



MUNICIPAL TAX ABATEMENT HANDBOOK

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INTRODUCTION

The purpose of this first edition of the Division of Local Government Services Municipal Tax Abatement Handbook is to equip local officials to better evaluate and, when appropriate, award municipal tax abatements that foster economic development, enhance the municipal tax base, expand community resources, and advance other public policy objectives. To accomplish this, this document presents a variety of useful tips and strategies for local governments considering municipal tax abatements. It also includes some municipal ordinance and financial agreement templates and sample language, as well as a list of key considerations and questions to ask. To frame the issue, it includes an overview of the short- and long-term tax exemption law itself. This information is coupled with a series of best practices and observations provided by the municipal technical advisors at the Division of Local Government Services. We hope that it helps local officials implement municipal tax abatements and PILOTs in a legally compliant manner that maximizes local value and provides for the best interests of the community and its residents.

In 2010, the Office of the State Comptroller prepared [*A Programmatic Examination of Municipal Tax Abatements*](#) (OSC Report). This report is crucial reading for municipal officials evaluating potential tax abatements. This excellent guide summarizes the law and draws upon best practices for tax abatements from around the state.

In addition, [*The Redevelopment Handbook: A Guide to Rebuilding New Jersey's Communities, 2nd Edition*](#) (handbook) is also critical information for municipal practitioners to internalize prior to embarking on redevelopment and tax abatements. The Department of Community Affairs and the NJ Chapter of the American Planning Association created this handbook to outline the redevelopment planning process and the steps for implementing redevelopment (including the selection of a redeveloper and exploring tax exemptions and abatements).

The Municipal Tax Abatement Handbook expands on some of the information provided in the above documents, equipping local officials with practical strategies for the exploration of abatements, establishment of the municipal redevelopment team, and a framework for their roles in the administration and oversight of tax abatements. This document then pairs with the rest of our Tax Abatement Toolkit, which offers “plug and play” analytical tools and a public data module that allows local officials to vet and establish baseline numbers for different standard categories of municipal tax abatement project proposals to better inform their holistic evaluation of the project’s potential benefits.

The cornerstone of this analytical suite is the Division of Local Government Services’ new [*PILOT Financial Agreement Forecast \(PFAF\)*](#). The PFAF is a spreadsheet tool that can be used to evaluate the net cost to the municipality of any given PILOT scenario. All a local official needs to do is input the details of a PILOT proposal to generate this baseline forecast. The PFAF takes budget data each municipality provides to the Division through the FAST system and calculates a baseline cost of services from the municipality associated with the proposed project. It then compares it to the financial benefits from the PILOT. This allows local officials to understand the level of local tax and operational subsidy being provided to the project, which can inform their balancing of priorities during consideration of each proposal.

The new DLGS statewide [PILOT Database and Viewer](#), then allows local units to peruse existing PILOT terms across the state, helping them understand the universe of terms that exists, and make comparisons across their county, region, and the state. This is a vital source of information for local units seeking to understand the marketplace.

BASICS OF THE TAX EXEMPTION AND ABATEMENT LAWS

The Long-Term Tax Exemption Law (N.J.S.A. 40A:20.1 et seq.) empowers municipalities to grant tax exemptions to private entities undertaking redevelopment and housing projects. The exemptions may continue for a term of up to 30 years from project completion or up to 35 years from the execution of the tax exemption agreement.

The Five-Year Exemption and Abatement Law (N.J.S.A. 40A:21.1 et seq.) authorizes municipalities to grant short-term tax abatements and exemptions for home improvements, commercial and industrial improvements, and the improvement or conversion of multiple dwellings.

The NJ Economic Opportunity Act of 2013 (N.J.S.A. 52:27D-489p et seq.) also authorizes tax exemptions, within the Garden State Growth Zone, under certain circumstances. The “Garden State Growth Zone” or “growth zone” encompasses:

1. “The four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the US Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009)”;
2. “A municipality which contains a Tourism District as established pursuant to section 5 of N.J.S.A. 5:12-219 and regulated by the Casino Reinvestment Development Authority”;
3. An aviation district, which “means all areas within the boundaries of the ‘Atlantic City International Airport,’ established pursuant to N.J.S.A. 27:25A-24, and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the ‘Atlantic City International Airport’ and the Federal Aviation Administration William J. Hughes Technical Center.”

