

# Just the Facts:

## Industrial Revenue Bonds (IRB) Operating Procedures

Adopted by Kentucky Economic Development Finance Authority on June 27, 2002; Revised 01/12/2004; Revised 04/29/2004; Revised 12/02/2004; Revised 05/26/2005; Revised 08/04/2006; Revised 7/25/2013

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### The Kentucky Economic Development Finance Authority operating procedures for the evaluation and approval of reduced ad-valorem taxes related to industrial revenue bonds under KRS 103.210

KRS 103.210 requires the Kentucky Economic Development Finance Authority (KEDFA) to evaluate and give its prior approval of the reduction of the state ad valorem tax rate on property being financed through the issuance of industrial revenue bonds by a tax-exempt governmental unit or statutory authority when the following occur:

- the structure of the proposed bond issue will require that all or part of the financed industrial project be leased from the tax-exempt governmental unit or statutory authority, and
- the ad valorem tax on the industrial project will be reduced as provided by KRS 132.020.

Under this legislation, KEDFA is required to adopt operating procedures governing its review and evaluation of the above-described industrial revenue bond issues for the purpose of determining whether a reduction in the ad valorem tax should be approved.

### Eligibility and Application Process

KEDFA shall only review the reduction of the state ad valorem tax rate on property being financed through industrial revenue bond issues of tax-exempt governmental units and statutory authorities where the issuing entity adopted with respect to the issuance of such bonds the following action on or after July 15, 2002: a) an inducement or similar resolution, b) municipal order, or c) an authorizing resolution or ordinance in the event that the adoption of an inducement or similar resolution or municipal order is not necessary. KEDFA review and approval of any such industrial revenue bond issues is not required if the issuing entity has adopted an inducement or similar resolution or municipal order prior to July 15, 2002, even if the issuing entity adopts an authorizing resolution or ordinance with respect to the issuance of such bonds on or after July 15, 2002.

KEDFA shall only approve or disapprove the reduction of the state ad valorem tax rate on property being financed through the issuance of industrial revenue bonds by a tax-exempt governmental unit or statutory authority when:

- it is anticipated that the original principal amount of the proposed bond issue will exceed \$500,000,
- the structure of the bond issue contemplates that all or a portion of the bond financed facility or equipment will be leased from the tax-exempt governmental unit or statutory authority to a company,
- the tax-exempt governmental unit or statutory authority anticipates a reduction of the ad valorem tax as authorized by KRS 132.020, and
- the tax-exempt governmental unit or statutory authority adopted an inducement resolution/municipal order on or after July 15, 2002.

For industrial projects interested in the reduction of the state ad valorem tax as provided by KRS 132.020, the tax-exempt governmental unit or statutory authority and the company requesting the issuance of industrial revenue bonds shall submit a joint application to KEDFA using the most recent application form. The joint application shall be submitted forty-five (45) days prior to the anticipated date of issuance of the industrial revenue bonds by the tax-exempt governmental unit or statutory authority. The joint application shall be accompanied by (a) a certified copy of the tax-exempt governmental unit or statutory authority's inducement resolution/municipal order or, if no inducement is required, a resolution/ordinance authorizing the issuance of the industrial revenue bonds for the particular industrial project; and (b) a five hundred dollar (\$500) non-refundable application fee paid either by the issuer or the company on whose behalf the industrial revenue bonds are to be issued.

## Evaluation Criteria and Conditions

The following criteria shall be considered by KEDFA when evaluating a request for the reduction in the ad valorem tax imposed on projects being financed pursuant to KRS 103.200 to 103.285:

- The number of existing full-time jobs committed to be retained and the number of new, full-time jobs committed to be created by the company for which the bonds are to be issued. Full-time job shall be defined as a position filled by an employee (excluding contract or part-time employees) that the company projects will work, on an annual basis, one thousand eight hundred and twenty (1,820) hours;
- The average salary committed to be paid for each full-time job created or maintained and the employee benefits to be offered by the company requesting the issuance of the industrial revenue bonds;
- The amount of capital investment being made by the company in the industrial project that is being financed by the industrial bonds;
- The unemployment rate in the county of the industrial project;
- The state tax incentive programs and grant/loan programs that the company is either seeking to or in which it is participating for the particular industrial project;
- Whether the proposed project would be eligible to participate in a tax incentive or grant/loan program offered under KRS Chapters 154 or 148;
- Whether the new project is a relocation of an existing Kentucky business;
- The new tax revenues which the company and the tax-exempt governmental unit or statutory authority anticipates will be produced by the industrial project over the life of the bond issue;
- The approximate amount and percentage of the state and local ad valorem taxes which will be lost as a result of the applicant company leasing all or a portion of the industrial project from the tax-exempt governmental unit or statutory authority; and
- The documentation provided by the company and the tax-exempt governmental unit or statutory authority (i.e., resolutions, Payment In Lieu of Tax Agreement, etc.) which demonstrates local support of the industrial revenue bond financing by all governmental entities affected by the proposed bond issue.

As a condition of approval of the proposed bond issuance, KEDFA may require the execution and delivery of a Payment in Lieu of Taxes Agreement, by and among the company, KEDFA, the Department of Revenue and if necessary, the issuer, which Agreement will offset, in whole or in part, the portion of the ad valorem taxes that the state will lose as a result of the applicant company leasing all or a portion of the industrial project from the tax-exempt governmental unit or statutory authority.

When reviewing a specific bond financed industrial project, KEDFA shall review and consider the total incentives that have been awarded to the industrial project under other programs. Upon recommendation of Commissioner of the Department for Business Development upon the recommendation of the Secretary of the Cabinet, KEDFA may

elect to reduce the amount of tax credits and/or wage assessment benefits previously approved under KRS Chapter 154 for the subject industrial project.

### KEDFA Review, Approval and Reporting to the Department of Revenue

KEDFA shall evidence its approval or disapproval of the proposed bond issue through the adoption of a resolution and, if KEDFA is requiring a Payment in Lieu of Taxes Agreement, the resolution shall also approve such Agreement and authorize the appropriate officials of KEDFA to negotiate the terms of and execute such Agreement. A copy of this resolution shall be sent to the applicant company, the tax-exempt governmental unit or statutory authority issuing the industrial revenue bonds and the Department of Revenue.

In order to facilitate the enforcement of KRS 103.210 and KRS 132.020 by local Property Valuation Administrators, KEDFA shall send a quarterly report to the Department of Revenue of all industrial revenue bond issues reviewed by KEDFA pursuant to KRS 103.210 and KRS 132.020 during the previous quarter.

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