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ECONOMIC DEVELOPMENT FUNDAMENTALS SEMINAR

PROPERTY TAX BASICS AND INCENTIVES

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PROPERTY TAX BASICS AND INCENTIVES

I. Basic Property Taxes

II. Fee in Lieu of Tax (“FILOT”)

III. Multi-County Industrial or Business Park (“MCP”) /Special Source Revenue Credit (“SSRC”)

IV. Abandoned Buildings Revitalization Credit

I. BASIC PROPERTY TAXES

Property Subject to Tax:

- Real Property – land and all structures and other things contained in the land or annexed or attached to the land (e.g., buildings and other improvements)
- Personal Property – all things, other than real estate, which have any pecuniary value (e.g., M&E)
- Intangible personal property and inventories not subject to tax
- See S.C. Code § 12-37-10 & 12-37-210 and S.C. Code of Regulations 117-1700.1
- Example – Air Conditioning
    - Building air conditioning, incl. refrigeration equipment – Real Property
    - Air condition window units & package units – Personal property

I. BASIC PROPERTY TAXES

Equation to calculate your property tax bill

FMV * Assessment Ratio * Millage = 

I. BASIC PROPERTY TAXES

- FMV – Real Property (other than agricultural real property and FILOT real property) – appraised to determine FMV
  - Generally, reappraised every 5 years, though county can delay reassessment by 1 year
  - Maximum increase in FMV due to countywide reassessment is 15% in 5 year period
  - FMV of improvements added to FMV of land upon completion – not subject to 15% cap
  - Can also be reassessed for assessable transfer of interest – not subject to 15% cap
  - See S.C. Code §§ 12-37-3120 – 12-37-3170; § 12-43-217

I. BASIC PROPERTY TAXES

- FMV – Personal Property
  - Manufacturers – from cost, fixed annual statutory depreciation down to residual value – S.C. Code §12-37-930

    Examples: Default – 11%, Aerospace – 15%, Life Sciences and Renewable Energy – 20%
  - Merchants and other businesses – from cost, income tax depreciation down to residual value

I. BASIC PROPERTY TAXES

Assessment ratios are found in the State Constitution:

- Manufacturing and Utility: 10.5%
- Commercial Personal Property: 10.5%
- Commercial Real Property: 6%
- Primary Residences: 4%
- Farm: 4%
- Personal Motor Vehicles: 6%

I. BASIC PROPERTY TAXES

Manufacturer's Assessment Ratio – S.C. Code § 12-37-220(A)(7)

- Generally, 10.5% on real and personal property
- Exceptions for real property owned by, or leased to, a manufacturer and used primarily for:
  - R&D;
  - Office building – if not located on premises of, or contiguous to, plant site; or
  - Warehouse and wholesale distribution – if property not physically attached to plant unless area is separated by a permanent wall

I. BASIC PROPERTY TAXES

- Millage includes the combined millage for all taxing entities within jurisdiction
  - Always includes county and school district; sometimes includes municipalities or special purpose districts
  - Determined by each taxing jurisdiction by dividing cost of its annual budget by the total assessed value within taxing jurisdiction
  - Restrictions in millage increases

I. BASIC PROPERTY TAXES

Manufacturer's Abatement – S.C. Code § 12-37-220(A)(7)

- All new manufacturing establishments as well as all additions of at least $50,000
- Abates (exempts) the county portion of the millage for five years for manufacturers – Automatic (county consent NOT required)
- Typically between 20% (in a city) and 40% (not in a city) of the millage
- Cities (by ordinance) may also abate their portion of the millage
- Not available if benefiting from a negotiated FILOT
- Similar abatements available for corporate headquarters, distribution facilities, and R&D facilities
  - Corporate HQ and distribution facilities also required to create 75 or more new full-time jobs (or 150 substantially equivalent) in State

I. BASIC PROPERTY TAXES

Extension of Abatement to Unrelated Purchasers – S.C. Code § 12-37-220(C) and SC Revenue Ruling # 04-14

- Facility must be acquired in arms-length transaction by unrelated party
- Existing facility and # of jobs must be preserved
- County council must approve
- If transferee makes $50,000 or more of additional investment, 5-year period may re-start
- Timing – need to approach county and, perhaps, conduct any layoffs prior to closing
- In certain extended closing scenarios, may qualify for abatement for "new" facilities (no requirement to maintain jobs or facility) if meets additional factors including change in product and change in product market

I. BASIC PROPERTY TAXES

Pollution Control Exemption:

- Complete exemption for facilities or equipment which are designed for the elimination, mitigation, prevention, treatment, abatement or control of internal or external water, air, or noise pollution requirement by the state or federal government
  - Upon request of DOR, DHEC can investigate property and provide DOR with listing of pollution control property
  - Dual purpose equipment – production and pollution control – value eligible for exemption is difference between cost of equipment with vs. without pollution control ability
  - See S.C. Code § 12-37-220(A)(8)

I. BASIC PROPERTY TAXES

Change in Use – Rollback Taxes:

- Agriculture use valuation generally based on 1991 values
- Change in use of agriculture real property results in additional taxes
- Equals sum of difference between taxes based on FMV for agricultural purposes and taxes that would have been paid if real property had been valued, assessed, and taxed as other real property in taxing district
- Current tax year (year of change in use) and 5 preceding tax years
- See S.C. Code § 12-43-220(d)

II. FILOT

Equation to calculate your property tax bill:

FMV * Assessment Ratio * Millage = 

- FILOTs affect all 3 variables in property tax formula – (1) FMV; (2) AR; and (3) Millage

II. FILOT

- 3 FILOT Statutes/Acts – Most commonly used today – Title 12, Ch. 44 of S.C. Code (Simplified FILOT)
- Minimum "Project" Requirements
  - Standard FILOT
    - $2.5 MM ($1 M for certain counties or in Brownfields Voluntary Cleanup Scenarios)
  - Super Fee/Enhanced Investment FILOT
    - $150 MM and 125 new full-time jobs or $400 MM
  - Very broad definition of "project"

II. FILOT

- Investment Period
  - Standard FILOT – 5th anniversary of end of property tax year in which FILOT property initially placed in service
  - Super Fee/Enhanced Investment FILOT – 8th anniversary of end of property tax year sin which FILOT property initially placed in service
  - Extensions – up to 5 more years (but NOT to reach statutory minimums)
  - 15 year investment available for very large investors in SC
- FILOT Term
  - Up to 30-year rolling payment period for Standard FILOTs (40-year period for Enhanced Investment FILOTs)
  - Possible extension of 10 years
- FILOT affects all 3 variables in property tax calculation

II. FILOT

Fair Market Value (FMV):

Real Property

- Outside of FILOT: Based on assessment by DOR or county assessor
- Inside of FILOT: Traditionally, original cost over the life of the FILOT (but statute now allows for value to be based on appraisal by DOR)

Machinery & Equipment (M&E)

- Generally, same outside and inside FILOT, but if in FILOT not entitled to extraordinary obsolescence

II. FILOT

Assessment Ratio:

- Outside of FILOT
  - Manufacturing – 10.5% on both real and personal property (chiefly M&E)
  - Commercial – 10.5% on personal property and 6% on real property
- Inside of FILOT
  - Down to 6% on both real and personal property
  - 4% for Super Fees/Enhanced Investment FILOTs

II. FILOT

NPV FILOT:

- Alternative payment method
- Minimum investment of $45MM
- Utilizes discount rate equal to yield in effect for new or existing US Treasury bonds of similar maturity published in month that Fee Agreement is executed
- Flat fee payments
- Advantages
  - Predictability of payment
  - Eases cash flow in early ears
- Disadvantages
  - Very complicated to administer
  - Disposal fees can be significant

II. FILOT

Advantages of FILOT to Taxpayers:

- ✓ Reduction of assessment ratio
- ✓ Elimination of agricultural rollback taxes (if real estate is AG use)
- ✓ Freezing of millage rate
- ✓ Greater predictability in forecasting FILOT payments

Advantages of FILOT to County:

- ✓ Eliminates 5-year abatements (manufacturing, corporate HQ, R&D)
    - County does not lose first 5 years of property taxes

II. FILOT

<u>Disadvantages of FILOT to Taxpayers:</u>

- ✓ Possible clawback (although clawback is negligible if no SSRC)
- ✓ Normally, freezes the FMV of the real property
- ✓ Lose extraordinary obsolescence
- ✓ Generally, can't include property previously subject to tax
  - Limited exceptions
  - May be addressed through special source revenue credit
  - Modifications to existing real property

II. FILOT

Additional Notes:

- Affiliates, lessors, and other investors may be able to also benefit
- Amendment of FILOT Agreements – Can NOT lower the millage rate or AR
- Transitions to Simplified Fee from other 2 FILOT statutes is allowed
- Transfers of FILOT agreements or property under a FILOT
  - Allowed if pre-approved or subsequently ratified by county
  - Transferee assumes basis of transferor – IMPORTANT

II. FILOT

- Why wouldn't a purchaser want to assume an existing FILOT arrangement?
  - Primary consideration – prospective FILOT payment schedule vs. prospective standard property tax payment schedule
    - Upon FILOT transfer, purchaser assumes basis (value) that seller had in real and personal property for purposes of calculating FILOT payments – can create issues, especially for real property
    - If FILOT Agreement allows, purchaser could assume FILOT and then remove real property from FILOT

II. FILOT

- FILOT/tax payments aren't only consideration
  - Initial investment or job creation requirements
  - Investment or job maintenance requirements
  - Clawback payments or prospective termination of benefits
  - NPV FILOT – could trigger true-up payments even if all other requirements are met

