

## **Industrial Revenue Bond Exemptions**

### **Qualification**

The following can qualify for exemptions from ad valorem taxes on proceeds of industrial revenue bonds (IRB): purchasing, acquiring, reconstructing, constructing, improving, equipping, furnishing, repairing, enlarging or remodeling facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development, and manufacturing purposes.

In order to qualify, the property must have been constructed or purchased with the proceeds of revenue bonds issued under direction of K.S.A.12-1740 to 12-1749d. Only property purchased or built with IRB proceeds is eligible.

### **Definite Non-Qualifiers**

The following, even though funded by IRBs, do not qualify for exemption:

1. Any project where the city or county issuing the IRB has agreed that the taxpayer will not seek a property tax exemption as a condition for issuing the bonds
2. The property is located in a redevelopment project area established by K.S.A. 12-1770
3. Any retail enterprise identified under the SIC codes 52-59, unless it's a facility used to house the headquarters or back office operations of the retail enterprise
4. Property used for poultry or rabbit confinement facilities per K.S.A 79-201a *Second*. Additionally, K.S.A. 12-1749b states that IRBs can't be issued for swine confinement facilities, thereby making them ineligible for IRB exemption.

### **Step One--Filing Statements with City or County**

Cities and counties will have to receive approval of either a letter of intent, adopted resolution of intent, or an inducement resolution to issue revenue bonds in the following circumstances (circumstance/approval issuer):

- City proposing to issue revenue bonds for a facility located outside the city limits / Board of County Commissioners in county in which facility is located.
- City proposing to issue revenue bonds for a facility located within another city's limits / governing body of city in which facility is to be located.
- City proposing to finance a facility located outside the county or counties in which any portion of the facility is located / Board of County Commissioners in which the facility will be located.
- City or county proposing to issue revenue bonds for a facility located on property owned by another city or county / governing body of city or county which owns the property.

Approval by a Board of County Commissioners is not required in the case where revenue bonds are being used to finance construction of a facility(s) on real estate where the issuing city has any title interest, or in which any title interest is in another entity which acquired such interest in whole or in part with funds of the city issuing the revenue bonds.

- A city or county receiving the intent letter, resolution, or inducement resolution has seven business days after the next regular meeting of the governing body to disapprove the issuance. If no word comes, the intent letter, resolution, or inducement resolution is deemed approved.
- County proposing issuance of revenue bonds for a facility located within the corporate limits of a city, or within three miles of the corporate limits of a city, or within another county / governing body of city or county in which facility is to be located. Approval of a city governing body shall not be required for a facility located on real estate, the title to which is in the county issuing the revenue bonds.
- Above applies here as well.

### **Step Two--Filing Statement with the Court of Tax Appeals**

No city or county can issue IRBs until after an information statement and fee have been filed with COTA, and the Chairman has issued a letter indicating all of the information required to be filed has been provided (K.S.A. 12-1744b).

The informational statement must include the following information and must be filed seven days prior to the issuance of IRBs (K.S.A. 1744a).

1. The names of the city or county proposing issuance, the lessee, the guarantor, if any, the paying or fiscal agent, the underwriter, if any, and all attorneys retained to render an opinion on the issue.
2. A legal description of the proposed property to be exempted, including the city or county in which the facility will be located.
3. The appraised valuation of the property as shown on the records of the county for the preceding January 1.
4. The estimated total cost of the facility, including a broken down estimation of real and personal property costs.
5. If the project is an expansion to a building that was purchased, or built by IRB financing, include date of such issuance. If that building is currently exempt from property taxation, include the period of exemption.
6. The principal amount of IRBs to be issued.
7. The amount of any payment in lieu of tax.
8. An itemized list of service fees or charges to be paid by the lessee, together with a detailed description of the services to be rendered.
9. A reasonably detailed description of the use of bond proceeds, including whether proceeds will be used to purchase, acquire, construct, reconstruct, improve, equip, furnish, enlarge, or remodel the facility in question.

10. Proposed date of issuance of IRBs (Note: This information statement must precede issuance by at least seven days).

If an item above is not included, and doesn't materially alter the reason for issuing the IRBs, it may be filed within 15 days of issuance of IRBs to COTA. There is a filing fee of \$250 set by COTA.

### **Step 3-- Cost Benefit Analysis, Public Hearing, and Resolution/Ordinance**

Prior to issuing the bonds, a city or county must do the following (See K.S.A. 12-1749d, and amendments thereto):

1. Complete a cost benefit analysis (CBA). The cost benefit analysis must include the effects on state revenues.
2. Once completed, it is required that a public hearing be conducted to address the project in its entirety, including the cost benefit, and the effects on state revenues. Notice of the public hearing must be published in the official newspaper, at least once, seven days prior to the scheduled date of hearing.
3. In addition to publishing the notice, and conducting the public hearing, the city or county clerk, whichever appropriate, must notify in writing the governing body and the unified school district within which the property proposed for tax exemption is located.
4. The city or county must pass an ordinance or a resolution authorizing the issuance of IRBs.

### **Step 4—Application Process**

Once IRBs have been issued and the property has been constructed or purchased, the appropriate city or county official completes and submits an application for exemption pursuant to K.S.A. 201a *Second*. A filing fee of \$500 for applications of \$1 million or less and \$1,000 for applications of more than \$1 million from the applicant must be included with the application. The application must show the following:

- Evidence that the requirements of K.S.A. 79-201a *Second* and K.S.A. 12-1749d are satisfied
- A detailed list of the property constructed or purchased with the proceeds of revenue bonds
- That the bond-funded property is not in a redevelopment project area as defined by K.S.A. 12-1770 et. seq.
- A description of the use of the bond-funded property
- The date the bonds were issued, and the date the property was purchased, and/or the date construction commenced and ended
- Whether the property at issue, or any property associated therewith was previously exempt, or is currently exempt pursuant to either K.S.A. 79-201a *Second* or Article 11, Section 13 of the Kansas Constitution
- Whether the property at issue, or any portion thereof, is used in any retail enterprise
- Whether the property at issue, or any portion thereof, is a poultry or rabbit confinement facility located on agricultural land which is owned, acquired, obtained, or leased by a corporation, as defined in K.S.A.17-5903

- Whether step one above has been completed, if applicable, and that all information in steps two and three above have been completed with all time sensitive documents dealt with appropriately

The county appraiser will consider the above information and include his/her comments on the application form.

COTA will either set a hearing, or decide on the application, based on the documents presented. Any party has the right to a hearing upon request. As of July 1, 1998, the application is deemed approved if instruction and assistance is sought and provided by the Kansas Department of Commerce, and 30 days from receipt of all material (not necessarily just the application) has passed without any action by the Court.

If a hearing is required, it must be scheduled within 30 days of receipt of all material and must be conducted within 60 days of the date the hearing was scheduled. Any party applying for either EDX or IRB exemptions may file a petition for reconsideration with COTA within 30 days after final service of final order. Review of COTA decisions are heard by the Kansas Court of Appeals. A party must first petition COTA for reconsideration in order to appeal any decision to the Court of Appeals.

If COTA decides in favor of the applicant, the county appraiser shall remove the property from the tax rolls.

During the period of exemption, the governing body must file with the county appraiser a claim for exemption indicating the property is still being used for the purposes defined in the original application. This must be filed on the proper form.