



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

December 22, 1995

Honorable Tracey Bright  
Ector County Attorney  
Ector County Courthouse, Room 218  
Odessa, Texas 79761

Letter Opinion No. 95-090

Re: Whether Local Government Code section 380.001(a) authorizes a home-rule municipality to agree to abate delinquent taxes and related questions (ID# 21377)

Dear Ms. Bright:

You have requested this office's opinion as to whether section 380.001(a) of the Local Government Code authorizes the City of Odessa to execute a tax abatement agreement in which the city agrees to abate a taxpayer's delinquent taxes. You premise your request on the following facts:

The City of Odessa created the South Enterprise Zone on May 6, 1991[,] and all of the other taxing entities adopted resolutions agreeing to participate in the Enterprise Zone. The City of Odessa first adopted a program to abate delinquent taxes in the City's Enterprise Zone for purposes of economic development pursuant to § 380.001(a) of the Local Government Code, and the Tax Abatement Act. Subsequently, Odessa Junior College, Ector County, Ector County Independent School District and the Ector County Hospital District also expressed an interest [in] entering into agreements with property owners to abate delinquent taxes in return for new investment by the property owners or creation of jobs in an Enterprise Zone.

We assume your question concerns the abatement of ad valorem taxes on real property.

As a preliminary matter, we note article III, section 55 of the Texas Constitution provides that the legislature "shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years." Section 55's principal purpose was to prevent the forgiveness of delinquent taxes. 1 GEORGE D. BRADEN, *THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS* 270 (1977). See generally *Tex. Const. art. III, § 55 Interp. Commentary* (Vernon 1984).

Similarly, nothing in chapter 33 of the Tax Code, which pertains to delinquent taxes, authorizes a municipality to forgive delinquent taxes. Section 33.05(c) of the Tax Code permits the removal of a delinquent tax from the delinquent tax roll only when the tax has been delinquent for twenty years, if the tax is on real property, or ten years, if the tax is on personal property, unless litigation is pending at the end of the specified period (or, we assume, unless the taxpayer pays the tax). This statutory limitation does not release the tax debt, but merely affects the remedy when the taxing unit seeks to enforce it. See Attorney General Opinion V-302 (1947) at 2 (and cases cited therein). In addition, while section 33.011 of the Tax Code expressly authorizes the governing body of a taxing unit to waive penalties and interest on a delinquent tax in certain circumstances, it does not authorize the taxing unit to waive collection of the delinquent tax itself.

We assume that the taxes in the situation you pose have been delinquent for less than twenty years. Unless another constitutional provision authorizes a municipality to abate delinquent taxes, therefore, we may not construe section 380.001(a) of the Local Government Code or chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act (the "act"), to permit the abatement of delinquent taxes. We find no such constitutional provision.

Section 380.001(a) provides as follows:

The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality.

Section 380.001 is the enabling legislation for article III, section 52-a of the Texas Constitution, which the electorate voted to add to the constitution in 1987. See Attorney General Opinion DM-185 (1992) at 2, 4. Under article III, section 52-a of the constitution, the legislature may authorize the creation of a program and the making of a loan or grant of public money "for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state." We find in article III, section 52-a no express authorization for the legislature to permit a municipality to abate delinquent taxes.

In Attorney General Opinion DM-185, this office determined that section 380.001 of the Local Government Code authorizes a municipality "to perform any of the functions that article III, section 52-a [of the Texas Constitution] permitted the legislature to delegate" to a municipality. Attorney General Opinion DM-185 (1992) at 5. While Attorney General Opinion DM-185 considered "the kind of incentives that a municipality

properly may include in a program "to promote state or local economic development" for purposes of section 380.001(a), this office declined to consider "specifically which incentives, when offered singularly or in combination, constitute a 'program . . . to promote state or local economic development.'"<sup>1</sup> *Id.* Because article III, section 52-a does not expressly make an exception to article III, section 55 of the constitution, however, we conclude here that section 380.001(a) of the Local Government Code does not authorize a municipality, as part of an economic development program, to agree to abate a taxpayer's delinquent taxes.