III. MCP/SSRC

- Established pursuant to Article VIII, Section 13(D) of the State Constitution and Title 4, Ch. 1 of the S.C. Code
- Counties may jointly development MCP within the geographical boundaries of one or more of the member counties
- Written agreement to share expenses and revenues of the park
- If the MCP encompasses property in a municipality, the municipality must consent prior to creation of the MCP
- All MCPs must consist of contiguous counties – enacted in 1995

III. MCP/SSRC

- “Industrial” or “Business” parks are NOT always MCPs
- Area comprising the parks and all property located therein is exempt from ad valorem taxes
- Owners or lessees of park MCP property pay an amount equal to property taxes or FILOT that would have been due and payable except for exemption
- Why bother with a MCP?

III. MCP/SSRC

- MCPs facilitate taxpayer benefitting from SSRCs
- County may use SSRCs to equalize (or lower) its property tax rate with any other county or state
- FILOT NOT a requirement for SSRCs
- Typically, presented as a % of FILOT payment or a flat $ amount for a defined period of time
- Both real and personal property expenditures may now be reimbursed
- Examples:
  - ✓ 25% SSRC for 10 years
  - ✓ $50,000 SSRC per year for 20 years
  - ✓ 33% SSRC per year until SSRC cap of $250,000

III. MCP/SSRC

<u>Advantages of SSRCs</u>

- Additional decrease of FILOT or tax payments – especially helpful for cash flow in early years
- Hard dollar incentive
- Allows high millage counties flexibility to be competitive

<u>Disadvantage of SSRCs</u>

- Clawbacks can be severe
  - Retroactive or prospective?
  - Complete or partial? Pro-rata?
- Can be difficult to track and calculate

Example Spreadsheet:

Standard Property Taxes vs. FILOT plus SSRC

ABANDONED BUILDINGS REVITALIZATION CREDIT

Abandoned Buildings Revitalization Act – enacted on June 2013 – Title 12, Chapter 67 of S.C. Code of Laws

- Allows a taxpayer who rehabilitates an "abandoned building" to also benefit from an income tax credit or a property tax credit based on level of "rehabilitation expenses"

ABANDONED BUILDINGS REVITALIZATION CREDIT - "ABANDONED BUILDING"

- A building or structure where at least 66% of the space has been closed continuously to business or otherwise nonoperational for income producing purposes for at least 5 years immediately preceding the date on which the taxpayer files a Notice of Intent to Rehabilitate – S.C. Code § 12-67-120(1)
- Allows for buildings or structures that otherwise qualifies as an "abandoned building" to be subdivided into separate units or parcels
  - May be owned by the same taxpayer or different taxpayers
  - Each unit or parcel is deemed to be an abandoned building site
- Building does not qualify if immediate preceding use was a single family residence
- Use of any portion of a building or structure listed on the National Register for Historic Places when used solely for storage or warehouse purposes is consider nonoperational for income producing purposes
- No minimum square footage requirement

ABANDONED BUILDINGS REVITALIZATION CREDIT - ABANDONED BUILDINGS ACT

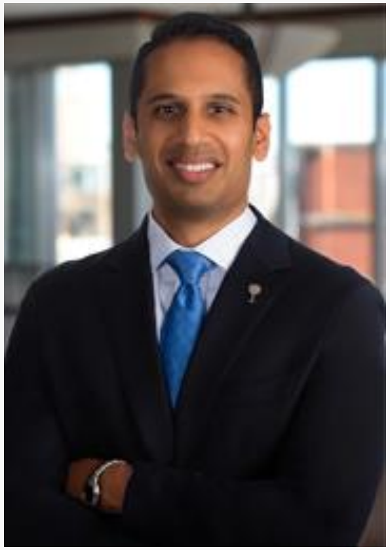
<u>Abandoned Buildings Credit</u> – S.C. Code § 12-67-120(6)

- Expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site
  - Renovation or redevelopment of existing buildings
  - Environmental remediation
  - Site improvements
  - Construction of new buildings and other improvements on the building site
- Excludes the cost of acquiring the building site or the cost of personal property located at the building site
  - "Building site" means the abandoned building together with the land upon which it is located and immediately surrounding it and other improvements located there (includes parking)
- Site improvement expenses only qualify if the building site is renovated or redeveloped
- Rehabilitation expenses don't qualify if more than double existing square footage on site
- Demolition expenses for building on the National Register for Historic Places don't qualify

ABANDONED BUILDINGS REVITALIZATION CREDIT

<u>Abandoned Buildings Property Tax Credit</u>

- 25% of the "rehabilitation expenses" at the building site times the "local taxing entity ratio" for each local taxing entity consenting to the credit
  - Capped at 75% of the <u>real property</u> taxes due on the eligible site each year for up to 8 years
  - Can begin claiming credit in year in building site (or portion thereof) placed in service



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