

December 28, 2016

VIA HAND DELIVERY
VIA E-MAIL

Ms. Danielle Clapinski
Staff Attorney
Louisiana Department of Economic Development
Post Office Box 94185
Baton Rouge, Louisiana 70804-9185

Re: Comments on Notice of Intent concerning adoption of proposed rules for the Industrial Ad Valorem Tax Exemption Program

Dear Ms. Clapinski:

In accordance with Louisiana's Administrative Procedures Act, La. R.S. 49:950 *et seq.*, and on behalf of members of the Louisiana Association of Business and Industry ("LABI"), we respectfully submit the following comments regarding the proposed Board of Commerce and Industry's ("BCI") rules for the Industrial Ad Valorem Tax Exemption Program. It is our view that the proposed rules should not be adopted in their current form for reasons set out below.

I. The Louisiana Association of Business and Industry

Established in 1975, LABI is Louisiana's chamber of commerce and manufacturers association. As such, we represent 2000 member businesses across the state encompassing all sectors of its economy. LABI works to foster a climate for economic growth by championing the principles of the free enterprise system and representing the general interests of the business community through active involvement in Louisiana's political, legislative, judicial and regulatory processes.

The vast majority of LABI's members are small businesses of 50 employees or less. In order to grow and flourish, they require an economy that expands and remains vital. Critical to such economic vitality is a healthy manufacturing sector. The nearly 3,000 manufacturing companies in Louisiana make a crucial contribution of \$53 billion or 21.2% of the total gross state product. Manufacturers provide 148,800 jobs with an average annual compensation of over \$82,000,

which is significantly higher than the state's average wage of \$44,409. Manufacturing employers in Louisiana also support thousands of indirect jobs through their activities.

II. The Louisiana Industrial Property Tax Exemption

A predictable and stable tax policy is a key consideration in any future investment contemplated by a manufacturing company. Louisiana's Industrial Property Tax Exemption ("IPTE") has been, and will continue to be, considered in those investment decisions. This economic development tool brings many long-term, significant benefits to the state and its parishes through direct jobs, indirect jobs, and the ongoing need for support services and supplies. Any new capital investment helps retain those jobs and necessitates the robust hiring of new graduates from our state's universities and colleges.

The IPTE program exists to attract manufacturing facilities to our state and to encourage them to remain and expand their operations after locating here. Manufacturing is critical to Louisiana's economic vitality because it generates new revenue for our economy by taking raw materials and turning them into marketable products. But the impact goes far beyond direct employee hiring and job retention. Thousands of contractor jobs associated with these capital projects are a significant part of the local and state economy. Merchants and service providers, as well as federal, state and local governments, feed off of the manufacturer-generated revenues. They recirculate those dollars, adding to the multiplier effect of the activity created by manufacturers.

This is why states particularly and aggressively compete for manufacturing investment. Three-quarters of all states have industrial exemption programs similar to Louisiana's. These states not only have similar tax incentive programs, but also have an able workforce, ample available land, strong transportation infrastructure and local governments eager for new investment. Uncertainty about the application of new rules regarding the IPTE program or revisions to rules that apply to existing applications may make Louisiana less competitive relative to these other states.

Louisiana not only competes with other states for this investment, but with other countries as well. Some of those countries have comparable natural resources along with lower labor and regulatory costs that make them more attractive for investment and development. With today's technologies, it is easy to locate anywhere on the planet and conduct business across the globe.

III. The Proposed Rules' Infirmities

Section 501 Statement of Purpose

Subparagraph B references Executive Order JBE 16-26, but fails to note the subsequent Executive Order JBE 16-73, which modified portions of JBE 16-26. We assert that it should therefore be referenced here, as well.

Section 502 Definitions

We submit that a definition of "*Establishment*" is not required and creates confusion that would not contribute to, indeed may be disruptive to, the IPTE program's smooth function. The

introduction of the new term “economic unit” is not at all clarifying, but is instead open to different interpretations. We recommend that this definition be eliminated.

The term “*Job*” is defined as one “not previously existing in the state.” As property tax revenue is entirely local government revenue, and since the administration has insisted that local governments should have more involvement in the IPTE program, we believe that a job should instead be defined as one not previously existing in the parish. If a company is locating or expanding in Parish A, the property tax revenue paid, or not paid, by that company goes to, or does not go to, taxing jurisdictions within Parish A. Whether the company is increasing or decreasing its employment in another parish should not be a factor in the decision to grant the company a property tax exemption in Parish A. If jobs are going to be a factor in these decisions, the jobs created within the parish in which the project is located should be the factor and not whether they are new to the state. If a company creates jobs in Parish A by building a project in Parish A and transferring in jobs from another parish, the new jobs to Parish A should count toward that company’s exemption eligibility.

The term “*Job*” is also defined as one “filled by a United States citizen who is domiciled in Louisiana or who becomes domiciled in Louisiana within 60 days of employment.” The proposed language creates a state-preference rule conditioning IPTE eligibility upon the hiring only of Louisiana-domiciled persons. This type of state-preference rule has already been struck down by the Courts. In the case of *Pelican Chapter, Associated Builders & Contractors, Inc., et al v. Edwards*, 128 F.3d 910 (1997), the Fifth Circuit US Court of Appeals held that a state-preference rule, which conditioned exemptions upon preferential use of Louisiana construction products and labor when they were on parity with those produced by another state, violated the dormant commerce clause. In that case former “Rule One” required favoring employment of Louisiana residents by contractors and subcontractors on industrial construction and improvement projects affected by the IPTE Program. The Board implemented an 80% policy relative to employment of Louisiana labor. The district court found that “Rule One” discriminated against the use of out-of-state workers and suppliers in favor of their local counterparts and that “Rule One” discouraged the use of out-of-state workers. The court therefore held that “Rule One” unconstitutionally discriminated against commerce and enjoined its application. See *Pelican Chapter, Associated Builders and Contractors, Inc. v. Edwards*, 901 F.Supp 1125 (M.D.La. 1995). The Fifth Circuit Court of Appeals affirmed the ruling of the district court stating, “* * * Because ‘Rule One’ serves to further no end other than the economic welfare of Louisiana and discriminates against articles and services in interstate commerce solely because of they are produced by another state, it is a simple measure of economic isolationism or protectionism that the United States Constitution forbids.” LABI therefore asserts that the Louisiana-domiciled “*Job*” requirement should be removed.

The term “*Manufacturing*,” as proposed, includes the phrase “and machinery,” which appears to be misplaced. The proposed term also includes the added phrase “by means of mass production or custom fabrication.” The Constitutional provision regarding the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment contains express language for the term “manufacturing,” which is “the business of working raw materials into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process.” (See La. Const.

Art VII, §21(F)). Any additional language inserted into the manufacturing-related phrase provided in the Constitution only serves to confuse and thwart the exemption process. More importantly, the La. Constitution provides parameters within which a manufacturing establishment (or addition thereto) will qualify for an ad valorem tax exemption. Modifying and/or restricting the language as used in the Constitution may lead to taxation of assets that would not otherwise be taxable for some period of time. The Louisiana Supreme Court and the First Circuit Court of Appeal have ruled that “policy changes and Regulations are insufficient to impose taxes, which are clearly a legislative function.” (See Chicago Bridge & Iron Company v. Cocreham, La., 317 So.2d 605 (1975) and Dow Chemical Company v. Traigle 336 So.2d 285 (La.App. 1st Cir.1976), writ denied, 339 So.2d 845). To the extent any proposed language restricts the language in the La. Constitution, which results in the taxation of assets that would not otherwise be taxed, such proposed language is unconstitutional. We suggest amending the additional proposed language in the following manner: “...by means of mass or custom production, including fabrication, applying manual labor or machinery...”

The definition of “*Rehabilitation*” refers to “extensive renovation.” What constitutes “extensive” is highly subjective, and the term’s use provides no real guidance. We recommend the word extensive be removed. The BCI and administration can ultimately judge whether a particular renovation project is of sufficient scope and scale to merit an award of an IPTE.

Section 503 Advance Notification; Application

Subparagraph D outlines the operation of newly required Exhibits “A” and “B” in the application process. Part I requires an executed cooperative endeavor agreement (CEA) between the state, Louisiana Economic Development and the applicant. La. R.S. 51:933 governs the use of a CEA and the Department of Economic Development. La. R.S. 51:933(A)(1) identifies certain requirements the CEA must contain, including the specific goals to be achieved by the business and methods for reimbursement if those goals are not met. However, La. R.S. 51:933(B) provides that such requirements “shall not apply to any existing economic development programs established by the Louisiana Constitution, the Revised Statutes of 1950, or by administrative rule, prior to August 15, 2012.” The use of the CEA for the constitutional IPTE program is contrary to the statutes purpose and we assert is therefore illegal and should be removed from these rules.

Additionally, there is a lack of clarity and actual conflicts created in parts 2, 3 and 4. Consistent with the executive orders, part 2 requires adoption of resolutions by the pertinent four local entities “signifying whether *each* of these authorities is in favor of the project.” [*Emphasis ours*] If one of these authorities fails or refuses to issue such a resolution, what is the manufacturer’s recourse? No process exists for such an eventuality. We request that one be established within the rules.

While part 3 of the subparagraph requires the BCI to consider the information in Exhibits A and B, it likewise seems to accord the BCI discretion in accepting or ignoring this information when deciding whether to approve an exemption contract. However, part 4 then appears to remove this authority as it asserts that the ‘provisions of Exhibit “B” shall prevail’ when the terms of Exhibits A and B are not the same. Thus, it becomes immaterial if the BCI prefers the terms in Exhibit A over those in B. The administration has indicated that it will treat the local entities’ resolutions as

input, and indeed, the statement in Section 501(A) expressly references allowing local governments' to have "input" and a "voice," but they are not to make the final determination. Yet, part 4 is at odds with that. Some clarification is needed here.

Section 505 Miscellaneous Capital Additions

Although MCA – type applications will no longer be approved by the Governor, per Executive Orders JBE 2016-26 and 2016-73, active contracts which were issued pursuant to MCA applications still remain in full force and effect. The renewal of such contracts must be approved by the BCI and also signed by the Governor. Therefore, we suggest: (i) retaining Section 505(A) and shifting the language to Definitions Section 502, and (ii) retaining/adding provisions in the rules related to the governance of MCA contracts.

We also believe that it is important to modify the term "establishment" in a couple of places within the rules to make it clear that the provisions apply to manufacturing establishments and not just any establishment. Therefore, we recommend the word "manufacturing" be inserted before "establishment" in Section 502 under "*Addition to a Manufacturing Establishment*" (1)(a) and Section 503(E)(2)(c).

Finally, we strongly urge the BCI to, in concert with the Louisiana Economic Development Department, review the forms utilized in the IPTE filing process and ensure that any terms used in those forms are adequately defined within these rules. It is critical to the success of the IPTE program, and indeed, our state's economic development, that those seeking to avail themselves of this program have a clear comprehension of its requirements.

IV. Conclusion

On behalf of LABI's member businesses – those in the manufacturing sector and those dependent upon their success – we thank you for the opportunity to provide comments on the proposed rules for the IPTE program. Because of the reasons set forth above, LABI respectfully requests that the BCI withdraw these rules and amend them to address our concerns outlined above. We greatly appreciate your consideration of our comments.

With best regards,

Jim Patterson
Vice President, Government Relations
Director, Taxation and Finance Council



December 28, 2016

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Danielle Clapinski
Louisiana Department of Economic Development
P O Box 94185
Baton Rouge LA 70804-9185

RE: Public Comments - Industrial Tax Exemption Program (ITEP) - Proposed Rule Changes

Danielle –

LIDEA would like to have the following comments taken into consideration as part of the public hearing being held on the proposed rules for the Industrial Property Tax Exemption program (published in the November 20, 2016 edition of the Louisiana Register).

