Sample Agreement for Oregon Enterprise Zone Extended Abatement

[Business Oregon offers this sample only to facilitate local processes and discussions among independent parties, who are advised to work with legal counsel. The department assumes no liability for legal enforceability or consequences associated with any agreement based on this sample]

{Applicable for rural enterprise zones and urban enterprise zones outside the Salem and Portland metropolitan urban growth boundaries}

Written agreement with the ______________________________ enterprise zone sponsor to extend property tax exemption to [four/five] consecutive years in total for investment by _____________________ [, inc.]

The sponsor of the _____________________ Enterprise Zone comprising the governing bodies of [the City of __________________________, and ___________________ County] (hereinafter "The Zone Sponsor") and ________________ [, Inc.] (hereinafter "The Firm") do hereby enter into an agreement for extending the period during which The Firm shall receive an exemption from ad valorem taxes on its proposed investment in qualified property in the Enterprise Zone, contingent on certain requirements, under ORS 285C.160.

The Zone Sponsor and The Firm jointly acknowledge that: subject to [timely submission of and] approval of [an/the] application for authorization, as well as satisfaction of requirements under ORS 285C.050 to 285C.250, The Firm is eligible for three years of full exemption on its qualified property under ORS 285C.175(2)(a); nothing in this agreement shall modify or infringe on that three-year exemption or the requirements thereof; and, this agreement is null and void if The Firm does not qualify for the three years of exemption on some such property.

The Zone Sponsor does hereby grant to The Firm an extension to that property tax abatement, as allowed under ORS 285C.175(2)(b), of an additional [one/two] year[s] on property that initially qualifies in the ___________________________ Enterprise Zone {[before/after] the assessment year beginning on January 1, 20___,} and, thusly, sets the period of exemption at [four/five] consecutive years in total, during which statutory requirements for the standard three-year enterprise zone exemption must also continue to be satisfied.

{Qualified property [items] [described/identified/listed in] ____[Exhibit]___ shall not receive the extended tax abatement granted herein but only the regular three years of exemption, relieving such property of its needing to satisfy applicable statutory requirements in the enterprise zone after that third year, at which time The Firm may promptly and formally notify the county assessor and local zone manager of other property to be treated as such.}

Confirmation of Statutory Provisions

In order for qualified property to be exempt from ad valorem taxes for the additional [one/two] year[s] of enterprise zone exemption as granted herein, The Firm agrees herewith that under ORS 285C.160(3)(a)(A)(i) or (ii) and (b), in accordance with OAR 123-674-0600:

1. For each year of the entire exemption period, The Firm's new employees shall receive an average level of compensation equal to or greater than [150/130] percent of the county average annual wage, such that:
   a. Compensation includes benefits such as employer-provided insurance that can be monetized and do not arise from a payroll tax or similar government mandate, and
   b. Except as revised under ORS 285C.160(4), the county wage is set at the time of authorization, and accordingly, the 20___ average wage for ____________ County [one with higher wage in two-county zone] is $__________________________, for which [150/130] percent equals $___________.
2. During the additional [year/two years], the average annual wage (taxable income) received by The Firm's new employees shall also be equal to or greater than the current county average wage based on the most recent, final figure at that time.
3. The Firm's 'new employees' for purposes of these requirements comprise only employees hired for and working at full-time, year-round, non-temporary jobs that are created and filled for the first time after the date of application for authorization but on or before December 31 of the first full year of the initial exemption, and that are performed within the current boundaries of the _______________________ Enterprise Zone and engaged a majority of their time in The Firm's eligible operations according to ORS 285C.135 and 285C.200(7), regardless if any such employee is leased, contracted for or otherwise obtained through an external agent, provided that they are hired by and employed directly by The Firm.

Local Additional Requirements
[The Zone Sponsor does not impose any additional requirement on The Firm, relinquishing the right to make the extension of property tax abatement granted herein contingent on such requirements that might otherwise be reasonably requested under ORS 285C.160(a)(B).]
[/]
{For The Firm to receive the additional [one/two] year[s] of enterprise zone abatement granted herein, The Zone Sponsor and The Firm agree that The Firm shall [meet the following additional requirement[s]/do the following in addition to statutory requirements] as reasonably requested by The Zone Sponsor under ORS 285C.160(a)(B):

{1...

