Dutchess County Industrial Development Agency

Information Bulletin

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I. INTRODUCTION

A. Agency Overview

Industrial Development Agencies (IDAs) are public benefit corporations created by state law to promote economic development and job creation within their political jurisdiction. They are empowered to acquire property and issue bonds to finance projects that will increase the local tax and employment base.

As public benefit corporations, IDAs are tax-exempt entities. Therefore, properties to which they take title are exempt from taxes in the same way that a municipal bond issued to finance the construction of a school or library is tax exempt. The interest income on bonds issued to finance an eligible project is exempt from federal, state and local taxes. This triple tax exemption has the effect of lowering the interest rate on the Company's borrowing. An IDA may also provide real property tax abatement, exemption from sales tax on newly acquired personal property, and exemption from mortgage recording tax.

In New York State, IDAs are established on a county-wide, city-wide or township-wide basis. The Dutchess County Industrial Development Agency (DCIDA) was created in 1976 as a public benefit corporation of the State of New York pursuant to Article 18A of the General Municipal Law. The DCIDA serves all of the cities, towns, and villages of Dutchess County.

B. Eligible Tax-Exempt Borrowers

<u>Manufacturers</u>

Bond proceeds may be used to finance "manufacturing facilities," where at least 75% of the bond proceeds must be expended on actual production space ("core manufacturing") with the balance used to finance facilities that are "ancillary but integrally related to" the manufacturing operation. This would include storage space for raw materials and finished goods, and office space used by the production staff. (Section 144(a) (12) of the Code)

<u>Non-Profit Organizations</u>

The DCIDA does not offer benefits to non-profit organizations. Non-profit organizations may seek benefits through the Dutchess County Local Development Corporation.

Exempt-Facilities

Other uses that qualify for tax-exempt financing include solid waste disposal facilities, airports, docks, wharves, mass-commuting facilities, sewage facilities, qualified residential rental projects, or hazardous waste facilities. (Section 142 of the Code)

II. IDA TRANSACTIONS

A. Bond Transactions

Industrial Development Bonds

Industrial Development Bonds (IDBs) are revenue bonds issued by an Industrial Development Agency to finance the construction or purchase of manufacturing or commercial facilities, which are then leased to a private user. An IDB is a "conduit financing" because the security for the bond and the party responsible for repayment is the private user (Company). The ability to sell the bonds depends solely on the creditworthiness of the company. The IDA provides no credit enhancement and assumes no obligation for repayment. The IDA enters into a financing lease with the user of the facility at a rental payment equal to debt service on the bonds and for a term equal to the repayment term of the securities. The property involved is generally used as collateral and the Company's direct guaranty is generally required. It may be necessary for the Company to provide some form of credit enhancement, such as a letter of credit issued by a bank or other qualified financial institution.

Use of Bond Proceeds

The use of bond proceeds is limited to financing capital assets such as land acquisition; building construction; acquisition of existing buildings and renovation; purchase of new machinery and equipment. The financing of used equipment with tax-exempt bonds is not permitted. Due to high transaction costs, the minimum bond size is usually $3.0 million.

Limitation on Capital Expenditures for Manufacturing Projects

A manufacturing company may have no more than $20 million in capital expenditures over a six-year period *within the political jurisdiction where the project is located*. The six-year period commences three years prior to the date of the bond closing and extends three years forward. It includes any capital expenditure, regardless of funding source, and also includes the bond issue being financed and any equipment acquired within the last three years that is moved from the old facility to the new bond-financed facility. Should the capital expenditure limit be exceeded, the bonds would be declared taxable.

Three Years to Spend Bond Proceeds

Under federal regulations, a borrower has three years from the date of closing to spend proceeds. During this time the funds are held by the Trustee and may be invested at a rate up to, but not to exceed, the interest rate on the bonds, plus the annual letter of credit fee, if any. A company can close on one tax-exempt issue, fund its plan for eligible project costs over a three-year time horizon and incur the bond closing transaction expense only once. This technique spreads the closing costs over a larger pool of capital and, in many cases, helps to increase the minimum size of a project to the $3 million threshold.