We appreciate the Governor's position and the guidance provided by his office through Executive Orders JBE 16-26 and JBE 16-73. Additionally, we respect his efforts to provide local approval and to provide a local voice in determining the approval of benefits under the ITEP. However, we would like to express concern over the modification of the rules to include the language of these executive orders whenever possible. By writing into the rules the specific limitations mentioned in the executive orders, the rules do not provide a full opportunity for local government to negotiate and to make a determination of what benefits they would like to provide. As a result, restrictions have been placed on their ability to freely negotiate on behalf of their respective entities.

Miscellaneous Capital Additions – Renewals

While the second Executive Order provided some clarification for applicants, the board and the public, it failed to acknowledge one specific group of applicants with respect to their renewal applications, some of which are now due. The order provides for a continued commitment to contract holders who filed an advance notification form prior to June 24, 2016. However, the order does not address those contract holders who followed the Miscellaneous Capital Addition (MCA) process. These contracts are not tied to an advance notification form. We appreciate the fact that the Governor and the Board have decided to treat the renewal of MCA contracts the same as they treat the renewal of other contracts; but this decision and treatment are not reflected in the rules.

We are requesting this decision and treatment be clarified and written into the rules, perhaps under Section 505. Miscellaneous Capital Additions and by the addition of point C. which reads as follows: **The renewal of Miscellaneous Capital Addition contracts approved prior to June 24, 2016 and those approved after June 24, 2016 in accordance with JBE 16-26 and 16-73 shall be treated in accordance with the prior rules.**

Section 501. B.

For clarity, we are requesting the following language be added to this section at the end of the paragraph: **"Therefore, only those applications with an advance notification form filed after June 24, 2016 are subject to the 2017 rule changes."**

Section 502. Definitions

The **"Jobs"** definition uses a set of circumstances to define the term "Jobs." It is important to remember this program provides a property tax abatement, not a benefit based on the number of jobs like the Enterprise Zone Program nor a benefit based on payroll like the Quality Jobs Program. Additionally, this benefit is provided for at the local level since the State currently does not impose an ad valorem tax. Therefore, we are requesting the first point under the definition of "Jobs" strike the language (not previously existing in the state) and replace it with (not previously existing in the **parish**).

The sixth point under the **"Jobs"** definitions includes language from both the Enterprise Zone and Quality Jobs programs, for which jobs are counted for a job count or payroll benefit. We would like to have this language stricken and replaced with the following: **filled by a person, who is subject to Louisiana income tax or who is required to file a Louisiana income tax return.** This language will ensure jobs are created, the State is receiving a payroll benefit through the payment of Louisiana income tax, while the companies can still fulfill their staffing needs.

In the definition of the term **"Manufacturing,"** we would like to propose the definition be redrafted to read: "working raw materials by means of **mass or custom production, machinery, or labor to create** wares suitable for use or which gives new shapes, qualities of combinations to matter which already has gone through some artificial process." This maintains most of the existing language, but should resolve issues created under the current wording.

Section 503. D. 2.

We are seeking clarification regarding the Exhibit B. According to this section, Exhibit "B" consists of **resolutions** adopted by the local governmental entities. Should this not notate the Sheriff is to provide a letter since he/she is a one-person authority? Additionally, this section does not address instances where the local entity refuses to provide a resolution or letter, nor does it address what a company should do when the local governing entities do not put the item on an agenda for consideration.

Furthermore, this section does not indicate what occurs if the local governmental entities do not agree on the terms of the contracts. Will there be more than one contract issued or will the single contract provide for different terms as defined by the local governmental entities; therefore, creating possible confusion for many parties including the assessor?

Section 503. E. 2. A

We would like to request this point read: "to prevent relocation to another **parish**, state or country;" We believe this point was made during one of the Board meetings. Local government should have the ability to negotiate to prevent a company from relocating to another part of the State where the firm may receive full benefits for a new facility, while removing property which is currently both exempted and not exempted from the original parish's tax rolls under Section 513. Relocations.

Section 503. J.

This paragraph makes it clear the Board may determine the firm does not meet the definition of manufacturing and it may also make a determination that some of or all of the equipment, machinery or facility is not eligible for the exemption. Since the application fee is based on the full amount of the request, is there a mechanism for the return of fees to the firm? Does the company have the ability to appeal the Board's determination? If so, what is that process?

We appreciate your consideration of the comments we have provided and look forward to continuing to work with the Department and the Board as we move forward with the proposed rules and their implementation. Should you need additional information regarding any of the comments we have provided, please feel free to contact us.

Respectfully submitted for LIDEA by,



Rhonda Reap-Curiel
Legislative Committee Chair

December 28, 2016

Danielle Clapinski
Louisiana Department of Economic Development
Capital Annex Building
Office of the Secretary, 2nd Floor
1051 North Third Street
Baton Rouge, LA 70802

Dear Ms. Clapinski:

**Subject: Notice of Intent to Revise Louisiana Administrative Code 13:I.Chapter 5
Industrial Ad Valorem Tax Exemption Program (ITEP)**

Louisiana Mid-Continent Oil & Gas Association (LMOGA) has participated in and supports the comments submitted by the Louisiana Association of Business and Industry (LABI) in response to the above referenced proposed rules. We also acknowledge such proposed rules are intended to align with Executive Order No. JBE 2016-73 (Executive Order 2016-73). Rather than provide duplicative comments with LABI, we submit the following additional comments related to the basis for the proposed rules (the “Whereas” section of the Executive Order) and concern for the revised ITEP process.

- **Environmental Upgrades** – Whereas paragraph number 4 in Executive Order 2016-73 misstates the treatment of environmental upgrades in most other states. Twenty-seven states exempt pollution control property from property taxes,¹ including significant manufacturing states of Alabama, Georgia, Indiana, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, South Carolina, Texas, Washington and Wisconsin. Six other states provide for a significantly lower value (e.g., salvage) or tax rate rather than an exemption. The Legislative Background section of the Texas Commission on Environmental Quality guidance says, “The intent of the constitutional amendment was to ensure that capital expenditures undertaken to comply with environmental rules did not increase a facility’s property taxes.” That is, the Texas legislature decided not to require businesses to pay property taxes to government on top of unfunded environmental mandates by government.
- **Process** – Prior to Executive Order No. JBE 2016-26 (Executive Order 2016-26), revised Executive Order 2016-73 and the development of these proposed rules, local government was represented and participated for decades in the ITEP process: (1) each applicable assessor was copied on every Advance Notification and Application, prompting input from local government when they had concerns regarding the application;² and (2) the BCI included appointees from the Police Jury Association and Louisiana Municipal Association.³ After the issuance of Executive Order 2016-26 and during the current rulemaking process, business has been told a significant reason for the additional inclusion of local government

¹ State Tax Smart Charts, CCH IntelliConnect, June 16, 2016 (attached)

² Practice of Office of Business Development, Louisiana Economic Development

³ La. R.S. 51:923.B.

in the ITEP process is to allow Louisiana to be like Texas regarding property tax abatements; however, the proposed rules and policy are considerable more burdensome than the rules and policy in Texas. Specifically, the proposed ITEP process⁴ adds at least four new steps in the process (parish council or police jury, school board, Louisiana Economic Development and Department of Revenue) in addition to the current steps requiring approvals by the Board of Commerce and Industry and the Governor. Texas⁵ has only one step for non-school abatements (local government), two steps for school abatements (school district and Comptroller) and one step⁶ for environmental capital (Texas Commission on Environmental Quality). We realize the BCI and Governor are in the ITEP process because of a requirement in the state constitution.⁶ However, we provide this comparison as it significantly impacts the business evaluation and decision timeline of major projects.

- Competition for Economic Development – The last Whereas in Executive Order 2016-73 says the current ITEP “practice has put Louisiana at a competitive disadvantage with neighboring states which use discretion in granting tax exemptions ...” LMOGA believes the proposed rules and the current policy will shift capital investment from Louisiana to other states and countries. We agree with the Tax Foundation,⁷ “When assessing which changes to make, lawmakers need to remember two rules:
 1. Taxes matter to business. Business taxes affect business decisions, job creation and retention, plant location, competitiveness, the transparency of the tax system, and the long term health of a state’s economy. Most importantly, taxes diminish profits. If taxes take a larger portion of profits, that cost is passed along to either consumers (through higher prices), employees (through lower wages or fewer jobs), or shareholders (through lower dividends or share value), or some combination of the above. Thus, a state with lower tax costs will be more attractive to business investment and more likely to experience economic growth.
 2. States do not enact tax changes (increases or cuts) in a vacuum. Every tax law will in some way change a state’s competitive position relative to its immediate neighbors, its region, and even globally. Ultimately, it will affect the state’s national standing as a place to live and to do business. Entrepreneurial states can take advantage of the tax increases of their neighbors to lure businesses out of high-tax states.”

For decades, Louisiana has successfully used the ITEP to recruit capital investment to Louisiana. LMOGA members contend additional steps in the proposed ITEP will require additional time and provide more risk in obtaining acceptable terms, both major factors in site evaluations and approvals (or no approval). That is, the proposed ITEP process will make Louisiana *less* competitive for major manufacturing projects compared to certain other states, including Texas. This is not speculation. Our members have already heard other states use the revised ITEP as another reason to build projects in their states.

Although Executive Order 2016-73 and the proposed ITEP rules exclude Miscellaneous Capital Additions (MCA) without an Advance Notification from eligibility for ITEP *initial* contracts, we

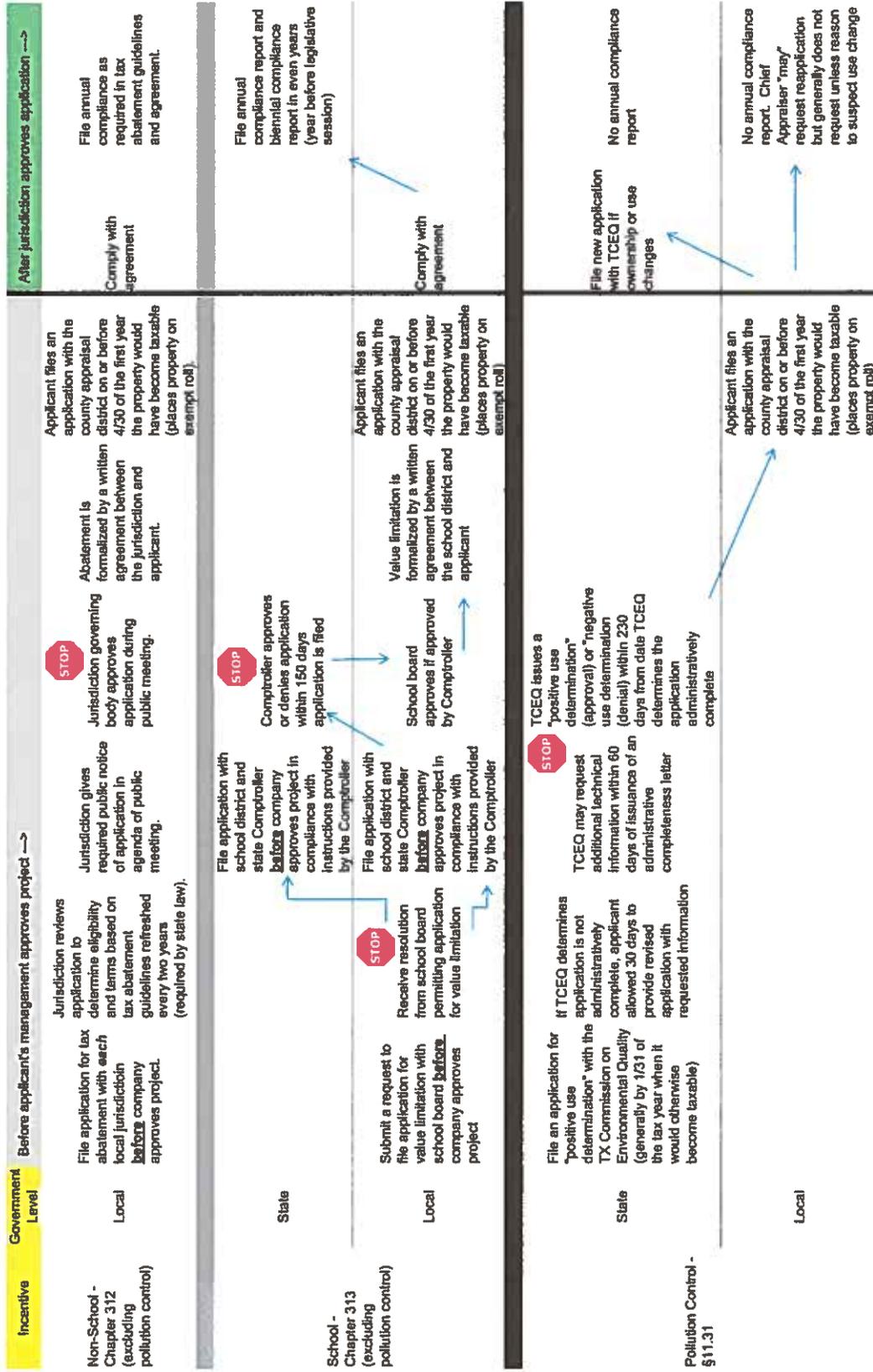
⁴ Process Flowchart of Proposed Louisiana Industrial Tax Exemptions Post Executive Orders JBE 2016-26 and JBE 2016-73, prepared by Louisiana Mid-Continent Oil and Gas Association, October 18, 2016 (attached)

