



Development
Services Agency

The Ohio Community Reinvestment Area Program (CRA)

Procedures for Enacting a New CRA Exemption

Ohio Development Services Agency
(800) 848-1300
www.development.ohio.gov



CRA Practitioners:

The following memorandum shall out lay the procedures for enacting a Community Reinvestment Area (CRA) tax exemption to a business pursuant to Ohio Revised Code (ORC) Section 3735.65 et seq. The decision to participate in the CRA Program is voluntary and decisions to grant individual taxpayers exemptions from taxation are similarly voluntary. For more information about the purpose, goals, and requirements of the CRA Program, please refer to the "CRA Program Summary" and the "Area Establishment Process" which are located on the Ohio Development Services Agency's CRA website. The Ohio Development Services Agency (Development) provides regulatory oversight to the CRA Program and provides advice to communities about effective strategies and best practices, but is not a party to the real property tax exemption.

This memorandum will begin by describing the typical process for granting a CRA tax exemption and will then break down each step in an effort to unearth the various regulatory and policy considerations that should be considered at each step. While this analysis will not provide an exhaustive list of the factors that might be considered, it is an effort to assist communities in eluding common pitfalls observed in the granting of CRAs as well as to apprise communities of their responsibilities as they participate in the program.

Before continuing, it is appropriate to note that many individuals refer to CRA tax exemptions as abatements. This memorandum shall avoid the use of the term abatement because the CRA statutes refer to the exemption of taxation; however abatement is a common word in CRA parlance and does accurately describe what is occurring (the amount of taxes that CRA recipient will pay is less than the normal rate of taxation). In your local practice it may be helpful to refer to CRA exemptions as abatements so as to avoid confusion with Tax Increment Financing (TIF) which also is statutorily defined as an exemption from taxation, but is actually a redirection of incremental taxes (using a payment in lieu of taxes) to finance public infrastructure.

Finally, the CRA Program is a flexible program that has many rules that apply in certain circumstances and not in others. While it is the responsibility of each participating local jurisdiction to follow all of the rules governing the program, Development is aware questions will arise. Development's staff members are available to answer questions not addressed in this memorandum and are focused on providing local communities with advice to advance their local economic development goals. For this reason, practitioners are encouraged to call (614) 466-2317 if you need assistance.

Regards,

Staff
Office of Strategic Business Investments

The typical process for granting a CRA exemption is as follows:

1. The business applicant obtains and completes a CRA application.
2. The local jurisdiction determines if there are any eligibility concerns or relocation related issues.
3. The local jurisdiction assembles its own "negotiation committee" to determine if a CRA exemption is warranted for the proposed project, and if so, how much exemption is appropriate.
4. The local jurisdiction creates a draft CRA tax exemption agreement in accordance with the relevant sections of the ORC and the local enabling legislation.
5. If necessary, relocation notices are sent out to the affected communities with the application and draft agreement.
6. The affected school board(s) and joint vocational school district(s) are provided written notice of the intent of the local jurisdiction to enter into a CRA agreement. This letter may ask for the affected school board's consent if it is required.
7. Once all of the relevant notice periods have concluded, and if necessary school board approval has been obtained, a local jurisdiction may enact a resolution or ordinance that approves the granting of a CRA tax exemption and authorizes a local official to sign the CRA agreement.
8. The agreement is executed by all the relevant parties.
9. All of the materials associated with procuring the CRA agreement (application, notices, approvals, local legislation, and agreement) and an application fee (presently \$750) are sent within 15 days of the passage of the legislation to the Ohio Development Services Agency, care of the Office of Strategic Business Investments at 77 South High Street, PO Box 1001, Columbus, Ohio 43216-1001.
10. Development shall review the information and enter the agreement into its system. At that time, the CRA Housing Officer will receive an email indicating that the agreement has been entered. This email should not be construed as a legal approval from Development or the State of Ohio.
11. The local jurisdiction shall transmit a copy of the CRA agreement to the county auditor and order that the property, consistent with the CRA agreement, be placed on the non-taxable list.
12. The business may begin construction of its facility.