State Volume Cap Allocation

Federal law limits the volume of tax-exempt Private Activity Bonds that each state (and its political subdivisions) may issue annually. This limit applies to manufacturing projects, housing projects and certain exempt-facility bonds, *but does not include bonds issued for non-profit organizations* (Civic Facility Bonds). Each state receives a per capita allocation that is presently limited to $50 per capita with a minimum allocation of $150 million per state. Annual volume cap allocation in New York State is approximately $900 million.

In New York State, manufacturing projects are given priority to receive cap allocation. However, because of high demand over the past several years, cap allocation may be tight, especially at year-end. In New York, this process is managed by the Empire State Development Corporation (ESD), which allocates "cap" to each IDA, based on population, early in the year. An IDA may then apply for additional cap, as needed, once its initial allocation is expended. It is recommended that Applicants be in direct contact with the Dutchess County Economic Development Corporation (DCEDC) so that arrangements can be made for securing additional cap where needed.

Taxable Bonds

Commercial, non-manufacturing projects qualify for taxable bonds. In addition, manufacturing projects that would not ordinarily qualify for tax-exempt bonds may be eligible for taxable bonds.

A combination of tax-exempt and taxable bonds can be issued for projects that include both manufacturing and non-manufacturing activities.

Exempt Facility Bonds

Federal law permits an IDA to issue exempt facility bonds. These are bonds whose proceeds provide an airport, dock and wharves, mass commuting facilities, sewage facilities, solid waste disposal facilities, local district heating and cooling facilities, qualified residential rental projects, qualified hazardous waste facilities, or high-speed intercity rail facilities.

B. Other Tax Benefits Offered by IDAs

In addition to the lower interest rate offered by tax-exempt bond financing, most IDAs also offer the following benefits which apply to both tax-exempt and taxable financing and straight lease transactions. These benefits are specific to New York State.

Real Property Tax Abatement

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 taxing jurisdictions, however, the IDA generally negotiates a Payment in Lieu of Taxes (PILOT Agreement) with the Company. The IDA will then direct, or receive and forward, those payments in lieu of taxes to the affected taxing jurisdiction. By law, IDAs have the authority to negotiate any PILOT Agreement they deem reasonable.

The DCIDA has adopted a Uniform Tax Exemption Policy that follows the State's Accelerated 485(b) program that reduces the increased value of the assessment by 50% in the first three years, phasing out the exemption over a ten-year period.

Accelerated Strategic Exemption Schedule

Year of Exemption	Percentage of Exemption
1	50
2	50
3	50
4	40
5	30
6	20
7	10
8	10
9	10
10	5

The DCIDA may deviate from its uniform tax exemption policy subsequent to notification of the affected taxing jurisdictions. Real property owned and controlled by an IDA is subject to special assessments and user fees. The DCIDA has a policy of not deviating from the ASES involved in the project.

Sales Tax Exemption

All construction materials, furniture, fixtures and equipment purchased with bond proceeds are exempt from sales tax. The sales tax rate in Dutchess County is 8.125% consisting of 4.0% State sales tax, 3.75% County sales tax. As of September 2016, DCIDA can no longer exempt the MTA surcharge (.375%)of the sales tax. This exemption is generally limited to the construction, reconstruction, or installation period and cannot cover ongoing costs such as elevator or computer maintenance contracts. The DCIDA issues a sales tax exemption letter to the Company, authorizing it to act as an Agent for the DCIDA.

Mortgage Recording Tax Exemption

Since the property is held in the name of the IDA, a tax-exempt entity, there is no mortgage recording tax assessed. The mortgage recording tax in Dutchess County is 1.05%.

C. Straight Lease Transactions

A second way IDAs promote economic growth is through a straight lease transaction. In this type of transaction, title to the project is conveyed to the IDA but no bonds are issued. The IDA then enters into a lease or sale agreement with the company; and grants mortgages to the lenders on behalf of the Company to secure the loans necessary to build or equip the facility.