⁵ Process Flowchart of Primary Texas Property Tax Incentives and Exemptions, prepared by Louisiana Mid-Continent Oil and Gas Association, October 18, 2016 (attached)

⁶ Article VII, Section 21(F), Louisiana Constitution of 1974

⁷ 2017 State Business Tax Climate Index, Page 9, Tax Foundation

Process Flowchart of Primary Texas Property Tax Incentives and Exemptions



CCH Smart Charts™

State Tax Smart Charts

Note: Not all states impose all tax types. If you selected a topic and no results appear for one or more states selected; those states do not impose that particular tax.

Caution: The links in the Citation and CCH Discussion columns below will only work if you are a subscriber to the CCH State Tax Reporter for the state.

— [Property Tax](#) > Specific Types of Property > **Pollution Control Facilities**

27 states exempt Pollution Control property
6 other states allow reduced value or tax rate

Jurisdiction	Pollution Control Facilities	Comment	Citation	CCH ¶
Alabama	Exempt		Alabama Code §40-9-1	Alabama 20-300
Alaska	Taxable	A municipality may provide an exemption with voter approval.	Alaska Stat. §29.45.050	Alaska 20-300
Arizona	Taxable		Ariz. Rev. Stat. §42-12006	Arizona 20-300, Arizona 20-105
Arkansas	Taxable	No specific statutes on topic. However, real property is generally taxable.	Ark. Code Ann. §26-3-201	Arkansas 20-300
California	Taxable	Limited to possessory interests in property acquired by or for the California Pollution Control Financing Authority.	Cal. Rev. & Tax Code §201.5	California 20-300
Colorado	Taxable		Colo. Rev. Stat. §39-1-103	Colorado 20-300
Connecticut	Exempt	Exemption applies to water and air pollution control facilities.	Conn. Gen. Stat. §12-81(51)(52)	Connecticut 20-300
Delaware	Taxable	No specific statutes on topic. However, real property is generally taxable.	Del. Code Ann. tit. 9, §8101	Delaware 20-300
District of Columbia	Taxable	No specific statutes on topic. However, real property is generally taxable.	D.C. Code Ann. §47-501	District of Columbia 20-300
Florida	Taxable	Taxed at no greater than market value at salvage for up to 10 years.	Fla. Stat. ch. 193.621	Florida 20-300
Georgia	Exempt		Ga. Code Ann. §48-5-41	Georgia 20-300
Hawaii	Exempt	Must meet emissions standards.	Haw. Rev. Stat. §246-34.5	Hawaii 20-300
Idaho	Exempt	Application must be submitted for exemption.	Idaho Code §63-602P	Idaho 20-300
Illinois	Taxable	Salvage value (1.5% of Replacement Cost less Physical Depreciation) Taxed at 33 1/3% of value.	35 ILCS 200/11-5	Illinois 20-300
Indiana	Exempt	Facility must meet requirements.	Ind. Code §6-1.1-10-9	Indiana 20-300
Iowa	Exempt		Iowa Code §427.1(19)	Iowa 20-300
Kansas	Taxable		Kan. Stat. Ann. §79-102	Kansas 20-300

		No specific statutes on topic. Real property is generally taxable.		
Kentucky	Taxable	Subject only to state property tax.	Ky. Rev. Stat. Ann. §132.200	Kentucky 20-300
Louisiana	Taxable		La. Rev. Stat. Ann. §47:1977	Louisiana 20-300
Maine	Exempt	The exemption is specifically limited to water and air pollution control facilities.	Me. Rev. Stat. Ann. tit. 36, §655(N)	Maine 20-300
Maryland	Taxable	Credit given for coal pollution control facility.	Md. Code Ann. §7-239	Maryland 20-300
Massachusetts	Exempt		Mass. Gen. Laws ch. 59, §5	Massachusetts 20-300
Michigan	Exempt		Mich. Comp. Laws §324.5904 , Mich. Comp. Laws §324.3704	Michigan 20-300
Minnesota	Exempt		Minn. Stat. §272.02	Minnesota 20-300
Mississippi	Taxable	Nonprofit organizations engaged in certain clean-up activities are exempt.	Miss. Code. Ann. §27-31-1(ff)	Mississippi 20-300
Missouri	Taxable	Tools and equipment used in pollution control are taxed at a reduced rate.	Mo. Rev. Stat. §137.115	Missouri 20-300
Montana	Exempt Taxable	HB 156 (2015) amended MT 15-6-219 to exempt pollution property.	Mont. Code. Ann. §15-6-135	Montana 20-300
Nebraska	Taxable	No specific statutes on topic. However, real property is generally taxable.	Neb. Rev. Stat. §77-201(1)	Nebraska 20-300
Nevada	Exempt		Nev. Rev. Stat. 361.077	Nevada 20-300
New Hampshire	Exempt	Application must be submitted for exemption.	N.H. Rev. Stat. Ann. §72:12-a	New Hampshire 20-300
New Jersey	Exempt		N.J. Stat. Ann. §54:4-3.46	New Jersey 20-300
New Mexico	Taxable	Property held under a lease from a county or a municipality under authority of an industrial revenue bond or pollution control revenue bond act is exempt.	N.M. Stat. Ann. §7-36-3	New Mexico 20-300
New York	Exempt		N.Y. Real Prop. Tax Law, §477 , N.Y. Real Prop. Tax Law, §477a	New York 20-300
North Carolina	Exempt		N.C. Gen. Stat. §105-275(8)	North Carolina 20-300
North Dakota	Exempt		N.D. Cent. Code §57-02-08(38)(b)	North Dakota 20-300
Ohio	Exempt		Ohio Rev. Code Ann. §5709.20	Ohio 20-300

Oklahoma	Taxable	No specific statutes on topic. However, real property is generally taxable.	Okla. Stat. tit. 68, §2806	Oklahoma 20-300
Oregon	Exempt		Or. Rev. Stat. §307.405, Or. Rev. Stat. §468.165	Oregon 20-300
Pennsylvania	Taxable	No specific statutes on topic. However, real property is generally taxable.	72 P.S. §5453.602	Pennsylvania 20-300
Rhode Island	Exempt		R.I. Gen. Laws §44-3-3 (21)	Rhode Island 20-300
South Carolina	Exempt		S.C. Const. Art X, Sec. 3	South Carolina 20-300
South Dakota	Taxable	No specific statutes on topic. However, real property is generally taxable.	S.D. Codified Laws §10-4-2	South Dakota 20-300
Tennessee	Taxable	Assessed at a reduced rate.	Tenn. Code Ann. §67-5-604	Tennessee 20-300
Texas	Exempt		Tex. Tax Code Ann. §11.31	Texas 20-300
Utah	Taxable	No specific statutes on topic. However, real property is generally taxable.	UT Const. Art XIII, Sec. 2	Utah 20-300
Vermont	Exempt		Vt. Stat. Ann. tit. 32, §3802(12)	Vermont 20-300
Virginia	Taxable	Municipalities may provide an exemption. After July 1, 2006, municipalities must exempt certified pollution control equipment and facilities involved in extracting electricity.	Va. Code Ann. §58.1-3660	Virginia 20-300
Washington	Exempt	Facilities must have been built before or after specified dates.	Wash. Rev. Code §84.36.487	Washington 20-300
West Virginia	Taxable	Valued at salvage rate.	W. Va. Code §11-6A-2	West Virginia 20-300
Wisconsin	Exempt		Wis. Stat. §77.01(21)	Wisconsin 20-300
Wyoming	Exempt	Exemption may be limited to portion of facility involved with pollution control.	Wyo. Stat. Ann. §35-11-1103	Wyoming 20-300

Date Prepared: 6/16/2016 9:15:15 AM

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Louisiana Chemical Association Comments

Public Hearing to enact, amend and reenact Rules of the administration of the capital industrial ad valorem exemption program CAP (LAC 13:1. Ch. 5) to implement programmatic changes in alignment with executive orders 16-25 and 16-73.

Mr./Ms./Mrs. Hearing Officer,

My name is Greg Bowser, president of the Louisiana Chemical Association and the Louisiana Chemical Industry Alliance. The LCA represents the interests of more than 60 chemical manufacturing companies with more than 100 locations in Louisiana. The LCIA is a group of more than 800 businesses that support the state's chemical plants with products, services and supplies.

We understand that the governor has the constitutional authority to determine how the industrial ad valorem exemption program operates. We understand that these rules proposed today are an attempt to enforce the mandates of his executive order.

We have a number of concerns about the direction of the program:

- Based on our understanding of the major manufacturing facilities in this state, we are concerned that many of the large expansions and new plants that have announced over the last several years will go elsewhere in the future. Louisiana's historic 10-year industrial property tax exemption program has been the economic difference in many competitions with other states and countries.
- The elimination of miscellaneous capital expenditures limits opportunities for existing facilities to compete against sister plants in other states and countries for modernization and incremental growth. The fear is it will be more difficult to maintain the 40 to 60-year life of our manufacturing facilities without these incentives.
- The program still does not take into consideration the retention of jobs or contract jobs. It is important to note contract workers at manufacturing facilities are, in many cases, permanent jobs. The additional contract workers that come onboard during turnarounds for maintenance and other regular functions and new construction migrate from one plant to another, up and down the Mississippi River and around South Louisiana. These are also full-time jobs.
- Our greatest concern is how the Cooperative Endeavor Agreements are going to work with local government officials. We understand this is a work in progress. We understand that LED is attempting to develop a formula with the parish councils or police juries, the school boards and the sheriffs. However, we suspect this will not be an

easy process. Hopefully, what is developed will be consistent throughout all parishes and not a patchwork system of different formulas.

- For those companies looking to make large investments on major projects in Louisiana and other states, this new situation creates major difficulties. Confidentiality on projects and competition under consideration is critical. It will be important for all parties to recognize the actions of those bodies on CEAs will need to remain confidential.

