

City of Edwardsville, Kansas Industrial Revenue Bond (IRB) and Economic Development Tax Exemption (EDX) Policy



Date Adopted: September 12, 2011

Section 1. Policy Statement

(a) The Governing Body shall evaluate all requests for tax abatement for the purposes allowed by law and shall approve such abatement, if, in its opinion, the project to be abated is reasonably expected to promote, stimulate and develop the general economic welfare of the City through promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources and recreational development in the City, to encourage and assist in the location of new business and industry in the City and the expansion, relocation or retention of existing business, industry and health facilities; and to promote the economic stability of the City by providing greater employment opportunities, diversification of industry and improved physical and mental health of the citizens of the City, and is deemed to be in the best interests of the City.

In evaluating a request for tax abatement, the Governing Body shall consider whether the proposed project will help achieve the following objectives:

1. Add substantially to employment in the City or preserve existing jobs in the City.
2. Help produce diversification of the local economy.
3. Create a positive impact on an area of the City where economic assistance is needed.
4. Expand the type of job skills available to the job market in the City or use of key skills of locally unemployed persons.
5. Create economic growth through the production of goods and/or services which will be exported from the City or which will replace goods and/or services which are currently imported to the City.
6. Increase the property tax base of both residential and commercial properties to further support the costs of municipal services provided by the City and increase the credit worthiness of the City by enhancing the tax base.
7. Open up other property for future development due to extension of utilities associated with the project.

(b) In evaluating an application for tax abatement, the Governing Body shall also consider the positive or negative influence for the City of the following factors:

1. Whether the abatement would grant an unfair advantage to the applicant over other firms providing the same or similar services in the City.
2. Whether the land used for the project fits the land use and development plans of the City.
3. Whether the project building design meets or exceeds the overlay district standards.
4. Whether there is an increase in the appraised value of the subject property and in the corresponding sales and income tax revenue resulting from the project.
5. Whether there will be additional costs associated with the applicant business due to the City providing services, infrastructure enhancements, and/or the local school districts providing facilities and to educate the students of the new residents.

Section 2. Requirements of Proposal, Fees, Origination Fee

The potential applicant should arrange for a pre-application meeting with the City Administrator and the City Attorney or their appointees, to explore the applicant's interest prior to formally submitting an application. All applicants are required to complete the standard application form attached to this resolution and incorporated herein by this reference. At least 15 days before the proposal is expected to be considered by the Governing Body, the applicant shall submit the application form to the City along with a non-refundable application fee of \$2,000. Such fees shall be used to defray costs of the City associated with issuing industrial revenue bonds and for other lawful purposes.

The applicant is also responsible for payment of other professional fees including, but not limited, to bond counsel, financial advisors and any fees of the City Attorney incurred in connection with the issuance of the bonds.

Each applicant approved for issuance of industrial revenue bonds or a constitutional exemption shall pay to the City an issuance fee in an amount equal to 1% of the total industrial revenue bond issuance or the total value of the abatement. All origination fees collected by the City shall be used by the City for the purpose of promoting and furthering local economic development activities.

Section 3. Conditions of Approval

Approval of industrial revenue bonds is subject to the conditions below:

Privately placed bonds: Applicant must provide reasonable assurance that the bonds are secure and marketable to sophisticated investors, approved by the City and that the bond issue complies with applicable state and federal laws.

Secondary market disclosure: Applicant must agree to provide ongoing secondary market disclosure to bond investors of material information regarding the security for the bonds to the extent required by law.

Required City advisors: The City requires the use of its designated bond counsel, Scott Anderson, Kutak Rock, LLP. The City reserves the right to approve the selection of other participants in the bond issue including, but not limited to, the underwriter and trustee/fiscal agent. The City, in its discretion, may retain additional independent advisors or counsel to assist the City in analyzing the legality or other merit of the proposed bond issue.

Reimbursement of City costs: The applicant must pay for or reimburse the City for all legal, financial and administrative work performed in connection with the tax abatement as determined by the City. All post-closing costs (i.e. default, transfer of ownership, transfer of bonds, redemption, remarketing issues, etc.) will be billed to the applicant for reimbursement to the City.

Environmental and planning: The proposed project must be non-polluting and consistent with all applicable planning and community development policies and regulations. The City may require the applicant to perform at least a Phase I environmental audit of the project site and take any remedial action necessary.

Taxes: The applicant must not have any delinquent property taxes.

Section 4. Methods of Tax Abatement

In Kansas, there are generally two methods utilized for obtaining property tax exemptions for economic development. The most common method of tax exemption is granted under K.S.A. 79 201a *Second* in connection with the issuance of industrial revenue bonds. The other method of tax exemption is economic development tax exemption granted under Article 11, Section 13, of the Kansas Constitution. Both provisions allow for exemption for a period not to exceed 10 years. However, there are important differences, both practical and legal, between the two exemptions. A comparison of the two tax exemption approaches is set forth below.

Comparative Analysis

<u>Constitutional (EDX) Exemption</u>	<u>IRB Exemption</u>
1. Sublease of project prohibited.	1. Subleasing of project permitted.
2. Change in use may jeopardize exemption.	2. No limitations on change in use.
3. Financing leases for equipment may not qualify because of dual use.	3. Financing leases can qualify for exemption.
4. Must meet relocation certification from KDoCH test.	4. No relocation certification from KDoCH test.
5. Board of Tax Appeals has legal and factual review.	5. Board of Tax Appeals approval perfunctory.
6. Significant number of applications denied or modified by Board of Tax Appeals.	6. Negligible number of applications denied by Board of Tax Appeals.
7. Statutory scheme implementing Constitutional exemption untested.	7. Constitutionality of IRB exemption upheld in 1985 Kansas Supreme Court case.