Detailed Analysis of Steps to Enact a CRA Agreement:

1. The business applicant obtains and completes a CRA application.

The purpose of the application is for the business applicant to describe the project to the community so that it can evaluate the business's eligibility, identify project issues, and determine whether this project merits a CRA tax exemption. It is noteworthy that the purpose of the CRA Program is to provide real property tax incentives in order to induce economic activity and job growth that would not have otherwise occurred in the absence of the incentive. This means that not every applicant must, or even should, receive a CRA tax exemption. The application is a crucial document, because it is a written certification of what the community can expect to receive should it offer a tax subsidy to the project.

Development has supplied a sample application on its website, and while communities are free to customize their own applications, they are encouraged to check with Development about deviations from the sample application. There are certain questions that Development will require to be answered in order for the CRA Program to remain sanctioned in a particular jurisdiction. The application must be signed by an authorized agent of the business applicant.

Many communities may have guidelines or other policies upon which they will grant CRA exemptions and, therefore, it may be appropriate to include additional questions to the application to collect the information necessary to make a decision about what, if any, exemption is appropriate.

2. The local jurisdiction determines if there are any eligibility concerns or relocation related issues.

Once a business applicant has supplied an application, the community must determine whether the business is eligible. Common items that render a business applicant ineligible are: 1) the property is not within the boundaries of the CRA; 2) the applicant is not proposing to create or retain at least two employees (Development interprets ORC § 3735.671 as requiring the creation or retention of at least two jobs); 3) the business, its successor, or related member has, within the last five years, closed a facility in the State of Ohio that was subject to a CRA tax exemption or an exemption under the Ohio Enterprise Zone Program (See ORC § 3735.671(E)); 4) the project's use is not consistent with the local zoning regulations; or 5) the project does not meet a requirement imposed by the local enabling legislation.

If it is determined that the business applicant is eligible, then it must be determined whether or not the project comprises a relocation within the meaning of the CRA statutes. A relocation occurs when a business moves jobs or assets from one Ohio political subdivision to another. The full definition of relocation and the requirements surrounding CRA relocations can be found in Ohio Administrative Code Section 122:9-1-02. The determination as to whether a project is a relocation project is crucial. If it is determined at a later date that a project is in fact a relocation, and the community and applicant did not follow the correct procedures, the applicant's CRA exemption will be voided. If a local jurisdiction has questions regarding the CRA relocation provisions, it is encouraged to contact the Office of Strategic Business Investments.

3. The local jurisdiction assembles its own “negotiation committee” to determine if a CRA exemption is warranted for the proposed project, and if so, how much exemption is appropriate.

How communities arrive at the decision to offer a CRA tax exemption varies widely throughout the State of Ohio, and Development has observed that there is not one method that works best for every community in the state. The composition of negotiating committees must balance the need to make decisions quickly versus including important public constituencies early in the process. The best negotiating committees balance these two often competing influences in a manner that is consistent with the shared values of the community regarding tax exemptions.

Development strongly encourages all CRA practitioners to establish professional relationships with all of the school district treasurers within their jurisdiction. While school superintendents are the CEO of the school district, the impact of the tax exemption upon school districts is typically best understood by the school district treasurers. CRA strategies often center on structuring deals that enable the community to win projects in a way that best benefits the school districts, because school districts are the largest recipient of the real property tax dollars that are being exempted.

Common members of negotiating committees include CRA Housing Officers, school district officials, elected officials, county economic development professionals, county auditors, local business owners, and interested citizens that understand taxation and economic development. Having a broad range of represented interests on the negotiating committee serves to aid in making decisions that reflect the community’s values. Business applicants will regularly ask for the maximum amount of tax exemption regardless of the merits of their project, therefore having a strong negotiation committee helps to determine what amount of subsidy, if any, is appropriate. CRA practitioners that shoulder all the responsibilities in the negotiating process report to Development that they often feel pressure to offer a level of incentive that the applicant requests, lessening their ability to consider important secondary impacts of the exemption on local competing businesses, school district funding, and the cost of public infrastructure improvements that will be necessary to complete the project.

Negotiating committees should establish a list of both quantitative (amount of investment, number of jobs created, amount of infrastructure costs, etc.) and qualitative (catalytic impact of project, type of jobs created, adherence to established community development plan, etc.) factors that will influence what amount of tax exemption is appropriate and then produce procedures for how to quickly gather the necessary data and make a decision. Development does observe that there are instances in which an applicant would prefer to have a quick answer with fewer subsidies than a drawn out process that is more lucrative. Participating communities should be deliberate in their use of the taxpayers’ money, but also shouldn’t reinvent the wheel each time an application is filed.

