

Bond Case Briefs

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Rivian Lines Up \$15 Billion of Imaginary Bonds to Snag Tax Break.

- **Electric-vehicle maker to build campus outside of Atlanta**
- **The company promises new plant will create thousands of jobs**

Electric-vehicle maker Rivian Automotive Inc. released what would usually be a startling announcement for the municipal-finance market: A potential \$15 billion bond for a Georgia campus, that would in theory be the largest ever muni sale and nearly the size of the company's market cap.

Except, the bonds aren't real.

The debt is structured as what's known as "phantom bonds" that are used by companies to get a property tax break in Georgia, and involve no real financial or accounting impact for the company involved, according to a report by law firm Smith, Gambrell & Russell LLP. In Rivian's case, it's a workaround because the state doesn't have legislation allowing for companies to get abatements that provide such relief.

The massive — yet essentially fictitious — sale is necessary as part of what's one of the largest economic development projects in Georgia's history. It's also indicative of the fierce arms-race states embark on to land massive manufacturing deals that promise high-paying jobs and an economic boon. The company says it will create 7,500 jobs and that once up and running, the facility will eventually produce as much as 400,000 vehicles per year.

The Irvine, California-based Rivian makes electric trucks and sport utility vehicles and is seen as a front-runner chasing market incumbent Tesla Inc. After a blockbuster initial-public-offering in 2021, the company struggled with supply chain challenges and ramping production. It has since managed to accelerate its output from a sole operational plant in Illinois over the course of this year.

The details of the Rivian deal are complicated. The bonds are essentially pseudo-issued through a four-county agency, known as the JDA, located 40 miles from Atlanta, which works to bring economic development to the area.

Under the agreement, the JDA issues the bonds to get a legal title for the project, which it will rent back to Rivian. Then, over the next 25 years, the company will make payments to local governments instead of the full property tax amount, though the payments do take into account local tax rates.

"The whole concept is set up for a break on the ad-valorem taxes," John Shakarjian, Rivian's associate general counsel for real estate and construction, said in an interview. "There's no cash changing hands, there's no cash being generated, there's no movement of money."

Shakarjian said Georgia's system for economic development projects was unusual among US states and even among countries abroad. He noted it's common for companies in Georgia to use the phantom-bond structure.

The bonds simply act as a “vehicle” to provide the tax break to Rivian, said Andrew Capezzuto, chief administrative officer and general counsel for the Georgia Department of Economic Development. He said countless phantom bond deals have been done to provide incentives.

“A lot of other states have the statutory authority to issue abatements and that just doesn’t exist in Georgia,” he said. “So some clever lawyers came up with this way in which they can do it — by transferring title of the asset to a tax exempt entity.”

EV Windfall

Rivian has agreed to make payments-in-lieu-of-taxes — known as a PILOT — of \$1.5 million that will gradually increase to \$20.4 million by 2047. The company guaranteed it will pay at least \$300 million, though that could increase if Rivian spends more than its initial commitment.

Currently, the area that will be home to Rivian’s new factory generates tax revenue of only about \$80,000, according to the state.

The reason why such deals are known as phantom bonds is that no actual debt service payments are made, unlike traditional transactions. As part of this structure, Rivian’s rent will always equal the debt service costs and because Rivian is the sole bondholder, money doesn’t change hands.

“Since the company is both the tenant and bondholder, such principal and interest payments may be constructively made and may be deemed to be made when due,” the securities filing reads.

So far, \$5 billion of phantom bonds have been issued as part of the agreement as Rivian kicks off the project, according to Shakarjian, the company’s lawyer. If costs rise, Rivian can request that the JDA increase the bond’s size to shield those costs from higher property taxes, he said. The JDA has authority for as much as \$15 billion of Rivian’s project costs to be abated.

Georgia’s economic development agency has said that the deal is similar to agreements put in place for other companies like Kia Corp. and SK Innovation.

The deal faced controversy and a legal challenge in the state. But in August, a judge validated the bond agreement. One local resident in a 2022 column in the Morgan County Citizen said the EV company was being given a “free ride” by Georgia.

Capezzuto, the counsel for the state’s economic development arm, said that Rivian isn’t being taxed at full value but it’s akin to sacrificing a few slices of pie.

“But Rivian might have chosen to go somewhere else,” he said. “If Rivian chose to go somewhere else, we would have no pie at all.”

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