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Compliance and Reporting for Texas Property Tax Value Limitation Agreements

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Compliance and Reporting for Texas Property Tax Value Limitation Agreements

Obtaining a property tax value limitation agreement is an important goal for most Texas renewable energy project developers. Value limitation agreements are authorized by Chapter 313 of the Texas Tax Code and are often referred to as "Chapter 313 agreements." These agreements represent the only property tax incentive that a renewable project may obtain from a school district. For many projects, a value limitation agreement results in the avoidance of millions of dollars of school district property taxes during the full term of the agreement. Obtaining and maintaining a proper value limitation agreement requires vigilance and attention to detail on the part of the project owner. This paper describes both the application phase and the compliance and reporting phase for a value limitation agreement. This paper also addresses the legal process for disputes involving value limitation agreements.

I. Applications for Value Limitation Agreements

Chapter 313 agreements have developed their own unique vocabulary, and an understanding of the following key terms is important for these agreements:

> "Qualifying Time Period" (or "QTP") means the period during which the applicant must complete its qualified investment. The qualifying time period generally starts on the date the school board approves the application and executes the agreement although the statute permits the deferral of the commencement of the qualifying time period to a later date. The qualifying time period includes the remainder of the year that the application is approved as well as the following two complete tax years. For most agreements, the qualifying time period can vary from two years to two-years-and-364 days, depending on the date of board approval or the deferred commencement date.
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> "Qualified Investment" means certain types of tangible personal property placed in service *during the qualifying time period* and any building that houses the eligible tangible personal property and that is built or constructed *during the qualifying time period*. Qualified investment does not include land or any investments made outside of the qualifying time period.
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> "Qualified property" means the property to which the property tax value limitation will be applied. Qualified Property may include land (which will also be subject to the value as limited by the agreement) and all tangible personal property and buildings placed in service *after the application review start date*. Qualified property may include investments made after the end of the qualifying time period so long as the property is eligible and fully described within the application and agreement.
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> "Tax Limitation Period" (or "TLP") means the ten tax years for which the applicant's qualified property will be subject to the tax limitation amount. The tax limitation period

must start on one of three specified dates, either: (1) January 1 of the first tax year that begins after the application date; (2) January 1 of the first tax year that begins after the qualifying time period ends; or (3) January 1 of the first tax year that begins after commercial operations begins at the project site. The qualifying time period and the tax limitation period may overlap. It is also possible for there to be one or more tax years in between the end of the QTP and the first year of the TLP.

"Tax Limitation Amount" means the maximum amount which may be placed as the appraised value on the applicant's qualified property for maintenance and operations tax assessment in each tax year of the tax limitation period. The tax limitation amount is determined by Chapter 313 of the Tax Code and is not negotiable. Also note that the tax limitation amount only applies to the school district's maintenance and operations tax rate and does not apply to the school district's interest and sinking fund ("I&S" or debt service) tax rate.

"Qualifying Job" means a job that is full-time, is not transferred from another area of the state, is not created to replace a previous employee, is covered by a group health plan for which the applicant pays at least 80% of the premiums or other charges, and pays at least 110% of the county's average weekly wage for manufacturing jobs.

The cumulative tax benefit obtained with a Chapter 313 agreement is a ten-year appraised value limitation for school district operations and maintenance taxes. By statute, only the following types of projects are permitted to obtain a Chapter 313 agreement: (1) manufacturing; (2) research and development; (3) clean coal projects; (4) advanced clean energy projects; (5) renewable energy electric generation; (6) electric power generation using integrated gasification combined cycle technology; (7) nuclear electric power generation; (8) computer centers primarily used in connection with one or more activities described above; and (9) Texas priority projects. In order to obtain a Chapter 313 agreement, a renewable energy project must be located in a designated reinvestment zone, meet a minimum investment requirement, and comply with a job creation requirement.

Chapter 313 agreements are the subject of a heavily structured process. The Comptroller has promulgated a form of application that requires disclosure of specific information about the proposed investment, including a description of the proposed investment, the estimated value of the proposed investment, and projected depreciation of the proposed investment. The application form is included on the Comptroller's website. To commence the process, the taxpayer must submit an application to the local school district and pay the district's application fee. The school district is not required to act on the application. If the school district approves the application, the school district must submit the application to the Comptroller, and then the process described below commences. The agreement must be final and signed within 151 days after the application is determined by the Comptroller to be complete. From initial contact to signed agreement, the process can take 180 days or longer.

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