4. The local jurisdiction creates a draft CRA tax exemption agreement in accordance with the relevant sections of the ORC and the local enabling legislation.

CRA practitioners are encouraged to seek the advice of legal counsel in the creation of contractual commitments and the drafting of a CRA contract is no exception. Communities should consider placing adequate safeguards in the contract to protect its interest in new employment should the company not meet the project parameters that it suggested in its application. The statutes that govern the CRA Program do not mandate any “clawback” provisions that require business applicants to repay tax savings if they do not meet their employment and investment commitments in order to maximize flexibility, but communities should consider the inclusion of provisions which safeguard the taxpayers’ interests. Additionally, many communities require CRA recipients to be members of local business groups or community associations. Such provisions are acceptable, however, it is important to note that fees associated with a CRA agreement must be used exclusively to finance the local operation of the program and should not be considered general revenue.

5. If necessary, relocation notices are sent out to the affected communities with the application and draft agreement.

Relocation notices are required if either assets or personnel are moved from any Ohio jurisdiction to another Ohio jurisdiction. A relocation notice must strictly comply with the requirements of ORC § 3735.673. The letter should provide ample information for the affected community to understand what business is moving, why they are moving, when the tax exemption will be offered, and a copy of the contract that the community wishes to execute. These letters are an important part of the programmatic framework and are not a mere professional courtesy granted to neighboring jurisdictions. Failure to provide timely notice to all affected communities may void the CRA exemption and may result in other sanctions from Development. If you have questions about the relocation provisions, please consult with Development's staff.

The use of incentives to transfer a business from one Ohio jurisdiction to another is one of the most controversial aspects of the CRA Program. The General Assembly spoke directly to this issue in ORC § 5709.671:

“...Such authority is not intended by the General Assembly to be exercised if not necessary to achieve such a result, nor is it intended to be exercised for the purpose of transferring employment from one political subdivision in this state to another if such exercise does not result in a net increase in or retention of employment in this state.”

For this reason, communities are encouraged to work with businesses that are relocating, but to be mindful of the costs that were borne by the jurisdiction that the business is leaving. It may be appropriate to provide additional safeguards to your community if you are working with a business that has a history of moving from one jurisdiction to another. This is especially true if the business will require substantial infrastructure improvements in order to relocate (should the business leave in the future, the community will still have to finance and maintain this infrastructure) or will occupy a building that is unique to a specific industry (should the business leave it may be challenging to obtain a new user for the structure). While the prospect of winning a project is exciting, communities must consider how the deal will affect their community's long-term position.

6. The affected school board(s) and joint vocational school district(s) are provided written notice of the intent of the local jurisdiction to enter into a CRA agreement. This letter may ask for the affected school board's consent if it is required.

Each CRA agreement, at a minimum requires that notice be sent to every affected school district and joint vocational school district that will be affected by the tax exemption. See ORC § 5709.83. This notice must be delivered not less than 14 calendar days prior to the date in which your jurisdiction will first consider the passage of legislation to enter into a CRA contract. During the notice period, your jurisdiction must meet with the affected school board if they request a meeting. While this requirement is statutory, it is also common sense. CRAs are most effective in communities in which the CRA jurisdiction and the affected school board have a shared vision of economic development.

Beyond notice, some CRA agreements require that the affected school district consent to the tax exemption. The general rule that is the affected school board(s) must consent to or approve a CRA exemption that is greater than 50 percent; however, ORC § 3735.671(A)(2)(a)-(c) provides for three off-sets that could eliminate the need for that approval. Alternately, some communities choose to have the affected school board consent to every CRA exemption regardless of the amount offered.

If a school board is called upon to consent to a tax exemption, it is afforded a longer notice period of 45 business days. If the school board(s) fail to act within that time, silence is interpreted to mean a failure to consent. If a school board does consent to an exemption, they must do so by a formal resolution. The resolution should also waive any remaining notice to which they are entitled unless there is a reason to allow for the full-notice period.

7. Once all of the relevant notice periods have concluded, and if necessary school board approval has been obtained, a local jurisdiction may enact a resolution or ordinance that approves the CRA tax exemption and authorizes a local official to sign the CRA agreement.

