



Ohio Revised Code

Section 5709.631 Requirements for agreements.

Effective: March 23, 2005

Legislation: Senate Bill 165 - 125th General Assembly

Each agreement entered into under sections 5709.62, 5709.63, and 5709.632 of the Revised Code on or after April 1, 1994, shall be in writing and shall include all of the information and statements prescribed by this section. Agreements may include terms not prescribed by this section, but such terms shall in no way derogate from the information and statements prescribed by this section.

(A) Each agreement shall include the following information:

(1) The names of all parties to the agreement;

(2) A description of the investments to be made by the applicant enterprise or by another party at the facility whether or not the investments are exempted from taxation, including existing or new building size and cost thereof; the value of machinery, equipment, furniture, and fixtures, including an itemization of the value of machinery, equipment, furniture, and fixtures used at another location in this state prior to the agreement and relocated or to be relocated from that location to the facility and the value of machinery, equipment, furniture, and fixtures at the facility prior to the execution of the agreement that will not be exempted from taxation; the value of inventory at the facility, including an itemization of the value of inventory held at another location in this state prior to the agreement and relocated or to be relocated from that location to the facility, and the value of inventory held at the facility prior to the execution of the agreement that will not be exempted from taxation;

(3) The scheduled starting and completion dates of investments made in building, machinery, equipment, furniture, fixtures, and inventory;

(4) Estimates of the number of employee positions to be created each year of the agreement and of the number of employee positions retained by the applicant enterprise due to the project, itemized as to the number of full-time, part-time, permanent, and temporary positions;



(5) Estimates of the dollar amount of payroll attributable to the positions set forth in division (A)(4) of this section, similarly itemized;

(6) The number of employee positions, if any, at the project site and at any other location in the state at the time the agreement is executed, itemized as to the number of full-time, part-time, permanent, and temporary positions.

(B) Each agreement shall set forth the following information and incorporate the following statements:

(1) A description of real property to be exempted from taxation under the agreement, the percentage of the assessed valuation of the real property exempted from taxation, and the period for which the exemption is granted, accompanied by the statement: "The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. No exemption shall commence after _____ (insert date) nor extend beyond _____ (insert date)." The tax commissioner shall adopt rules prescribing the form the description of such property shall assume to ensure that the property to be exempted from taxation under the agreement is distinguishable from property that is not to be exempted under that agreement.

(2) A description of tangible personal property to be exempted from taxation under the agreement, the percentage of the assessed value of the tangible personal property exempted from taxation, and the period for which the exemption is granted, accompanied by the statement: "The minimum investment for tangible personal property to qualify for the exemption is \$_____ (insert dollar amount) to purchase machinery and equipment first used in business at the facility as a result of the project, \$_____ (insert dollar amount) for furniture and fixtures and other noninventory personal property first used in business at the facility as a result of the project, and \$_____ (insert dollar amount) for new inventory. The maximum investment for tangible personal property to qualify for the exemption is \$_____ (insert dollar amount) to purchase machinery and equipment first used in business at the facility as a result of the project, \$_____ (insert dollar amount) for furniture and fixtures and other noninventory personal property first used in business at the facility as a result of the project, and \$_____ (insert dollar amount) for new inventory. The exemption commences the first year for which the tangible personal property would first be taxable were that property not exempted from taxation. No exemption shall commence after tax return year



_____ (insert year) nor extend beyond tax return year _____ (insert year). In no instance shall any tangible personal property be exempted from taxation for more than ten return years unless, under division (D)(2) of section 5709.62 or under division (C)(1)(b) of section 5709.63 of the Revised Code, the board of education approves exemption for a number of years in excess of ten, in which case the tangible personal property may be exempted from taxation for that number of years, not to exceed fifteen return years." No exemption shall be allowed for any type of tangible personal property if the total investment is less than the minimum dollar amount specified for that type of property. If, for a type of tangible personal property, there are no minimum or maximum investment dollar amounts specified in the statement or the dollar amounts are designated in the statement as not applicable, the exemption shall apply to the total cost of that type of tangible personal property first used in business at the facility as a result of the project. The tax commissioner shall adopt rules prescribing the form the description of such property shall assume to ensure that the property to be exempted from taxation under the agreement is distinguishable from property that is not to be exempted under that agreement.

