



MEMORANDUM

Date: January 25, 2017

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to read "C.H. Huckelberry", is written over the typed name and title.

Re: **United States Foreign Trade Zone Information and Guidance**

Questions have been raised regarding what would result if one or more of the taxing jurisdictions failed to provide a Letter of No Objection or were not satisfied in any Payment in Lieu of Taxes (PILOT) agreement. The guidance issued by the US Department of Commerce has been unclear as to how the Department would proceed with a specific Foreign Trade Zone (FTZ) application.

In the case of the Monsanto FTZ application, the County Attorney has communicated with the Executive Director and Staff Director of the US FTZ Board. The attached January 24, 2017 memorandum from Economic Development Deputy Director Patrick Cavanaugh discusses this issue in more detail.

In summary, it is believed that if any jurisdiction affected by an FTZ application and the receipt of property taxes fails to provide a Letter of No Objection or satisfactory PILOT agreement, the application will not move forward, nor will the FTZ be activated. Hence, no property tax savings or FTZ benefit would be achieved by the applicant.

CHH/anc

Attachment

c: Dr. John Moffatt, Director, Economic Development Office
Patrick Cavanaugh, Deputy Director, Economic Development Office



MEMORANDUM

January 24, 2017

To: Chuck Huckelberry,
Pima County Administrator

From: Patrick Cavanaugh, *PMC*
Deputy Director, Office of Economic Development

Through: John Moffatt *JAM*
Director, Office of Economic Development

Subject: U.S. Foreign Trade Zone Board Information and Guidance

During the five Monsanto community information meetings held this month there continued to be questions as to whether the U.S. Foreign Trade Zone (FTZ) Board would approve the FTZ application for Monsanto under different scenarios related to the Payment in Lieu of Taxes (PILOT) agreements and/or letters of no objections. These actions were required under the "Additional Guidance on Addressing Potential Tax Impacts" that was issued by the FTZ Board staff in November of 2016. *(Please see the attached guidance document.)*

While the guidance is clear that under instances of real property tax impacts (required under Arizona law) to local governments, the FTZ Board require letters on no objection or evidence of no impact/PILOT to be filed with the application, it was unclear in the actual FTZ regulations as to what action if any the FTZ Board

would take in a circumstance where one or more of the affected taxing entities took no action and provided neither a PILOT agreement or letter of no objection.

In attempt to clarify this issue, I asked Regina Nassen of the Pima County Attorney's Office to contact the FTZ Board in Washington, D.C.

Ms. Nassen spoke by phone with Andrew McGilvray, Executive Director and Staff Director of the U.S. Foreign Trade Zone Board, this afternoon and confirmed that his staff would not move an application forward for consideration by the FTZ Board unless all the requirements under the November 2016 guidance document are met. In other words, in instances where a jurisdiction submitted no response, the company's application would not be considered for FTZ activation.

Please let me know if you require any additional information.

FTZ Board Staff – November 2016

ADDITIONAL GUIDANCE ON ADDRESSING POTENTIAL TAX IMPACTS

In certain states, there are taxes for which collections can be affected through FTZ Board action to designate FTZ sites (including sites of subzones).

Examples of such taxes include:

- *Ad valorem* taxes on business inventories in states such as Texas, Louisiana and Kentucky (for which collections can be affected by 19 U.S.C. 81o(e))
- Real property taxes in the state of Arizona (for which collections can be affected due to a provision of Arizona law allowing for reclassification of FTZ-designated property under certain conditions).

When proposed FTZ designation of a particular parcel of land could result in a reduction in revenue collected locally for such a tax, the FTZ Board requires the applicant to address the potential impact. Specifically, the applicant must:

- A) Explain the specific local tax(es) for which collections would be affected;
- B) Include a letter from the FTZ grantee containing a certified list of all affected parties¹; and,
- C) Include copies of correspondence from all affected parties indicating concurrence or non-objection to the proposed FTZ designation.

In response to requests from potential applicants, the following is additional guidance developed by the FTZ Board's staff to assist applicants in addressing potential state/local tax impacts of FTZ proposals.