You next ask whether the act, chapter 312 of the Tax Code, authorizes a taxing entity to execute an agreement to abate delinquent taxes. You have informed us that the City of Odessa has agreed to abate delinquent taxes for persons who participate in the city's enterprise zone. An area designated as an enterprise zone pursuant to the Texas Enterprise Zone Act, Government Code chapter 2303, is a reinvestment zone for purposes of chapter 312, subchapter B of the Tax Code. Tax Code § 312.2011.

The act serves as the enabling legislation for article VIII, section 1-g of the Texas Constitution, which permits the legislature by general law to authorize "cities, towns, and other taxing units to grant exemptions or other relief from ad valorem taxes on property located in a reinvestment zone for the purpose of encouraging development or redevelopment and improvement of the property." *See* Bill Analysis, C.S.S.B. 17, 67th Leg., 1st C.S. (1981). We find nothing in the explicit language of article VIII, section 1-g suggesting a legislative intent to authorize a municipality to abate delinquent property taxes.<sup>2</sup> Thus, to construe chapter 312, and specifically section 312.204, of the Tax Code

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<sup>1</sup>We note, however, each component of an economic development program listed in Local Government Code section 380.001(a) involves a promise on the part of a municipality to provide, *in the future*, public money, personnel, or services in return for economic development. While the list of illustrative components is not intended to be exclusive, the forgiveness or abatement of a *past* debt may be qualitatively different.

<sup>2</sup>The legislature proposed amending the constitution to add article VIII, section 1-g by the passage of Senate Joint Resolution No. 8 in 1981. *See* Tex. S.J. Res. 8, 67th Leg., 1st C.S., 1981 Tex. Gen. Laws 295. In part, the purpose of proposed article VIII, section 1-5(a) was to make Texas businesses and low-income citizens eligible for federal tax breaks under legislation pending before the United States Congress at that time. *See* Bill Analysis, C.S.S.J.R. 8 (1981); TEX. LEGIS. COUNCIL, INFO. REP. NO. 81-3, ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS APPEARING ON NOV. 3, 1981, BALLOT, at 4 (Sept. 1981). "Pending federal legislation, if enacted, would permit a state or a political subdivision of a state to designate part of its territory for redevelopment as an enterprise zone if it reduced property taxes or offered other financial incentives to encourage jobs and improvement of property in the zone." TEX. LEGIS. COUNCIL, INFO. REP. NO. 81-3, ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS APPEARING ON NOV. 3, 1981, BALLOT, at 4 (Sept. 1981).

Title 42 U.S.C. chapter 120 appears to comprise the federal legislation for which the legislature proposed enacting article VIII, section 1-g(a) of the Texas Constitution. Section 11501(a)(1) authorizes the Secretary of Housing and Urban Development to designate an area, nominated by a local government and the state in which the land is located, as an enterprise zone. The Secretary of Housing and Urban

to permit a municipality to execute an agreement to abate delinquent taxes would contravene article III, section 55 of the constitution.

Indeed, we do not believe the legislature intended by the enactment of section 312.204 of the Tax Code to authorize the abatement of delinquent taxes. Section 312.204, which pertains to municipal tax abatement agreements, provides in pertinent part as follows:

(a) The governing body of a municipality eligible to enter into tax abatement agreements under Section 312.002 may agree in writing with the owner of taxable real property that is located in a reinvestment zone, but that is not in an improvement project financed by tax increment bonds, to exempt from taxation a portion of the value of the real property or of tangible personal property located on the real property, or both, for a period not to exceed 10 years, subject to the rights of holders of outstanding bonds of the municipality, on the condition that the owner of the property make specific improvements or repairs to the property. . . .

