



Ohio Revised Code

Section 3735.671 Written agreement where commercial or industrial property is to be exempted.

Effective: April 3, 2023

Legislation: Senate Bill 33

(A) If construction or remodeling of commercial or industrial property is to be exempted from taxation pursuant to section 3735.67 of the Revised Code, the legislative authority and the owner of the property, prior to the commencement of construction or remodeling, shall enter into a written agreement, binding on both parties for a period of time that does not end prior to the end of the period of the exemption, that includes all of the information and statements described in divisions (B)(1) to (8) of this section. Agreements may include terms not described in those divisions or otherwise prescribed by the model agreement adopted by the director of development under division (B) of this section, but such terms shall in no way derogate from the information and statements described in divisions (B)(1) to (8) of this section.

(1) Except as otherwise provided in division (A)(2) or (3) of this section, an agreement entered into under this section shall not be approved by the legislative authority unless the board of education of the city, local, or exempted village school district within the territory of which the property is or will be located approves the agreement. For the purpose of obtaining such approval, the legislative authority shall certify a copy of the agreement to the board of education not later than forty-five days prior to approving the agreement, excluding Saturday, Sunday, and a legal holiday as defined in section 1.14 of the Revised Code. The board of education, by resolution adopted by a majority of the board, shall approve or disapprove the agreement and certify a copy of the resolution to the legislative authority not later than fourteen days prior to the date stipulated by the legislative authority as the date upon which approval of the agreement is to be formally considered by the legislative authority. The board of education may include in the resolution conditions under which the board would approve the agreement. The legislative authority may approve an agreement at any time after the board of education certifies its resolution approving the agreement to the legislative authority, or, if the board approves the agreement conditionally, at any time after the conditions are agreed to by the board and the legislative authority.

(2) Approval of an agreement by the board of education is not required under division (A)(1) of this



section if, for each tax year the real property is exempted from taxation, the sum of the following quantities, as estimated at or prior to the time the agreement is formally approved by the legislative authority, equals or exceeds twenty-five per cent of the amount of taxes, as estimated at or prior to that time, that would have been charged and payable that year upon the real property had that property not been exempted from taxation:

- (a) The amount of taxes charged and payable on any portion of the assessed valuation of the new structure or of the increased assessed valuation of an existing structure after remodeling began that will not be exempted from taxation under the agreement;
- (b) The amount of taxes charged and payable on tangible personal property located on the premises of the new structure or of the structure to be remodeled under the agreement, whether payable by the owner of the structure or by a related member, as defined in section 5733.042 of the Revised Code without regard to division (B) of that section.
- (c) The amount of any cash payment by the owner of the new structure or structure to be remodeled to the school district, the dollar value, as mutually agreed to by the owner and the board of education, of any property or services provided by the owner of the property to the school district, whether by gift, loan, or otherwise, and any payment by the legislative authority to the school district pursuant to section 5709.82 of the Revised Code.

The estimates of quantities used for purposes of division (A)(2) of this section shall be estimated by the legislative authority. The legislative authority shall certify to the board of education that the estimates have been made in good faith. Departures of the actual quantities from the estimates subsequent to approval of the agreement by the board of education do not invalidate the agreement.

- (3) If a board of education has adopted a resolution waiving its right to approve agreements and the resolution remains in effect, approval of an agreement by the board is not required under division (A)(1) of this section. If a board of education has adopted a resolution allowing a legislative authority to deliver the notice required under this division fewer than forty-five business days prior to the legislative authority's execution of the agreement, the legislative authority shall deliver the notice to the board not later than the number of days prior to such execution as prescribed by the board in its resolution. If a board of education adopts a resolution waiving its right to approve



agreements or shortening the notification period, the board shall certify a copy of the resolution to the legislative authority. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the legislative authority.

(4) If the owner of the property or the legislative authority agree to make any payment to the school district as described in division (A)(2)(c) of this section, the owner or legislative authority shall agree to make payments to the joint vocational school district within which the property is located at the same rate or amount and under the same terms received by the city, local, or exempted village school district.

(B) The director of development shall adopt rules in accordance with Chapter 119. of the Revised Code prescribing the form of a model agreement that a legislative authority may, in its discretion, use as the basis for an agreement to be executed under this section. The model agreement may include any term necessary for the administration and enforcement of such agreements by the director and legislative authority, but must include all of the following:

(1) A space to include the description of real property to be exempted from taxation under the agreement and to identify the property's owners;

(2) A space to denote the percentage of the assessed valuation of real property exempted from taxation and the period for which the exemption is granted;

(3) A statement requiring the owner to pay real property taxes not exempted under the agreement, as required by law, and requiring rescission of the agreement if the owner fails to pay those taxes beginning in and after the year any such taxes are charged;

(4) A statement that the owner certifies, at the time the agreement is executed, that the owner does not owe any delinquent property taxes or taxes for which the owner is liable under Chapter 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code, or, if such delinquent taxes are owed, that the owner is paying the delinquent taxes pursuant to an undertaking enforceable by the state or an agent or instrumentality thereof, has filed a petition in bankruptcy, or has had a bankruptcy petition filed against the owner;



- (5) A statement requiring the owner to provide to the property tax incentive review council any information reasonably required by the council to evaluate the applicant's compliance with the agreement;
- (6) A statement that the agreement is not transferable or assignable without the approval of the local authority;
- (7) A statement describing the circumstances under which an agreement may be revoked by the local authority for noncompliance and the manner by which already-received benefits may be recovered;
- (8) A statement requiring the owner to provide an estimate of the following for each agreement:
 - (a) The number of employment opportunities created due to the remodeling or construction, as well as the payroll attributable to those opportunities;
 - (b) The number of employment opportunities retained due to the remodeling or construction, as well as the payroll attributable to those opportunities.

Once the director adopts rules prescribing a model agreement under this division, the model agreement may not be changed unless the director adopts, amends, or rescinds those rules in accordance with Chapter 119. of the Revised Code.

(C) If any person that is party to an agreement granting an exemption from taxation discontinues operations at the structure to which that exemption applies prior to the expiration of the term of the agreement, that person, any successor to that person, and any related member shall not enter into an agreement under this section or section 5709.62, 5709.63, or 5709.632 of the Revised Code, and no legislative authority shall enter into such an agreement with such a person, successor, or related member prior to the expiration of three years after the person's discontinuation of operations. As used in this division, "successor" means a person to which the assets or equity of another person has been transferred, which transfer resulted in the full or partial nonrecognition of gain or loss, or resulted in a carryover basis, both as determined by rule adopted by the tax commissioner. "Related member" has the same meaning as defined in section 5733.042 of the Revised Code without regard to division (B) of that section.



The director of development shall review all agreements submitted to the director under section 3735.672 of the Revised Code for the purpose of enforcing this division. If the director determines there has been a violation of this division, the director shall notify the legislative authority of such violation, and the legislative authority immediately shall revoke the exemption granted under the agreement.