

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: September 10, 2013 Consent Regular
 Ordinance Public Hearing

Department: Department of Economic Sustainability

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on October 22, 2013, at 9:30 a.m.: An Ordinance of the Board of County Commissioners of Palm Beach County, Florida, establishing an exemption from certain Ad Valorem taxation for certain new and expanding business properties to encourage economic development in the County; providing for title; providing for enactment authority; providing for intent and declaration; providing for definition of terms; providing for an approval process application for exemption; providing for application consideration; providing for application fees; providing for revocation of exemption/recovery of funds; providing for appeals; providing for applicability; providing for inclusion in the code of laws and ordinances; providing for severability; providing for repeal of laws in conflict; and providing for an effective date.

Summary: In a referendum held on November 6, 2012, the voters of Palm Beach County authorized the Board of County Commissioners (BCC) to grant economic development ad Valorem Tax exemptions. The Ordinance establishing the Economic Development Ad Valorem Tax Exemption Program will remain in effect for a ten (10) year period (from August 31, 2014 until August 31, 2024) based on Section 196.1995, Florida Statutes. All Ad Valorem tax exemptions are contingent upon the eligibility of the new business or expanding existing business subject to F.S. 196.012, which determination is made by the Palm Beach County Property Appraiser upon completion of the property improvements. A business granted an exemption must have a positive economic impact on the County's economy, including the creation and maintenance of new full-time jobs. To date, 20 companies have been approved under the Program since its inception in 1994 and over \$2.3 Million in business property taxes have been forgiven to date. (DES Administration) Countywide (DW)

Background and Policy Issues: The Economic Development Ad Valorem Tax Exemption program that was approved by a referendum vote in August, 2004 and implemented by the BCC through the adoption of Ordinance 2005-004, as amended, will expire in August 2014 due to having reached its 10th year limitation pursuant to Section 196.1995, Florida Statutes.

Attachments:

1. Ordinance
2. Program Criteria – approved by BCC on December 18, 2012

Recommended By: Jeremy Howard 8-27-13
 Department Deputy Director Date

Approved By: [Signature] 9/4/13
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2013 | 2014 | 2015 | 2016 | 2017 |
|--------------------------|-------------|-------------|-------------|-------------|-------------|
| Grant Expenditures | | | | | |
| Operating Costs | | | | | |
| External Revenues | | | | | |
| Program Income | | | | | |
| In-Kind Match (County) | | | | | |
| NET FISCAL IMPACT | *See below | | | | |

| | | | | | |
|--|--|--|--|--|--|
| # ADDITIONAL FTE POSITIONS (Cumulative) | | | | | |
|--|--|--|--|--|--|

Is Item Included In Current Budget? Yes _____ No _____
 Budget Account No.:

B. Recommended Sources of Funds/Summary of Fiscal Impact:
 * The fiscal impact is indeterminable at this time. Application and processing fees will depend on the number of applications received.

C. Departmental Fiscal Review: _____
 PO 8/24/13
 Shairette Major, Fiscal Manager I

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 OFMB KW 8/28 8/28

 Contract Development and Control
 8-30-13

B. Legal Sufficiency:

 Assistant County Attorney
 8/4/13

C. Other Department Review:

 Department Director

ORDINANCE NO. 2013 -

1
2
3 AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF
4 PALM BEACH COUNTY, FLORIDA, ESTABLISHING AN EXEMPTION
5 FROM CERTAIN AD VALOREM TAXATION FOR CERTAIN NEW AND
6 EXPANDING BUSINESS PROPERTIES TO ENCOURAGE ECONOMIC
7 DEVELOPMENT IN THE COUNTY; PROVIDING FOR TITLE,
8 PROVIDING FOR ENACTMENT AUTHORITY; PROVIDING FOR
9 INTENT AND DECLARATION; PROVIDING FOR DEFINITION OF
10 TERMS; PROVIDING FOR AN APPROVAL PROCESS APPLICATION
11 FOR EXEMPTION; PROVIDING FOR APPLICATION
12 CONSIDERATION; PROVIDING FOR APPLICATION FEES;
13 PROVIDING FOR REVOCATION OF EXEMPTION/RECOVERY OF
14 FUNDS; PROVIDING FOR APPEALS; PROVIDING FOR
15 APPLICABILITY; PROVIDING FOR INCLUSION IN THE CODE OF
16 LAWS AND ORDINANCES; PROVIDING FOR SEVERABILITY;
17 PROVIDING FOR REPEAL OF LAWS IN CONFLICT; AND PROVIDING
18 FOR AN EFFECTIVE DATE.
19

