

CITY OF WYANDOTTE

REVIEW POLICY

FOR AGREEMENT PAYBACKS AND TRANSFER PENALTIES

ASSOCIATED WITH

INDUSTRIAL FACILITIES EXEMPTION CERTIFICATES



CITY OF WYANDOTTE, MICHIGAN
3131 Biddle Avenue
Wyandotte, Michigan 48192

Prepared by:
Community Development Department
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Adopted by the Mayor and Council on October 9, 2006

CITY OF WYANDOTTE REVIEW POLICY FOR AGREEMENT PAYBACKS AND TRANSFER PENALTIES ASSOCIATED WITH AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE

The purpose of this policy is to specify the City Council's policies regarding agreement paybacks and transfer penalties associated with an Industrial Facilities Exemption Certificate (IFEC) when a company that has received an IFEC is unable to comply with the conditions specified in its Letter Agreement, the Plant Rehabilitation and Industrial Development Districts Act, Public Act 198 of 1974 ("Public Act 198"), as amended, and/or relocates outside the City of Wyandotte.

I. Definitions

1. Agreement Payback. Section 22 of Public Act 198 (see Exhibit 1) authorizes and requires a written agreement (the "Letter Agreement" – see Exhibit 2) between the City and the IFEC recipient. The Letter Agreement that every IFEC recipient must sign may provide for an "Agreement Payback" by the recipient. According to a typical Letter Agreement, the City's approval is subject to several conditions, including the retention of existing jobs, the creation of new jobs, the investment of an estimated dollar amount in real and/or personal property, and the recipient remaining in the City for the duration of the IFEC. If an IFEC recipient fails to comply with the conditions specified in its Letter Agreement and/or Public Act 198 during the time the IFEC is in effect, the recipient shall, subject to the approval of the City Council, and upon relocation or adoption of a resolution by the City Council noting the recipient's failure to comply with other conditions specified in the Letter Agreement, pay to the City and all affected taxing units, an amount equal to those taxes it would have paid had the abatement not been in effect. In other words, the Agreement Payback is prior year taxes that were exempted as part of the IFEC (see Exhibit 3 for an example). The payment provided shall be distributed in the same manner as the industrial facilities tax is distributed.

2. Transfer Penalty. Section 21 (2) of Public Act 198 (see Exhibit 1) authorizes a "Transfer Penalty" if the owner or lessee of a facility for which an IFEC is in effect relocates that facility outside of the industrial development district or plant rehabilitation district during the period in which the IFEC is in effect. The owner or lessee is liable to the City (from which it is leaving), upon relocating, for an amount equal to the difference between the industrial facilities tax to be paid by the owner or lessee of that facility for that facility for the tax years remaining under the IFEC that is in effect and the general ad valorem property tax that the owner or lessee would have paid if the owner or lessee of that facility did not have an industrial facilities exemption certificate in effect for those years (see Exhibit 3 for an example). In other words, the Transfer Penalty is equal to future year taxes that were to be exempted as part of the IFEC. The payment provided shall be distributed in the same manner as the industrial facilities tax is distributed.

II. Policy

1. It shall be the policy of the City of Wyandotte that an IFEC recipient that fails to comply with the conditions specified in their Letter Agreement and/or applicable State law, i.e. Public Act 198, shall be responsible for full payment of the "Agreement Payback" amount to the City and other taxing jurisdictions. Said amount shall be determined by the City Assessor's Office. The City Council must approve a resolution authorizing the collection of said amount.

Factors the City may consider in determining if forgiving all or a portion of the Agreement Payback amount is in its best interest include, but are not limited to:

- a. The number of years for which the IFEC recipient complied with the terms of their Letter Agreement and/or the applicable State law.
 - b. The portion of the IFEC recipient's manufacturing operation, personal property, and jobs, if any, that will remain in Wyandotte.
 - c. The financial condition of the City.
2. It shall be the policy of the City of Wyandotte that an IFEC recipient that relocates a facility outside of the industrial development district or plant rehabilitation district during the period in which the IFEC is in effect, shall, upon relocation, be responsible for full payment of the "Transfer Penalty" amount to the City and other taxing jurisdictions. Said amount shall be determined by the City Assessor's Office.

Factors the City may consider in determining if forgiving all or a portion of the Transfer Penalty liability is in its best interest include, but are not limited to:

- a. The number of years for which the IFEC recipient complied with the conditions specified in their Letter Agreement and/or the applicable State law.
 - b. The portion of the IFEC recipient's manufacturing operation, personal property, real property, and/or jobs, if any, that will remain in Wyandotte.
 - c. The financial condition of the City.
3. The City Council may make an exception to any of the above policies upon adoption of a resolution stating the specific reasons for said exception.

