



**COUNTY ATTORNEY**  
Fort Bend County, Texas

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**JUL 22 2003**  
**OPINION COMMITTEE**

BEN W. "Bud" CHILDERS  
County Attorney

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**JUL 21 2003**  
**OPEN RECORDS DIVISION**

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**RQ-0081-GA**

July 17, 2003

Via CMRRR # 7003 1010 0003 8502 6121

Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

**FILE #** ML-43193-03  
**I.D. #** 43193

Re: Request for Attorney General Opinion

Dear Attorney General Abbott:

On behalf of the Honorable Marsha P. Gaines, Tax Assessor/Collector of Fort Bend County, I am seeking an opinion from your office. I request your opinion on the following question:

1. Whether a tax abatement granted under the Property Redevelopment and Tax Abatement Act, Section 312.001, et. seq of the Texas Property Tax Code, may be amended to apply retroactively.

**Statement of Facts**

On September 12, 2000, Fort Bend County granted RTRON Ltd. a tax abatement. *See Exhibit A.* The City of Stafford, Texas, created the reinvestment zone pursuant to Section 312.201 of the Texas Property Code and issued a tax abatement to RTRON, Ltd. on July 20, 2000. On December 17, 2002, RTRON Ltd. requested an amendment to the agreement with Fort Bend County, seeking the following changes to the original agreement:

1. Decreasing the certified appraised value of the improvements and tangible personal property from \$7,250,000.00 to \$5,750,000.00.
2. Decreasing the certified appraised value of the tangible personal property from \$2,000,000.00 to \$1,400,000.00.

RTRON Ltd. requested the abatement because their business was "more inventory and labor intensive than capital intensive." *See Exhibit B.* RTRON Ltd. requested that the amendment apply retroactively to January 1, 2002, in order for the abatement to apply to

tax year 2002. If the abatement was not applied retroactively, the abatement granted to RTRON Ltd. would not apply to tax year 2002 because RTRON Ltd. would not meet the requirements described above.

While the request for the amendment was pending with Fort Bend County, the taxes for tax year 2002 became due. The taxes were assessed at full value because RTRON Ltd. did not meet the requirements of the tax abatement for tax year 2002. The full taxes were paid by RTRON Ltd. for tax year 2002 in the amount of \$163,160.35.

On March 25, 2003, the amendment to the tax abatement requested by RTRON Ltd. was approved by the Fort Bend County Commissioners Court. *See Exhibit C.* The amendment was approved to apply retroactively to January 1, 2002. RTRON Ltd. has requested a refund for the overpayment of taxes paid for tax year 2002 since the amendment was approved to apply retroactively to January 1, 2002, which would place RTRON Ltd. in compliance with the agreement. *See Exhibit D.*

### Statutory Authority

Section 312.001 et seq. of the Texas Property Tax Code governs the issuance of tax abatements and Fort Bend County is a taxing unit subject to the terms of this statute. Additionally, Fort Bend County has established guidelines and criteria governing tax abatement agreements that are reviewed every two (2) years. *See Exhibit E.*

Section 312.208 of the Texas Property Tax Code addresses modifications and terminations of tax abatement agreements:

#### § 312.208. Modification or Termination of Agreement

(a) At any time before the expiration of an agreement made under this subchapter, the agreement may be modified by the parties to the agreement to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. The modification must be made by the same procedure by which the original agreement was approved and executed. *The original agreement may not be modified to extend beyond 10 years from the date of the original agreement.* (emphasis added).

(b) An agreement made under this subchapter may be terminated by the mutual consent of the parties in the same manner that the agreement was approved and executed.

Section 312.208 does not address the issue of retroactive modifications of tax abatements. The only prohibition addressed is the extension of a tax abatement "beyond

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10 years from the date of the original agreement.” Therefore, it appears that changes may be made to an agreement if they could have been included in the original agreement.

Thank you in advance for your time and consideration with regard to this matter. If you require any additional information to make a determination in this case, please do not hesitate to contact me.

Sincerely,



Ben W. "Bud" Childers,  
Fort Bend County Attorney

Enclosure: Exhibits A - E

cc: Honorable Marsha P. Gaines,  
Fort Bend County Tax Assessor/Collector

Fort Bend County Commissioners-Court