20 **WHEREAS**, the Board of County Commissioners believes that local government should support
21 economic growth by providing an incentive for employment opportunities that will lead to the improvement
22 of the quality of life of the residents of Palm Beach County and the positive expansion of the economy;
23 and

24 **WHEREAS**, to this end, the Board of County Commissioners desires to offer ad valorem tax
25 exemptions to new businesses relocating to Palm Beach County and to expansions of businesses
26 already situated in Palm Beach County; and

27 **WHEREAS**, the granting of ad valorem tax exemptions to businesses will provide Palm Beach
28 County with an additional economic development incentive which will enhance the ability of Palm Beach
29 County to be competitive when trying to encourage new business development in Palm Beach County
30 and retain local businesses with planned expansions; and

31 **WHEREAS**, such exemptions are authorized pursuant to Article VII, Section 3, of the Constitution
32 of the State of Florida and Section 196.1995, Florida Statutes, upon the successful passage of a
33 referendum; and

34 **WHEREAS**, the electors of Palm Beach County desire to authorize the offering of ad valorem tax
35 exemptions as evidenced by the successful passage of a referendum held on this issue on, November 6,
36 2012.

37 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF**
38 **PALM BEACH COUNTY, FLORIDA, that:**

39 **SECTION 1. Title**

40 This Ordinance shall be known as the "Economic Development Ad Valorem Tax Exemption
41 Ordinance of Palm Beach County, Florida."

42 **SECTION 2. Enactment Authority**

43 Article VII, Section 3, of the Constitution of the State of Florida and Section 196.1995, Florida
44 Statutes, empowers the County to grant economic development ad valorem tax exemptions after the
45 electors of the County, voting on the question in a referendum, authorize such exemptions. In a
46 referendum held on November 6, 2012, the voters of Palm Beach County authorized the Board of County

1 Commissioners to grant economic development ad valorem tax exemptions.

2 **SECTION 3. Intent and Declaration**

3 It is the intent of the Board of County Commissioners of Palm Beach County (hereinafter the
4 "Board") in enacting this Ordinance to provide an incentive to those new or expanded businesses which
5 make a positive contribution to the economy of Palm Beach County in terms of new jobs and
6 improvements to real and personal property.

7 The intent of the Board is to promote the economy by creating jobs in Palm Beach County in such
8 a way so as not to disadvantage existing businesses while recognizing that productive competition assists
9 in economic growth.

10 The Board desires to provide incentives to businesses of diverse industries, with the exception of
11 retail operations, having a positive impact on the economy of Palm Beach County. The Board declares
12 that the provision of ad valorem tax exemptions pursuant to this Ordinance serves the public purpose of
13 fostering economic growth in Palm Beach County, all to the benefit of Palm Beach County's residents and
14 business owners. This Ordinance shall expire on August 31, 2024.

15 **SECTION 4. Definition of Terms**

16 For the purpose of this Ordinance, Terms are defined in accordance with 196.012, Florida
17 Statutes unless defined below. Where a conflict exists between the Ordinance and the Statute, the
18 Statute shall prevail.

- 19 A. Applicant - Any person, firm, partnership, or corporation who files an application with the Board
20 seeking an economic development ad valorem tax exemption.
- 21 B. Board - The Board of County Commissioners of Palm Beach County.
- 22 C. Business - Any activity engaged in by any person, firm, partnership, corporation, or other
23 business organization or entity, with the object of private or public gain, benefit, or advantage,
24 either direct or indirect.
- 25 D. Department - The Florida Department of Revenue.
- 26 E. Enterprise Zone - As defined in 196.012, Florida Statutes.
- 27 F. Expansion of an Existing Business - As defined in 196.012, Florida Statutes.
- 28 G. Goods - All personalty when purchased primarily for personal, family, or household use, but not
29 including personalty sold for commercial or industrial use.
- 30 H. New Business - As defined in Section 196.012.
- 31 I. Retail Operation - A business regularly engaged in, and whose business consists to a substantial
32 extent of, selling goods to a buyer, not principally for the purpose of resale.
- 33 J. Sales Factor - As primarily defined in Section 220.15(5), Florida Statutes.