A Straight Lease Transaction offers tax abatement and exemption capabilities to a project without having to include the IDA in the actual project financing, if such inclusion only results in a more complex and expensive transaction. Title to the project is re-conveyed to the Company at an agreed-upon date, usually upon completion of construction for a non-manufacturing facility, and at the end of the abatement period (Payment In Lieu of Taxes, or PILOT) for a manufacturing facility.

III. NEW YORK STATE COMPLIANCE

A. State Environmental Quality Review (SEQRA)

Actions taken by an IDA are subject to the State Environmental Quality Review Act (SEQRA). Before an IDA can take an action, it must first determine if the Project constitutes a Type I, Type II, or Unlisted Action. If the project constitutes a Type I or an Unlisted Action, an Environmental Assessment Form (EAF) should be prepared by the Company and submitted to the Agency. If the project is determined to be a Type I Action, the Company should complete and submit to the IDA a long environmental assessment form.

A short environmental assessment form may be used if the project constitutes an Unlisted Action. If the IDA identifies the project as a Type II Action, no further action is required under SEQRA before processing. If the IDA concludes an Environmental Impact Statement (EIS) is not required, it may proceed by demonstrating that the project will not have a negative impact on the environment (the Negative "Declaration").

B. Open Meetings Law/Freedom of Information Law (FOIL)

An IDA must hold its meetings in compliance with the Open Meetings Law, requiring public notice of the time and place of meetings and making meetings open to the public. Records of an IDA are subject to public inspection under the Freedom of Information Law (FOIL). These records include the application and related materials submitted by a Company to an IDA. The Company should be advised to separately identify proprietary and/or information that the Company does not want disclosed publicly.

C. Public Hearings

Before providing financial assistance in excess of $100,000, an IDA must hold a public hearing with thirty (30) days advance notice to the affected taxing jurisdictions, under General Municipal Law 859-a. Notice of this hearing must also be published in a newspaper of general circulation at least thirty (30) days before the hearing. If a tax-exempt bond is to be issued, the Code requires a public hearing with fourteen (14) days notice. These hearings are generally combined. If the IDA or other entity acting as a Lead Agency under SEQRA makes a positive declaration, public hearings will be required under SEQRA.

IV. TRANSACTION COSTS

Due to the complex nature of issuing tax-exempt bonds, transaction costs are higher than conventional bank financing. The project must pass legal, tax and financial scrutiny; a public agency is involved; securities are usually offered to the public; a trustee is required; some issues are rated by the rating agencies; and all parties are represented by counsel. For these and other reasons, the cost of issuance usually equals 3%-5% of the bond amount. Federal regulations limit the portion of bond proceeds that may be used to pay closing costs to 2%. The balance must come from company funds or other conventional financing. In most cases, however, the higher bond-related transaction expenses are recouped through interest rate savings within a 12 to 18 month period after closing.

The following is a schedule of fees applicable to IDA projects.

A. Application Fee

Dutchess County IDA (DCIDA) requires a fee of **$250.00** due at the time of application.

B. Other Costs

<u>Administration Fee</u>

All projects involving bond issuances or straight lease transactions are subject to DCIDA administrative fees as follows: 1% of the first $2.5 million of the bond amount (or certified cost of the project), and .25% (1/4 of 1%) of the amount over $2.5 million. Administrative fees are due at closing.

<u>Agency Counsel</u>

Each project requires the participation of an Agency Counsel. Agency costs, such as public hearing and legal notice fees, are the responsibility of the applicant from the time an application is submitted. Applicants are encouraged to discuss the project with the DCIDA in order to estimate Agency Counsel costs. Agency Counsel fees are due at closing.

<u>Bond Counsel</u>

The Bond Counsel prepares the financing and closing documents, and issues an opinion on the tax-exempt status of the bonds. Fees vary with the complexity of the financial structure of the project. The Applicant typically selects the Bond Counsel.

<u>Legal Notices and Public Hearing Costs</u>

The legal notices and public hearings can add several thousand dollars to total costs – review with Bond Counsel for a determination of these extra costs.

<u>Compliance Fee</u>

An annual compliance fee of $500.00 for the term of the benefits to the project will be due each year for the preparation of a mandated report that must be submitted to the New York State Authorities Budget Office and the Office if the State Comptroller by March 31 each year.

