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Industrial Development Corporations—Purpose and Authority

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Industrial Development Corporations—Purpose and Authority

Reference Number: CTAS-619

Industrial development corporations were authorized by the General Assembly to maintain and increase employment, increase agricultural and industrial production, and reduce pollution. These corporations can figure prominently in a county's economic development activities. They are considered to be public instrumentalities of their creating municipalities (which can be a county, city or a combination of both), and thus, any property owned by an industrial development corporation is tax exempt. T.C.A. § 7-53-305. Counties and municipalities are authorized to appropriate funds to make contributions or loans with reasonable interest, to industrial development corporations in the county. County legislative bodies are also authorized to borrow funds for the purpose of making contributions or loans to industrial development corporations. T.C.A. § 6-54-118.

The powers and duties of industrial development corporations are set forth in T.C.A. § 7-53-101 *et seq.* These statutes are to be broadly construed to further the health, welfare, and safety of citizens. T.C.A. § 7-53-102. Industrial development corporations are authorized to acquire projects, improve and/or maintain projects, lease projects, sell projects and enter into loan agreements relating to projects to facilitate their economic development goals. T.C.A. § 7-53-302. What constitutes a "project" is defined in T.C.A. § 7-53-101 and includes examples such as manufacturing facilities, office buildings, public buildings, healthcare facilities, amusement parks, and multifamily low-income housing. Industrial development corporations are authorized to sell, exchange, convey or donate any or all of their property. T.C.A. § 7-53-302. Industrial development corporations can also issue bonds or otherwise borrow money, mortgage or pledge projects as collateral for their bonds or notes, and pledge revenue or receipts from projects. T.C.A. § 7-53-302. It is important to note that industrial development corporations cannot pledge the general taxing power of the creating municipality without the municipality first obtaining a certificate of public purpose and necessity and then holding an election in which 75% of the voters approve pledging the municipality's credit. T.C.A. § 7-53-306 and T.C.A. § 7-53-307.

Industrial development corporations can also be formed for specific purposes. Pursuant to T.C.A. § 7-53-318, housing opportunity counties may create industrial development corporations to support additional residential housing. Industrial development corporations formed under § 7-53-318 have the following additional powers:

- (1) To construct and install public infrastructure for qualified residential developments or contract with a private party for the construction and installation of such public infrastructure;
- (2) To accept loans and grants of money from this state or the United States or any agency or instrumentality of this state or the United States, upon such terms and conditions as this state, the United States, or the agency or instrumentality may impose, for purposes of carrying out the design, construction, installation, financing, or undertaking of public infrastructure; and
- (3) To make loans and grants of money to private entities constructing and installing public infrastructure for qualified residential developments within the boundaries of the housing opportunity county upon such terms as the industrial development corporation deems advisable.

In addition, industrial development corporations may also be established and operated solely to assist and benefit locally owned businesses and small businesses. T.C.A. § 7-53-319. Furthermore, T.C.A. § 7-53-320 authorizes counties to provide assistance to industrial development corporations involved in public-private partnerships.

Industrial development corporations have two additional powers which are important economic development tools--the power to enter into payment in lieu of tax (PILOT) agreements and the power to enter into tax increment financing (TIF) agreements.

Payment in Lieu of Tax Agreements

Reference Number: CTAS-2472

Payment in Lieu of Tax (PILOT) agreements can be a very important economic development tool. It is important that they are structured correctly and that they are only entered into when it is in the best interests of the county.

Cities and counties are constitutionally prohibited from granting tax abatements to non-exempt persons. Thus, such abatements are accomplished by going through an industrial development corporation.

Property (real or personal) that is included as part of a "project" can be transferred to an industrial development corporation, which would make such property tax exempt. The industrial development corporation would then lease the property back to the entity involved in the project and upon receiving the proper delegation of authority from the creating municipality (which can be a city, county or a combination of both), the industrial development corporation could then enter into a PILOT agreement with that entity.

Industrial development corporations can negotiate, accept or waive payments in lieu of taxes only after receiving a formal delegation of authority from their creating municipality(ies). Such municipality can require that each negotiated PILOT agreement come back before the legislative body for final approval. T.C.A. § 7-53-305.