34 **SECTION 5. Economic Development Ad Valorem Tax Exemption Established**

- 35 A. Establishment - There is herein established an Economic Development Ad Valorem Tax
36 Exemption (hereinafter the "exemption"). The exemption is a local option tax incentive for new or
37 expanding businesses which may be granted or refused at the sole discretion of the Board.

- 1 B. Taxes Applicable - The exemption applies only to taxes levied by Palm Beach County. The
2 exemption does not apply to taxes levied by a municipality, school district, or water management
3 district, or to taxes levied for the payment of bonds or taxes authorized by a vote of the electors
4 pursuant to Section 9 and Section 12, Article VII of the State Constitution.
- 5 C. Exemption Period - The exemption may be for a period up to ten (10) years from the date the
6 Board adopts the ordinance granting the exemption.
- 7 D. Eligibility - The ability for an applicant to be eligible for an exemption under this Program is
8 defined in Title XIV – Taxation and Finance, Chapter 196 – Exemption, Florida Statutes and
9 applies to new businesses locating in Palm Beach County and to expansions of existing
10 businesses presently located in Palm Beach County.
- 11 E. Land - No exemption shall be granted for the land upon which new or expanded businesses are
12 to be located.

13 **SECTION 6. Approval Process Application for Exemption**

- 14 A. Conceptual Application - A Conceptual Application (Exhibit "A") may be applied for through the
15 Palm Beach County Department of Economic Sustainability prior to commencement of
16 improvements, but is not required. A review of the application will be conducted to determine
17 conceptual compliance with s.196.1995 Economic Development Ad Valorem Tax Exemption,
18 Florida Statutes. Any projects to be recommended for conceptual approval shall be placed on the
19 Board's agenda to establish conceptual support for the application and the maximum exemption
20 amounts only.
- 21 B. Formal Application - A Formal Application (Exhibit "B") for Ad Valorem Tax Exemption must be
22 applied for through the Palm Beach County Department of Economic Sustainability, by March 1st
23 in the year that the exemption is desired to take effect and the applicant shall file an annual report
24 every year thereafter for the duration of the exemption on the application entitled "Economic
25 Development Ad Valorem Property Tax Exemption, Chapter 196.1995, Florida Statutes Form
26 418". This application will be reviewed by the Palm Beach County Property Appraiser prior to
27 consideration by the Board. The application shall request that the Board adopt an ordinance
28 granting the applicant the exemption and shall include the information required by Florida Statute
29 Section 196.1995.
- 30 C. Property Appraiser Review - Before the Board takes action on a Formal Application, the Board
31 shall deliver a copy of same to the Property Appraiser for review.
- 32 D. Community Redevelopment Agency - If a new business is locating to, or an expansion of an
33 existing business is occurring in, a community redevelopment area, the community
34 redevelopment agency overseeing such area shall be provided a copy of the application for
35 review and comment. Input from the community redevelopment agency will be considered in
36 deciding whether an application is to be granted. Should a community redevelopment agency
37 object to the grant of an exemption, the agency may submit said objection in the form of a duly

1 adopted resolution to the Board for its consideration.

2 E. Property Appraiser Report - The Property Appraiser's report shall include the following:

- 3 1. The total revenue available to the County for the current fiscal year from ad valorem tax
4 sources, or an estimate of such revenue if the actual total available revenue cannot be
5 determined;
- 6 2. The amount of revenue lost to the County for the current fiscal year by virtue of
7 exemptions previously granted, or an estimate of such revenue if the actual revenue lost
8 cannot be determined;
- 9 3. An estimate of the amount of revenue which would be lost to the County for the current
10 fiscal year if the exemption applied for was granted had the property for which the
11 exemption is requested otherwise been subject to taxation; and
- 12 4. A determination as to whether the property for which an exemption is requested is to be
13 incorporated into a new business or the expansion of an existing business, or into
14 neither, which determination the Property Appraiser shall also affix to the face of the
15 application. Upon request, the Department will provide the Property Appraiser such
16 information as it may have available to assist in making this determination.