{2....}

Accepting for the Sponsor of the
__________________________ Enterprise Zone:

[By X] ____________________________________

[Include printed name(s), title(s), and date(s); as needed, cite and attach source of authority from sponsoring jurisdiction(s) (e.g., executed copies of adopted resolutions), and possibly endorsement of municipal legal counsel]

Accepting for __________________, [Inc.]:

[By X] ________________________________

[Include printed name, title, date, and cite legal authorization as needed (e.g., attached letter from the owner or an appropriate executive officer, if agreement is accepted by an attorney or other indirect representative)]

Extended Abatement of Standard Enterprise Zone Exemption on Qualified Business Property

Introduction

As a generally as-of-right tax benefit, new property is exempt in an Oregon enterprise zone for three years from 100 percent of the local property taxes that would otherwise be due on qualified plant & equipment newly invested by an eligible business that: applies for authorization before physically starting work on its investments; sufficiently increases its workforce inside the zone, and files timely exemption claims once property is in service and in all property tax years while its exempt.

This abatement is frequently extended two more years (although a single extra year is allowed) for a total exemption period of five consecutive years, subject to approval by the local governments that (co)sponsor the enterprise zone. Begun in 1993, the extended abatement allows for an enhanced business development incentive that emphasizes local control and the creation of well-paying, quality jobs.

To receive an extended abatement, the business and its property must nevertheless satisfy and remain in compliance with the authorization application, employment and other obligations of the basic three-year exemption throughout the four- or five-year period. In addition, the qualified firm must achieve the following, which are specific to an extended abatement:

1. Written agreement executed with the local enterprise zone sponsor before the application for authorization is fully approved.
2. Potentially, local additional requirements that the sponsor may reasonably request through the written agreement.
3. Compensation and wage standards for new employees established under state statutes—except in an urban enterprise zone inside the Salem or Portland metropolitan area.

The above items, as further explained below, do not affect or jeopardize the first three years of the enterprise zone exemption—only the final year or two—such that if an otherwise qualified business fails to adhere to them, then the exemption period simply reverts to the regular length of three years.

Compensation & Wage Standards

These criteria are satisfied based on all **new employees** of the business:

- As normally counted for enterprise zone purposes, in terms of persons working in year-round, full-time jobs (>32 hours/week, not equivalents) directly for the firm in eligible operations located inside the zone …, but only those who are …

- Hired, contracted for or leased to fill only those jobs that are newly created after submission of the application for authorization, through until the end of the first (calendar) year of initial exemption, even if an individual filling the job had worked previously for the business in another position.

Pursuant to written agreements executed since October 6, 2017, (annual wages):

- Total taxable income paid to new employees during the calendar year, divided by (÷) the number of new employees, must equal or exceed (≥) the county wage.
- This average wage standard needs to be satisfied with the two exemption claims filed (by April 1, primarily with the county assessor) after the final, extra two years of any five-year extended abatement (or one year if four in length).
- The county wage is the most recent average annual wage for all ownerships and industries of the county, in which the qualified property is located, as finalized by the Oregon Employment Department at the time of the claim.

Pursuant to any written agreement (annual compensation):

- Total compensation received by new employees during the calendar year, divided by (÷) the number of new employees, must be at least 30% or 50% higher than the applicable county average wage (≥1.3 … or ≥1.5 × county wage).
- Compensation consists of not only the new employees' wages, salaries, etc., but also their fringe or financial benefits that can be monetized and are not government-mandated comparable to a payroll tax.
- This average compensation standard needs to be satisfied with **all four or five** exemption claims after each year of the extended abatement.
- The minimum compensation average of new employees is only 130% of the county average wage if on the date when the written agreement is executed (on or after October 6, 2017), some part of the zone is inside a county (both)—
    - that is not part of any federally established metropolitan statistical area, and
    - for which the proportion of total taxes imposed (excluding urban renewal) to total assessed value in the county's latest assessment roll is 1.3% or greater.
- The county wage applicable in this case is the same as above, except it is—
    - that of the county with the highest wage among counties that contain any part of the enterprise zone.
    - established based on the most recent, final figure available at authorization (following execution of the written agreement), which will change only if the authorization is renewed or becomes inactive after two full calendar years without beginning the 3–5-year exemption, in which case the county wage changes to what is most recent at the time, either of renewal to maintain the authorization's active status, or of filing the initial exemption claim.

Written agreement

An eligible business seeking an extended abatement must have a written agreement (see sample above) between it and the local enterprise zone sponsor that:

1. Confirms the compensation and wage standards above, if applicable,
2. Clearly grants either 'one' or 'two' additional years of exemption on (some) qualified property consecutively following the basic three years, and
3. Stipulates all additional requirements, if any, as requested by the sponsor.

Each city, port, or county government that sponsors the zone must in some manner ratify this agreement, usually separately, but potentially through common meeting and approval. By virtue of circumstance, custom or local law, a (co)sponsor's governing body might prefer or need to adopt a resolution allowing, validating, or containing the agreement, but state statutes do not demand as much.

