

## Publications

### To Be or Not To Be -- Texas Chapter 313

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Chapter 313 of the Texas Tax Code is a decades-old law designed to lure companies to Texas with the promise of property tax breaks. The law is set to expire at the end of 2022, and the Texas Legislature is faced with a choice: it could either renew the law or allow the law to lapse, permitting any existing Chapter 313 agreements to expire over time.

Chapter 313 has a storied history that starts with a missed opportunity. In 1991, Intel nearly built a massive chip fabrication plant near Fort Worth, but the tech giant instead picked Arizona because “Texas property taxes were too high”. See “A Texas economic incentive offers massive tax breaks to companies, but its renewal isn’t a done deal,” by Duncan Agnew, *The Texas Tribune* (April 29, 2021).<sup>[1]</sup> In response, just two years later, Texas lawmakers enacted Chapter 313, also known as the Texas Economic Development Act, to offer property tax breaks to major companies that locate new facilities in the state.

These tax abatements under Section 313 of the Texas Tax Code -- often called a “Chapter 313 abatement” -- permit an independent school district to reach an agreement with a company to reduce the valuation of that company’s property in the district for a period of up to 10-years. These agreements are designed to address one of the most significant barriers for major investment projects in Texas, namely a relatively high property tax rate. To mitigate this burden, a school district can offer a temporary (10-year) tax abatement under Chapter 313. While cities and counties can also offer a temporary tax abatement under Chapter 312 of the Tax Code, school districts typically account for the largest share of a property tax bill, making Chapter 313 abatements an essential part of the state’s economic development arsenal.

From its inception, Chapter 313 has supported the development of certain eligible industries in Texas, including manufacturing; research and development; “clean coal” projects; nuclear and renewable

electricity generation; and computer data centers. It has been used to attract Tesla Inc.'s upcoming \$1.1-billion gigafactory near Austin and a proposed \$17 billion semiconductor plant for Samsung in central Texas. Chapter 313 has also become a major component of the state's winning economic development formula. "Today, Chapter 313 agreements account for almost a billion dollars in tax breaks for some of the largest companies in Texas." See "A Texas economic incentive offers massive tax breaks to companies, but its renewal isn't a done deal," by Duncan Agnew, *The Texas Tribune* (April 29, 2021). There are over 500 Chapter 313 agreements in effect, and the projects incentivized by Chapter 313 "represent \$217 billion in investments by companies" for which those companies have "have received gross tax benefits of \$10.8 billion". See "Chapter 313 program doomed after Texas lawmakers miss deadline; 'We're going to lose a lot of projects,'" by Kathryn Hardison, *Austin Business Journal* (May 27, 2021).<sup>[2]</sup> However, with Section 313 of the Texas Tax Code set to expire in 2022, the Texas Legislature has yet to act.

This past spring, the Texas Legislature missed a May 26 deadline to advance House Bill 4242, which would have extended the Chapter 313 incentives program by two years. Unless lawmakers revive the bill or pass alternative legislation during a special legislative session, the program will expire in December 2022. In that case, existing Chapter 313 projects will run their course under current agreements, but no new Chapter 313 abatements would be approved.

If the program is not extended, it may significantly alter the state's competitive position. Dale Craymer, president of Texas Taxpayers and Research Association, commented after the May 26 deadline expired: "We're going to lose a lot of projects that companies are currently in the initial planning stages for. If Texas isn't on their list now, we likely won't be on their list in the future. . . . Even if we come back in 2023 and create a new program, it will create a gap of investment in the state." See "Chapter 313 program doomed after Texas lawmakers miss deadline; 'We're going to lose a lot of projects,'" by Kathryn Hardison, *Austin Business Journal* (May 27, 2021).<sup>[3]</sup> However, discussions regarding the program are still ongoing. Sen. Lois Kolkhorst, who advocated for reforms to Chapter 313, said she expects the program to be "one of the hottest topics of the interim." See "How skeptical Texas lawmakers put an end to a controversial tax incentive program," by Mike Morris and John Tedesco, *Houston Chronicle* (June 3, 2021).<sup>[4]</sup>

To be eligible for a Chapter 313 abatement, a company must:

1. Make a new investment in connection with a project for: (1) manufacturing, research and development, electricity generation (using certain clean or renewable energy), or nuclear energy; (2) a computer center primarily used in connection with one or more of the aforementioned activities; or (3) a "Texas priority project", i.e., any project with a qualified investment in excess of \$1 billion;
2. Invest an amount sufficient to qualify for the abatement, which differs depending on the total property value located in a particular school district. A higher level of investment is required in a property-wealthy school district (where the minimum qualified investment can reach as high as \$100 million) verses less wealthy school districts in rural or strategic investment areas (where the minimum qualified investment can be as low as \$1 million); and
3. A project must create at least 25 "qualifying" jobs (or 10 jobs, if the project is located in a rural or economically disadvantaged school district). A "qualifying" job is a new full-time job that: (a) requires at least 1600 hours of work per year; (b) is not transferred from another location in the state; (c) is not created to replace a previous employee; (d) includes a group health benefit (with the employer offering to pay at least 80 percent of the premiums); and (e) pays at least 110 percent of the average weekly

wage for manufacturing jobs in the county.

A project seeking a Chapter 313 abatement must make a formal application to the school district where the property will be located and pay the district an application fee, to defray school district's costs, which typically ranges from \$75,000 to \$150,000. See Understanding Chapter 313: School Property Tax Limitation and the Impact on State Finances, A Research Report by the Texas Taxpayers and Research Association (TTARA).[5] The form of the application is established by the Texas Comptroller.

A company may apply to the school district for a Chapter 313 abatement on the taxable value of new property that it intends to put in place. Property eligible for the abatement includes land, buildings and certain tangible personal property, such as machinery and equipment, but not inventories. If the school district decides to consider the application, it will forward the application to the Comptroller, who evaluates the application and determines whether it meets certain required criteria. Those criteria include a determination that: (1) the Chapter 313 abatement is a deciding factor in the applicant's decision to invest in the state, and (2) the project would be likely to generate over 25 years, tax revenue in an amount sufficient to offset the tax revenues lost from the proposed Chapter 313 agreement. If these conditions are met, the Comptroller issues a certificate of approval and the school district may act on the application.

If the school district approves the application, it may enter into an agreement with the owner of the project and set a temporary limit (up to 10 years) on the amount of the investment that may be taxed. Chapter 313 also sets a floor (or minimum limitation amount) on the amount of the abatement that may be offered by the school district based on the amount of the qualified investment and type of school district (standard vs rural or strategic investment area).

Chapter 313 does not remove property from the tax rolls, instead it simply delays the time before the full value of the new investments will go on the tax rolls. In exchange for the reduced tax burden, school districts commonly require supplemental payments in return for the Chapter 313 abatement, which are allowed under the law subject to certain limits. If applicable, these supplemental payments will reduce a company's net tax savings from the Chapter 313 abatement.

With the law set to expire at the end of 2022, the debate over Chapter 313 continues. Critics of Chapter 313 have raised questions about the loss of tax revenues and the state's return on its investment. Some have claimed that a portion of Chapter 313 abatements have gone to companies that would still have chosen to complete their projects in state. Proponents of Chapter 313 do not share that view and instead have cited major projects that Chapter 313 has helped bring to the state. Proponents also worry that the loss of Chapter 313 could place Texas at a competitive disadvantage. Ultimately, the Texas Legislature will decide the fate of Chapter 313 – and in doing so, decide whether to close the book on a storied economic development incentive.

Texas Tax Code § 313.001, *et. seq.*

[1] See <https://www.texastribune.org/2021/04/29/texas-legislature-chapter-313/>

[2] See <https://www.bizjournals.com/austin/news/2021/05/27/chapter-313-program-now-doomed-after-texas-leg.html>

[3] See <https://www.bizjournals.com/austin/news/2021/05/27/chapter-313-program-now-doomed-after-texas-leg.html>

[4] See <https://www.houstonchronicle.com/news/investigations/article/How-skeptical-Texas-lawmakers-put-an-end-to-a-16220649.php>

[5] See [https://www.ttara.org/wp-content/uploads/2018/09/UnderstandingChapter313\\_Final\\_Web\\_1\\_11\\_17.pdf](https://www.ttara.org/wp-content/uploads/2018/09/UnderstandingChapter313_Final_Web_1_11_17.pdf)