17 F. Ordinance

- 18 1. After consideration of the Formal Application and the report of the Property Appraiser on
19 the application, the Board shall adopt an ordinance granting the exemption to a new or
20 expanding business.
- 21 2. Upon approval of a Formal Application for a tax exemption under this section, the Board
22 shall enter into a written tax exemption agreement, which shall include performance
23 criteria consistent with the Formal Application and state law, including a provision
24 regarding the authority to revoke, in whole or in part, the exemption if the applicant fails to
25 meet expectations and representation and such other provisions as deemed necessary
26 by the Board.

27 **SECTION 7. Board of County Commissioners Consideration of Application**

28 A. The granting of, or the denial of exemptions will be conducted on a rational, nonarbitrary,
29 nondiscriminatory basis by the Board, in furtherance of the economic development goals of Palm
30 Beach County. Any and all exemptions granted must result in an economic benefit to the County.

31 B. The granting of an exemption is contingent upon a finding that the business meets the criteria in
32 196.1995, Florida Statutes.

33 **SECTION 8. Application Fees**

34 A non-refundable fee in the amount of \$2,000.00 shall be charged for processing of the
35 conceptual application of an Economic Development Ad Valorem Tax Exemption Application and a
36 \$2,000.00 fee shall be charged for the processing of the formal application of an Economic Development
37 Ad Valorem Tax Exemption Application.

1 **SECTION 9. Revocation of Exemption/Recovery of Funds**

- 2 A. **Board** - Should any new business or expansion of an existing business fail to file the annual
3 report with the Board on or before **March 1st** of each year the exemption has been granted as
4 required in Sections 5. I.1. and 5.I.2., or fail to continue to meet the definition of a new business
5 or an expansion of an existing business, and/or fail to fulfill any other representation made to the
6 Board during the application process, including the creation and maintenance of the total number
7 of new jobs identified by a business in the formal application, the Board may adopt an ordinance
8 revoking the ad valorem tax exemption.
- 9 B. **Revocation** - The revocation of an ordinance may occur for a business that fails to fulfill its
10 obligations as provided for under the ordinance granting the business an exemption after the
11 expiration of this Ordinance on August 31, 2024. The effective date for revocation of the
12 exemption will be identified in the ordinance.
- 13 C. **Notification** - Upon revocation, the Board shall immediately notify the Property Appraiser.
- 14 D. **Recover Taxes** - For any year that taxes may have been exempted and the Board finds that the
15 business was not entitled to the exemption, such taxes may be recovered and the Property
16 Appraiser will assist the Board to recover any taxes exempted.
- 17 E. **Property Appraiser** - Should any new business or expansion of an existing business fail to file the
18 annual exemption renewal application with the Property Appraiser on or before **March 1st** of
19 each year the exemption has been granted as required in Sections 5. I.3. and in accordance with
20 Chapter 196.011(1)(a), Florida Statutes, or fail to continue to meet the definition of a new
21 business or an expansion of an existing business, the Property Appraiser may deny the
22 exemption in accordance with Chapter 196.193(5), Florida Statutes.
- 23 F. **Reapply** - Nothing herein shall prohibit a business from reapplying for an ad valorem tax
24 exemption pursuant to State law.

25 **SECTION 10. Appeals**

26 The decision of the Board not to grant an exemption to a particular business is subject only to
27 judicial review.

28 **SECTION 11. Applicability**

29 This Ordinance shall be applicable in all areas of Palm Beach County where Palm Beach County
30 is the taxing authority. For purposes of enforcement and revocation, this Ordinance shall survive the
31 expiration date of August 31, 2024.

32 **SECTION 12. Inclusion in the Code of Laws and Ordinances**

33 The provisions of this Ordinance shall become and be made a part of the Code of Laws and
34 Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or
35 relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any
36 other appropriate word.

37

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SECTION 13. Severability

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

SECTION 14. Repeal of Laws in Conflict

All local ordinances in conflict with any provision of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 15. Effective Date

The provisions of this Ordinance shall become effective on August 31, 2014 and upon filing with the Secretary of State.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, on the _____ day of _____, 2013.

ATTEST:
CLERK & COMPTROLLER
SHARON R. BOCK

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
Senior Assistant County Attorney

EFFECTIVE DATE: Filed with the Department of State on the _____ day of _____, 2013.

