in a Metropolitan Statistical Area (MSA) central city. Zones located in these two areas must meet only one distress measurement to qualify as a full authority zone. Distress criteria include concentrated unemployment levels, a prevalent number of vacant or demolished commercial or industrial structures, concentrated population loss, areas of low-income residents, and areas with low weighted average tax capacities.

When a zone is formed, a decision must be made on which unit of government (township, municipality, city, or county) will negotiate agreements. Regardless of which option of negotiation is chosen, any agreement must be approved by both the local unit of government and the county before it becomes effective.

Zone Certification

As soon as these decisions are made, the county petitions ODOD for zone certification. The application covers the following points: name of applicant; zone manager; area to be included in the zone; population of zone; type of zone to be created (distressed versus non-distressed and central city versus county); distress criteria used; authorizing resolutions; school board notification procedures; zone map; and list of local contacts. The local jurisdiction will receive notification of ODOD action. Once the application for creating a zone is approved, the community is authorized to accept applications for enterprise zone incentives. Additional areas may be added to existing en-

terprise zones by applying to the state for an amendment to the boundaries of the zone.

Eligibility for Incentives

Four general types of projects are eligible for incentives: business establishments, expansions, renovations, and occupations. Establishment of a firm is defined as the creation of a facility determined by the director of ODOD to represent a significant investment in real and/or personal property at a location where the business had not previously operated. An expansion involves the addition of land, buildings, machinery, or equipment to a facility that equals 10 percent of market value of the facility prior to such expenditures. Renovations are projects to alter or repair an existing facility that equals at least 50 percent of the value of the facility. Occupations are expenditures of 20 percent or more of the market value of a vacant facility.

As a general rule, exemptions can be approved on eligible investments in real property for up to 75 percent for a maximum of fifteen years in municipalities and for up to 60 percent for a maximum of fifteen years in unincorporated areas of an enterprise zone. The exemption percentage can be increased with the express written approval of the affected board of education. In addition, incentive agreements can be "front loaded" with incentive levels exceeding the allowable percentages in the early years of an agreement to assist a firm's cash flow needs and exemption levels reduced in later years as necessary to bring the average exemption under the statutory cap. Front loading an agreement may be valuable for firms suffering cash flow pressures in the first years following an improvement.

The jurisdiction must execute an agreement using the statutory required format to finalize the negotiated/approved agreement. Copies of the agreement must be sent to ODOD and the Ohio Department of Taxation. To be effective, agreements must be signed before a firm begins its expansion or construction at a new location.

The Role of Boards of Education

A board of education cannot prevent an enterprise zone incentive from being enacted, provided that the agreement terms are less than the statutory 75/60 percent incentive level. Yet they do have input into the enterprise zone agreement process. Boards of education must be notified of a project application prior to local review as part of the application process and are given a 15-day period to

comment on any proposed incentive. The comment period increases to 30 days if a business is requesting incentives in excess of the 75/60 percent limits. The comments of the affected boards of education must be considered by local governments before a final project agreement is reached. In addition, the state suggests that the board of education be included in the local committee charged with negotiating individual project agreements.

Side agreements between the applicant and local school districts are not uncommon and may provide for some level of payment in lieu of taxes for the local schools. These agreements are not part of the formal enterprise zone agreement and are entered into on a case-by-case basis.

Projects that will generate more than \$1,000,000 in new payroll subject to municipal income tax are required to enter into a cooperative agreement with the affected board of education. Communities are encouraged to create a procedure to calculate and distribute the income to be generated from the new payroll. If local negotiations fail to determine the ratio at which tax income will be shared, the law provides that the split be 50-50.

All agreements are subject to a non-waiveable \$750 application fee payable to ODOD. Local application fees are not authorized under the current law. However, local annual monitoring fees are allowed. Local monitoring fees are based on the amount of taxes the enterprise zone agreement saves the business. The local community can collect 1 percent of the incentive received by the firm up to \$2,500 per year. The local fee is also subject to a \$500 annual minimum amount. Local monitoring fees are used to defray the costs of enterprise zone administration and may be waived at the discretion of the local jurisdiction.

