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Agency 006.05

**REGULATION
IN-LIEU-OF-TAX PAYMENTS**

Pursuant to the authority granted by Ark. Code Ann. §19-1-208, Ark. Code Ann. §25-15-203 and Act 1629 of 2001, the Director of the Arkansas Department of Finance and Administration and the Director of the Arkansas Department of Economic Development, in compliance with Ark. Code Ann. Sec. 25-15-204, do hereby promulgate the following regulation governing the application for and approval of payments in lieu of ad valorem tax under Ark. Code Ann. §14-164-703:

GENERAL PROVISIONS

From July 1, 2001, through June 30, 2003, the following provisions apply if a city or county enters into a lease or sale contract of city or county property to a for profit entity for the purpose of securing and developing industry:

1. The lease or contract shall include an obligation that the lessee or purchaser make payments in lieu of property taxes in an amount as negotiated between the parties.
2. The aggregate amount of the payments during the initial term of the lease or sale contract shall be not less than thirty five percent (35%) of the aggregate amount of ad valorem taxes that would be paid if the property were on the tax rolls unless the Director of the Department of Economic Development (ADED) and the Chief Fiscal Officer (CFO) of the State approve a lesser amount.
3. The city or county shall give at least ten (10) days written notice to each school district superintendent in which school district all or part of the property subject to the lease or sale contract is located and to the Chief Fiscal Officer of the State informing them that a meeting is to be held by city or county officials where action might be taken regarding approval of in-lieu-of tax payments. The notification must include the date, time, and place of the meeting.

PROCEDURES

1. Upon receipt of the required notice of a meeting to be held by a city or county, the Chief Fiscal Officer, or his designate, shall review information to determine if the notice includes a request to exceed the 35% minimum and a written response will be issued to the city or county confirming that the notice has been received.
 - a) If the notice does not contain information regarding the amount and percent of the in-lieu-of tax payment, the response letter will explain that such information is required, reminding the city or county that approval will be needed by both ADED and the CFO if the in-lieu-of tax payment is less than 35% of the taxes that would be paid if the property were on the tax rolls.

b) If the notice does contain information regarding the amount and percent of the inlieu-of-tax payment, and it does not exceed 35%, the response letter will include a reminder to the city of county that in the event the approved payment is less than 35%, then approval will be needed.

e) If the notice contains a request for approval for a payment of less than 35%, the response letter shall notify the city or county that the request will be considered by ADED and the CFO only after the city or county has obtained written approval from the city council, the quorum court, and each school district impacted by the tax abatement. The notice from the city or county requesting a payment of less than 35% must contain the names, addresses, and telephone numbers of contact persons with the local government, the business, and the school districts who can provide information related to the proposed agreement.

2. Immediately upon receipt of approval from the city or county in support of the business' request for an in-lieu-of-tax payment of less than 35%, ADED will conduct a cost benefit analysis, to review the effects of the proposed agreement on public school funding, and consider other relevant matters. The CFO shall assist ADED, as requested, in obtaining all information needed for ADED to conduct the cost benefit analysis. The proposed agreement will be evaluated considering the amount of capital investment anticipated, the number of jobs to be created, the anticipated additional payroll to be created, the amount of property taxes to be abated, the anticipated additional state tax collections resulting from the project, and all other factors relevant to the project.

3. As soon as the analysis described above is completed, the Director of ADED and the CFO shall issue a joint letter to the mayor of the city or county judge of the county either approving or denying the request for a payment of less than 35% of the property tax on the new facility.

4. The CFO will monitor all agreements entered into by cities and counties and maintain files and statistics regarding activity for all in-lieu-of-tax payments for use by the General Assembly in conducting a study of the impact of in-lieu-of-tax payments as provided in Act 1629 of 2001.

Richard A. Weiss, Director
Arkansas Department of Finance and
Administration

Date: July 2, 2002

Jim Pickens, Director
Arkansas Department of Economic
Development

Date: July 2, 2002