Circumstances in which concurrence/non-objection is not needed

In states with taxes for which revenues could be reduced as a result of FTZ designation, there are several sets of circumstances in which FTZ designation will not, in fact, result in reduction in tax revenues. If FTZ designation would not result in a reduction in tax revenues, no concurrence or non-objection is needed from affected parties (since there would not be any governmental entities that would be negatively "affected" by the proposed FTZ designation). The following are general examples of such circumstances:

¹ As used throughout this document, the term "affected parties" encompasses governmental entities whose tax revenues could be affected negatively (reduced) as a result of FTZ designation.

1. *A legal provision unrelated to the FTZ program already provides the exemption/reduction in taxes payable that otherwise could result from FTZ designation.*

With regard to *ad valorem* inventory taxes within a state, there may exist a state constitutional provision(s) or other state/local legal provision(s) that provides an exemption(s) from such taxes in certain circumstances that are unrelated to the FTZ program. For example, state law may allow a “freeport” exemption(s) on *ad valorem* inventory taxes for merchandise shipped into the state and then shipped back out of the state within a certain period of time. As another example, one or more categories of merchandise may be exempt from *ad valorem* inventory taxes under the state constitution or other state/local legal provisions. To the extent that all merchandise that would be stored in a proposed FTZ site would be already exempt from *ad valorem* inventory taxes under a freeport exemption(s) or a state/local constitutional/legal provision, FTZ designation and the subsequent use of FTZ procedures at the site would have no impact on the *ad valorem* inventory taxes payable on the merchandise. Therefore, there would not be any affected parties whose concurrence/non-objection would be needed for the application requesting FTZ designation. The application would need to explain fully the exemption(s) or provision(s) under which all merchandise to be stored at the proposed FTZ site would be already exempt from *ad valorem* inventory taxes. In addition, the FTZ user² would need to include in its agreement with the grantee of the FTZ a provision that constitutes a binding commitment to limit its FTZ use to storage of merchandise that is exempt from *ad valorem* taxation in the manner indicated in the application. The grantee would also need to confirm in its application to the FTZ Board that the grantee would take any necessary steps to ensure that use of the proposed FTZ site would be limited to storage of merchandise that is exempt from *ad valorem* taxation in the manner indicated in the application.

2. *The FTZ user will not claim – or will fully offset – any FTZ-related tax benefit.*

An application for FTZ designation does not need to include correspondence expressing the concurrence/non-objection of a given potentially affected party if the FTZ user will not claim the FTZ-related tax reduction³ – or will make other payments to the potentially affected party(ies) to offset fully any such reduction. In those circumstances, the grantee would need to include in its agreement with the FTZ user a provision that constitutes a binding commitment by the FTZ user not to claim the FTZ-related tax reduction or to make fully offsetting payments to

² As used throughout this document, the term “FTZ user” encompasses any company or other entity that could obtain a FTZ-related reduction in taxes payable through FTZ designation of a site or use of FTZ procedures at the site.

³ For purposes of this explanation, “claim[ing] the FTZ-related tax reduction” extends to taking any action that could result in such a tax reduction, such as claiming reclassification for real property taxes for FTZ-designated land under the provision of Arizona law cited above.

the potentially affected party(ies) for which the application did not present correspondence expressing concurrence/non-objection. In the application, the grantee would need to explain fully the FTZ user's contractual commitment not to claim the FTZ-related tax deduction – or to make fully offsetting payments to the potentially affected party(ies) for which the application did not present correspondence expressing concurrence/non-objection. The grantee would also need to confirm in its application that the grantee would take any necessary steps to enforce that provision of its agreement with the FTZ user.

Timing and content of correspondence expressing concurrence/non-objection

When FTZ designation could result in a reduction in local tax revenues – and in the absence of any circumstance outlined above in which affected parties' concurrence/non-objection is not needed – an application for FTZ designation must include correspondence from the affected parties expressing their concurrence/non-objection. An affected party may issue correspondence pertaining to a specific parcel(s) of land at any point, including prior to the identification of any specific company(s) that might seek to use FTZ procedures at that location. That correspondence can then be used for an application to the FTZ Board if/when the need actually arises for FTZ designation at that location. In addition, there is significant flexibility on the degree of specificity of such correspondence. An affected party may express its concurrence or non-objection to FTZ designation for a specific parcel(s) of land within its jurisdiction, a larger subset of its jurisdiction, or the entirety of its jurisdiction. Such documented concurrence/non-objection can then be used at any point when the need for FTZ designation might arise at the location(s) for which the affected party has expressed concurrence/non-objection.