
**Subject: REPAYMENT OF ABATED TAXES
(P.A. 198 & 328)**

No. 30.7

Date: June 4, 2007

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PURPOSE:

This policy applies to the repayment of abated taxes “clawback” relating to Industrial Tax Exemptions.

SCOPE:

This policy applies to all P.A. 198 Industrial Facilities Exemption Agreements and P.A. 328 New Personal Property Exemption Agreements.

POLICY:

The intent of the policy is to define the process of tax repayments when a company ceases its operations within its proposed improvement district prior to the expiration of the term of the Industrial Facilities Exemption Certificate, and no transfer of the certificate is approved by the city to a third party that continues adequate operations within the facilities, or if the company remains delinquent in payment of taxes issued under IFT exemption certificate.

1. Companies granted tax abatements are expected to comply with city policy and are required to enter into a legally-binding tax exemption agreement describing the company project investment, job generation and retention, commitment to continue operations in the City of Kalamazoo, payment of taxes, submission of reports and non-discriminatory hiring practices. If a company fails to honor its commitments, the city shall invoke its clawback provisions outlined in the tax exemption agreement and state law.
2. The basis of the city’s ability to demand repayment of abated taxes comes from, respectively, the Industrial Facilities Tax (IFT) Exemption Agreement and MCL 207.571. In addition, MCL 211.107 provides the basis for the city to affix delinquent tax penalties, interest and administrative fees. These tax default remedies have been explicitly cited in Sections 3 and 4 in each IFT Agreement that accompanies a tax abatement approval. The default clauses are policies that have been approved by the City Commission.
3. Three components constitute the “clawback” calculation:
 - The previously reduced taxes from all local units of government which benefited the company.
 - Accrued interest, penalties and administrative fees applicable in the same amount as would be collected if the same were considered delinquent.

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- Taxes on the remaining years of the industrial facilities exemption certificate.
- 4. The city shall invoke components 1 and 2 when a company ceases operations within the improvement district, moves outside the City of Kalamazoo, or is delinquent in payment of taxes issued under the IFT certificate. The city, under state law, shall invoke component 3 at its discretion prospectively for tax years remaining under the certificate.
- 5. Under extreme and documented circumstances by the company, a waiver of the “clawback” provisions may be considered under the following conditions:
 - The company has made a substantial investment in another project within the City of Kalamazoo.
 - Real and personal property tax base is increased at another location owned by the company in the City of Kalamazoo.
 - The project retains and creates additional employment opportunities for city residents.

EFFECTIVE DATE: June 4, 2007

SEE ALSO:

Michigan P.A. 198 of 1974, as amended; P.A. 328 of 1998; MCL 207.571; and MCL 211.107

SIGNATURE:

Hannah J. McKinney, Mayor