Exhibit 1

PLANT REHABILITATION AND INDUSTRIAL DEVELOPMENT DISTRICTS
Act 198 of 1974

AN ACT to provide for the establishment of plant rehabilitation districts and industrial development districts in local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax upon the owners of certain facilities; to impose and provide for the disposition of an administrative fee; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; to prescribe the powers and duties of the state tax commission and certain officers of local governmental units; and to provide penalties.

History: 1974, Act 198, Imd. Eff. July 9, 1974;—Am. 2001, Act 157, Imd. Eff. Nov. 6, 2001.

Popular name: Act 198

Excerpt

207.571 Transfer and assignment of industrial facilities exemption certificate.

Sec. 21. (1) An industrial facilities exemption certificate may be transferred and assigned by the holder of the industrial facilities exemption certificate to a new owner or lessee of the facility but only with the approval of the local governmental unit and the commission after application by the new owner or lessee, and notice and hearing in the same manner as provided in section 5 for the application for a certificate.

(2) If the owner or lessee of a facility for which an industrial facilities exemption certificate is in effect relocates that facility outside of the industrial development district or plant rehabilitation district during the period in which the industrial facilities exemption certificate is in effect, the owner or lessee is liable to the local governmental unit from which it is leaving, upon relocating, for an amount equal to the difference between the industrial facilities tax to be paid by the owner or lessee of that facility for that facility for the tax years remaining under the industrial facilities exemption certificate that is in effect and the general ad valorem property tax that the owner or lessee would have paid if the owner or lessee of that facility did not have an industrial facilities exemption certificate in effect for those years. If the local governmental unit determines that it is in its best interest, the local governmental unit may forgive the liability of the owner or lessee under this subsection. The payment provided in this subsection shall be distributed in the same manner as the industrial facilities tax is distributed.

History: 1974, Act 198, Imd. Eff. July 9, 1974;—Am. 1999, Act 140, Imd. Eff. Oct. 18, 1999.

Popular name: Act 198

207.572 Industrial facilities exemption certificate; requirements for approval and issuance.

Sec. 22. A new industrial facilities exemption certificate shall not be approved and issued under this act after April 1, 1994, unless a written agreement is entered into between the local governmental unit and the person to whom the certificate is to be issued, and filed with the department of treasury.

History: Add. 1993, Act 334, Eff. Apr. 1, 1994;—Am. 1994, Act 266, Eff. Imd. July 6, 1994.

Popular name: Act 198

Exhibit 2

EXAMPLE OF NEW LANGUAGE

INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE ("IFEC")

LETTER OF AGREEMENT AND AFFIDAVIT OF FEES

This Agreement between _____
(the "Company") and the City of Wyandotte ("City") is for the purpose of fulfilling the requirements of the Plant Rehabilitation and Industrial Development Districts Act, Public Act 198 of 1974, as amended by Public Act 334 (1993) Section 22. In consideration of approval of a certain exemption certificate, the Company understands that through its investment of \$ _____, and the City, by its investment of the industrial facilities tax exemption, are mutually investing and benefiting from this economic development project, and further agree to the following:

1. The length of time for which the abatement is approved is _____ () years.
2. The Company will retain _____ () jobs and create ____ () to ____ () new jobs in Wyandotte within two (2) years of project completion as a result of the purchase and installation of the items checked below for which the abatement is granted: (check those that apply)

_____ building improvements and land improvements
_____ machinery and equipment
_____ furniture and fixtures

In addition, local jobs will be supported during construction and the installation of said improvements.

3. The total estimated dollar amount invested in the property shall be \$ _____, as further specified in the Certificate application.
4. **Agreement Payback.** If, during the time the IFEC is in effect, an IFEC recipient: (a) relocates outside the City of Wyandotte all or any portion of a facility for which an IFEC was issued, or (b) fails to retain or create the minimum agreed upon number of jobs as specified above, then the recipient shall, subject to the approval of the City Council, pay to the City and all affected taxing units, an amount equal to those taxes it would have paid had the abatement not been in effect (in other words, an "agreement payback" for prior year taxes that were exempted as part of the IFEC). The agreement payback payment provided for shall be distributed in the same manner as the industrial facilities tax is distributed.
5. **Transfer Penalty.** If the owner or lessee of a facility for which an IFEC is in effect relocates a facility outside of an industrial development district or plant rehabilitation district in the City of Wyandotte during the period in which the IFEC is in effect, the owner or lessee is liable to the City of Wyandotte, upon relocating, for an amount equal to the difference between the industrial facilities tax to be paid by the owner or lessee of that facility for that facility for the tax years remaining under the IFEC that is in effect and the general ad valorem property tax that the owner or lessee would have paid if the owner or lessee of that

facility did not have an IFEC in effect for those years (in other words, future year taxes that were to be exempted as part of the IFEC). If the City of Wyandotte determines that it is in its best interest, the local governmental unit may forgive the liability of the owner or lessee under this subsection. The transfer penalty payment provided for in this subsection shall be distributed in the same manner as the industrial facilities tax is distributed.

