



Susan Combs
Texas Comptroller of Public Accounts

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OPINION COMMITTEE

512/463-4000
FAX: 512/463-4965
P.O. BOX 13528
AUSTIN, TEXAS 78711-3528

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

The Honorable Greg Abbott
Attorney General
State of Texas
209 West 14th Street, 8th Floor
Austin, Texas 78701-1614

FILE # ML-45127-07
I.D. # 45127

RQ-0570-GA

Dear General Abbott:

As the Comptroller of Public Accounts, I ask your opinion about the application of Section 403.302 (d)(4), Government Code.

Section 403.302, Government Code, requires the Comptroller to conduct a study in each school district to determine the total taxable value of all school district property. This value is used in the school finance formulas, which are intended to provide equitable state funding for each of the state's school districts. A school district's *total taxable value* is determined by estimating the market value of all property in the school district and subtracting from that value exemptions and other deductions, as required by Section 403.302(d). Most of the property values that are deducted from total taxable values are the property values on which the school district may not impose a tax because of the various state-mandated exemptions, but some are for property value "lost" to other provisions, such as tax increment financing, which is governed by Chapter 311, Tax Code.

In 1997, the Legislature amended Section 403.302(d)(4), Government Code, to recognize the possibility that a school district may agree to contribute to a tax increment fund only a portion of the taxes levied and collected on the captured appraised value of property in a tax increment reinvestment zone. The amended statute states:

(d) For the purposes of this section, "taxable value" means the market value of all taxable property less...

(4) subject to Subsection (e), the total dollar amount of any captured appraised value of property that:

(A) is within a reinvestment zone created on or before May 31, 1999, or is proposed to be included within the boundaries of a reinvestment zone as the boundaries of the zone and the proposed portion of tax increment paid into the tax increment fund by a school district are described in a written notification provided by the municipality or the board of directors of the zone to the governing bodies of the other taxing units in the manner provided by Section 311.003(e), Tax Code, before May 31, 1999, and within the boundaries of the zone as those boundaries existed on September 1, 1999, including subsequent improvements to the property regardless of when made;



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(B) generates taxes *paid into* a tax increment fund created under Chapter 311, Tax Code, under a reinvestment zone financing plan approved under Section 311.011(d), Tax Code, on or before September 1, 1999; and
(C) is eligible for tax increment financing under Chapter 311, Tax Code.
(*emphasis added*)

Before the 1997 amendment, this provision stated that “[for] the purposes of this section, ‘taxable value’ means market value less...the total dollar amount of any captured appraised value of property that is located in a reinvestment zone and that is eligible for tax increment financing under Chapter 311, Tax Code.”

My question is whether the statute, as amended in 1997, requires the Comptroller to deduct the total dollar amount of the captured appraised value of school district property located in a tax increment reinvestment zone that generates the taxes that the school district has actually *paid into* the tax increment fund or whether the Comptroller is required to deduct the total dollar amount of *all* of the captured appraised value of school district property located in a tax increment reinvestment zone and that is eligible for tax increment financing, regardless of the amount of taxes the school district pays into the tax increment fund.

I have enclosed a document that discusses in more detail the statutory provisions relevant to this request.

Sincerely,



Susan Combs

Enclosure

cc: Shirley J. Neeley, Ed.D., Commissioner, Texas Education Agency
Dr. Abelardo Saavedra, Superintendent of Schools, Houston Independent School District

**DEDUCTION OF PROPERTY VALUE UNDER
SECTION 403.302(d)(4), TEXAS GOVERNMENT CODE**

Section 403.302, Government Code, requires the Comptroller to conduct a study in each school district to determine the total taxable value of all school district property. This value is used in the school finance formula, which is intended to provide equitable state funding for each of the state's school districts. A school district's *total taxable value* is determined by estimating the market value of all property in the school district and subtracting from that the property value of exemptions and other deductions, as required by Section 403.302(d). Most of the property values that are deducted from total taxable value are the property values on which the school district cannot impose a property tax because of various state-mandated property tax exemptions and other provisions, such as tax increment financing, which is governed by Chapter 311, Tax Code.

Section 311.003, Tax Code, provides that tax increment financing may be initiated only by a city or county. Once a city or county has started the process of establishing a tax increment financing reinvestment zone (TIRZ), other taxing units, including school districts, are allowed to consider participating in the TIF agreement. After the TIF project plan and the TIRZ are approved by the initiating governing body, the other taxing units with property in the zone contract with the city or county regarding the percentage of their increased tax revenues that will be paid into the tax increment fund (TIF fund). The TIF fund is made up of the contributions by the respective taxing units of a portion of their increased tax revenues that are collected each year under the project plan.

Section 311.012, Tax Code, governs the determination of the tax increment amount. Subsection (a) provides that "the amount of a taxing unit's tax increment for a year is the amount of property taxes levied and collected by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone." Captured appraised value is defined in subsection (b) as "the total appraised value of all real property taxable by the unit and located in the reinvestment zone for that year less the tax increment base of the unit." Subsection (c) defines the tax increment base as "the total appraised value of all real property taxable by the unit and located in a reinvestment zone for the year in which the zone was designated under this chapter."

