

PRESENTED AT

19th Annual Renewable Energy Law Institute

January 29-31, 2024

Austin, Texas

**Nothing Has Changed, and Everything Has
Changed: A 2024 Update on Texas Property Tax
Incentives**

David J. Sewell

Stahl, Sewell, Chavarria, Friend & Cohen, LLP

Nothing Has Changed, and Everything Has Changed: A 2024 Update on Texas Property Tax
Incentives
By: David J. Sewell*

I. INTRODUCTION

Pursuing property tax incentives has become an integral part of many real estate development projects in Texas, and energy projects are not an exception. Whether the energy project is a renewable energy facility, a gas-fired power plant, a green fuels manufacturing facility, or a natural gas liquefaction facility, successfully negotiating one or more property tax incentive agreements is an expected part of the project's asset package. This paper reviews the principal types of property tax incentives that are offered in Texas.

Property tax incentive agreements have developed their own unique language. *Can you help with a 312 agreement? Can you help me amend my 313? Does the county prefer a 312 or a 381?* These and other related questions are commonplace as project developers wade through the different property tax issues facing their projects. It is important for the developer's Texas tax counsel to understand the type of tax incentive offered by each of these different statutes and for what types of projects each incentive is available. Technical adherence to the process for obtaining a final incentive agreement is also required.

II. TAX CODE CHAPTER 312 – TAX ABATEMENT AGREEMENTS

Texas Tax Code Chapter 312, the Property Redevelopment and Tax Abatement Act, provides for the abatement of property taxes on eligible property. All local taxing jurisdictions except school districts are eligible to enter into Chapter 312 agreements. Tex. Tax Code § 312.002(g). The current version of Chapter 312 sunsets on September 1, 2029. Tex. Tax Code § 312.006.

Chapter 312 of the Tax Code is structured in an odd way that can make it difficult to review and apply. Subchapter A of the statute addresses general items and matters of eligibility for tax abatements. Subchapter B addresses tax abatement agreements entered into by municipalities although one section of the subchapter—Section 312.206—is the only part of the statute that directly governs agreements entered into by taxing units other than municipalities and counties. Subchapter C addresses tax abatement agreements entered into by counties, but most of the provisions in Subchapter C refer back to and incorporate the code sections applicable municipalities in Subchapter B. This cross-referential nature of Chapter 312 can create confusion and lead to errors in pursuing Chapter 312 agreements. The ensuing subsections of this paper clarify these aspects of Chapter 312 agreements: (1) the prerequisites for an agreement, (2) the tax incentive available to the taxpayer, (3) the agreement's requirements and limitations, (4) the process for entering into the agreement, and (5) special provisions for taxing units other than municipalities and counties.

* **David J. Sewell** is a partner with Stahl, Sewell, Chavarria, Friend & Cohen in Austin, Texas, where he practices in the areas of renewable energy law, commercial real estate law, and Texas state tax litigation and consulting. Mr. Sewell has represented energy companies for over twenty years on projects throughout the United States, focusing on real estate issues and issues related to state taxation. You can contact Mr. Sewell at dsewell@sbaustinlaw.com or (512) 652-2945.

A. Prerequisites.

To be eligible to approve a tax abatement agreement, a taxing unit must take two preliminary steps—adopt a resolution stating that the taxing unit is eligible to enter into agreements governed by Chapter 312 and adopt guidelines and criteria that will govern its abatement agreements. Tex. Tax Code § 312.002(a). These steps should be completed at a public hearing with the opportunity for public comment. Tex. Tax Code § 312.002(c-1). The “eligibility resolution” is understood to be a one-time act while the guidelines and criteria adopted by the taxing unit are effective for only a two-year period and must thereafter be renewed for successive two-year periods. Tex. Tax Code § 312.002(c).

The hardwired expiration of the guidelines and criteria presents the first potential trap for project developers. Project developers must make sure that the taxing unit’s guidelines and criteria have not expired before taking any formal action in pursuit of the tax agreement. If the guidelines and criteria have expired, the taxing unit can either reauthorize them or adopt new guidelines and criteria in a public meeting. Guidelines and criteria already in effect can be amended by the taxing unit, but the Tax Code requires a three-quarters vote in order to approve amendments. Tex. Tax Code § 312.002(c). The taxing unit’s guidelines and criteria may establish an application process for tax abatement agreements and require an application fee not to exceed \$1,000. Tex. Tax Code 312.002(e).

The first official project-specific act that the developer will likely pursue is the designation of a reinvestment zone. A taxing unit may only grant a tax abatement to property that is located or will be located in a designated reinvestment zone. Tex. Tax Code §§ 312.204(a), 312.206(a), 312.402(a). Only school districts, municipalities, and counties have the authority to designate reinvestment zones. Tex. Tax Code §§ 312.0025, 312.201, 312.401. The statute adopts a process for a municipality or county to designate a reinvestment zone while the process for the school district is less detailed. In practice, project developers who are seeking tax abatements from a municipality or a county will apply to the municipality or the county for the designation of the reinvestment zone. School districts were granted the right to designate reinvestment zones in connection with pending Chapter 313 value limitation agreements. Because the Chapter 313 statute has now expired, it is unlikely that taxpayers will approach school districts for the designation of a reinvestment zone in connection with a tax abatement agreement.

Sections 312.201 and 312.401 establish a detailed process for the proper designation of a reinvestment zone by a municipality and county, respectively. In order to designate the zone, the taxing unit must (1) hold a public hearing on the designation, and (2) at least seven days prior to the scheduled meeting, both publish notice of the hearing in a newspaper having general circulation in the taxing unit and deliver written notice of the scheduled meeting to the presiding officer of the governing body of each taxing unit that has the authority to assess ad valorem taxes on the land included in the zone. Tex. Tax Code §§ 312.201(d), 312.401(b).

Chapter 312 also requires the designating taxing unit to make certain formal findings at the time that the reinvestment zone is designated. With respect to reinvestment zones designated by a municipality, § 312.201(d) requires that the municipality adopt a finding that “that the improvements sought [for the zone] are feasible and practical and would be a benefit to the land

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Nothing Has Changed, and Everything Has Changed: A 2024 Update on Texas Property Tax Incentives

First appeared as part of the conference materials for the
19th Annual Renewable Energy Law Institute session

"Nothing Has Changed, and Everything Has Changed: A 2024 Update on Texas Property Tax Incentives"