For instance, An LCA member in Calcasieu Parish undergoing a major expansion reported when they went through the process they signed nondisclosure agreements with LED, the Port of Lake Charles and the Chamber of Southwest Louisiana. These groups have experience preventing external information leaks that could harm ongoing projects. This confidence is important to companies because economics are one of the first aspects of project development to be established and incentives are the key component in considering multiple site locations. This information, if disclosed, could cause changes, including stock price fluctuation that would leave the company at a disadvantage and in violation of federal Securities and Exchange Commission laws. These abuses are subject to insider trading rules and violation of those rules land people in jail.

Under these rules, our members will be required to negotiate agreements with more than three authorities: police juries or parish councils, school boards, sheriffs and other tax authorities totaling dozens of people. Upper management would be unlikely to approve disclosing information to groups of this size unprepared to handle the risks the companies face. In addition, public debate and disclosure of a site location could violate company rules and prevent progress on the investment decision.

These are major concerns. This ad valorem exemption program is one factor of many that influence the site selection procedure. As part of the greater development process, complications can have far-reaching consequences.

As stated, these rules create an environment that will further complicate and stall both new investment and routine improvements across the chemical manufacturing industry. These rules should be studied further and in the future crafted to achieve local access and input with guidance from the business community that must operate within them.

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PUBLIC COMMENTS FOR
THE BOARD OF COMMERCE AND INDUSTRY
OF THE
LOUISIANA ECONOMIC DEVELOPMENT CORPORATION
HELD AT
LASALLE BUILDING
617 NORTH 3RD STREET
LABELLE ROOM
BATON ROUGE, LOUISIANA
ON THE 29TH DAY OF DECEMBER, 2016
COMMENCING AT 10:04 A.M.

REPORTED BY: ELICIA H. WOODWORTH, CCR



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Appearances of Board Members Present:

Charles R. "Robby" Miller

Staff members present:

Kristen Cheng
Danielle Clapinski
Frank Favaloro
Secretary Don Pierson



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1 SECRETARY PIERSON:

2 Thank you, everyone, for your attendance
3 today. I know that there's been a lot of effort that's
4 gone into preparing your comments that the department
5 will receive today relative to the executive order and
6 the changes for the Industrial Tax Exemption Program, so
7 I know a lot of thought has gone into this. We
8 appreciate this as constructive, I won't say, dialog,
9 because you're going to provide us input today, and
10 Danielle will talk about those rules of engagement.

11 We're not here to debate the merits of
12 your suggestions, but certainly we want to convey 100
13 percent, A, appreciation of this important input, and
14 then, B, give it full consideration as we continue to
15 develop the rules on behalf of the Governor and the
16 Commerce & Industry Board.

17 So with that, I would like to ask one of
18 our C&I Board members, the Tangipahoa Parish President,
19 if he would like to make any other additional remarks

20 MR. MILLER:

21 I would just echo what Secretary Pierson
22 said that we thank you so much and this has been a very
23 large effort. As y'all all know, my comments at the
24 beginning of this were the uncertainty is what causes us
25 most heartache, and I think we're close to the



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1 uncertainty being gone. You might not like it 100
2 percent, but at least we know what we're dealing with
3 now and we appreciate the effort and hopefully your
4 comments are going to make us even a little bit better
5 in what we put out there. And as a Board member here,
6 I'll tell you we're anxiously waiting for this so we can
7 get this process continued through and finished.

8 SECRETARY PIERSON:

9 And in closing, we did not tactically
10 select the brief time period between Christmas and New
11 Years. It's hard to gather an audience, but what we
12 were we actually doing is trying to get the speed of
13 execution to get the rules established and get business
14 back on a field of certainty, so that is just the way
15 that the calendar happened to dictate the availability
16 and the compliance with the APA and those types of
17 things. So thank you for that, and I will now yield to
18 Danielle.

19 MS. CLAPINSKI:

20 Okay. Good morning. For those of y'all
21 who don't know, I'm Danielle Clapinski, staff attorney
22 here at LED. I have the pleasure, or misfortune,
23 depending on the day, of working with the ITEP program.

24 This is the public hearing for the rules
25 that were published in the 2016 edition of the register.



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1 We do have a court reporter here today, so I would ask
2 that when it's your opportunity to give your comment,
3 please state your name, who you represent and speak --
4 we don't have a microphone, so please speak as loudly
5 without shouting as you can. I don't think there are
6 too many in here that are soft spoken, so we should be
7 okay.

8 I don't intend to limit anybody to any
9 set amount of minutes or time at this point in time,
10 other than, you know, we do have a good many people here
11 that would like to speak, so please be mindful that
12 everyone gets an opportunity to speak. If you have
13 submitted written comments, and I've received, I think,
14 three or four different versions, please, if you can
15 sort of summarize those. I don't know that we need to
16 go through each one because the written comments are
17 already part of the record for comments on these rules.

18 At that, whoever -- I don't think
19 there's any formalized process on where we start. We
20 can just start on one side and go around if you'd like.

21 MR. ZAGOTTI:

22 My name is Matt Zagotti from Director of
23 Ryan, LLC. My main purpose here was to just kind of
24 observe and see what's going on next.

25 MR. ALLISON:



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1 I'm Don Allison with Advantous
2 Consulting and member of LIDEA Board of Directors, and
3 Rhonda also with LABI. I think she submitted some
4 comments. I don't plan to make any, but I'll defer to
5 Rhonda.

6 MS. REAP-CURIEL:

7 Rhonda Reap-Curiel with CENCOR
8 Consulting representing LIDEA as government legislative
9 committee chair. I did submit written comments
10 yesterday, and I just want to highlight a couple of
11 those points. I know other people around the table
12 probably have some similar points or the ones that I
13 feel are similar I want to skip over, but when it comes
14 to MCA renewals, there's still some confusion out there
15 because it appears that even though the second executive
16 order provided some clarity on those existing contracts
17 with advances that are in renewal state, it does not
18 refer to specifically those MCAs which don't have an
19 advance tied to them. So we would like some clarity
20 written into the rules so that those companies who may
21 not have been attending the meetings to see that the
22 last two meetings they've actually been approved,
23 understand how they are to be treated and the commitment
24 is still there from the State.

25 We have suggested some language to be



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1 added as additional point in that Section 501, and then
2 we also added some additional -- an additional sentence
3 to 501(b) that we would hope you would consider.

4 And then under 503(d)(2), it's really
5 more questions than comments because there is concern
6 that the local governmental entities that require
7 resolution, there may be difficulty in them actually
8 holding a hearing or getting on the agenda. If they
9 just choose to ignore you, they have the luxury to do
10 that. There's nothing that requires that side to be
11 responsive back to the business. It seems that the onus
12 is all on the business. They're required to go get
13 these things, but there's nothing that says, "Look, the
14 government has to be responsive back to them."

15 And that section does only say
16 resolutions, and we know the sheriff is a letter, but we
17 think that should be plain and written out.

18 And then with 503(e)(2)(a), we'd ask
19 that you include "relocation to another parish." I
20 believe Ms. Malone brought that up in the actual
21 discussion of the rules at the Board meeting, and if
22 you're in the Delta Region or you're in a rural parish,
23 it is a challenge sometimes to keep your existing
24 industry there, and if this is a tool that we can use to
25 keep those companies there and make them just as



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1 efficient and profitable by having them move to a more
2 metro area where maybe there's greater workforce or
3 something of that nature, we would like the ability to
4 do that. We know that with relocation to another parish
5 within the state there's some limitations, but the
6 limitation doesn't include them getting the full benefit
7 of a new facility, and that's something that will be a
8 disadvantage to those parishes where these companies
9 already exist.

10 And with that, I'll just let you have
11 the rest of my comments. I don't know if you had any
12 questions of if you even had time to read them.

13 MS. CLAPINSKI:

14 I did. I don't have any questions on
15 what your comments state.

16 MS. REAP-CURIEL:

17 And, I'm sorry. On 503(j), I know this
18 was brought up in the actual rules committee meeting
19 about the fees if the Board determines you're not
20 meeting the definition of manufacturer or they say, you
21 get to your hearing for your application approval and
22 they decide, "Oh, well, that equipment doesn't count,"
23 you know, your fees are based on what you're submitting
24 and requesting in value to be accepted, and we'd like to
25 see some mechanism that would allow a return of fees for



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1 excluded, of course, keeping, you know, the
2 administrative fee. And if there's an appeal process,
3 what that would be, we'd like to see that spelled out as
4 well.

5 SECRETARY PIERSON:

6 Rhonda, just one before we leave this,
7 if you would just articulate a little bit more for me
8 the parish-to-parish move and no net new -- the concept
9 typically is the state seeks new investment and new job
10 creation. How does a lateral move across the parish
11 line qualify for abatement of tax?

12 MS. REAP-CURIEL:

13 A company is getting ready to do an
14 expansion, they --

15 SECRETARY PIERSON:

16 It would be with that new component.

17 MS. REAP-CURIEL:

18 -- may move within a state, and because
19 they could go build a bigger, larger facility as opposed
20 to doing an addition at an older facility, that would be
21 more attractive because they can get the full benefit of
22 a newer, expanded facility as opposed to a partial on
23 the addition. So there should be some mechanism that
24 allows the parish to work to try to keep those companies
25 that are looking to expand or add additional lines to



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1 their facility within that parish.

2 SECRETARY PIERSON:

3 Okay.

4 MR. ALLISON:

5 I want to mention one thing before we
6 leave the voir dire comments.

7 We did a letter to Industry & Commerce
8 about some definitions, three definitions, of the term
9 "jobs". Two of them deal with the definition of the
10 term "jobs," and they're very important. The one I want
11 to point out is the one that deals with the definition
12 of the term "manufacturer." It's a real bedrock concept
13 that is the foundation for much of this program. This
14 is obviously exemptions that are allowed to
15 manufacturing establishments, and the term
16 "manufacturing establishment" is defined in the
17 constitution, and the rules try to define the term
18 "manufacturing," and so, you know, the language that --
19 actually the words appear three or four times between
20 the rules committee, the Board, et cetera, and what was
21 published. I think the language ended up with few too
22 many words and some confusing language, and so we have
23 some suggestions there about the language that you've
24 proposed contains the language from the constitution
25 plus some other language, and the additional language is



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1 what we're having a problem with, and right now it would
2 say that the definition is -- how does it read? I'm
3 sorry. Here we go.

4 The definition says -- used the term "by
5 means of mass production or custom fabrication and
6 machinery," and some of those words, we think, are
7 confusing, especially in the order that they read, so
8 our suggestion would be to change it to "mass or custom
9 production, machinery or labor to create -- for use," et
10 cetera. So, anyway, there may be some more discussion
11 today about the definition of manufacturing because it's
12 so important to the program, and I wanted to point out
13 that our comment deals with that same definition.

14 MS. CLAPINSKI:

15 If I can just point out, Don, I think
16 she knows who you are, but if you do comment again, make
17 sure that you identify yourself again so we have on
18 record who made the comments.

19 SECRETARY PIERSON:

20 And I also want to be confident that
21 everyone has signed in. I know a number of you have
22 passed. As long as we've got a reflection of your
23 presence today, that's important. Thank you.

24 MR. PATTERSON:

25 I'm Jim Patterson with the Louisiana



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1 Association of Business and Industry. I serve as the
2 director of LABI's Taxation and Finance Council. I
3 appreciate the opportunity to speak to you-all about the
4 rules of the proposed, and I appreciate the
5 consideration that our comments are going to be given.

6 I essentially will stand on my comment,
7 but I do want to just highlight a few of them as
8 particular concerns of ours starting with Louisiana
9 residential requirement. The feeling in part of many of
10 our members is that this issue was dealt with back in
11 the late 1990s when there was an attempt to install what
12 was commonly known as Rule 1 to require that Louisiana
13 workers be used in construction work in these kinds of
14 projects, and, of course, found Rule 1 to be
15 constitutional already. I think the issue of defining
16 manufacturing and the problems attended with that has
17 already been sufficiently addressed.