Taxing units were originally required to contribute into the TIF all of the taxes levied and collected on the captured appraised value of property located in a TIRZ. That requirement was gradually relaxed until in 1989, taxing units were permitted to retain all or a portion of the taxes levied and collected on the captured appraised value in a TIRZ. Acts of 1989, 71st Leg., Ch.1137, Sec. 25. Currently, the percentage of tax revenue that may be contributed to a TIF fund by a taxing unit is governed by Section 311.013, subdivisions (b) and (f), which state:

(b) Each taxing unit shall pay into the tax increment fund for the zone an amount equal to the tax increment produced by the unit, less the sum of:

- (1) property taxes produced from the tax increments that are, by contract executed before the designation of the area as a reinvestment zone, required to be paid by the unit to another political subdivision; and
- (2) for a taxing unit other than the municipality that created the zone, or county that created the zone a portion, not to exceed 15 percent, of the tax increment produced by the unit as provided by the reinvestment zone financing plan or a larger portion as provided by Subsection (f).

(f) A taxing unit is not required to pay into the tax increment fund any of its tax increment produced from property located in a reinvestment zone...unless the taxing unit enters into an agreement to do so with the governing body of the municipality or county that created the zone. ...The agreement may include conditions for payment of that tax increment into the fund and must specify the portion of the tax increment to be paid into the fund and the years for which that tax increment is to be paid into the fund...

Before 1997, the property value study deduction for TIFs reflected the original requirement that all of the taxes levied and collected on the tax increment be contributed to the TIF fund. The original provision stated:

For the purposes of this section, "taxable value" means market value less...the total dollar amount of any captured appraised value of property that is located in a reinvestment zone and that is eligible for tax increment financing under Chapter 311, Tax Code.

In 1997, the Legislature amended Section 403.302(d)(4), Government Code, to recognize the possibility that a school district may agree to contribute to a tax increment fund only a portion of the taxes levied and collected on the captured appraised value of property in a tax increment reinvestment zone. The statute as amended states:

(d) For the purposes of this section, "taxable value" means the market value of all taxable property less...

(4) subject to Subsection (e), the total dollar amount of any captured appraised value of property that:

(A) is within a reinvestment zone created on or before May 31, 1999, or is proposed to be included within the boundaries of a reinvestment zone as the boundaries of the zone and the proposed portion of tax increment paid into the tax increment fund by a school district are described in a written notification provided by the municipality or the board of directors of the zone to the governing bodies of the other taxing units in the manner provided by Section 311.003(e), Tax Code, before May 31, 1999, and within the boundaries of the zone as those boundaries existed on September 1, 1999, including subsequent improvements to the property regardless of when made;

(B) generates taxes *paid into* a tax increment fund created under Chapter 311, Tax Code, under a reinvestment zone financing plan approved under Section 311.011(d), Tax Code, on or before September 1, 1999; and

(C) is eligible for tax increment financing under Chapter 311, Tax Code.
(*emphasis added*)

We believe this change links the amount to be deducted to the amount that the district agrees to pay into the fund. Further support is found in another 1997 amendment.

Subsection (e), referenced above, was also added in 1997. That subsection states in part:

The total dollar amount deducted under Subsection (d)(4) for any zone, including those created on or before January 1, 1999, may not be increased by a change made after August 31, 1999, *in the portion of the tax increment retained by the school district.* (*emphasis added*)

If all of the value of the property in the zone was to be deducted, there would be no need for a provision limiting the possible increase, as subsection (e) does. If all of the value was already being deducted, no increase would be available. The Government Code, Section 311.021 (2), creates a presumption that the Legislature, when enacting a statute, intended to give effect to the entire statute. Had the legislature not intended that the deduction reflect the captured appraised value that generates revenue paid into the TIF fund, there would have been no need to refer to the "portion of the tax increment retained by the school district."

Later changes are also consistent with our view that only a portion of the value should be deducted. Section 1.16 of HB 1 (79th, Third Called Session) amended Section 311.013, Tax Code, to require school districts with tax increment financing agreements to pay into tax increment funds at their 2005 tax rate rather than at the lower rates required by HB 1. This provision would have harmed these school districts had there not been an offsetting deduction in the Comptroller's property value study. Subsection 403.302(d)(5), Government Code, requires the Comptroller to deduct in the property value study the amount of value necessary to offset the amount of tax levy paid into the tax increment fund in excess of what school districts would have paid at the reduced property tax rate required by HB 1.

This is significant because Subsection 403.302(d)(5), Government Code is clear that the property value study deduction is only to hold the school district harmless for additional taxes paid into the tax increment fund—not for any value above this amount. This is consistent with state policy for property value study deductions. The purpose of the deductions is to make school districts whole for tax revenue lost when the districts are required by the state to exempt property or otherwise forgo tax revenue.

We believe that these statutory changes require the deduction of the captured appraised value that generates revenue actually paid into the TIF fund. This amount would be proportionate. For example, if one-half of the tax increment is paid into the fund, one-half of the captured appraised value would be deducted. Our belief that this is the correct interpretation is reinforced by the reference in subsection (e) to the "portion of the tax increment retained by the school district."