Section 5. Tax Abatement.

The City has authority under Kansas law to exempt certain property from ad valorem taxation for a maximum 100% for 10 years, as an economic development incentive. If an applicant desires to be considered for tax abatement the applicant must complete the appropriate application form. Only new real property not already on the City tax rolls is eligible except as provided for in the case of vacant buildings that have been vacant for a considerable period of time as outlined in Section 6.

If an application for abatement is made, the Governing Body shall determine whether the requested tax abatement should be granted and if so, the amount to be abated. The amount of the tax abatement shall be determined at the discretion of the Governing Body based on its review of the application. Consideration will be paid to the factors listed in Section 7. The City utilizes the standard 50% tax abatement on new incremental taxes over ten years. The schedule for the abatement will be determined on a per case basis. The project construction design, size, and number of jobs may warrant greater tax abatement in rare cases.

The Governing Body's authority is discretionary and applications may be considered on a

case-by-case basis. The Governing Body is under no obligation to approve any requested tax abatement and reserves the right to deviate from the policies contained herein and the schedule above (though not the procedures) if, in the opinion of the Governing Body, circumstances warrant such deviation.

Once the City has approved the tax abatement, it will submit an application for the tax abatement to the Court of Tax Appeals for approval of the tax abatement in accordance with State law. If such approval is denied, no tax abatement may be granted. If the applicant fails to pay required payment in lieu of taxes which may be a condition for granting the abatement, or fails to provide data requested by the City, or fails to comply with terms of the performance agreement, the City may revoke or modify the abatement.

Section 6. Payment in Lieu of Taxes

a) Any applicant receiving a tax abatement shall be required to make a payment in lieu of taxes equal to the amount of property tax paid or that was payable for the most recent year before acquisition of the property by the applicant business, construction of new facilities or added improvements to buildings. This policy ensures that entities within the taxing jurisdiction affected by the abatement will receive the same tax revenue from the abated property as was received before the tax abatement granted by the City. If vacant buildings are purchased or leased by a new or expanding business, or the market value of the property decreases, this requirement may be waived in whole or in part, at the discretion of the Governing Body.

b) The incremental payment of taxes on new development based upon the tax abatement schedule in Section 3 (or as determined by the Governing Body) shall be considered an additional payment in lieu of taxes over and above the minimum payment described above. The payment terms will be determined before the City approves the tax abatement.

Section 7. Kansas Retailer's Sales Tax

Under the existing provisions of K.S.A. 79-3606, subsections (b) and (d) and other applicable laws, sales of certain tangible personal property or services purchased in connection with the IRB-financed improvements may be entitled to exemption from the tax imposed by the Kansas Retailers' Sales Tax Act.

Section 8. Initial Review and Public Hearing

Each completed application shall be reviewed initially by City staff and bond counsel who shall determine whether (a) the application is complete and sufficient for review, and (b) the applicant's business is eligible for tax abatement under the applicable laws, if an abatement is requested. If an application is incomplete, the City shall notify the applicant noting what changes or additions are necessary. If the application is found complete and is for a purpose which appears to be authorized by law, the City Administrator shall place the item before the Governing Body for its review.

No tax abatement shall be granted by the City prior to a public hearing. Notice of the public hearing shall be published by the City Clerk at least seven days prior to the hearing in the official city newspaper. The City Clerk shall notify by certified mail the applicable taxing authorities advising them of the public hearing and providing them with a copy of the application and cost benefit analysis. The applicant business shall be required to attend the public hearing.

Section 9. Letter and Resolution of Intent

Administrative Letter of Intent: The City Administrator is authorized to issue administrative letters of intent when requested by the applicant upon a finding that the public interest requires confidentiality in order to successfully negotiate the location of the prospective business within the City. Such administrative letter of intent is not binding on the Governing Body and shall be superseded by any final action or final resolution of intent issued by the Governing Body.

Governing Body Resolution of Intent: The Governing Body may issue a resolution of intent, setting forth in general terms its proposed plans for granting tax abatement and any conditions of performance. Such resolution of intent is an expression of good faith, and in no way binds the City to grant tax abatement. Such resolution of intent shall expire six months after issuance, but may be renewed. A public hearing shall not be required prior to the issuance of a resolution of intent. No other group or individual shall be authorized to speak for and commit the Governing Body to the granting of tax abatement. A resolution of intent issued by the Governing Body supersedes any letter of intent issued by the City Administrator.

Section 10. Performance Agreement

To provide reasonable assurance that the projected benefits to the City will be realized, the agreement for payment in lieu of taxes shall include a performance agreement requiring the applicant to maintain certain standards of performance (i.e. minimum job levels, minimum capital investment, etc.) while the abatement is in place.

Section 11. Annual Review

Each performance agreement is subject to annual review and determination by the City Clerk that: (i) the conditions originally qualifying the business for the exemption continue to exist, and (ii) the specific conditions of the performance agreement have been met. A non-refundable fee of \$250 is required no later than January 15 of each year for the term of the tax abatement to cover costs associated with conducting the review. The annual review shall include the completion by the applicant of the required tax exempt renewal form submitted to the City Clerk who shall forward the completed application to the appropriate County Official. If conditions substantially change, then such information shall be forwarded to the Governing Body through the City Administrator, along with any recommended actions. Any business granted a tax abatement shall notify the City of any substantive change in the use of tax exempt property.

Section 12. Special Assessments

Any tax abatement granted under this policy shall not affect the liability of such property for any special assessments levied or to be levied against such property.