Each application is considered individually by a local negotiating committee. For county designated zones, the state recommends the local negotiating committee consist of one representative from the county; a second from the local township, village, or city with jurisdiction; and a third from the board of education. This provides additional assurance that any concerns of the school board will be heard and provides a well-rounded review of the incentive request.

Monitoring the Agreement

Creating a zone and negotiating an agreement does not complete the incentive process. Each agreement must be monitored annually to assure that the firm is abiding by the terms of the agreement. Monitoring of the agreements is performed by local tax incentive review councils (TIRC). For non-MSA central city enterprise zones, the local TIRC

consists of three representatives appointed by the county commissioners, two members from each affected municipal corporation, two members from each township, the county auditor or his/her designee, a representative from affected boards of education, and a representative from the local vocational school. This committee meets and determines the company's compliance with the enterprise zone agreement.

The tax incentive review council cannot make changes to enterprise zone agreements. If the TIRC feels that a company is not living up to the enterprise zone agreement, it is the TIRC's duty to note any such failing and to propose possible remedial steps to the affected county, municipality, or township. Any changes to an outstanding enterprise zone agreement can be made only by the groups party to the agreement. TIRC meetings should be held early enough in the year to give communities the opportunity to use the information obtained to file the required report to the ODOD by the March 31 annual deadline. All reporting is now done electronically.

Sample Agreement

What might a typical agreement look like? Consider the following sample situation: Ajax Widget, Inc. will be building a new facility in the Dogwood School District, Molasses Township, Zebra County, Ohio. The facility will involve an investment of \$2.5 million in real estate. Investments in machinery and equipment are no longer considered as new investment in such tangible personal property is no longer taxed under Ohio law. Real property is taxed at 35 percent of its true value. The full and effective tax rates for the affected taxing entities are listed in Table 1.

Taxing entity	Full rate	Effective rate
Township and fire	4.60	4.45
Dogwood schools	37.30	29.59
Zebra County	4.10	4.04
Total millage	46.00	38.08

After negotiations have concluded, the parties have agreed to offer an incentive of 60 percent for ten years on real and tangible personal property, not including inventory. This model assumes that tax rates remain fixed for the life of the agreement. Ten-year totals are listed in Table 2.

Table 2. Ajax Widget Inc. Sample Tax Schedule

Taxing entity	Tax due without incentive	Tax due with incentive	Savings to company
Molasses Township	\$38,938	\$15,575	\$23,363
Dogwood schools	258,913	103,565	155,348
Zebra County	35,350	14,140	21,210
Totals	\$333,201	\$133,280	\$199,921

If a 10-year, 60-percent incentive is granted to Ajax Widget for investments in real property, taxing entities in Zebra County will receive \$133,280 in new taxes over a 10-year period and Ajax will save \$199,921 in taxes that would have been paid if no incentive had been granted.

The Ohio Enterprise Zone program is one of the few programs that provide decision-making power to local leaders. The decision to deal or not to deal with a firm, decisions on the percent and duration of the incentive, and areas of the community to be included or excluded from participation in the program are all decided locally. Communities are encouraged to create local guidelines to codify these local decisions. The inability to include tangible personal tax relief may lessen the value of enterprise zone incentives, yet the program is one of very few where the local community makes the financial decisions.

Further Reading

This fact sheet is not designed to provide detailed legal guidance on the creation, operation, and maintenance of local enterprise zones. The Ohio Department of Development has information on the enterprise zone program including legislation, sample documents, annual reports and other important information on line at www.odod.state.oh.us/edd/ez/, which covers the topics found in this fact sheet in detail. Counties should consider the need for legal advice and review of enterprise zone activities and documents. Legislation controlling enterprise zones can be found in the Ohio Revised Code sections 5709.61 through 5709.85.

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