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Time May Be Running Out For Texas Property Tax Abatements.

The Texas state legislature must decide whether or not to extend the ad valorem property tax abatement program currently authorized under state law. The program is currently set to expire on September 1, 2019. Local tax abatements are not without their detractors, and the decision to extend the existing program could impact the viability of future renewable energy and other energy developments across the state.

Background: Chapter 312 Property Tax Abatement Program

Chapter 312 of the Texas Tax Code currently permits local taxing units to enter into agreements with property owners providing for the abatement of ad valorem property taxes, provided that the property owner makes specified improvements or repairs to the property. These agreements are entered into between a property owner and a local county, city, special taxing district or other authority such as a water district or a hospital district. The state law authorizes and establishes certain guidelines for the abatement agreements, with the precise terms of the abatements negotiated and agreed to by the local taxing authority and the taxpayer. Any agreement must be approved by a vote of the members of the governing body of the local taxing unit.

Currently, the Chapter 312 abatement program is set to expire on September 1, 2019. The expiration of the program would not impact abatement agreements that have already been executed, but would prohibit local taxing units from entering into any new agreements after the expiration date. The term of an abatement agreement is limited to a maximum of 10 years by the statute, so property owners who have executed agreements prior to the potential expiration of the program could potentially still benefit from the abatement program for a number of years past this expiration date.

School districts, whose ad valorem property tax rates are typically greater than those of the other local taxing units, are prohibited from entering into abatement agreements under Chapter 312. However, Chapter 313 of the Texas Tax Code provides for a similar incentive with respect to ad valorem taxes levied by local school districts. Unlike Chapter 312, which provides for the abatement of property taxes, Chapter 313 allows school districts and property owners to enter agreements to limit the appraised value of property for ad valorem property tax purposes. Chapter 313 is currently set to expire on December 31, 2022, barring any legislative action to extend the expiration date.

Texas Legislative Session and Proposals

The Texas legislature began its session on January 8, 2019, and the session is scheduled to end on May 27. Pre-filing of bills for the 2019 session opened on November 12, 2018. Three pre-filed bills addressing the pending expiration of the Chapter 312 abatement program would extend the program for an additional term of 10 years. The bills introduced to date include Texas H.B. 360 and Texas H.B. 499, filed by Republican State Representatives Jim Murphy and Angie Button, respectively, as well as Texas S.B. 118, filed by Democratic State Senator Royce West. As currently

drafted, the bills do not contain any provisions creating any additional limitations or carve-outs from the abatement program.

> **Eversheds Sutherland Observation:** Tax abatement agreements have been offered by local taxing jurisdictions across Texas to taxpayers in a wide range of industries and for diverse types of projects. Lobbyists and trade groups are currently presenting arguments on both sides of the debate regarding extension of the Chapter 312 abatement program. In particular, a number of groups have expressed opposition to granting tax abatements to renewable energy projects, including wind and solar farms. Taxpayers who are contemplating a project in Texas or who have already begun acquiring or developing such a project should be mindful of the pending expiration of this abatement program and seek to execute any abatement agreements in advance of September 1, 2019. Eversheds Sutherland will continue to monitor any developments regarding the extension or modification of the Chapter 312 abatement program and provide updates of any significant developments.

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