SEYFARTH SHAW

BONDS FOR TITLE MADE SIMPLE

How Georgia "Abates" Property Taxes

Daniel M. McRae

Seyfarth Shaw LLP

404-888-1883

dmcrae@seyfarth.com

danmcrae.com

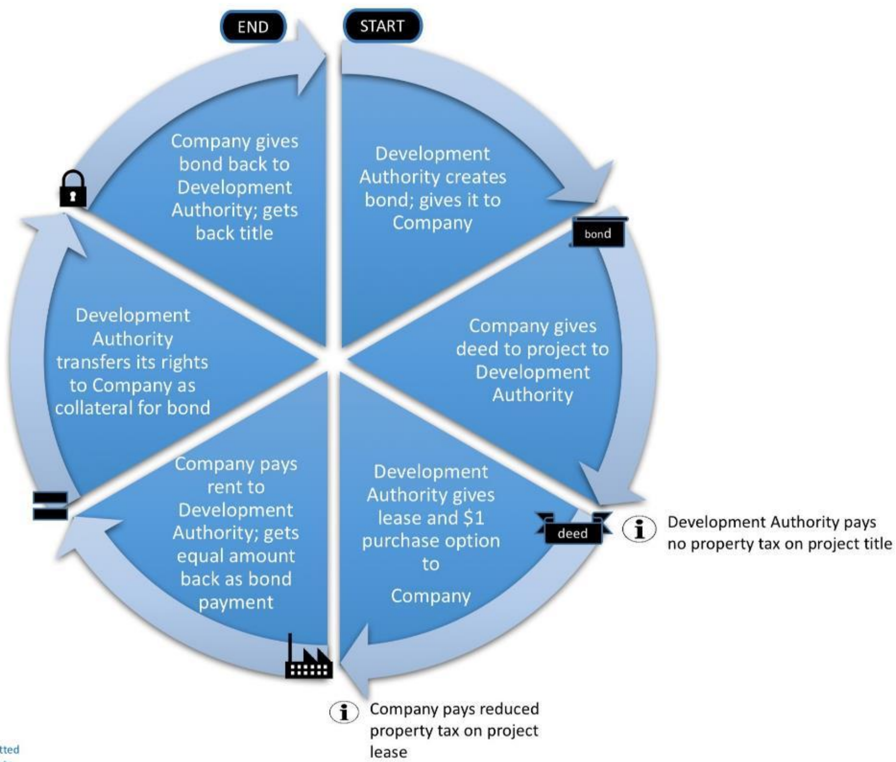
FACEBOOK http://facebook.com/danmcrae68

LINKEDIN http://linkedin.com/in/danmcrae2

TWITTER @McRaeDan

Seyfarth Shaw LLP

HOW IT WORKS


END
START
Development Authority creates bond; gives it to Company
bond
Company gives deed to project to Development Authority
deed
Development Authority pays no property tax on project title
Development Authority gives lease and $1 purchase option to Company
Company pays reduced property tax on project lease
Company pays rent to Development Authority; gets equal amount back as bond payment
Development Authority transfers its rights to Company as collateral for bond
Company gives bond back to Development Authority; gets back title

NOTES

- In order to obtain property tax savings, legal title to the Project must be transferred to the local Development Authority, with the Company assuming the status of a lessee. "Abatement" results since tax is not paid on the legal title held by the Development Authority, and the lease is made either nontaxable, or taxable only in accordance with the applicable abatement schedule. The abatement schedule is negotiable, but can be constrained by local policies.
- This structure involves the issuance of a taxable industrial development revenue bond by the Development Authority to the Company to acquire the Project.
- The Project, as it then exists, will be transferred to the Development Authority and the Company's cost basis will be the initial balance of the Bond, which is a draw-down instrument.
- As between the Development Authority and the Company, the flow of funds related to the issuance of the bond is a "wash", or cashless, transaction, since the seller of the Project is the Company which is also the buyer of the bond.
- The Development Authority will lease the Project back to the Company under a bond lease at a rent equal to debt service on the bond.
- In addition to being the holder of the bond, the Company is also the lessee under the bond lease.
- The payment of rent under the bond lease payable by the Company is assigned by the Development Authority to the Company, as bondholder. Because these amounts are equal and offsetting, the payment of rent and debt service is a "wash", or cashless, transaction.
- The Company merely notes rent payments as a credit to debt service on the Bond's schedule of payments.
- No cash has to actually change hands. The Development Authority is the owner and lessor of the Project, but its rights to receive rent and a security interest in the Project would be pledged to the bondholder (i.e., the Company) as security for the bond, by a deed to secure debt, assignment of leases and rents and security agreement.
- Therefore, the Company has complete control over the Project at all times.
- However, the security title and security interests securing any loan by any existing secured lender on the Project will retain priority, and will not be affected by the transaction (there may be a need for a waiver of any "due on sale" clause or the like).
- The Company, as lessee, would have an option to buy the Project for $1 when the bond has been retired.
- If, for some reason, the Company wished to obtain title earlier, it could do so by paying off (or canceling) the bond and paying the $1 option price.
- The bond lease would terminate upon reacquisition of title by the Company, as would the tax savings period

QUESTIONS?

Daniel M. McRae, Partner

Seyfarth Shaw LLP

1075 Peachtree Street, N.E., Suite 2500
Atlanta, Georgia 30309
Telephone: 404.888.1883
dmcrae@seyfarth.com

http://danmcrae.com

DOWNLOADS

THIS PRESENTATION AND MY WHITE PAPERS ON ECONOMIC DEVELOPMENT AND OTHER TOPICS CAN BE DOWNLOADED

at http://danmcrae.com/whitepapers

MORE INFORMATION

This presentation is a quick-reference guide for company executives and managers, elected and appointed officials and their staffs, economic developers, participants in the real estate and financial industries, and their advisors. The information in this presentation is general in nature. Various points which could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case. Any tax information or written tax advice contained herein is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.