6. In accordance with State Tax Commission Bulletin No. 3 dated January 1998, the City of Wyandotte and the Applicant for an Industrial Facilities Exemption Certificate do hereby swear and affirm that no payment of any kind, whether they be referred to as "fees," "payments in lieu of taxes," "donation," or by other like terms, such payments are contrary to the legislative intent of Act 198 that exemption certificates have the effect of abating all ad valorem property taxes levied by taxing units with the unit of local government which approves the certificate. The undersigned do swear and affirm by our signatures below that "no payment of any kind in excess of the fee allowed by Public Act 198 of 1974, as amended by Public Act 323 of 1996, has been made or promised in exchange for favorable consideration of an exemption certificate application."

This Agreement is assignable and transferable by either party with advance written consent of the other party hereto. This Agreement may only be altered upon mutual consent of both parties.

_____	THE CITY OF WYANDOTTE
Company Name	A Municipal Corporation
By:	By:
X _____	_____
	James R. DeSana, Mayor

Print Name and Title	
X _____	_____
	William R. Griggs, City Clerk

Print Name and Title	
Dated: _____	Dated: _____

Exhibit 3

EXAMPLE

ESTIMATE OF AGREEMENT PAYBACK AND TRANSFER PENALTY ASSOCIATED WITH AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE

PERSONAL PROPERTY ONLY

Year No.	Year	Value of New Machinery & Equipment	Depreciated Value	Assessed Value (50% of Dep. Value)	Taxes w/out Exemption	Taxes with IFT Exemption	Difference	Difference Plus 1% Admin. Fee
					Taxes at regular millage rate of 66.0006	Taxes at IFT millage rate of 35.9999		
Prior No.1	2005	\$1,000,000	\$890,000	\$445,000	\$29,370	\$16,020	\$13,350.31	\$13,483.81
Prior No. 2	2006	\$1,000,000	\$760,000	\$380,000	\$25,080	\$13,680	\$11,400.27	\$11,514.27
Subtotal for Prior Years ("Agreement Payback")		-	-	-	\$54,450	\$29,700	\$24,750.58	\$24,998.08
3	2007	\$1,000,000	\$670,000	\$335,000	\$22,110	\$12,060	\$10,050.23	\$10,150.74
4	2008	\$1,000,000	\$600,000	\$300,000	\$19,800	\$10,800	\$9,000.21	\$9,090.21
5	2009	\$1,000,000	\$540,000	\$270,000	\$17,820	\$9,720	\$8,100.19	\$8,181.19
6	2010	\$1,000,000	\$490,000	\$245,000	\$16,170	\$8,820	\$7,350.17	\$7,423.67
7	2011	\$1,000,000	\$450,000	\$225,000	\$14,850	\$8,100	\$6,750.16	\$6,817.66
8	2012	\$1,000,000	\$420,000	\$210,000	\$13,860	\$7,560	\$6,300.15	\$6,363.15
9	2013	\$1,000,000	\$380,000	\$190,000	\$12,540	\$6,840	\$5,700.13	\$5,757.13
10	2014	\$1,000,000	\$360,000	\$180,000	\$11,880	\$6,480	\$5,400.13	\$5,454.13
11	2015	\$1,000,000	\$310,000	\$155,000	\$10,230	\$5,580	\$4,650.11	\$4,696.61
12	2016	\$1,000,000	\$290,000	\$145,000	\$9,570	\$5,220	\$4,350.10	\$4,393.60
Subtotal for Remaining Years ("Transfer Penalty")		-	-	-	\$148,831	\$81,180	\$67,651.58	\$68,328.09
Total for Prior and Remaining Years (Agreement Payback & Transfer Penalty)		-	-	-	\$203,282	\$110,880	\$92,402.16	\$93,326.18

Notes/Assumptions:

1. Assumes the Company receives an IFEC and relocates outside the City two years after receiving the IFEC.
2. Assumes the Company is responsible for an Agreement Payback and Transfer Penalty.

Millage rates current as of 2005.

City of Wyandotte

Prepared by: Community Development Department

Revised: October 4, 2006