PROGRAM CRITERIA *

ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION PROGRAM

Palm Beach County, Florida

1. Eligibility – The ability for an applicant to be eligible for an exemption under this Program is defined in Title XIV – Taxation and Finance, Chapter 196 – Exemption, Florida Statutes and applies to new business relocating to Palm Beach County and to expansions of existing businesses presently located in Palm Beach County.
2. Jobs & Improvements - New or expanded businesses must make a positive contribution to the economy of Palm Beach County in terms of new jobs and improvements to real and/or personal property.
3. Type of Business - It is within the sole discretion of the Board of County Commissioners to grant an exemption to those businesses that qualify under 196.012, Florida Statutes.

Retail operations are **ineligible** for ad valorem tax exemptions, including a retail business presently in or locating to an enterprise zone.
4. Consideration – The Board of County Commissioners has complete discretion on whether to support or not to support granting an exemption. The Board of County Commissioners must take into account, as defined in 196.012 Florida Statutes, the following with respect to granting the exemption:
 - (A) The total number of net new jobs to be created by the applicant;
 - (B) The average wage of the new job;
 - (C) The capital investment to be made by the applicant;
 - (D) The type of business or operation and whether it qualifies as a Target Industry as defined by the Board of County Commissioners;
 - (E) The environmental impact of the proposed business or operation;
 - (F) The extent to which the applicant intends to source its supplies and materials within Palm Beach County;
 - (G) Any other economic related characteristics or criteria deemed necessary by the Board of County Commissioners.
5. Expansion of an Existing Business - As primarily defined in Section 196.012(16), Florida Statutes.
6. New Business - As primarily defined in Section 196.012(15), Florida Statutes, a new business means.
7. Tax Roll - The exemptions shall not accrue to improvements to real property made by or for the use of new or expanding businesses when such improvements have been included on the tax rolls prior to the effective date of the ordinance specifically granting a business an exemption.
8. Assessed Value - Any exemption granted may apply up to one hundred (100%) percent of the assessed value of all improvements to real property made by or for the use of a new business and of all tangible personal property of such new business, or up to one hundred (100%) percent of the assessed value of all added improvements to real property made to facilitate the expansion of an existing business and of the net increase in all tangible personal property acquired to facilitate such expansion of an existing business, provided that the improvements to real property are made or the tangible personal property is added or increased on or after the effective date of the ordinance specifically granting a business an exemption.
9. Land - No exemption shall be granted for the land upon which new or expanded businesses are to be located.
10. Palm Beach County Taxes - The exemption applies only to taxes levied by Palm Beach County, where Palm Beach County is the taxing authority. The exemption does not apply to taxes levied by a municipality, school district, or water management district, or to taxes levied for the payment of bonds or taxes authorized by a vote of the electors pursuant to Section 9 and Section 12, Article VII of the State Constitution.
11. Substantially Completed - The Property Appraiser **does not use** the Certificate of Occupancy (CO) date in deciding whether a new building, expansions or renovations are assessed for any given year. The Property Appraiser goes by whether it is "substantially completed," which is defined as: Improvements to real property shall be substantially completed when the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed.

12. Glades Area – Special consideration shall be given to new business/expansion of existing business in the Glades Area. This area is geographically defined as the Urban Service Area as delineated in the Palm Beach County Comprehensive Plan and includes the communities of Belle Glade, South Bay and Pahokee.
13. Formal Application Submittal – The formal exemption application, including the application fee, must be fully filled out, signed and submitted to the Palm Beach County Department of Economic Sustainability on or before March 1 of the year the exemption is desired. The submitted application must include the Exemption Application Form PB-418, the Application Addendum, the State of Florida Tangible Personal Property Tax Return Form DR-405, and other supplemental information. During the application review process, in the event that the applicant is requested by County staff to clarify and to provide additional data, the applicant will be required to provide such clarification and/or additional information in a timely manner.

NOTICE: The exemption program packet that includes an application can be obtained from:

PALM BEACH COUNTY DEPARTMENT OF ECONOMIC SUSTAINABILITY
100 Australian Avenue, Suite 500, West Palm Beach, FL 33406
(561) 233-3600
Fax: (561) 233-3651
www.pbcgov.com/des

*

Program Criteria was approved by Board of County Commissioners on June 22, 2004, and Amended on December 18, 2012.