V. SUMMARY OF BASIC BOND DOCUMENTS

Inducement Resolution

DCIDA issues an Inducement Resolution upon review of the Company's application for bond financing. The resolution qualifies the Project as eligible for bond financing, with the agency finding that the public incentive, in the form of the bonds and economic benefits associated with them, are necessary to "induce" the Company to precede with the Project and that the Project will increase employment and tax revenues. Once the Inducement Resolution has been adopted, the Company may begin incurring expenses that may be refinanced at a later date with bond proceeds. Immediately prior to closing, a second resolution, referred to as Bond Resolution, is adopted detailing the specifics of the financing.

Trust Indenture

The Trust Indenture is a contract between the issuer of the bonds (DCIDA) and the Trustee (a commercial bank's corporate trust department), for the benefit of the bondholders. The Trustee administers the funds or property specified in the indenture in a fiduciary capacity on behalf of the bondholders.

Lease Agreement

Due to State Constitution restrictions in New York State, a financing lease, rather than a loan agreement is used as the basic financing vehicle between DCIDA and the Company receiving tax-exempt financing. In many cases, a real estate holding company is formed by the Borrower to hold real estate assets being financed with bond proceeds. The Lease Agreement specifies the conditions under which the property may be used, and acts as the vehicle for repayment of the bond debt through lease rental payments. A separate lease agreement is created if any equipment is being financed and will be owned directly by the operating company. If no real estate holding company is contemplated, only one lease agreement is needed for both real estate and equipment.

Sub-Leases

If necessary, sub-lease agreements may be required between the Borrower's real estate holding company and the operating company (the user of the facility).

Direct-Pay Letter of Credit

A commercial bank issues a direct-pay Letter of Credit to the Trustee of the bond issue for the benefit of the bondholders. The Letter of Credit specifies conditions for draws by the Trustee to make payment to the bondholders for regularly scheduled interest and principal payments, un-remarketed bonds and pay-off in the event of default. The bondholders receive funds drawn under the Letter of Credit, with the Company reimbursing the bank for the letter of credit draws.

Letter of Credit Reimbursement Agreement

Letter of Credit Reimbursement Agreement is between the Letter of Credit (LOC) Bank and the Borrower. The agreement contains all terms and conditions of the business deal, including financial covenants, Letter of Credit fees and expenses, representations and warranties of the borrower, financial reporting requirements, events of default, environmental representations, and compliance requirements.

Bond Purchase Agreement

This agreement describes the terms and conditions under which the Underwriter will purchase the bond, including underwriting fees and expenses.

Remarketing Agreement

Between the Borrower and the Underwriter (acting in the capacity of the Remarketing Agent), this agreement specifies the terms and conditions of the ongoing responsibilities for remarketing the bonds, including setting the weekly interest rate and reselling bonds that are put back to the Remarketing Agent under the bondholders' put option.

Official Statement or Private Placement Memorandum

The Official Statement or Private Placement Memorandum is the offering circular used by the Underwriter or Placement Agent to sell the bonds. It includes a description of the bond issuer, the borrower, the Project, the various parties involved, and a summary of the bond documents. It gives details of the transaction and the financing documents.

Tax Opinion

The opinion of a nationally recognized Bond Counsel that interest on the bond is exempt from federal, state, and local income tax.

Rating Letter

Issued by a Moody's Investors Service or Standard and Poor's Corporation, the rating letter is based solely on the Letter of Credit Bank's credit rating, not by the creditworthiness of the underlying Borrower or transaction. The rating analyst is usually a lawyer who reviews the bond documents to assure that the bondholders will be paid in a timely fashion under all circumstances.

Mortgages, Security Agreements and Guarantees

Between the Letter of Credit Bank or Bond Purchaser and the Borrower, these documents are identical to those used for conventionally secured lending.

If you have any questions or require additional information, please contact Th!nk Dutchess Alliance for Business at ***(845) 463-5400****.*

This information bulletin was prepared by Th!nk Dutchess Alliance for Business. Any questions or comments should be directed to Th!nk Dutchess at the address below.

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