No PILOT agreement providing for the acceptance or waiver of payments in lieu of taxes, including any renewal or extension of such agreement, may result in a corporation's lessee making payments in lieu of taxes in an amount less than the applicable ad valorem taxes for a period that is greater than twenty (20) years plus a reasonable construction or installation period not to exceed three (3) years, unless both the commissioner of economic and community development and the comptroller of the treasury have made a written determination that the agreement is in the best interest of the state. T.C.A. § 7-53-305.

Before an industrial development corporation approves a PILOT agreement, the corporation must hold a public meeting relating to the proposed agreement after notice is provided by the corporation or governing body, as may be required by law, at least five (5) days prior to the date of such public meeting. Such notice must include the time, place, and purpose of the public meeting. The corporation must also attach to each agreement an analysis of the costs and benefits of the agreement, in such manner and under such conditions as shall be prescribed by the commissioner of economic and community development or the commissioner's designee. T.C.A. § 7-53-305.

PILOTs for retail projects must meet certain criteria set forth in T.C.A. § 7-53-305. There are also special provisions for PILOTs from industrial development corporations formed by municipalities that do not levy their own property tax. T.C.A. § 7-53-305.

Tax Increment Financing Agreements

Reference Number: CTAS-2474

Industrial development corporations are authorized to prepare and submit to the municipality of their creation (which can be a county, city or combination of both) an economic impact plan. T.C.A. § 7-53-312. The plan must identify the boundaries of the economic impact area affected by the plan as well as identify the industrial park or project located within the economic impact area. The definition of "project" is found at T.C.A. § 7-53-101. The plan must discuss the expected benefits to the municipality from the development of the economic impact area subject to the plan and provide that the property taxes collected on property in the plan area, including taxes on personal property, above the base year amount (the "increment") will be allocated to a separate fund of the industrial development corporation and used for industrial development purposes or to pay debt service on the industrial development corporation's obligations. Further restrictions on the use of the incremental tax proceeds are set forth in T.C.A. § 9-23-108. The plan may include an amount greater than the base year amount to be allocated to the taxing local governments. T.C.A. § 9-23-103.

The industrial development corporation's board must hold a public hearing after giving two weeks' notice before submitting the plan to the municipality. The governing body of the municipality that created the corporation must approve the plan. For taxes collected within the economic impact area by another municipality, the governing body of that municipality must also approve the plan. T.C.A. § 7-53-312.

After the approval by a municipality of an economic impact plan, the clerk or other recording official of such municipality must transmit to the appropriate assessor of property and to each affected taxing agency, a copy of the description of all property within the area subject to the economic impact plan and a copy of the resolution approving that plan. If the plan is approved by any taxing agency other than the creating municipality, the clerk or other recording official of that taxing agency must also provide a copy of the resolution approving the plan to such assessor of property and taxing agencies. A copy of the plan and any resolutions approving the plan must also be filed with the comptroller of the treasury, and an annual statement of amounts allocated in excess of the base tax amount must be filed with the state board of equalization. T.C.A. § 7-53-312.

Industrial development corporations are required to transmit to the appropriate assessor of property for each taxing agency and the chief financial officer of each taxing agency a copy of the description of all property within the area subject to the plan (including parcel numbers with respect to real property), a copy of each resolution of each taxing agency approving the plan and the base tax amount with respect to all property subject to the plan. They must also file a copy of the information with the comptroller; and by

October 1, they must file with the comptroller an annual statement of all tax increment revenues allocated to the tax increment agency with respect to each active plan. T.C.A. § 9-23-106.

Any plan may provide that a total of up to five percent (5%) of incremental tax revenues may be set aside for administrative expenses, including expenses incurred by the industrial development corporation and the tax agency administrative offices (assessor of property and/or trustee or other tax collecting official) in administering the plan, and including a reasonable allocation of overhead expenses. T.C.A. § 9-23-105.

No allocation of tax increment revenues may be made with respect to any property for a period of more than twenty (20) years in the case of an economic impact plan, or thirty (30) years in the case of a redevelopment plan or community redevelopment plan as defined in § 9-23-102, unless both the commissioner and the comptroller have made a written determination that a longer period is in the best interest of the state. If the written determination approving or declining the longer term is not rendered within thirty (30) days, the longer term is deemed approved. T.C.A. § 9-23-104.

In any year in which the taxes on any property are less than the base and incremental taxes, only those taxes actually imposed and collected will be paid to the respective taxing agencies. T.C.A. § 9-23-103.

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