18 We do believe that some confusion, at
19 least our perception, some confusion made elicit from
20 parts 2, 3 and 5 in Section 503, where there is
21 discussion of the Exhibits A and B and the particular
22 control that will operate with one versus the other.
23 There seems to be a retention of the right of BCI to
24 rule regarding these contracts, but there's also some
25 suggestion that what happens with regard to Exhibit B is



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1 kind of final say as well, and I think that some
2 clarification may be in order there.

3 We still and the general business
4 community feels that there needs to be some clear
5 direction as to what resolution is at our disposal if a
6 particular local entity does not issue the resolution
7 required under Exhibit B. This is not anywhere within
8 the rules found addressed, and we think there needs to
9 be some clarity there.

10 And then finally we strongly urge that
11 consideration be given to the forms that you-all
12 routinely utilize for these applications, ensuring that
13 any terms that are utilized on the forms are, in fact,
14 addressed in the rules so that essentially the business
15 people know what's being talked about when we're trying
16 to comply with the requirements.

17 Again, thank you very much for allowing
18 us the opportunity and for coming in, you know, on the
19 holiday. Some of us did, but nevertheless, appreciate
20 the fact that you're here, particularly you,
21 Mr. Secretary Pierson. Thanks.

22 MR. BOWSER:

23 Greg Bowser, President of Louisiana
24 Chemical Association. Some brief comments, and I know a
25 number of the guys here will cover the same things that



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1 I'm concerned about.

2 The Louisiana Chemical Association
3 represents 60 chemical manufacturers that operate at 100
4 different locations throughout the State of Louisiana.
5 We also represent different suppliers in our chemical
6 industry alliance, which amounts to over 850 Louisiana
7 companies, and their particular concern, and I'll
8 mention what the real concern for them would be, we
9 understand that these rules are an attempt to comply
10 with the Governor's executive order and the changes to
11 the Industrial Tax Exemption Program. Our concern is
12 that the changes may make the program so cumbersome to
13 use, it may be a detriment to the economic development,
14 especially to the chemical industry.

15 One of the big things that you do is you
16 eliminate miscellaneous capital expenditure. By doing
17 that, it's going to go to some other plant that may have
18 to do upgrades and do some things to be competitive and
19 stay. We're concerned about that.

20 The other thing that concerns us when we
21 look at it, there's no consideration for the retention
22 of jobs or contract jobs, and this is why LCI folks are
23 often -- these people are full-time workers. They may
24 be at one plant today and at another plant next week, so
25 they're full-time workers, and I don't think there's



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1 consideration for any of that, so we would like to see
2 that done.

3 The other thing that concerns us is the
4 cooperative endeavor agreements. All of a sudden we are
5 going to have to go and make those with several
6 different taxing authorities, and so that's a concern
7 when you start talking about confidentiality and you
8 start talking about your public-trade company
9 information, that has an opportunity to get out and
10 cause you some problems with respect to stock prices and
11 investments.

12 Under rules, our members are required to
13 negotiate with so many different authorities. One of
14 the things that concerns us is that unlike any other
15 states, you have to go and negotiate with all of these
16 taxing authorities, and then after you've put all of
17 your information out there under negotiation, you still
18 have to come back to the state and there's a decision
19 made at that point whether or not you'll get the
20 exemption, whether or not what you've offered and what
21 you've negotiated is felt to be fair. To our knowledge,
22 there is no other state that does that. That puts us in
23 a very difficult situation for the State of Louisiana
24 from a competitive standpoint.

25 So I'll stop there. I'll let the others



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1 make some comments. I know some are going to have the
2 same comments, but I'll be glad to provide to you in
3 writing some of the comments that we have.

4 MS. CLAPINSKI:

5 And I will point out just to your one
6 comment, our definition of jobs does allow for contract
7 labor, so that, at least, is addressed in the rules.

8 MR. BAKER:

9 Danielle, when you say "contract labor,"
10 are you saying the type of contract labor that is at the
11 plant on a constant basis, are you talking about
12 contract labor that I think Mr. Bowser is talking about
13 that is in and out of plants at periods of time, meaning
14 that you've got a project that -- and my point I'm
15 trying to make is on the application, there was
16 construction jobs, for example; okay, well, you may --
17 those construction jobs may be on one project at one
18 particular time, but may -- those same jobs may be on
19 another project at another time, so you have this
20 consistent or continuous, I should say, injection of
21 contract labor going in and out of those plants all of
22 time and that's -- I was listening to your comments, and
23 that's the kind of thing that I think that I believe the
24 rule changes have not really addressed or how it can be
25 very hurtful because of -- you know, it could be some



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1 curtailment of projects because -- and those people are
2 going to be the ones that are really going to get hurt.

3 MS. CLAPINSKI:

4 My understanding, and, you know,
5 obviously -- and I should have said this from the
6 beginning. All of the these comments will go back to
7 the Board, the rules committee and the Board. They have
8 to make a determination if they're going to choose to
9 make any changes based upon the comments received.
10 That's not LED.

11 But my understanding of the Governor's
12 thought was that it would -- he wants to make it a
13 job-creation-type program, so I would say -- and there
14 will be requirements, my understanding, through the CEA
15 with the department and the locals that you maintain a
16 job level. So, to me, that would indicate that whether
17 it's employed directly or through contract labor, that
18 they would need to be on site at a regular -- maybe not
19 every day, but on some sort of regular basis. So if
20 that's to your point, then I understand your concern.

21 MR. BOWSER:

22 Well, the concern further is that --
23 Greg Bowser again -- is that when you say they have to
24 be on site for a particular time, and nobody knows what
25 that is. Sometimes those guys are there for two months;



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1 sometimes they're there for six months. We have some
2 contract employees that's been at some of our plants for
3 years.

4 MS. CLAPINSKI:

5 Sure. And I don't know that it's
6 necessarily tied to the employees as it is tied to the
7 job. So if it's a contract engineer that comes in on
8 some of these facilities, and that individual person
9 changes out -- I mean, I know all of our job programs,
10 and I would imagine that when we're looking at jobs for
11 this program as well, that it's going to be the job, not
12 the employee, so that -- and I understand your concerns,
13 but I think the Governor's intent -- and certainly, you
14 know, these comments will all go back and we'll take a
15 look at these in that scope -- was that it would be a
16 job creation program, so I think having that same job
17 potentially count at multiple sites would be
18 problematic.

19 MR. BOWSER:

20 Danielle, I'll just give one quick
21 example, and, you know, it's from a chemical plant
22 perspective, it's like you're in your automobile, you
23 know, if something is wrong with your car, you take it
24 to a mechanic. Okay? You pay that mechanic to do that.
25 Well, that mechanic has a full-time job. When you



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1 leave, there's other people there that come to that
2 mechanic, so that's a full-time job. In the chemical
3 industry, what happens many times is that, you know,
4 Plant A may have this going on today and workers come in
5 and take care of that. They may be there six months or
6 sometimes two or three years. That same employee then
7 has to go to the plant next door to do the same work, so
8 that's a full-time job, and we believe under these
9 circumstances, we don't get credit. They say that's not
10 a full-time job that's counted. And that's our concern.

11 MS. CLAPINSKI:

12 I understand. Thank you.

13 MR. GOLLEHER:

14 Brent Golleher, Louisiana Mid-Continent
15 Oil & Gas Association. Comments were submitted
16 yesterday, and at the appropriate time, I will defer to
17 Jeff and Bob to get more detail on some of the issues
18 that as a property tax committee, we've kind of drawn up
19 and come up with.

20 MS. SIMS:

21 Phyllis Sims, Kean Miller. I don't have
22 any comments.

23 MS. LAWRENCE:

24 Donna Lawrence with Denbury Resources.
25 Observing.



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1 MR. BAKER:

2 Joe Baker with Louisiana Mid-Continent
3 Oil & Gas Association. I chair the property tax
4 committee, and thanks for providing some time for us to
5 make these comments.

6 I'm going to defer to Bob in just a
7 minute, but what I would like to ask is, the question
8 is, once you receive all of these comments, what's the
9 mechanics going forward after that for the legal process
10 and how does that work?

11 MS. CLAPINSKI:

12 Sure. So generally speaking, this
13 program is a little bit different because the Board
14 itself makes the rules, whereas most of our other
15 programs, it's LED. All of the written comments, as
16 well as the transcript from this hearing today, will go
17 to the Board, and it will be up to them where they want
18 to start with the rules committee and then -- they have
19 to make a decision on whether any changes are going to
20 be made based upon these comments. At that point, there
21 will be a determination of whether those changes are
22 substantive or not substantive, if they choose to make
23 some. Non-substantive changes would not slow down the
24 rules process. Substantive changes basically starts it
25 over again. We'd have to issue another Notice of Intent



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1 or a potpourri, but either of those has another public
2 hearing requirement where we might have to do this all
3 again.

4 If they decide to not make any changes,
5 then notice would be given to the oversight committees,
6 which are the commerce committees of the house and the
7 senate, and they have 30 days to call their own
8 oversight hearing should they choose to.

9 If they do not choose to, then those 30
10 days run and the department can proceed with final
11 promulgation of the rules. So it really depends from
12 here on what the Board decides to do with the comments
13 they receive.

14 MR. BAKER:

15 And if the oversight committees were to
16 suggest accepting some of these proposed --

17 MS. CLAPINSKI:

18 It's an up or down at that point. It's
19 an approval or non approval of the rules. And I do
20 believe there may be the opportunity for the Governor to
21 override the oversight committees as well. So there are
22 a lot of different scenarios on where we could go from
23 here.

24 MR. BAKER:

25 Understood. Thank you.



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1 MS. CLAPINSKI:

2 No problem.

3 MR. BAKER:

4 So I'm going to defer to Bob.

5 MS. SIMS:

6 Let me ask before we get there.

7 Phyllis Sims, for the record.

8 Danielle, are these going to the Board
9 for the February meeting then?

10 MS. CLAPINSKI:

11 I don't know that. That is the next
12 regularly-scheduled meeting of the Board. If they chose
13 to call a meeting prior to then to address it, that is
14 the Board's right, and it would obviously be properly
15 noticed in accordance with open meetings and all of
16 those.

17 MR. BAKER:

18 Now I'll defer to Bob.

19 MR. ADAIR:

20 Bob Adair representing Louisiana
21 Mid-Continent Oil & Gas Association and I'm a member of
22 the Property Tax Committee and I will not read into
23 record the letter that we submitted. I will use it as a
24 guide.

25 Before I get to that, I thought I would



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1 give you a little perspective of where we're coming
2 from. I have significant depth of experience of about
3 15 states and I've worked in about 25 states, so and I
4 realize that LED has worked with other -- you compare
5 other states and how they compete, too. I also chair
6 the Project Tax Committee of the Texas Taxpayers and
7 Research Association, which is the primary tax committee
8 in Texas -- or tax group in Texas, and also chair the
9 Tax Relief for Pollution Control Properties with the
10 Texas Commission on Environmental Quality.

11 Okay. I'll jump into -- the first point
12 is LMOGA supports LABI's presented testimony and their
13 written submittal, but so we don't want to duplicate
14 what they're doing, but I'll cover some high-level
15 comments. We acknowledge that the proposed rules are
16 intended to align with the executive orders from the
17 Governor, but I'll also say that -- so our comments are
18 more high-level rather than detailed from LABI.

19 So the first point, and I won't dwell on
20 this, but for the record, I will mention that
21 environmental grades -- upgrades have, of course, been
22 excluded in the executive orders, and we want to point
23 out that whereas Number 4 said that most -- had
24 misstated that most states do not have this. Well, in
25 fact, 27 states exempt pollution control property



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1 permanently, and another six, I believe, has a
2 significant reduction in value. For example, Illinois,
3 that I work in, they have, it's like, one and a half
4 percent of depreciated value is the value on pollution
5 control, so it's significantly discounted. Some states
6 also have a lower tax rate for pollution control.

