

ELIGIBILITY REQUIREMENTS

Project Eligibility

The Ohio Enterprise Zone law requires any business seeking an incentive under the program to make a substantial investment. While ORC Section 5709.61 provides definitions of "substantial investment" under specific circumstances, local jurisdictions have considerable flexibility to make eligibility determinations. Projects must be determined to be eligible prior to granting any tax exemption incentives through an Enterprise Zone Agreement.

Business organizations -- corporations, partnerships, sole proprietorships, and S corporations -- may propose a project for local review. Please note that retail projects, unless located in an area within an Enterprise Zone that is also designated as an Impacted City, (ORC Section 1728.01) are not eligible for enterprise zone benefits. A broad definition of retail which includes over-the-counter service activities at a facility open to the consuming public is included in the statutory definition of "making retail sales" found in ORC Section 5709.61 (T). Also, residential activities are not eligible for Enterprise Zone benefits.

There are four possible eligibility determinations. For a project to be considered for Enterprise Zone benefits, it must meet one of the following four definitions:

1. Establish: means the creation of a facility that is determined to the satisfaction of the Director to entail significant investment in real and/or personal property *other than inventory* at a location where the business had not previously operated.

2. Expand: ORC Section 5709.61 (E) "means to make expenditures to add land, buildings, machinery, equipment, or other materials, *except inventory*, to a facility that equal at least ten percent of market value of the facility prior to such expenditures, as determined for the purposes of local property taxation."

3. Renovate: ORC Section 5709.61 (F) "means to make expenditures to alter or repair a facility that equal at least fifty percent of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation."

4. Occupy: ORC Section 5709.61 (G) "means to make expenditures to alter or repair a vacant facility equal to at least twenty percent of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation."

Proposed Enterprise Zone projects which include the relocation of employment positions or assets from one Ohio site to another are regulated under Ohio law. Only distressed-based Enterprise Zones with authority granted under ORC Sections 5709.62 or 5709.63 after July 22, 1994 can review and approve projects that involve relocation for Enterprise Zone benefits. The community considering the Proposed Agreement must provide a minimum 30 days prior notice of the formal review meeting to the community from which the employees or assets are to be relocated. In addition, non-

distressed based Enterprise Zones with authority under Sections 5709.632 or Enterprise Zones certified prior to July 1, 1994 can consider a relocation project if that project received a waiver from the ODOD Director under ORC Section 5709.633(B). (Please review the Relocation section).

Asset Eligibility

The Ohio Enterprise Zone Program can provide tax exemptions for a portion of the value of new real and personal property. Existing land values and existing building values are not eligible except as noted within the large manufacturing facility or Brownfield site provisions. Please remember that while the increased value of land that is added by a business as a result of a project is eligible for exemption consideration, the existing taxable value is not eligible for an exemption.

Categories of tangible personal property eligible for an Enterprise Zone tax exemption include:

1. New machinery and equipment purchased by the business;
2. Used machinery and equipment purchased by the business from another firm in Ohio which is not an affiliate and that was never used by the business seeking the exemption;
3. Used machinery or equipment brought to the project site by the business from a location outside Ohio and placed into service for the first time in Ohio as a result of the project;
4. Machinery and equipment owned by the business in Ohio, but never previously placed into operation;
5. Specified new inventory added as a result of an expansion at the site in excess of the amount or value of inventory listed in the personal property tax return of the business "in the return for the tax year in which the agreement is entered into;" and
6. New inventory added as a result of the establishment of a facility.

Local governments considering granting personal property tax exemptions should review and adhere to ORC Section 5709.61 (O), especially the "first-used-in-business" standard which states "that the property referred to has not been used in business in this state by the enterprise that owns it, or by an enterprise that is a related member of predecessor enterprise of such an enterprise, other than as inventory, prior to being used in business at a facility as the result of a project." Please note that related members or predecessor enterprises are not eligible for these incentives. Any purchase of used assets involved as part of an Enterprise Zone project must be an "arms-length" transaction.

Each project will be unique in circumstances. Local governments should gather as much detail on the proposed project as possible and apply the standards set forth in the Ohio Enterprise Zone law before making determinations of eligibility or approving any incentives. The local Enterprise Zone Program Guidelines should be reviewed to ensure the proposed project conforms to the standards established in that document. ODOD is available for consultation and guidance in this area.