Under N.J.S.A. 52:27D-489s(b), “every Garden State Growth Zone Development Entity that owns real property, or leases real property for a period of not less than 30 years, within a Garden State Growth Zone, and that undertakes the clearance, re-planning, development, or redevelopment of such property is hereby granted an exemption on improvements to such eligible property for any new construction, improvements, or substantial rehabilitation of structures on real property for a period of 20 years from receiving a final Certificate of Occupancy, provided however, that a municipality located within the Garden State Growth Zone shall, by ordinance, opt-in to such program within 90 calendar days of the enactment [of N.J.S.A. 52:27D-489p et seq.]”.

Also, an owner located within a Garden State Growth Zone that does not qualify as a Garden State Growth Zone Development Entity that performs any “new construction, improvements, or substantial rehabilitation improvements” is entitled to an exemption on the improvements for a period of five years, per N.J.S.A. 52:27D-489s(e).

Municipalities that have opted for designation as a Garden State Growth Zone must read and understand the specific requirements of this law and its impact on tax abatements.

HMFA PROJECTS AND TAX EXEMPTION CONSIDERATIONS

Projects that seek approval and funding through the New Jersey Housing and Mortgage Finance Agency (HMFA) are subject to additional requirements. HMFA has a model PILOT agreement and a suggested percentage of annual gross revenue of 6.28%, which establishes the agency's project recommendation and baseline for federally subsidized affordable housing development projects. However, municipalities should also complete an analysis of the project as described herein when making determination as to the value of the PILOT.

Some HMFA-affiliated tax credit projects use the percentage of annual gross revenue paid to the municipality as a factor in determining points given to a project. A point system is used to rank projects for the receipt of tax credits.

Rather than relying exclusively on the developer description regarding the limitations of these factors, it is strongly recommended that a municipality consult directly with HMFA for a complete understanding of their program standards.

ESTABLISHING YOUR MUNICIPAL TAX ABATEMENT POLICY THROUGH A MUNICIPAL ORDINANCE

Developing a governing ordinance is an essential preliminary step for any local unit contemplating issuing tax exemptions.

The tax exemption laws exist to incentivize private developers to invest in the development of a property or area of a municipality in a manner that may not be economically viable without a financial incentive. The abatement reflects the local unit's policy interest in advancing economic development at the abated site, and its willingness to sacrifice some tax revenue in the short to mid-term in exchange for attaining those policy goals. This is a delicate balance because too little subsidy may cause a municipality to fail to realize the development objective, but too much may unduly burden other taxpayers who must offset the subsidy through their own tax dollars.

Understanding the scope and cost of municipal services associated with a new development project can help to ensure this balance is achieved. Therefore, each municipality should consider what municipal services are impacted by a given project as part of its analysis of the abatement proposal. This tells the municipality how its budget appropriations may be altered by the project's completion.

Additionally, each municipality should evaluate the advantages the project proposal will yield. Most projects that receive abatements bring a variety of financial and development advantages to their host community. The annual service charge or payment in lieu of taxes (PILOT) help to cover the cost of municipal services described above but are less than what would be obtained through conventional taxation. Meeting other local needs, such as spurring economic development, providing affordable housing, expanding public transportation options, or creating new jobs or essential services access may more than compensate for the financial cost of a project. Considering

the value of these advantages and balancing them with the financial analysis to ensure the municipality is receiving a net benefit from each project is crucial to full evaluation of an abatement proposal. Setting forth the local unit's development objectives and methodology by ordinance will help to guide this analysis in a consistent and effective manner.

Developing an ordinance outlining the process for reviewing and granting or denying tax abatements allows the municipality to investigate and determine the standards they want to employ in determining whether to grant a tax abatement in advance of a time sensitive application's presentation. By understanding the law and contemplating its implications for the municipality before any specific project presents itself, a municipality can better equip itself to evaluate each project and ensure it will align with local interests. This preparation can also signal to potential developers a municipality's readiness to partner in a qualifying project, thereby jump-starting crucial redevelopment conversations.

