Bond Case Briefs

Municipal Finance Law Since 1971

South Carolina Economic Development Incentives: The Negotiated Fee in Lieu of Property Taxes.

South Carolina has some of the highest business property taxes in the Southeast. The state generally taxes land, buildings, machinery and equipment, and furniture and fixtures, but does not tax inventory, pollution control equipment, intellectual property, and other assets.

To reduce the effect of its high business property tax rates, and to make the state a more competitive environment for business, South Carolina offers a property tax incentive and tax savings for those businesses investing at least $2.5 million over a five year period in the state. This incentive is known as the negotiated fee-in-lieu of property taxes, or "FILOT".

Property taxes are calculated by taking the "value" of taxable property and multiplying it by an "assessment ratio" set by state law and then multiplying that product by an applicable "millage rate" set by local government. Real property owned and used by a "commercial enterprise" has an assessment ratio of 6%, and the personal property of the business is assigned an assessment ratio of 10.5%. Manufacturers are assigned an assessment ratio of 10.5% for both real and personal property.

Under a FILOT, the value of land and buildings is generally set at the value of this property at the beginning of the arrangement (typically, the cost or price paid for these assets) and this value remains constant throughout the term of the FILOT. This value may be adjusted to fair market value every five years, through agreement with the county. The value of personal property (e.g. machinery and equipment) begins with its cost and then is depreciated each year under a statutory rate (e.g. 11% per year for manufacturers) until the property is depreciated down to 10% of its cost.

The FILOT permits a business and the county to negotiate a reduction in the assessment ratio for all property, both real and personal, down to 6% (or even lower with larger investment levels), and the county can agree to "freeze" the millage rate at a fixed rate, or to adjust the millage rate every five years, throughout the term of the FILOT.

The term of a FILOT is from 20 – 30 years, from each year of investment. The county may grant an extension of the FILOT term for up to an additional 10 years. The investment period is generally five years, but may be extended for an additional five years.

There are three types of FILOT arrangements: the original FILOT Act (the "Big Fee"); the Streamlined FILOT Act (the "Little Fee"); and the Simplified FILOT Act. Each FILOT arrangement requires approval by the county, and through a local county council ordinance, which requires three county council readings and a public hearing.

Original FILOT Act ("Big Fee")

Under the Big Fee, a business must invest a minimum of $45 million in property. The Big Fee requires the county to own and have title to the property, so the business must transfer its applicable property to the county, but subject to a lease agreement with the county where the county leases the property back to the business for its use during the FILOT term. The business has the right to terminate the FILOT and reacquire its property during the term of the lease, and at the end of the lease, for nominal consideration (e.g. $1.00).

Streamlined FILOT Act (“Little Fee”)

The Little Fee is similar to the Big Fee, but the investing business must only invest a minimum of $2.5 million over a five-year investment term. Like the Big Fee, the business will transfer its property to the county and lease it back for the term of the FILOT.

Simplified FILOT Act (“Simplified Fee”)

Under the “Simplified Fee” a business must invest a minimum of $2.5 million. However, unlike the Big Fee and Little Fee, title to property may remain with the business, and no lease with the county is required. The business and the county enter into an approved “Fee Agreement” with the property being classified as “economic development property.”

Additional FILOT Parties

With county consent, an additional business or party may be added to a FILOT arrangement as a “sponsor affiliate”. Provided the sponsor affiliate (or multiple sponsor affiliates) makes a required minimum investment (which can be exempted for certain types of businesses, including manufacturing), all property of the sponsor affiliate potentially qualifies for the FILOT.

Larger FILOT Arrangements

Under each of the FILOT arrangements, there are provisions that allow a business to receive a lower property assessment ratio, a longer investment period, and a lengthier FILOT term in return for a substantially higher minimum investment amount, and which is often coupled with a job creation requirement. For example, if a single business invests at least $150 million and creates 125 new full-time jobs in the state, or invests at least $400 million at a project the business may be able to negotiate a reduction of the assessment ratio from 10.5% to 4.0%, an extension of the FILOT term, and the business would have at least 8 years (if an extension is granted – a total of 13 years) to make the required investment.

by Adam Landy | McNair Law Firm, P.A.

7/8/2016

Copyright © 2024 Bond Case Briefs | bondcasebriefs.com