7 In Texas, since -- and I'll discuss
8 Texas several times because Texas has been brought up in
9 both the Governor's and other discussions because we're
10 trying to be more like Texas. So in regarding
11 environmental upgrades, Texas -- the Texas legislature,
12 their intent was basically they do not want to require
13 businesses to pay property taxes to government on top of
14 unfunded mandates by the same government, although there
15 might be a difference in state versus local level, but
16 they intentionally did not want to put that burden on
17 businesses.

18 The second point that we have concerns
19 about is the process, and I won't go through this -- we
20 have significant questions that remain on how this is
21 going to work out. A couple people asked about the
22 logistics, how this is going to work, and I know LED is
23 still working it and I've heard different parishes are
24 working how that's going to work, but I do want to
25 observe that, of course, the current process you've got



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1 just the Board of Commerce & Industry and the Governor,
2 which we call a -- I'll call it a pause or in process,
3 significant amount of time that it's going to take some
4 decision. In the attachment to what we submitted, I
5 have what we call "stop signs." That's not intended to
6 offend anyone. It's just a recognition that there is
7 there's more time added to the process it seems in this
8 process, so that is a concern. And it's time that's, of
9 course, significant in management as a review processes
10 or review a project to consider multiple sites, where
11 are they going to build or are they going to build at
12 all. If the economics don't work out, that project can
13 be shelved, which is very common, so that is a concern.

14 And just for the record that the stop signs,
15 or the pauses, I will say, are now -- or the additional
16 ones are Exhibit A, which is the cooperative endeavor
17 with LED and the local government. There could be
18 multiple, up to four, depending on if you're in the city
19 limits or not. And then you've got the Department of
20 Revenue has to issue a letter of no objection or letter
21 of approval, and that's -- before it gets to the process
22 where it was before for the BCI to be reviewed. So I
23 know you're aware of that. I just mention that for the
24 record we're concerned about those additional pauses in
25 the process.



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1 So enough about processes unless we have
2 questions. I'll be glad to answer those.

3 The next point is competition for
4 economic development. I don't have to -- and,
5 Mr. Pierson, you're much more aware of this than I am.
6 I see it from a company perspective and throughout my
7 career. I've been a business development teams, so I
8 see it from that perspective, so I realize you're well
9 aware that there's competition for a very limited
10 capital within a company and also between states,
11 between countries, and as I said earlier, whether it
12 will be built at all. It has to meet other certain
13 hurdle rate or a certain return. So all of those items
14 are very important.

15 The tax foundation makes -- I will not
16 quote their -- I will only reference their comments,
17 which we have in writing here. They make the point that
18 taxes matter to business. It's a big -- I've never said
19 that it's the only consideration in site selection, but
20 it is a significant consideration. It also states do
21 not enact tax changes in a vacuum. That's kind of a
22 given, too. Whenever you make significant changes in
23 tax policy, you will -- if you treat something in one
24 place, it's kind of like a balloon that's squeezed,
25 something else pops up somewhere else, so there should



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1 be some concern there.

2 And, also, we said for decades, as long
3 as I've been working with the business associations,
4 that we've always been very open to working with ITEP as
5 long as it's considered with the entire tax structure.
6 So we're a little concerned with the changes in just the
7 ITEP that can affect business in capital investment
8 decisions.

9 So I'll -- for decades, Louisiana has
10 been successful in using the ITEP, and speaking from
11 someone from Texas, a resident of Texas, and observing
12 people over there in business decisions, it's -- I've
13 been on the other end of it, too, that Louisiana's been
14 successful. And I met with county judges and others,
15 and even recently. They're very aware of what you're
16 doing. And I'm aware that states, even local
17 governments, use not only what you're doing, but what
18 you're considering doing. We use it against each other,
19 and you're very aware of that.

20 One last point that I won't dwell on
21 very much, we included a comment on miscellaneous
22 capital additions, and there's a misperception that -- I
23 don't think there's a misperception in Mr. Pierson or
24 Mr. Miller, who is here, because you accurately
25 explained what an MCA is in the last BCI meeting, but we



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1 include that here because the intent of an MCA is never
2 to try to have a, for example, \$60-million project and
3 divide it by five and say each one of those projects is
4 an MCA. That's never the intent. I've never even heard
5 of that in all of the years that I've worked with this.
6 So as the rules state, it is an accumulation of multiple
7 projects to get to the \$5-million level. So I wish when
8 we requested the Board to reconsider that -- and I only
9 bring that up in case the Governor and his
10 representative were actually thinking they put that in
11 executive order because they thought that an MCA is just
12 a division of a big project to circumvent your rules.

13 With that, we respectfully request you
14 consider the LABI comments that were presented, also the
15 presented comments that we have in more detail here.

16 So I'll close with that. Thank you.

17 SECRETARY PIERSON:

18 As this dialog, anybody that may have
19 passed has something discussed that you feel you want to
20 articulate a little bit more on that topic so that it's
21 fully embedded in our analysis, it's a question to the
22 group and your opportunity to respond before we close
23 out the record today.

24 (No response.)

25 SECRETARY PIERSON:



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1 Well, this has been enormously helpful.
2 I know that you've spent a lot of time with it.
3 Certainly we appreciate the analysis that's here. Our
4 goal is the same as your goal. It's a vibrant economy
5 in Louisiana that can only be happening if we are in
6 concert with business industry providing that certainty
7 that's necessary for a business to make investments with
8 confidence. It's not static. It is a global
9 competition. It is a competition across America for
10 this capital, for these jobs, for these investments.
11 The number of manufacturing jobs over the last 10 years
12 has significantly decreased, 1.4-million fewer
13 manufacturing jobs today than just 10 years ago, so
14 they're very important to us. We do prioritize this.
15 We do understand that taxation is a very import part of
16 the equation.

17 So, again, thank you for your thoughtful
18 analysis, the input that you've provided, and we will
19 take that our best to help craft a set of rules that can
20 be navigated by a business with confidence. And, again,
21 we have to be patient with the process. There is a lot
22 of new here, and while we are going to have a learning
23 curve to come up, it will be part of my responsibility
24 and the department's responsibility to make sure that
25 this doesn't become a permanent climb up Mount Everest.



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1 We want to do the necessary training, understanding
2 clarifications so that it is a smooth and streamlined
3 process. I believe that it can be. I know that today
4 it's different than it was prior to June 24, but I think
5 over time, once there's these clear understandings in a
6 now way of doing business, that we'll get to a point
7 where we're very efficient with it. That's the goal.
8 If we don't meet that goal, then I'll ask that you
9 continue to bring that to my attention so that we can
10 continually improve until we get to that position.

11 Thank you for your time and attention
12 today.

13 Danielle, anything else before we close
14 the record?

15 MR. ALLISON:

16 I have a quick question.

17 SECRETARY PIERSON:

18 Yes.

19 MR. ALLISON:

20 It looks like based on what we heard
21 today and received comments from LIDEA, LABI, LCA and
22 LMOGA. Did you receive any other comments?

23 MS. CLAPINSKI:

24 I don't think we received any written
25 comments.



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1 SECRETARY PIERSON:

2 Well, we still have mail coming in today
3 that was just delivered to the Board that can be
4 attached to this before we close out the record, so we
5 can't probably accurately tell you all of the input that
6 we've had because of the mail was just delivered. But
7 the permanent record will reflect all of the input that
8 we receive to include the letters from the various
9 organizations.

10 MS. SIMS:

11 And, Danielle, we just come to you to
12 get a copy of the permanent record?

13 MS. CLAPINSKI:

14 Well, it's going to be at least a couple
15 of weeks we have the -- about two weeks --

16 MS. SIMS:

17 Before we have the transcript?

18 MS. CLAPINSKI:

19 -- before we have the transcript from
20 the court reporter.

21 MS. SIMS:

22 But you're the point person to
23 request --

24 MS. CLAPINSKI:

25 Yes. If it's a public records request,



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1 technically it's supposed to start in our communications
2 division, but I'll be the one pulling all of the
3 records.

4 SECRETARY PIERSON:

5 But we do plan to aggregate the
6 information and provide it to the Board members, in
7 particular the chair of the rules committee and the
8 rules committee so that the input is utilized to its
9 fullest advantage.

10 MR. ALLISON:

11 What about those -- are we going to be
12 able to get a copy of the records?

13 SECRETARY PIERSON:

14 Yes. It will be public record, and
15 we'll be happy to provide it. You don't have to ask us
16 for a copy of what we're going to put together for the
17 rules committee.

18 MR. ALLISON:

19 Do you know at this time if you received
20 more than just the four today?

21 MS. CLAPINSKI:

22 Mail is delivered, so I have to see
23 what's in the mail. We've got to separate it and see
24 what's --

25 SECRETARY PIERSON:



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1 With the holiday and such, I know mail
2 has been stacking up, and so Danielle hasn't had a
3 chance to go through all of that to accurately your
4 question, but we'll be happy to, you know, share all of
5 the input that we have.

6 MS. LAWRENCE:

7 And, Danielle, I have a question. Donna
8 Lawrence from Denbury. If there are projects in the
9 pipeline, you know, that a company is looking at, what
10 is the timeline that we're jumping from pre-June to
11 post-June to have rules under which a new -- a company
12 wants to look at a new project? How do we know where --

13 SECRETARY PIERSON:

14 You just call LED and we'll assign a
15 project manager and we'll move you forward. There's no
16 disparity or -- we have a new set of rules, but we know
17 how to follow those.

18 MS. LAWRENCE:

19 Okay.

20 SECRETARY PIERSON:

21 And we don't want to do anything that's
22 going to hold up investments. Let me know, and we'll
23 jump right on it.

24 MS. LAWRENCE:

25 Thank you.



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SECRETARY PIERSON:

All right. With no other comments,
meeting adjourned.

(Meeting concludes at 10:44 a.m.)



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2 I, ELICIA H. WOODWORTH, Certified Court
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5 Commerce and Industry of the Louisiana Economic
6 Development Corporation, do hereby certify that this
7 meeting was reported by me in the stenotype reporting
8 method, was prepared and transcribed by me or under my
9 personal direction and supervision, and is a true and
10 correct transcript to the best of my ability and
11 understanding;

12 That the transcript has been prepared in
13 compliance with transcript format required by statute or
14 by rules of the board, that I have acted in compliance
15 with the prohibition on contractual relationships, as
16 defined by Louisiana Code of Civil Procedure Article
17 1434 and in rules and advisory opinions of the board;

18 That I am not related to counsel or to the
19 parties herein, nor am I otherwise interested in the
20 outcome of this matter.

21 Dated this 13th day of January, 2017.

22

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ATTACHMENT B

NOTICE OF INTENT

**Department of Economic Development
Office of Business Development**

Industrial Ad Valorem Tax Exemption Program (LAC 13:I.Chapter 5)

These rules are being published in the Louisiana Register as required by LA R.S. 47:4351, et seq. The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104 hereby proposes to enact Section 501 and 502 and to amend and reenact Sections 503 – Section 537 for the administration of the Industrial Ad Valorem Tax Exemption Program in LAC 13:I.Chapter 5 to implement programmatic changes in alignment with Executive Orders 16-26 and 16-73.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 5. Industrial Ad Valorem Tax Exemption Program

§ 501 Statement of Purpose

A. New Rules

1. These rules amend and restate prior rules and upon adoption are to implement two important policies for the Industrial Tax Exemption Property Tax Exemption. The first is as a competitive incentive for job creation and under compelling circumstances, job retention. The second is to provide for input from local parish and municipal governments, school boards and sheriffs as to the extent of, and other terms and conditions for the Industrial Tax Exemption.