A municipal tax abatement policy ordinance should include:

1. Application requirements to apply for a tax exemption:
 - a. Property details – ownership, survey, etc.
 - b. Statement of reasons for seeking a tax exemption.
 - c. Description of the benefits to the community if granted.
 - d. Detailed description of the improvements to be made to the property, including architectural and site plans and an estimate of total cost certified by the architect or engineer.
 - e. Statement disclosing the sources and uses of capital to fund the project.
 - f. A fiscal plan and cash flow statement for the project outlining, among other things, the purchase price of the site and improvements, detailed mortgage payouts, construction loan payouts and any other payments associated with the sale and prior owner, schedule of annual gross revenue, estimated expenditures for operation and maintenance, payments of interest, amortization of debt and reserves and payments to the municipality.
 - g. Detailed construction schedule with milestone dates.
 - h. Statement of fair market value of the property when filing the application and estimate of fair market value upon project completion.
 - i. Statement of the current and projected tax levy.
 - j. Disclosure of ownership or interest in the property.
 - k. Estimate of the number and types of temporary and permanent jobs.
2. Application and other fees.
3. Composition of the municipal Internal Review Committee and its process for making recommendations for tax exemptions.
4. Outline of factors the internal review committee shall take into consideration, which will likely include:
 - a. Whether the project will result in housing and what percentage of housing the municipality requires to be affordable.
 - b. Comparison of estimated PILOT payments versus conventional taxes on the expected property value at completion.
 - c. Estimated cost of providing municipal services to the project.

- d. Project compliance with the municipal master plan, zoning ordinances, and redevelopment plans.
- e. Degree of economic necessity for the tax exemption.
- f. Whether the project meets or exceeds economic development objectives and potential for the site.
- g. Whether the project may serve as a catalyst or anchor in a targeted region.
- h. Extent to which improvements will enhance the health and welfare of the municipality.
- i. The property assessment at the time of application and the estimated property assessment after project completion along with the associated tax levies.
- j. Status of current tax payments and other municipal charges or liens for the current property and for any other property in the municipality owned or controlled by the developer.
- k. Whether there are any outstanding property maintenance violations on the property or for any other property in the municipality owned or controlled by the developer.

DEVELOPING AN INTERNAL REVIEW COMMITTEE

Armed with the municipal redevelopment ordinance, which establishes a framework for decision-making, it is strongly recommended that the municipality create an Internal Review Committee to undertake the initial evaluation of any application. This body exists to evaluate developer applications and financial reports, independent financial reports, and other pertinent information, then to decide whether to recommend a tax abatement to the decision-making body.

The Internal Review Committee's composition may vary by municipality, but typically includes a combination of the municipal manager or administrator, the chief finance officer, tax assessor, tax collector, economic development director, housing director, engineer, planner and municipal counsel. In addition, review of the proposal by other departments, such as police, fire, and public works may be warranted to determine if the project conforms to the ordinance and to ensure negotiation and execution of an equitable financial agreement.

The decision of whether and what type and duration of tax abatement may apply to a project should be considered on an individual basis using the specific criteria and processes set forth in the municipal ordinance. Relevant criteria may include:

1. Does the scope, purpose or magnitude of the project meet the municipal redevelopment objectives?
2. What impact will the project have on local property taxes?
3. Is the developer able to secure financing for the project?
4. Is there a significant benefit to the project, as determined through a comprehensive cost benefit analysis that should include consideration of any economic spillover benefits to surrounding areas?
5. Does the estimated assessed value of the redevelopment project, when the current property tax is applied, make the project too expensive to sell or lease in comparison to similar projects within the municipality or within like communities?

6. Will the project cost translate into rents that are not competitive with other projects in the municipality or with surrounding communities?
7. Will the payments in lieu of taxes meet the cost of services provided by the municipality for the project in a manner similar to the tax cost for same services borne by current taxpayers? If not, are the other associated benefits sufficient to warrant this subsidy?
8. What is the minimum tax abatement that can be provided to make the project possible?
9. What duration of tax abatement is appropriate for the project? Municipalities should not assume that all projects require a 30-year tax exemption.

