

Chapter 100 Program Benefits

Chapter 100 authorizes cities and counties to issue industrial development bonds to finance a wide variety of commercial facilities and equipment, and to offer real and/or personal property tax abatement, sales tax exemption on construction materials and sales tax exemption on tangible personal property.

Chapter 100 Property Tax Abatement

Under Missouri law, all property of any political subdivision is exempt from taxation. In a typical Chapter 100 revenue bond transaction, the municipality holds fee title to the project and leases the project to a company for which the municipality wishes to offer tax abatement. Concurrently with the closing of the bonds, the company conveys title to the site on which the project will be located to the municipality. The municipality leases the project site, together with all improvements made (including the project), back to the company pursuant to a lease agreement. To achieve partial tax abatement, the company makes payments in lieu of taxes (“PILOTs”) equal to the difference between the abatement amount and the taxes otherwise due. (For instance, to achieve a 25% tax incentive, the company makes PILOTs equal to 75% of the taxes that would otherwise be due, but for the municipality’s ownership of the project.) Both the length of the abatement and the term of the abatement are negotiable.

If the bonds are being issued solely to facilitate property tax abatement, and not to access capital, the company is typically the purchaser of the bonds. Under this scenario, the company’s obligation to make “rental payments” under the lease agreement is offset by the municipality’s obligation to make “debt service” payments to the company under the bonds. When the tax abatement term ends, the company may acquire the project from the municipality for nominal consideration.

Although the Missouri Supreme Court has held that a leasehold interest in governmentally-owned property is taxable, it is taxable only to the extent that the economic value of the lease is less than the actual market value of the lease. Under the industrial

revenue bond structure, where rental payments under the lease agreement equal the debt service payments on the bonds, the property should be exempt from ad valorem taxation and personal property taxation so long as the bonds are outstanding.

Chapter 100 Sales Tax Exemption

Missouri law provides an exemption for materials used on the construction of facilities for cities, counties and other political subdivisions. Therefore, a municipality may allow any company that undertakes a project under Chapter 100 to use the municipality’s sales tax exemption certificate, so that materials used in construction or real property improvements are exempt from state and local sales and uses taxes.

In addition, a company may apply to the Missouri Department of Economic Development (“DED”) to receive a sales tax exemption on all personal property purchased through a revenue bond transaction. To receive this exemption, the personal property must qualify as a “project” under the Chapter 100.

Tax Abatement and Sales Tax Exemption Under Other Statutes

Frequently, especially in the St. Louis and Kansas City metropolitan areas, a municipality may wish to offer tax abatement to a company through a city- or county-related agency. The Land Clearance for Redevelopment Authority Law, found in Chapter 99, allows real and personal property tax abatement within “blighted” areas. The Port Authority Law, found in Chapter 68, allows real and personal property tax abatement anywhere within the Port Authority’s jurisdiction. Both of those agencies may offer sales tax exemption on construction materials — just as described above under Chapter 100. However, the State of Missouri’s Department of Economic Development is not authorized to provide sales tax exemption on tangible personal property in connection with tax abatement programs of a Land Clearance for Redevelopment Authority or Port Authority.