Each CRA contract must be legislatively authorized by either a municipal council or county government (if the land is in a township) in a public meeting. Communities should follow local practices regarding notice to the public of the meeting, emergency procedures, etc. The copy of the legislation that is sent to Development must be certified by the clerk of the legislative authority as being a true and accurate copy.

It is a best practice to include the procedural history of the exemption in the “whereas” portion of the ordinance/resolution, as it is not uncommon for a given business to amend a CRA agreement or to have multiple CRA agreements over time. Providing the procedural history makes it much easier to ensure that all of the parties are discussing the same project.

8. The agreement is executed by all the relevant parties.

While this may seem self-explanatory, it is important to note that the best practice is to have both the owner of the real estate and the entity that will create the jobs (if different) sign the document as parties to the agreement. The inclusion of both parties has several benefits: 1) it aids in the collection of required annual reporting information; 2) it protects the community against inadvertent violations of the CRA relocation provisions; 3) it provides a contractual remedy to recapture (commonly referred to as “clawback”) incentive dollars should an applicant not meet their contractual commitments; and 4) it informs the public about which entities are actually receiving the benefit of the CRA exemption.

If the project is occurring in a township, the township trustees may sign the agreement, but the legally required signature must come from the board of county commissioners. Townships cannot legally create CRAs and must rely upon the authority granted to boards of county commissioners in order to participate.

9. All of the materials associated with procuring the CRA agreement (application, notices, approvals, local legislation, and agreement) and an application fee (presently \$750) are sent within 15 days of the passage of the legislation to the Ohio Development Services Agency, care of the Office of Strategic Business Investments at 77 South High Street, PO Box 1001, Columbus, Ohio 43216-1001.

If you have been working with a particular member of Development’s staff, you may send the package of materials to that person at the address above in order to expedite the process. Development runs numerous programs and therefore failing to indicate a specific office or staff member may slow our ability to examine the materials.

Development charges a fee to accept these materials to compensate for the time needed to review the initial application materials as well as the time needed to facilitate the annual reporting of this agreement. Development will not begin its review of any submitted materials until it has received an application fee. The fee is not refundable in instances in which the project ultimately does not move forward.

10. Development shall review the information and enter the agreement into its system. At that time the CRA Housing Officer will receive an email indicating that the agreement has been entered. This email should not be construed as a legal approval from Development or the State of Ohio.

Development strives to review all CRA agreements within five business days of receipt. Our goal in the review is to identify any statutory problems with the exemption and propose solutions, when possible. In this role, Development operates as both a regulator and an adviser. Our goal is to ensure that your community can grant the exemption if it is permissible by statute.

For this reason, it is imperative that you provide Development with all the relevant information as soon as possible. As is noted below, if construction begins on the project and a problem is identified, the exemption may become void. Development understands that all business applicants attempt to convey a sense of urgency to receive all the required approvals and checks and, therefore, place pressure on communities to work quickly. If a project must be given special immediate attention, let us know, as we never want our review to compromise a project.

11. The local jurisdiction shall transmit a copy of the CRA agreement to the county auditor and order that the property, consistent with the CRA agreement, be placed on the non-taxable list.

The CRA Housing Officer should contact the local county auditor and familiarize themselves with the procedures that the county auditor employs to make a parcel of land tax exempt. Auditors may need additional information beyond what is described above in order to place the property on the tax exempt list and Development defers to county auditor on such issues. In order to provide the best customer service to your clients, it is important that you understand the remaining steps that must occur once the exemption leaves your hands. Additionally, Development observes that county auditors are often the best record keepers and advisers regarding tax exemptions, therefore, forming a good professional relationship with auditor is strongly encouraged. The auditor views every tax exemption in the county and is the chairperson of your jurisdiction's Tax Incentive Review Council that will annually examine the performance of the exemptions that your community grants under the CRA Program.

12. The business may begin construction of its facility.

If any improvements are made prior to the execution of the CRA agreement, the exemption may be rendered void. As a CRA practitioner, it is imperative that you warn applicants against the desire to start a project prematurely. If a business is insistent that it must begin construction before all the necessary steps are completed, it is a strong signal that a CRA exemption is not necessary. Remember, a CRA is designed to facilitate economic activity and job growth that would not have otherwise occurred, and if a business cannot wait for these statutorily required steps, it is likely that it is going to proceed with the project even without the CRA tax subsidy.

END OF DOCUMENT