DEVELOPING TAX ABATEMENT FINANCIAL AGREEMENTS

Municipalities are encouraged to develop a standard financial agreement with general provisions that would pertain to every tax abatement that is granted and conform to the standards set forth in the municipality's abatement ordinance. Municipalities should not rely on developers' attorneys to craft this important document. With a standard agreement in hand to protect the municipality's core objectives, the municipality is better equipped to negotiate project specific terms and conditions.

In a typical tax abatement scenario, a municipality will still assess conventional property taxes on the value of the land, and a PILOT is authorized as an alternative to property taxes on the value of the improvement.

Currently, PILOTs may be calculated in one of two ways. The first method allows the municipality to charge up to 2% of the total project cost (TPC). The second method applies a percentage of the project's annual gross revenues (AGR).

Clarifying the municipality's cost associated with the provision of services impacted by development prior to and as part of the financial agreement is also advisable. This includes, for example, determining how much it costs to provide police and other vital services to current property owners and what, if any, of that cost will be altered by and/or should be borne by the proposed redevelopment project.

Within this general framework, the financial agreement should include:

1. Details of improvements to be constructed.
2. Detailed construction schedule which requires the commencement of the construction no later than one year from the date the tax exemption is approved.
3. Term of the financial agreement and tax exemption.
4. Calculation used to determine annual service charge, gross revenue, administrative fee and other financial factors.
5. Commencement of annual service charge and schedule for its payment and/or escalation charges, in accordance with the statute, over the term of the exemption. Statement indicating that the charges shall not decrease during the term of tax exemption even as a result of the annual audit of gross revenue or project cost. Land value to remain under conventional taxation.
6. Municipality pays 5% of annual service charge to county pursuant to N.J.S.A. 40A:20-12.

7. Interest on delinquent payments set at the highest rate permissible under NJ law for late payments, just as for any other delinquent taxpayer.
8. Sale or assignment provisions.
9. Indemnification provisions.
10. Default provisions.
11. Grounds for termination of the tax exemption:
 - a. Failure to commence or complete construction on schedule.
 - b. Failure to pay municipal charges, including but not limited to annual service charges, administrative fees, permit fees, connection fees etc. within certain time frames.
 - c. Failure to timely submit certified audits of total project cost or gross revenue.
 - d. Failure to disclose a change in use of the project during the term of tax exemption.
 - e. Failure to disclose additional income derived from any source related to the property.
 - f. Failure to maintain the habitability of the property in accordance with state law.
 - g. Failure to arrange an annual inspection with the municipality to conduct interviews with the property occupants as to project maintenance.
 - h. Failure to address property maintenance violations effecting health and safety of the public.
12. Administration and oversight requirements:
 - a. Required permits and inspections on an ongoing basis.
 - b. Quarterly reports to the tax assessor, and other municipal officials regarding the status of the permit and construction activity on the project from the date the tax exemption is granted through issuance of the final certificate of occupancy.
 - c. Establish practices for the conversion from taxation to exempt as COs are issued for part of project or total project.
 - d. Establish practices and timeframes for billing and collection of annual service charges and administrative fees.
 - e. Submission of final project cost audit to CFO and CFO review.
 - f. Developer to submit annual audits of the project and time frame for submission. Review process by CFO. Bill for any increases as agreed upon.
 - g. Process to declare a violation of agreement and termination.
 - h. In the event of a municipal revaluation, Internal Review Committee has the right to review agreement and modify terms as appropriate.
 - i. Termination when time frames reached.
 - j. Non-wavier language.
13. Other unique municipal requirements (if any) which may include provisions such as:
 - a. Workforce requirements.
 - b. Contracting requirements.
 - c. Pay-to-play compliance.
 - d. Affirmative action.
 - e. Payroll taxes.
 - f. Residential and housing regulations.
 - g. Trust fund contributions
 - h. Affordable housing requirements.