Cosponsors or enterprise zones may by formal policy already have or choose to suitably empower an official or an inter-jurisdictional board (zone association) to enter into such agreements, under at least certain conditions. Zone sponsors have also provided by official intergovernmental accord that the jurisdiction, in which exempt property will be located, simply acts on behalf of the other cosponsors.

This written agreement is valid only if concluded and fully executed before the business firm is actually approved for authorization. An authorization application must be submitted prior to the commencement of any physical work on qualified property proposed for exemption in the enterprise zone. Authorization is not required for such work to proceed and often entails little more than a technical determination by the local zone manager and the county assessor following a preauthorization conference. Formal authorization, however, might need to be delayed to accommodate official endorsement of an extended-abatement written agreement.

Local additional requirements

The sponsoring jurisdictions may make the extended abatement contingent on further actions or efforts by the business—as jointly requested by the cosponsors and spelled out in the agreement, and advisably including clear provisions for verification and the consequences of noncompliance. The zone sponsor is entirely responsible for monitoring and enforcing such requirements during the exemption period.

These requirements could have very broad reach and special consequences, although state statutes insist on reasonableness, which may entail that once a track record has been established, local governments would need to be deliberate in (re)setting policies that deviate substantially from requirements previously requested in a given zone, as well as the pattern, if any, in approving the extended abatement or not.

Moreover, these requirements must be completely in addition to—steering well clear of—any statutory criteria for property costs, hiring, compensation, etc., including not effectively raising the stringency of such criteria. They are also not enforceable for hiring, etc., if explicitly defined in terms of geography or residency, according to an opinion of the Oregon Attorney General (No. 8236).

In the case of an urban enterprise zone, which may establish policies and standards for imposing additional conditions on an enterprise zone exemption of any length, the urban zone sponsor will have to maintain those conditions on top of any requirement that it attaches to an extended abatement.

Likewise to be coordinated with an extended abatement are the resolution(s) adopted by a local zone sponsor in waiving the normal 110 percent employment requirement, which may also establish other conditions, along with setting an alternative minimum number of jobs. Such a waiver is allowed at authorization for total investments of $25 million or more, or in the case where: measured productivity is slated to increase by 10 percent; 25 percent of tax savings are dedicated to workforce training, and annual average employment remains at least at its existing level.

Local zone sponsors might consider the following examples of additional requirements for extended abatements (or in other relevant cases):

- Availability of childcare or other specific types of benefits for workers
- Community involvement or financial/in-kind donations to charities
- Compensation of temporary/part-time employees or for construction labor
- Contributions to public infrastructure/services or to local education or workforce training programs
- Mandatory hiring of/from certain groups or sources, or employee retention
- Nonproprietary reporting or transparency regarding company practices
- Onsite training or certification for employees
- Safety or environmental assurances with new facility operations or general policies (sustainability), as well as facility's physical appearance
- Transit plan or subsidy for workers
- Using local-area contractors, suppliers and so forth, based on a clearinghouse or other method that is not explicitly restricted in terms of geography.

Summary of Requirements for Exemption

Type of Enterprise Zone

Exemption Period	Urban—in MSA ≥ 400,000 in population	Other Urban	Rural
Any length	Basic requirements see memorandum below		
	ORS 285C.150—required to satisfy additional conditions reasonably related to employment opportunities, as defined and imposed by local zone sponsor pursuant to policy that establishes standards, for subsequent applications*		None
	ORS 285C.155 and 285C.200(2)/285C.205—in waiving the normally required increase of a business firm's in-zone employment at authorization, sponsor resolutions must set minimum job level and may include other conditions with which the firm must also comply		
Four or five consecutive years in total	ORS 285C.160(3)(c)—written agreement for requirements that the zone sponsor may reasonably request*	ORS 285C.160(3)(a) & (b)—written agreement for: • Compensation and wage standards for newly created jobs,** and • Requirements that the zone sponsor may reasonably request*	

MSA—federally established metropolitan statistical area
*To be enforced by the sponsoring jurisdictions pursuant to ORS 285C.230(2), 285C.235(2), and 285C.240(7)
**As defined under ORS 285C.050

Memorandum—enterprise zone requirements for at least three-year exemption:

- Engaged in eligible operations and activities (generally traded-sector/non-retail)
- Increase full-time, permanent employment of the firm inside the enterprise zone by the greater of one new job or 10 percent (or special-case local waiver as noted above)
- Generally, no concurrent job losses outside/beyond the zone boundary
- Maintain minimum employment levels during exemption period
- Enter into first-source agreement with local job training providers.

Statutes and Rules

The laws passed by the Oregon Legislature to create the enterprise zone program are contained in ORS 285C.050 to 285C.250. The principal section for the extended abatement is ORS 285C.160. These statutes are elaborated, clarified and implemented through Oregon Administrative Rules of OAR chapter 123, divisions 668 and 674.