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(footnote continued)

Development may not designate a nominated area as an enterprise zone, however, unless the local government and the state agree in writing that, while the area is an enterprise zone, the governments will adhere to a specified course of action designed to "reduce the various burdens borne by employers or employees in such area." 42 U.S.C. § 11501(d)(1). The course of action may include, but is not limited to, the following elements:

- (A) a reduction of tax rates or fees applying within the enterprise zone;
- (B) an increase in the level of public services or in the efficiency of the delivery of public services, within the enterprise zone;
- (C) actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;
- (D) involvement in the program by public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents of the nominated area;
- (E) the giving of special preference to contractors owned and operated by members of any minority; and
- (F) the gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

*Id.* § 11501(d)(2). We note that 42 U.S.C. § 11505(d)(2) does not expressly address tax abatements of delinquent taxes.

(b) The agreements made with the owners of property in a reinvestment zone must contain identical terms for the portion of the value of the property that is to be exempt and the duration of the exemption.<sup>3</sup> [Footnote added.]

The legislative history of chapter 312 reveals no intent to permit a municipality to abate a taxpayer's delinquent taxes. The legislature enacted the act in 1981 by the passage of Senate Bill 17. See Act of August 10, 1981, 67th Leg., 1st C.S., ch. 5, 1981 Tex. Gen. Laws 53. The purpose of the bill was to permit a municipality to establish "reinvestment zones," within which the owners of nonproductive property may qualify for "partial or total"<sup>4</sup> exemption from ad valorem taxation on the condition that the owner of the property makes specified improvements or repairs to the property. Senate Finance Comm., Bill Analysis, S.B. 17, 67th Leg., 1st C.S. (1981); see also Bill Analysis, C.S.S.B. 17, 67th Leg., 1st C.S. (1981) (stating that bill would permit municipality to contract with individual property owners to improve their property in return for property tax reductions").

In our opinion, section 312.204 of the Tax Code permits the abatement of only ad valorem taxes to be assessed in the future. To construe the statute otherwise would, as we have suggested, violate article III, section 55 of the constitution. We therefore conclude that neither Local Government Code section 380.001 nor Tax Code section 312.204 authorizes a municipality to abate delinquent taxes owed by a taxpayer who participates in

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<sup>3</sup>But see Act of May 27, 1995, 74th Leg., R.S., ch. 985, § 13, 1995 Tex. Sess. Law Serv. 4948, 4954 (to be codified at Tax Code § 312.204(f)) (providing that agreement made with property owner in enterprise zone that is also designated as reinvestment zone need not contain identical terms). Once a municipality has executed a tax abatement agreement regarding a particular piece of property under section 312.204 of the Tax Code, its governing body or a designated officer or employee of the municipality must notify the governing body of each other taxing unit in which the property subject to the agreement is located. Tax Code § 312.2041(a). Any taxing unit authorized by law to do so then may execute a similar tax abatement agreement with the property owner, the agreement "must contain terms identical to those contained in the agreement with the municipality providing for the portion of the property that is to be exempt from taxation under the agreement, the duration of the agreement, and the provisions included in the agreement under Section 312.205 . . . ." *Id.* § 312.206(a).

The Seventy-fourth Legislature amended section 312.206 by adding subsection (e). See Act of May 27, 1995, 74th Leg., R.S., ch. 985, § 14, 1995 Tex. Sess. Law Serv. 4948, 4954 (to be codified at Tax Code § 312.206(e)). Under subsection (e), the governing body of a taxing jurisdiction may execute an agreement with the property owner of property whose taxes a county or municipality has abated; "[t]he agreement may," but need not, "contain terms that are identical to those contained in the agreement with the municipality, county, or both, . . ." except that the taxing jurisdiction may vary the portion of the property that is to be exempt from taxation and the duration of the agreement. *Id.*

<sup>4</sup>Section 312.204(a) of the Tax Code authorizes a municipality to exempt from taxation under chapter 312 only "a portion of the value of the real property or of tangible personal property . . ." (Emphasis added.)

the municipality's enterprise zone. Moreover, article III, section 55 of the Texas Constitution expressly forbids the abatement of delinquent taxes.

**S U M M A R Y**

Neither Local Government Code section 380.001 nor Tax Code section 312.204 authorizes a municipality to abate delinquent taxes owed by a taxpayer who participates in the municipality's enterprise zone. Moreover, article III, section 55 of the Texas Constitution expressly forbids the abatement of delinquent taxes.

Yours very truly,



Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee