Auburn Industrial Development Authority Assistance

Industrial development agencies ("IDAs") are formed under Article 18-A of New York State General Municipal Law ("GML"), as amended (the "Act"), as public benefit corporations. The current provisions of the Act allow IDAs to provide four basic forms of financial assistance that include: (1) mortgage recording tax exemption, (2) sales and use tax exemption, (3) real property tax abatement, and (4) interest rate savings via tax-exempt financing.

1. Mortgage Recording Tax Exemption

Whenever a county clerk records a mortgage in the State, the mortgagor must pay a mortgage recording tax – 1% of the mortgage amount in Cayuga County - a significant expense on projects involving substantial financing. The IDA, however, can qualify a company for a mortgage recording tax exemption of 75% of the mortgage recording tax amount. If an IDA (on a non-recourse basis) is in title (either fee title or leasehold interest) at the time the mortgage is recorded, the IDA will mortgage its interest in the property (exempt from the mortgage recording tax under GML § 874) and the company will simultaneously mortgage its interest in the property (exempt from the mortgage recording tax under New York State Tax Law ("Tax Law") (§ 255). As an alternative, the IDA and the company can execute one mortgage with the IDA agreeing to pay the mortgage recording tax (which triggers a single exemption under GML § 874). Either arrangement can save a substantial amount of money for the company – in Cayuga County a savings of $7,500 on a $1 million principal mortgage.

2. Sales and Use Tax Exemption

The sales and use tax rate in Cayuga County is 8%. Under GML § 874, all purchases made by an IDA or its agents are exempt from sales and use tax. The IDA can issue a sales tax exemption letter to a company, authorizing it to act as an agent for the IDA. The company can then acquire the equipment, materials and services needed to acquire, construct, reconstruct and/or equip the project without having to pay sales or use taxes. The exemption is generally limited to the construction, reconstruction or installation period and cannot cover ongoing operational costs.

Depending on the size of the project, the cost savings for the company under this arrangement can be significant. On a project where $1 million of the costs are subject to sales and use tax, the exemption would result in a savings of $80,000. When the lease or installment sale agreement expires, the IDA transfers any personal property that is involved in the project to the company without the payment of any sales or use tax.

3. Real Property Tax Abatement

In New York State, property owners pay a real property tax based on the assessed value of land and improvements to a site. Any real property owned or controlled by an IDA is not subject to ad valorem real property taxes, under GML § 874 and Real Property Tax Law ("RPTL") § 412-a. However, real property owned or controlled by an IDA continues to be subject to special assessments and user fees (water, sewer, fire, etc). When an IDA takes title to or a leasehold interest in real property, the property becomes 100% exempt from ad valorem real property taxes. To accommodate the needs of the local tax jurisdictions, however, the IDA generally negotiates a Payment-In-Lieu-Of-Tax Agreement ("PILOT Agreement") with the company. The IDA will then direct, or receive and forward, these payments-in lieu-of-taxes to the affected tax jurisdictions in the percentage that each affected tax jurisdiction would otherwise have received but for the Agency's involvement. By law, IDAs have the authority to negotiate any PILOT Agreement they deem reasonable. There is no required formula for calculating the payments to be made under a PILOT Agreement. They are, however, required to have specific policies adopted which outline the types of PILOT Agreements they are offering and procedures for deviation from those stated policies (the Uniform Tax Exemption Policy) ("UTEP"). If the IDA deviates from its UTEP, it must notify the affected jurisdictions. Although there is no statutory limit to the period or amount of the abatement, IDAs generally limit the period to between 10 and 20 years, with the assumption that the abatement generally results in more revenue for the tax jurisdictions than was generated by the property before the IDA's involvement.

This benefit is generally referred to as a "real property tax abatement" rather than a real property tax exemption, given the interplay between the 100% exemption from real property taxes and the IDA policy of

requiring a payment in lieu of taxes. Some PILOT Agreements provide a specific dollar amount to be paid each year for the term of the PILOT Agreement. The mere predictability provided by such a PILOT Agreement can be invaluable to a developer. Since each PILOT Agreement is negotiated on a project-by project basis, it is difficult to estimate the exact savings from the real property tax abatement. There is little doubt, however, that the abatement can provide significant savings. As a reminder, certain projects may already qualify for a partial exemption from real property taxes for new improvements under RPTL § 485-b or 485-e.

4. Lower Interest Rates for Debt Incurred as Part of the Project

IDAs are authorized by New York State law to issue bonds and notes. An IDA can issue tax-exempt bonds, subject to the limitations imposed by the Internal Revenue Code of 1986, as amended (the "Code"). The proceeds of these tax-exempt bonds can be used to fund all, or substantially all, of the costs of a project (excluding certain costs of issuance in excess of 2% of the total amount of the bond issue). If the project meets the strict qualification requirements of the Code, the company should then determine if issuing tax exempt bonds is a cost-effective method of financing the project.

An IDA itself provides no credit enhancement and issues bonds on a non-recourse basis. For that reason, the ability to sell bonds depends solely on the creditworthiness of the company (or the credit rating of the credit enhancement supporting the transaction, if any – see discussion, below). State law does not allow an IDA to loan the net proceeds directly to the company, as is done in other states. Because an IDA does not have the statutory authority to "loan" money (as is the case in many other states), bond proceeds are used by the company to build the project in the name of the IDA. The project is then leased or sold by the IDA to the company for an amount equal to debt service on the bonds issued. The company's rental payments under the lease agreement, or installment purchase payments made under the installment sale agreement to the IDA (or bond trustee), are used to pay principal of and interest on the bonds. The property involved is generally used as collateral and the company's direct guaranty is generally required. It may be necessary to provide some form of credit enhancement, such as a letter of credit issued by a bank or other qualified financial institution, bond insurance, or FHA insurance, depending on the market where the tax-exempt bonds are sold and on the creditworthiness of the company.

Before proceeding with a bond transaction, the company should conduct a cost/benefit analysis, weighing the cost of financing through traditional means against those costs associated with a tax-exempt bond transaction. Does it pay to finance the project with funds that are at an interest rate that is generally two to three percentage points lower than the cost of borrowing money directly through a taxable transaction? Or will that benefit be outweighed by the additional costs of documenting a bond transaction such as bond counsel fees and, potentially, letter of credit fees of .75% to 1.5% of the bond amount, underwriter discount fees of 1% to 3% of the bond amount, underwriter counsel fees, letter of credit and issuer counsel fees, trustee fees and other incidental costs?