Industrial Revenue Bonds & Local Economic Development Act

Summary and applicability

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Industrial Revenue Bonds

What is a IRB

- Technically: A “loan” from an investor (Bond Purchaser) to a company where the loan proceeds and repayment flow through the City (Issuer)

- Practically: A mechanism through which a company may receive certain tax-exemptions in exchange for the creation of increased economic activity and jobs in the City

- Only qualified “projects,” (land, building, equipment, and improvements) as defined in the Municipal Industrial Revenue Bond Act are eligible

Benefits of IRBs

- Available Tax Abatements
  - Property Tax on real and personal property
  - Gross Receipts Tax on equipment purchased as agent for the City using Type 9 NTTCs
  - Compensating Tax on equipment from out of state
  - Taxes of other overlapping jurisdictions
- Payments In Lieu Of Taxes (PILOTs or PILTs) to recover some of this foregone tax revenue
- “Claw-backs”

IRBs: Issuance process

1. The Company contacts the City and applies for IRB assistance
2. The City and the Company begin to negotiate the terms of the IRB (amount, Company commitments, duration of tax exemption, etc.)
3. City considers a Non-binding Inducement Resolution
   - Allows the Company to start benefiting from the gross receipts tax exemption
4. The City notifies the County is notified of the City's intent to issue IRBs
5. The City approves the issuance of the IRB via Bond Ordinance
6. Bond documents including a Bond Indenture, Lease Agreement, and Bond Purchase Agreement are executed

Local Economic Development Act

LEDA: Anti-Donation Clause Exception

- The Local Economic Development Act allows the City to provide economic support to projects that will result in increased economic activity
  - There are some limits to the amount of aid that can be provided
- The State (in certain circumstances) and other governmental entities can provide additional assistance for the same project
- Not all types of businesses are eligible
  - "Qualifying entities" are listed in 5-10-3(L) NMSA 1978
- Prior to providing any support, the City must approve an Economic Development Plan detailing its economic development goals and strategies
  - The plan cannot exceed the limits set by the Local Economic Development Act

LEDA Incentives

- The assistance from the City can take many forms
  - In kind: grants of land, buildings or rights of way; building of infrastructure specific to the project, etc.
  - Purely monetary: lump sum payments from the State, lump sum payments from the City, gross receipts tax increment from local governments, gross receipts tax sharing from City, County, and State
- The City must be able to recoup its investment should the commitments from the Company not materialize
  - It is common to request a “security” from a bank or a parent company guaranteeing the reimbursement of the public aid in case of breach

LEDA: Approval Process

1. The City must have an Economic Development Plan in place approved via ordinance.
2. The Company contacts the City and applies for LEDA assistance
3. The City and the Company start negotiating the terms of the assistance (amount, employment or outcome commitments, etc.)
4. If applicable, other governmental entities also join the negotiations
5. The City approves the LEDA Plan for the specific project via ordinance and a Project Participation Agreement is executed.
6. In the event that other governmental entities participate in the project, an Intergovernmental Agreement or Intergovernmental Project Participation Agreement is signed.

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Q&A