(3) " _____ (insert name of enterprise) shall pay such real and tangible personal property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. If _____ (insert name of enterprise) fails to pay such taxes or file such returns and reports, all incentives granted under this agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter."

(4) " _____ (insert name of enterprise) hereby certifies that at the time this agreement is executed, _____ (insert name of enterprise) does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which _____ (insert name of enterprise) is liable under Chapter 5727., 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code, or, if such delinquent taxes are owed, _____ (insert name of enterprise) currently is paying the delinquent taxes pursuant to a delinquent tax contract enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against _____ (insert name of enterprise). For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes."



(5) " _____ (insert name of municipal corporation or county) shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions."

(6) "If for any reason the enterprise zone designation expires, the Director of the Ohio Department of Development revokes certification of the zone, or _____ (insert name of municipal corporation or county) revokes the designation of the zone, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless _____ (insert name of enterprise) materially fails to fulfill its obligations under this agreement and _____ (insert name of municipal corporation or county) terminates or modifies the exemptions from taxation granted under this agreement."

(7) "If _____ (insert name of enterprise) materially fails to fulfill its obligations under this agreement, other than with respect to the number of employee positions estimated to be created or retained under this agreement, or if _____ (insert name of municipal corporation or county) determines that the certification as to delinquent taxes required by this agreement is fraudulent, _____ (insert name of municipal corporation or county) may terminate or modify the exemptions from taxation granted under this agreement."

(8) " _____ (insert name of enterprise) shall provide to the proper tax incentive review council any information reasonably required by the council to evaluate the enterprise's compliance with the agreement, including returns or annual reports filed pursuant to section 5711.02 or 5727.08 of the Ohio Revised Code if requested by the council."

(9) " _____ (insert name of enterprise) and _____ (insert name of municipal corporation or county) acknowledge that this agreement must be approved by formal action of the legislative authority of _____ (insert name of municipal corporation or county) as a condition for the agreement to take effect. This agreement takes effect upon such approval."

(10) "This agreement is not transferable or assignable without the express, written approval of



_____ (insert name of municipal corporation or county)."

(11) "Exemptions from taxation granted under this agreement shall be revoked if it is determined that _____ (insert name of enterprise), any successor enterprise, or any related member (as those terms are defined in section 5709.61 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under division (E) of section 3735.671 or section 5709.62, 5709.63, or 5709.632 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections."

(12) "In any three-year period during which this agreement is in effect, if the actual number of employee positions created or retained by (insert name of enterprise) is not equal to or greater than seventy-five per cent of the number of employee positions estimated to be created or retained under this agreement during that three-year period, (insert name of enterprise) shall repay the amount of taxes on property that would have been payable had the property not been exempted from taxation under this agreement during that three-year period. In addition, the (insert name of municipal corporation or county) may terminate or modify the exemptions from taxation granted under this agreement."

The statement described in division (B)(7) of this section may include the following statement, appended at the end of the statement: "and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement." If the agreement includes a statement requiring repayment of exempted taxes, it also may authorize the legislative authority to secure repayment of such taxes by a lien on the exempted property in the amount required to be repaid. Such a lien on exempted real property shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Notwithstanding section 5719.01 of the Revised Code, such a lien on exempted tangible personal property shall attach, and may be perfected, collected, and enforced, in the same manner as a security interest in goods under Chapter 1309. of the Revised Code, and shall otherwise have the same force and effect as such a security interest.

(C) If the director of development had to issue a waiver under section 5709.633 of the Revised Code as a condition for the agreement to be executed, the agreement shall include the following statement:



"Continuation of this agreement is subject to the validity of the circumstance upon which _____ (insert name of enterprise) applied for, and the Director of the Ohio Department of Development issued, the waiver pursuant to section 5709.633 of the Ohio Revised Code. If, after formal approval of this agreement by _____ (insert name of municipal corporation or county), the Director or _____ (insert name of municipal corporation or county) discovers that such a circumstance did not exist, _____ (insert name of enterprise) shall be deemed to have materially failed to comply with this agreement."

If the director issued a waiver on the basis of the circumstance described in division (B)(3) of section 5709.633 of the Ohio Revised Code, the conditions enumerated in divisions (B)(3)(a)(i) and (ii) or divisions (B)(3)(b)(i) and (ii) of that section shall be incorporated in the information described in divisions (A)(2), (3), and (4) of this section.