The Georgia Developer's Toolkit: Economic Development and Employment Incentives

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The authors explain how developers in Georgia can benefit from economic development and incentive programs available in the state.

Many development authorities and other economic or industrial development authorities in the State of Georgia (each, an "Authority") offer "Economic Development and Incentive" programs for private companies which commit to make new capital investments that promote trade and commerce and provide new employment or retain existing employment. Under such programs, companies receive a reduction in the portion of the ad valorem taxes assessed on their real and personal property in connection with an authorized project. This economic development tool is generally used by Authorities when a community is attempting to attract a specific industry or jobs creation or prevent the loss of jobs to another location. For a developer with the right project, use of the tool can result in significant savings to the project's "bottom line."

BACKGROUND

All real and personal property is taxable in the State of Georgia unless some specific exemption applies. Each county in the State of Georgia is authorized to assess an annual tax based on the fair market value of all real and personal property located within the geographical boundaries of such county. These local taxes are referred to as "ad valorem" taxes.

Under the constitution of the State of Georgia, a county or other local government may not voluntarily, or by agreement, reduce or eliminate property taxes on real or personal property, except in certain very limited circumstances. However, if a project is included in an incentive program, companies receive an effective property tax reduction when title to real and personal property is transferred to an Authority, and then subject to

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a lease-back to the company from the Authority. This is because under Georgia law, these Authorities are not subject to ad valorem property taxation on property which is titled to them.

Although the fee interest held by the Authority is exempt from ad valorem taxes, pursuant to Georgia law, the leasehold interest held by the company is subject to assessment based on its "leasehold value," which is generally less than the ownership. Recent Georgia Supreme Court decisions have required that the jurisdiction's board of assessors have a reasonable basis upon which to value the leasehold interest, supported by independent valuation. The Authority's acquisition and installation of the economic development project is accomplished through the issuance by the Authority of its taxable lease purchase bonds.

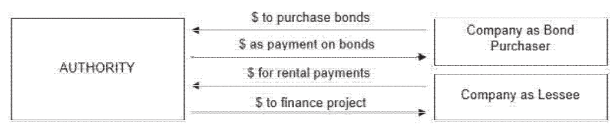
WHICH PROJECTS QUALIFY?

It depends on the Authority that is offering the Economic Development and Incentive program. The Authority must have either the constitutional or statutory authority to undertake the project. Examples of projects that have benefitted from Economic Development and Incentive programs include:

- Manufacturing and/or production facilities;
- Mixed-use residential and commercial properties;
- Office buildings and related real and personal property; and
- Any project that the Authority determines advances the public purpose of developing trade, commerce, industry and employment (including, in certain circumstances, hotels and rental housing, among other projects).

HOW THE ECONOMIC DEVELOPMENT & INCENTIVE PROGRAM WORKS

Typically, the Authority will issue the bonds which will be purchased by the company. Following the bonds issuance, the company will transfer title to the project to the Authority. The Authority will lease the completed project to the company in exchange for rental payments in amounts sufficient to pay debt service on the bonds. The rental payments to the Authority will be made back to the company, as the bondholder. At the end of the lease term, title to the project will revert to the company.



WHAT ARE THE STEPS TO GET STARTED?

First, contact an Authority to find out if your project qualifies. The Authority will provide information on how their program works and what fees are involved.

If the project qualifies, the Authority typically adopts an inducement resolution, preliminarily approving the issuance of the bonds, and a financing team is established, usually including issuer's counsel, lessee's counsel, a trustee and bond counsel.

Next, the Authority contacts the county assessor's office to seek agreement on the calculation of the "leasehold value." The company, Authority and county tax assessor's office execute a memorandum of agreement, detailing how the "leasehold value" will be calculated throughout the term of the memorandum of agreement.

After the Authority approves the transaction and the county's tax assessor's office agrees to a methodology for calculating the "leasehold value," the parties seek judicial approval of the transaction by way of a "judicial validation." The entire transaction can generally be documented and closed within eight to 12 weeks.

WHAT ARE THE BENEFITS TO MY PROJECT?

The savings can be significant. For a project with a fair market value of $20,000,000 in a jurisdiction with a 30 mill tax rate, the first year's saving could equal $120,000 (assuming a 40 percent assessed value and the first year's assessment at 50 percent of the fee simple tax rate).

Typically, the amount of annual savings will be reduced over the term of the lease. Actual savings will vary depending on the agreement reached with the county's tax assessor's office and on the county's millage rate.

FREQUENTLY ASKED QUESTIONS

Q: What is the term of the incentive?

A: It varies by jurisdiction. It could be as few as five years for equipment or as long as 20 or more years. Each jurisdiction has their own program and conditions related to the length of the lease.

Q: When do the incentives begin?

A: The incentives typically begin on the January 1 following the year in which the project received its certificate of occupancy or, if complete, the January 1 following the year in which title is transferred to the Authority.

Q: Does the company get to take depreciation?

A: The company has the benefits and burdens of ownership and is, therefore, treated as the owner for federal tax purposes and, as a result, carries the project on its balance sheet and takes full depreciation expense.

Q: How will project lenders be impacted?

A: The Authority typically subordinates its fee interest to the lender's lien and generally grants leasehold mortgages and/or assignment of its rights; additionally, the company may be asked to pledge the bond to the lender as collateral.