A RESOURCE GUIDE TO ECONOMIC INCENTIVE AGREEMENTS

What Is an Economic Incentive Agreement? Under Illinois law, all municipalities (home rule and non-home rule) are allowed to enter into Economic Incentive Agreements (EIAs) with a developer or tenant to share or rebate "retailers occupation taxes" ("sales taxes") over a finite period of time.

The objective of these agreements is to provide a source of funds to make high impact projects financially feasible that would otherwise not be. Projects resulting in part from EIAs must be expected to: create or retain jobs; further development in surrounding areas; strengthen the commercial sector of the municipality; enhance the tax base of the municipality; and be in the best interest of the municipality.

As these agreements are ultimately contracts between the municipality and a developer or tenant, the amount of tax sharing, timing of payments, performance and compliance requirements, and other details are negotiated on a project-by-project basis. EIAs are particularly attractive to municipalities; from day one, some portion of the new sales taxes will go to the general fund of the municipality (under most sharing agreements) and help maintain fiscal balance.

The Illinois Business District Act, 65 ILCS 5/65 ILCS 5/Art. 8 Div. 11-20 is the enabling legislation for these agreements.

How it Works

Retail sales taxes are collected from consumers by retailers and from retailers by the Illinois Department of Revenue. These taxes are tracked based on municipal point of sale. In turn, those taxes are paid to the State Treasurer who returns the appropriate municipal share to each community. During the period of an EIA, and subject to the terms and conditions of that agreement, a municipality then rebates taxes to the developer or tenant that is party to the agreement. The sales tax taxes and rates that can be shared under an EIA are summarized below:

Home Rule	
General Merchandise, Autos, Food	1.0%
Home Rule General Merchandise	Theoretically unlimited, based on municipal law; usually 1.0% to 1.5%
Non-Home Rule	
General Merchandise, Autos, Food	1.0%

Typically under an EIA, a municipality retains some percentage of the new sales taxes starting on the first day the project opens. EIAs must be for a fixed period of time (generally no more than 20 years). The amount rebated to the developer or tenant can be further limited based on a total dollar amount, a fixed percentage of sales taxes, a percentage of sales above a baseline, or other structures. The goal of all EIAs is to structure a deal that provides sufficient assistance to make a project feasible while maximizing the sales taxes retained by the municipality.

Required Findings

A municipality can enter into an EIA with a developer or tenant after making the following two sets of findings:

1. Site Eligibility Findings

For sites comprised of vacant land:

- The property subject to the agreement has remained vacant for at least one year; or
- If there was a building on the site in the past year, before demolition, that building would have met the standards for sites with buildings on them, as described below.

For sites with buildings on them:

- The buildings on the site no longer comply with current building codes; or
- The buildings have remained "... underutilized for a period of at least one year."

2. Project/Deal-Specific Findings

(all of the following findings must be made)

- The project is expected to create or retain job opportunities within the municipality;
- The project will further the development of adjacent areas;
- Without this agreement, the project would not be possible (the so-called "but for" test);
- The developer meets at least one of the following high standards of creditworthiness:
  - Corporate debenture ratings of BBB or higher by Standard & Poor's or Baa or higher by Moody's,
  - A letter from a financial institution with assets of $10,000,000 or more, attesting to the financial strength of the developer, or
  - Specific evidence of equity financing of not less than 10% of total project costs;
- The project will strengthen the commercial sector of the municipality;
- The project will enhance the tax base of the municipality; and
- The agreement is made in the best interest of the municipality.

It is desirable to have documentation and analysis to support the making of any such findings by a government body.

Eligible Costs

Taxes rebated under an EIA can be used for any purpose, including capital costs (such as public infrastructure, site preparation, building rehabilitation or tenant improvements) or incentive payments otherwise required to achieve a financially-feasible project.

Point of Sale Considerations

65 ILCS 5/Art. 8 Div. 11-21 provides some limitations regarding the use of EIAs, specifically related to point of sale issues. It requires that municipalities submit reports on all point of sale related issues for EIAs to the Illinois Department of Revenue. In addition, a municipality is not allowed to enter into an EIA with a tenant or developer if, absent the agreement, the sales taxes would have been paid to another unit of local government and the tenant maintains a retail location in that other municipality.

Reporting

Public Act 097-0976 requires all units of local government to electronically report agreements commonly known as "rebate sharing agreements" to the Illinois Department of Revenue. More information on reporting requirements and the agreements that are submitted to the Department of Revenue can be found online at: http://www.revenue.state.il.us/LocalGovernment/RebateSharing.htm

Other Considerations

EIAs can be utilized on their own or combined with other economic development tools, such as Business Districts and/or Tax Increment Financing (TIF), to help facilitate otherwise infeasible development projects.

Compared to TIF and Business District funds, there is more flexibility regarding potential uses of rebated sales taxes under an EIA. These funds are also potentially available sooner than TIF funds since the Illinois Department of Revenue disburses sales tax proceeds on a monthly basis (three months in arrears).

NOTE: This document is only a brief summary of the requirements and conditions for Economic Incentive Agreements. The full text of the enabling legislation can be found online at: www.ilga.gov | http://bit.ly/2d5Pw0B

For more information, please visit our website at **www.sbfriedman.com** or contact us at **info@sbfriedman.com.**