2. On all projects, applicant manufacturers are to demonstrate a genuine commitment to investing in the communities in which they operate, and a genuine commitment to creating and retaining jobs in those communities. These are the expectations for the program's future, and the Board will continue to operate it in a way that makes Louisiana competitive with other states in securing good jobs for our citizens while giving local governments a voice in their taxation. These rules are to be interpreted in a manner so as to promote these goals.

B. Applicability of Prior Rules. Just as the Board is promoting job growth and economic development and extending fairness to communities, the Board is promoting fairness to manufacturers who have acted in accordance with prior rules. Contracts for the Industrial Property Tax Exemption and the renewal of the exemption and projects found to be pending as defined by Executive Orders ~~JBE 16-26 and JBE 16-73~~ are to be treated fairly under the rules that were in place at the time of the Contracts and prior to the new rules. Louisiana honors its commitments and the rules governing existing contracts and applications not subject to the new rules are to be interpreted in order to promote fairness and commitment. Therefore, only those applications with an advance notification form filed after June 24, 2016, are subject to the 2017 rules changes.

C. Going Forward.

1. Louisiana values its manufacturers and their contributions to its economy. The Board's policies going forward are to provide all a seat at the table to determine the best investment outcome for our industries and our communities.

2. All rules in this chapter are intended to align with the above purpose while providing a process that balances accountability with reasonable administrative burden for state and local government and applicants.

§502 Definitions

Addition to a manufacturing establishment—

1. a capital expenditure for property that would meet the standard of a new manufacturing establishment if the addition were treated as a stand-alone establishment;

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ATTACHMENT B

2. a capital expenditure for property that is directly related to the manufacturing operations of an existing manufacturing establishment; or
3. an installation or physical change made to a manufacturing establishment that increases its value, utility or competitiveness.
4. Maintenance capital, environmentally required capital upgrades, and replacement parts, except those replacements required in the rehabilitation or restoration of an establishment, to conserve as nearly, and as long as possible, original condition, shall not qualify as an addition to a manufacturing establishment.
5. Expenses associated with the rehabilitation or restoration of an establishment as provided for in Section 511 shall be included as an addition to a manufacturing establishment

Beginning of Construction—the first day on which foundations are started or, where foundations are unnecessary, the first day on which installations of the manufacturing establishment begins

Board—Board of Commerce and Industry

Capital Expenditure—the cost associated with a new manufacturing establishment or an addition to an existing manufacturing establishment, including the purchasing or improving real property and tangible personal property, whose useful life exceeds one year and which is used in the conduct of business

Environmentally Required Capital Upgrades—upgrades required by any state or federal governmental agency in order to avoid fines, closures or other penalty

Establishment -- an economic unit at a single physical location

Integral—required to make whole the product being produced

Job—positions of employment that are:

1. New (not previously existing in the state) or retained;
2. Permanent (without specific term);
3. Full-time (working 30 or more hours per week);
4. Employed directly, by an affiliate or through contract labor;
5. Based at the manufacturing establishment;
6. Filled by a United States citizen who is domiciled in Louisiana or who becomes domiciled in Louisiana within 60 days of employment; and
7. Any others terms of employment as negotiated in the Exhibit A or Exhibit B.

LED—Louisiana Economic Development

Local Governmental Entity—parish governing authority, school board, Sheriff, and any municipality in which the manufacturing establishment is or will be located

Maintenance Capital—costs incurred to conserve as nearly as possible the original condition

Manufacturer—a person or business who engages in manufacturing at a manufacturing establishment

Manufacturing-- working raw materials by means of mass or custom production, including fabrication, applying manual labor or ~~or custom fabrication and~~ machinery into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process. The resulting products must be "suitable for use" as manufactured products that are placed into commerce for sale or sold for use as a component of another product to be placed, and placed into commerce for sale.

Obsolescence—the inadequacy, disuse, outdated or non-functionality of facilities, infrastructure, equipment or product technologies due to the effects of time, decay, changing market conditions, invention and adoption of new product technologies or changing consumer demands.

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Qualified Disaster—

1. A disaster which results from:
 - a. An act of terror directed against the United States or any of its allies; or
 - b. Any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof), but not including training exercises
2. Any disaster which, with respect to the area in which the property is located, resulted in a subsequent determination by the President of the United States that such area warrants assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act;
3. A disaster which is determined by an applicable federal, state, or local authority (as determined by the Secretary) to warrant assistance from the federal state or local government or agency of instrumentality thereof; or
4. Any other extraordinary event that destroys or renders all or a portion of the manufacturing establishment inoperable

Rehabilitation—the extensive renovation of a building or project that is intended to cure obsolescence or to repurpose a facility

Restoration—repairs to bring a building or structure to at least its original form or an improved condition

Secretary—Secretary of Louisiana Economic Development

Site—One or more contiguous parcels of land which are under the control of the manufacturing establishment or which contains certain assets of the manufacturing establishment.

§503. Advance Notification; Application

A. An advance notification of intent to apply for tax exemption shall be filed with the LED Office of Business Development (OBD) on the prescribed form prior to the beginning of construction or installation of facilities on all projects for tax exemption except as provided in Section 505(A) and (B) of these rules. An advance notification fee of \$250 shall be submitted with the form. The advance notification will expire and become void if no application is filed within 12 months of the estimated project ending date stated in the advance notification. The estimated project ending date as stated on the advance notification may be amended by the applicant if the amendment is made prior to the estimated project ending date.

B. All financial incentive programs for a given project shall be filed at the same time and on the same advance notification. The applicable advance notification fee for each program for which the applicant anticipates applying shall be submitted with the advance notification.

C. An application for tax exemption may be filed with OBD on the prescribed form:

1. either concurrent with or after filing the advance notification, but no later than 90 days after the beginning of operations or end of construction, whichever occurs first;
2. the deadline for filing the application may be extended pursuant to §523;
3. an applicant filing an application prior to the beginning of operations or end of construction of the project shall file an annual status report with OBD on the prescribed form by December 31, until the Project Completion Report and Affidavit of Final Cost are filed. If the applicant fails to timely file a status report the board may, after notice to the applicant, terminate the contract.

D. In order to receive the Board's approval, applications with advance notifications filed after June 24, 2016, shall contain both of the following:

1. An Exhibit "A" consisting of a fully executed cooperative endeavor agreement between the state, Louisiana Economic Development and the applicant specifying the terms and conditions of the granting of the exemption contract.

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a. The terms and conditions of the Exhibit "A" shall include the following:

(i) either number of jobs and payroll to be created at the project site or the number of jobs and payroll to be retained at the project site where applicable;

(ii) the term of the exemption contract which shall be for up to, but no more than five (5) years and may provide for an ad valorem exemption of up to 100% and terms for renewal may be included provided that the renewal of the contract shall be for a period up to, but no more than three (3) years and may provide for an ad valorem tax exemption of up to, but no more than 80%;

(iii) the percentage of property eligible for the exemption;

(iv) any penalty provisions for failure to create the requisite number of jobs or payroll at the project site, including but not limited to, a reduction in term, reduction in percentage of exemption, or termination of the exemption; and

(v) a statement of Return on Investment (ROI) as determined by the Secretary.

2. An Exhibit "B" consisting of resolutions adopted by the parish governing authority (speaking on behalf of the parish and all parish bodies who receive a millage), the school board, ~~the Sheriff~~, and any municipality (speaking on behalf of the municipality and all municipal bodies who receive a millage-) and a letter from the Sheriff approving the project in which the manufacturing establishment is or will be located signifying whether each of these authorities is in favor of the project.

a. Exhibit "B" shall include provisions addressing the following:

(i) The number of jobs and payroll to be created at the project site required by the local governmental entity for approval of the exemption;

(ii) The term of the exemption contract approved by the local governmental entity; and

(iii) the percentage of property eligible for the exemption approved by the local governmental entity.

~~e-~~ b. Failure of the parish governing authority, the school board, or the municipality to issue a resolution or failure of the Sheriff to issue a letter within 90 days of a business' request for such resolution shall be deemed to result in the continuation of the millage without exemption.

c. LED will provide guidance to local governmental entities as to suggested alternatives as it relates parameters for job creation, payroll, percentage of exemption and length of contract.

3. The Board shall consider the information collected and the provisions of Exhibits "A" and "B" in determining whether to approve the contract for exemption and the renewal thereof.

4. If the terms of Exhibit "A" and Exhibit "B" as it relates to the term of the exemption, and the percentage of property tax eligible for exemption are not the same, the provisions of Exhibit "B" shall prevail.

E. 1. Applications which provide for a new manufacturing establishment or which provide for an addition to a manufacturing establishment with the creation of new jobs or a compelling reason for the retention of existing jobs shall be favored by the Board.

2. In determining whether a company has presented a compelling reason for the retention of existing jobs, the following situations may be considered:

a. to prevent relocation to another state or country;

b. to provide an advantage for investment from a company with multi-state operations with an established competitive capital project program;

c. to employ best practice or innovative, state of the art technology for the establishment's industry;

d. to increase maximum capacity or efficiency; or

e. to provide the state a competitive advantage as determined by the Secretary or by the Board.

F. An application fee shall be submitted with the application in the amount equal to 0.5 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$500 and in no case shall a fee exceed \$15,000 per project.

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G. OBD reserves the right to return the advance notification, application, or Affidavit of Final Cost to the applicant if the form is incomplete or incorrect, or the correct fee is not submitted. The document may be resubmitted with the correct information and fee.

H. If the application is submitted after the filing deadline, the term of exemption available under an initial contract and renewal thereof shall be reduced by one year for each year or portion thereof that the application is late, up to a maximum reduction up to the maximum remaining term. The board may impose any other penalty for late filing that it deems appropriate.

I. The department will provide a copy of the application and all relative information to the Louisiana Department of Revenue (LDR) for review. LDR may require additional information from the applicant. The department must receive a letter-of-no-objection or a letter-of-approval from the LDR, prior to submitting the application to the board for action.

J. Eligibility of the applicant and the property for the exemption, including whether the activities at the site meet the definition of manufacturing, will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered by the Board of Commerce and Industry. The property exempted may be increased or decreased based upon review of the application, Project Completion Report or Affidavit of Final Cost. An application filed prior to completion of construction may be considered by the board and a contract may be executed based upon the best available estimates, subject to review and approval of the Project Completion Report and Affidavit of Final Cost. If the applicant fails to timely file the Project Completion Report or Affidavit of Final Cost the board may, after notice to the applicant, terminate the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:864 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2376 (August 2011), LR 41:2318 (November 2015).

§505. Miscellaneous Capital Additions

A. Miscellaneous capital additions which had pending contractual applications on June 24, 2016, and which provide for new jobs at the completed manufacturing establishment shall be considered by the Board.

B. Miscellaneous capital additions which did not have a pending contractual application as of June 24, 2016 or those with pending applications as of June 24, 2016, but do not provide for new jobs, are not eligible for the property tax exemption. AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011), LR 41:2318 (November 2015).

§507. Eligible Property – Buildings and Facilities Used in Manufacturing; Leased Property; Capitalized Materials

A.

The board shall consider for tax exemption buildings and facilities used in the operation of new manufacturing establishments located within the state of Louisiana (subject to the limitations stated in §517 and 519) and additions to manufacturing establishments within the state of Louisiana. Exemptions are granted to the owners of buildings that house a manufacturing establishment and facilities that are operated specifically in the manufacturing of a product. The board recognizes two categories of ownership:

1. owners who engage in manufacturing at said facilities; and
2. owners who are not engaged in manufacturing at said manufacturing establishment, but who have provided either or both of the following for a predetermined manufacturing establishment:
 - a. buildings to house a manufacturing establishment;
 - b. facilities that consist of manufacturing equipment operated specifically in the manufacturing process.
3. Owners who are not engaged in manufacturing at the manufacturing establishment are eligible for the exemption only if the manufacturer at the site is obligated to pay the property taxes if the exemption were not granted.

