

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. 810(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. The FTZ Board allows that correspondence to be used for an application if/when the need actually arises for FTZ designation at that location.⁴ 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.

⁴ It should be noted that, based on local considerations, each grantee may adopt additional requirements – including a stricter standard on use of previously issued, tax-related letters – for applications under the grantee's zone. Any such additional requirements would need to be consistent with the uniform treatment requirements of the FTZ Act and Regulations.