CONDUCTING A COST - BENEFIT ANALYSIS

When a municipality is approached about a potential development project or receives an application for a tax abatement, it will generally include the developer's estimates and projections setting forth their financial needs and the costs associated with the project. These projections should be fully vetted. Independent assessment and questioning are vital to informed local decision-making. Thoroughly review the documents provided and ask common sense questions to gain an understanding of what is being proposed and how it may impact the municipality. It may be prudent for the municipality to hire a financial advisor to assist them in this process, depending upon the proposal's complexity, the local unit's available in-house expertise, and its level of experience with economic development and redevelopment. In some cases, the cost of independent review may be borne by the developer. Once an independent financial report is in-hand, the municipality's Internal Review Committee can ask questions and evaluate the conclusions reached. A comprehensive financial analysis will likely include the following:

1. An internal rate of return (IRR). This used to determine the developer's potential need for financial assistance.

Tips for understanding IRR:

- a. Question why and verify that the IRR percent being using is appropriate for this type of development.
 - b. Understand what a typical IRR is for this type of development and what factors could alter it.
 - c. For any assumptions in the analysis, ask how it was developed and what industry-specific objective standards are being utilized.
2. A 10-year pro forma under conventional taxation and a 10-year pro forma under a PILOT. This calculates the expected project revenues and costs, including full taxes vs PILOT. A calculation of the market value of the property is used. This calculation is based on the projected net operating income or NOI for the project, excluding taxes, and a capitalization rate plus the effective tax rate as a percentage.

Tips for understanding the pro forma:

- a. How is the potential project revenue calculated?
- b. How are the projects structural reserves calculated?
- c. Why is the specific capitalization (cap) rate percent being used?
- d. How does this cap rate percent vary when various factors change, such as type of development?
- e. What does the yield on cost percentage indicate about the development?
- f. For any assumptions in the analysis, ask how it was developed and what industry-specific objective standards are being utilized.

Municipalities are encouraged to use the Division's [PILOT Financial Agreement Forecast \(PFAF\)](#) to examine the proposed project and establish a baseline understanding of the financial costs and benefits to the municipality.

3. A Fiscal impact study that compares the municipality's existing revenue from the property to the projected revenue from the PILOT. The difference is the incremental annual revenue for the municipality.

To attain real value from this exercise requires putting the data in context. Understanding the cost of providing municipal services for the subject property is a fundamental component in determining the PILOT. Municipalities should calculate this information annually during the budget process.

The following chart demonstrates, in a simplified format, what this kind of analysis entails, summarizing the more standard services a municipality provides, and allocating their associated costs for a hypothetical project. Each municipality should determine which municipal services to include for each development.

**Table 1:
EXAMPLE
Municipal Cost of Services Analysis**

<u>Department</u>	<u>Final Budget</u>	<u>Per Capita</u>	<u>Per Parcel</u>	<u>Monthly Per Capita</u>	<u>Monthly Per Parcel</u>
Administration	\$2,443,876	\$ 10.85	\$ 30.32	\$ 0.90	\$ 2.53
Finance	\$2,823,240	\$ 12.53	\$ 35.02	\$ 1.04	\$ 2.92
Law	\$1,750,000	\$ 7.77	\$ 21.71	\$ 0.65	\$ 1.81
Fire	\$40,617,417	\$ 181.38	\$ 506.95	\$ 15.58	\$ 42.25
Police	\$50,929,106	\$ 214.02	\$ 598.19	\$ 17.84	\$ 49.85
Public Works	\$16,392,098	\$ 72.75	\$ 203.34	\$ 6.06	\$ 16.95
Human Resources	\$3,247,630	\$ 14.41	\$ 40.29	\$ 1.20	\$ 3.36
Solid Waste	\$9,850,000	\$ 43.72	\$ 122.19	\$ 3.64	\$ 10.18
Total	\$128,053,367	\$ 557.43	\$1,558.01	\$ 46.91	\$ 129.85

The financial analysis is a primary component of the PILOT analysis. However, there are other factors that are pertinent to each use case. The unique circumstances of each municipality must be considered along with the numbers. Below are some examples of important non-financial factors that the Internal Review Committee should be considering during its assessment of each project proposal. Their relative value will depend upon the municipality's needs:

1. Does the development address urban blight by enhancing the physical appearance of the community?
2. Does it address the need for affordable housing whether through COAH requirements or community-based need?
3. Will it assist in the elimination of food deserts?
4. Does it create long-term job opportunities for community members?
5. Is it a catalyst development that will spur other economic investment?
6. Will it enhance the gateway into the community or expand a vital commercial corridor?
7. Will it provide a sustainable future tax ratable once the PILOT ends?
8. Does it address a need identified in the municipal master plan?
9. Will it attract visitors to the community who will become patrons of stores and restaurants?
10. Will it be a regional employment center that will bring people to shop and dine in the community?

ADMINISTRATION AND OVERSIGHT OF AUTHORIZED TAX ABATEMENTS

Each municipality engaged in the municipal tax abatement process will need to assign a team of municipal officials who are responsible for negotiating, administering and overseeing all executed financial agreements. The officials involved in this process may vary, but often include the municipality's chief administrative officer, who, depending on the form of government, may be the municipal manager, administrator or mayor. The municipal attorney, the chief finance officer, tax collector, tax assessor, and construction official are also generally assigned duties related to the administration and oversight of financial agreements.

Annual Oversight Process:

Tax abatement administration and oversight is an active and ongoing process. Municipalities must remain engaged; they cannot merely file the agreement away and expect its terms to self-effectuate. Routine monitoring should include the following:

- Ensure compliance with construction timeframes and milestones.
- Review annual audits, including the certified audit of project cost, gross revenues, and annual financial operations. Seek developer clarification of any items that don't make sense or require additional detail or explanation. Don't just put the report in the drawer.
- Review payment of taxes, PILOTS, administrative fees, water and sewer charges, permits and inspections fees. Ensure they are billed, paid, and collected in a timely manner.

- Review the conditions under which the abatement was granted, as outlined in financial agreement:
 - Has the developer claimed employment numbers for construction and operation? Have these been met?
 - Are they required to hire residents for construction and operation? Has this occurred?
 - Have any other specific requirements or milestones been met?
- Does the developer have any property maintenance violations? Have these been corrected?
- If the agreement is violated at any stage, do you need to issue any related notices? Can or has the violation been cured? Does the violation rise to the level of default or termination?

RENEWAL OF A TAX ABATEMENT

Redevelopment and municipal tax abatement law provides for renewal of a redevelopment designation and authorization of a PILOT under certain conditions. One example of a basis for extension is remodeling or recapitalization of projects currently authorized for tax abatements. Not scrutinizing requests for renewal may lead to improper extension, failure to obtain an appropriate local benefit, or perpetual tax abatements. This is counter to the intent of the governing law, which contemplates providing a defined period of abatement, after which all residents and services provided by the municipality benefit from a fully taxable property. Renewal should only be granted where there is clear proof that continued abatement is necessary to the continued success of the project, and the project remains beneficial to the whole community. To inform this determination, requests for an extension should be assessed using the evaluation process used to grant the initial abatement. If the request seeks continued abatement to support remodeling or recapitalization, a thorough review should be completed to determine if the improvements are an unsustainable financial burden for the project. Municipalities should question if it is equitable to provide an additional tax abatement period for ordinary repairs, remodeling and maintenance. Community benefits sufficient to warrant continued subsidy must exist.

CONCLUSION

Our state's complex statutory scheme allows for unique opportunities to attract quality development to New Jersey's municipalities. A robust and efficient local process enhances the odds of successful development. Engaging in thoughtful advance planning facilitates attraction and review of proposals. Comprehensive review ensures local benefits are maximized and a race to the bottom avoided, while providing the necessary support for competitive and advantageous projects. Ultimately, through careful attention to and knowledge of the laws and best practices in this complex field, municipalities can obtain real immediate value and achieve lasting economic benefits through a properly administered municipal tax abatement program. This Handbook, and the rest of the Division's Tax Abatement Toolkit, exists to support local units' success in these endeavors.