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B. Leased property is eligible for the exemption, if the property is used in the manufacturing process, is and remains on the plant site, and the manufacturer is obligated under the lease agreement to pay the property taxes if the exemption were not granted.

C. Capitalized materials which are an essential and integral part of a manufacturing process, but do not form part of the finished product, may be exempted along with the manufacturing establishment. Some examples of these are:

1. ammonia in a freezing plant;
2. solvent in an extraction plant; and
3. catalyst in a manufacturing process.

D. To be eligible for exemption, a manufacturing establishment must be in an operational status and engaged in manufacturing. An owner of a new manufacturing establishment under construction may apply for an exemption with the expectation that the manufacturing establishment will become operational. If the manufacturing establishment fails to become operational or ceases operations without a reasonable expectation of recommencing operations, the facility shall no longer be eligible for exemption and its contract shall be subject to termination under Section 531.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011).

§509. Integral Parts of the Manufacturing Operation

A. Property that is an integral part of the manufacturing operation is eligible for the tax exemption.

B. The following activities are considered to be integral to the manufacturing process:

1. Quality Control/Quality Assurance
2. Packaging
3. Transportation of goods on the site during the manufacturing process
4. Other on site essential activities as approved by the Secretary and the Board.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011).

§511. Rehabilitation and Restoration of Property

A. Capital expenditures for the rehabilitation or restoration of an existing establishment may be exempted if it is not maintenance. If replacements or upgrades are made as part of a rehabilitation or restoration to an establishment, only the capital expenditures in excess of original cost shall be eligible for tax exemption. A deduction for the original cost of property to be replaced shall not be made if the project will result in capital additions that exceed \$50,000,000.

B. Exemption may be granted on the costs of rehabilitation or restoration of a partially or completely damaged facility, but only on the amount in excess of the original cost.

C. Original costs deducted from rehabilitation or restoration made or rebuilding shall be clearly documented.

D. A deduction for the original cost of property to be replaced as part of a rehabilitation or restoration, as provided by Subsections A or B, shall not be made if the project is related to the replacement or reconstruction of property after the destruction of or damage to such property, as a result of a qualified disaster.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011).

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§513. Relocations

- A. A manufacturing establishment moved from one location in the state to another place within the state shall be eligible for the unexpired consecutive years, if any, of the tax exemption contract granted at the original location.
- B. If a manufacturing establishment moves from one location in the state to another location within the state, the company shall be required to seek approval of the parish governing authority, the school board, the Sheriff, and any municipality in which the manufacturing establishment will be located if these local governing authorities are different than those that approved the exemption at the original site.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 29:2633 (December 2003), LR 37:2378 (August 2011).

§515. Used Equipment

A. Used equipment is eligible for tax exemption provided no ad valorem property taxes have been paid in Louisiana on said property.

AUTHORITY NOTE: Promulgated in accordance with Article VD, Pan 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:886 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011).

§517. Ineligible Property

A. Maintenance capital, environmentally required capital upgrades and new replacements to existing machinery and equipment, except those replacements required in the rehabilitation or restoration of a facility, are not eligible for the tax exemption.

B. If the establishment or addition is on the taxable rolls and property taxes have not been paid, the establishment or addition is not eligible for the exemption unless the assessor and local governmental entity agree in writing to remove the establishment or addition from the taxable rolls should the tax exemption be granted.

C. The board shall not consider for tax exemption any property listed on an application on which ad valorem property taxes have been paid.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011).

§519. Land

A. The land on which a manufacturing establishment is located is not eligible for tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VU, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011).

§521. Inventories

A. The following are not eligible for tax exemption:

1. inventories of raw materials used in the course of manufacturing;
2. inventories of work-in-progress or finished products;
3. any other consumable items.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

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HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011).

§523. Extension of Time

A. OBD may grant an extension of up to six months for the filing of an application (§503.B.), a Project Completion Report (§525), or an Affidavit of Final Cost (§527), provided the request for extension is received prior to the filing deadline.

B. Additional extensions of time may be granted for good cause.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011).

§525. Effective Date of Contract; Project Completion Report

A. The owner of a new manufacturing establishment or addition shall document the beginning date of operations and the date that construction is substantially complete. The owner must file that information with OBD on the prescribed project completion report form not later than 90 days after the beginning of operations, completion of construction, or receipt of the fully executed contract, whichever occurs last. A project completion report fee of \$250 shall be submitted with the form. The deadline for filing the project completion report may be extended pursuant to §523.

B. The effective date of tax exemption contracts for property located in parishes other than Orleans Parish shall be December 31 of the year in which effective operation began or construction was essentially completed, whichever occurs first. The effective date of tax exemption contracts for property located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development LR 37:2379 (August 2011), LR 41:2318 (November 2015).

§527. Affidavit of Final Cost

A. Within six months of the beginning of operations, completion of construction, or receipt of the executed contract, whichever occurs last, the owner of a manufacturing establishment or addition shall file on the prescribed form an affidavit of final cost showing complete cost of the exempted project. A fee of \$250 shall be filed with the affidavit of final cost or any amendment to the affidavit of final cost. Upon request by OBD, a map showing the location of all facilities exempted in the project shall be submitted in order that the exempted property may be clearly identifiable. The deadline for filing the affidavit of final cost may be extended pursuant to §523.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 41:2319 (November 2015).

§529. Renewal of Tax Exemption Contract

A. Application for renewal of the exemption must be filed with OBD on the prescribed form not more than six months before, and not later than, the expiration of the initial contract. A fee of \$250 shall be filed with the renewal application. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Upon proper showing of full compliance with the initial contract of exemption, the contract may be approved by the board for an additional period of up to but not exceeding five years.

B. Eligibility of the applicant and the property for renewal of the exemption will be reviewed by the Board using the same criteria that was used for the initial contract, and based upon the facts and circumstances existing at the time the renewal application is considered. The property exempted for the renewal period may be increased or decreased based upon review of the renewal application. The term of the renewal contract shall be reduced by one year for each

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calendar month, or portion thereof, that the renewal application is filed late. The board may impose any other penalty for late renewal submission that it deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 41:2319 (November 2015).

§531. Violation of Rules or Documents; Final Inspection

A. The board reserves the right, on its own initiative or upon written complaint of an alleged violation of terms of tax exemption rules or documents, to conduct a final inspection. During the final inspection OBD may cause to be made a full investigation on behalf of the board and shall have full authority for such investigation including authority to demand reports or pertinent records and information from the applicant and complainants. Results of the investigation will be presented to the board.

B. All contracts of exemption shall be subject to the final inspection. If a final inspection indicates that the applicant has violated any terms of the contract or rules, or that the exempt facility is not engaged in manufacturing, the board may conduct a hearing to reconsider the contract of exemption, after giving the applicant not less than 60 days notice.

C. If the board determines that there has been a violation of the terms of the contract or the rules, that the property exempted by the contract is not eligible because it is not used in a manufacturing process, or that the facility has not commenced or has ceased manufacturing operations, the board may terminate or otherwise modify the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VU, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011).

§533. Reporting Requirements for Changes in Operations

A. OBD is to be notified immediately of any change which affects the tax exemption contract. This includes any changes in the ownership or operational name of a firm holding a tax exemption contract. A fee of \$250 shall be filed with a request for any contract amendment, including but not limited to, a change of ownership, change in name, or change in location. The board may consider restrictions or cancellation of a contract for cessation of the manufacturing operation, or retirement of any portion of the exempted equipment. Failure to report any material changes constitutes a breach of contract and, with approval by the board, shall result in restriction or termination.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 41:2319 (November 2015).

§535. Sale or Transfer of Exempted Manufacturing Establishment

A. In the event an applicant should sell or otherwise dispose of property covered by a contract of exemption, the purchaser of the said plant or property may, within three months of the date of such act of sale, apply to the board for a transfer of the contract. A fee of \$250 shall be filed with a request to transfer the contract. The board shall consider all such applications for transfer of contracts of exemption strictly on the merits of the application for such transfer. No such transfer shall in any way impair or amend any of the provisions of the contract so transferred other than to change the name of the contracting applicant. Failure to request or apply for a transfer within the stipulated time period shall constitute a violation of the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:868 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 41:2319 (November 2015).

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§537. Reporting to the Parish Assessor

A. The applicant shall file annually with the assessor of the parish in which the manufacturing establishment is located, a complete taxpayer's report on forms approved by the Louisiana Tax Commission, in order that the exempted property may be separately listed on the assessment rolls.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.
HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011).

Provider Impact Statement

The proposed rulemaking should have no provider impact as described in HCR 170 of 2014.

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Poverty Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Public Comments

Interested persons may submit written comments to Danielle Clapinski, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Office of the Secretary, Second Floor, 1051 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by email to danielle.clapinski@la.gov. All comments must be received no later than 5 p.m., on December 28, 2016.

Public Hearing

A public hearing to receive comments on the Notice of Intent will be held on December 29, 2016 at 10:00 a.m. at the Department of Economic Development, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
UnderSecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Industrial Ad Valorem Tax Exemption Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no significant costs or savings to state or local governmental units as a result of the proposed rule changes. The Department of Economic Development (DED) intends to administer the program with existing resources and personnel. However, the DED, as well as the LA Department of Revenue may incur marginal administrative costs associated with implementing the proposed rule changes

Executive orders JBE 16-26 and 16-73 made significant changes to the Industrial Tax Exemption Program (ITEP) and the Board of Commerce and Industry is codifying those changes in the rules for the program. These changes include requiring all projects to file an advance notification, eliminating the miscellaneous capital addition process, and eliminating maintenance, repairs and environmentally required upgrades from eligibility for the tax exemption.

Additionally, the rule changes require that companies who want to participate in the program seek and receive approval from both local and state governments. Firms wishing to participate must file two exhibits, Exhibit "A" and Exhibit "B," which have separate requirements regarding state and local requirements to be eligible for the exemption, respectively. If the terms of Exhibits "A" and "B" differ on the term of the exemption and/or the percentage of property tax eligible for the exemption, the provisions of Exhibit "B" will take precedent.

Furthermore, the term of the renewal contracts is now limited to 3 years and the percentage of exemption for renewed contracts is now 80%. This is a change from the previous practice of

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renewing contracts for up to 5 years at a 100% exemption percentage. However, advances filed and miscellaneous capital additions approved prior to June 24, 2016 are grandfathered in to the past practice of being renewed for up to 5 years at a 100% exemption percentage. Lastly, the rules establish a definitions section to further clarify and explain portions of the rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes may increase revenues for local governments by an indeterminable amount for a number of reasons. First, some projects that previously filed miscellaneous capital additions, the process for which is being eliminated by the proposed rule changes, could previously file advances. Second, the DED has not previously captured how many ITEP program contracts are for maintenance, repairs, etc., that are no longer eligible for the exemption. As a result the corresponding aggregate value of the aforementioned contract types cannot be determined. Lastly, the DED does not know how many years or percentage of exemption local governing entities will grant, as local governing authorities have the ability to set contract terms and exemption percentages and supersede state terms and percentages under the authority of the proposed rule changes.

The proposed rule changes will not affect revenue collections for state governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

The incomes of companies that are no longer eligible to participate in the program will decrease in the same amount as any increases in local revenues, as fewer exemptions will likely be granted due to the Executive Orders and the rule changes. The proposed rule changes narrow the scope of ITEP, eliminating the miscellaneous capital additions process and the eligibility of maintenance, repairs, and environmentally required upgrades from eligibility. Additionally, firms must file advance notices with the state if they seek approval to participate in ITEP. Furthermore, contract renewals for firms participating in the program will only have terms of three years at an exemption percentage of 80%, a reduction from the previous five-year terms at a 100% exemption percentage, though there is an exception for firms who filed advances or had miscellaneous capital additions approved prior to June 24, 2016. As a result of the narrowed scope of ITEP, the economic benefits available to firms who wish to participate in the program are similarly reduced.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

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