G|K NEW MEXICO ALERT

MAY 2015

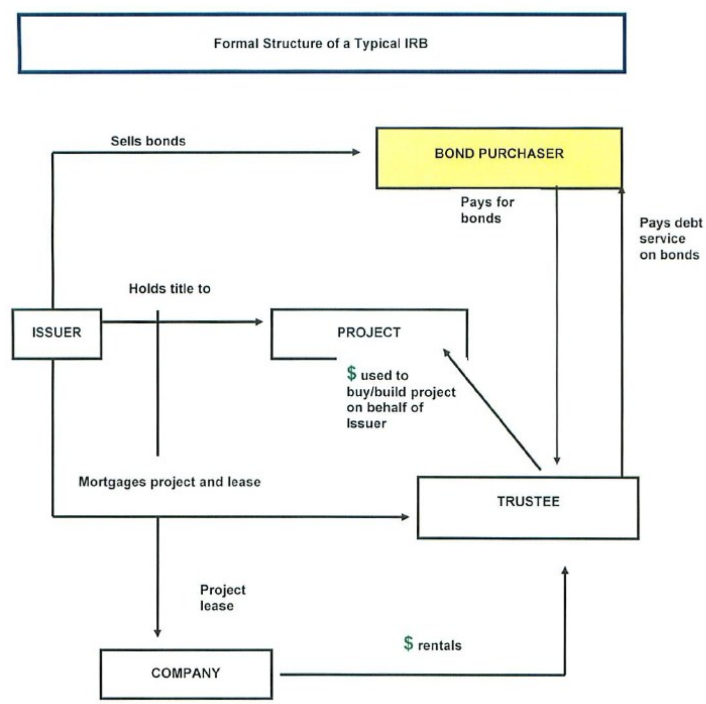
INDUSTRIAL REVENUE BONDS NOW AVAILABLE FOR MINING & ENERGY PROJECTS

By Tim Van Valen, T.J. Trujillo, & Dal Moellenberg

During its 2015 Regular Session, the New Mexico Legislature passed Senate Bill 319, which amended the County Industrial Revenue Bond Act in order to add mines and energy refineries, treatment or processing plants to the list of "projects" qualifying for issuance of county industrial revenue bonds (IRBs). Gallagher & Kennedy (G&K) provides this alert to the mining industry, energy companies, and local governments to inform them of this expanded economic development tool.

What are the benefits of IRBs?

IRBs have three principal benefits for companies that engage in qualifying projects: (1) a total property tax exemption for project property for up to 30 years; (2) gross receipts or compensating tax deductions or exemptions for the purchase of equipment and other tangible personal property; and (3) in very limited circumstances, an exemption from federal income taxation on the interest paid to bondholders, resulting in lower interest rates for a borrower than other types of commercial borrowings. Property and gross receipts or compensating tax benefits are available for most New Mexico projects with significant capital development. The third benefit depends on the IRBs being deemed "tax exempt" under the federal Internal Revenue Code.



What are IRBs?

An IRB is in effect a loan by a lender/bond purchaser to a company, where the loan proceeds and the loan repayments flow through a governmental issuer. The tax benefits of IRBs result from the fact that the company constructs the project as agent for the governmental issuer. As a consequence, the project has the tax status of a governmental entity as purchaser of equipment and owner of the project. The company leases the project from the

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issuer for the period of bonded indebtedness and the governmental issuer has no control over construction or operation of the project facility. The bonds are paid off solely with the payments made by the company to the issuer under the lease. There is no risk to the issuing governmental entity. At the conclusion of the bond period, the company purchases the project from the governmental entity for a nominal amount.

What projects qualify for IRBs?

Only specific types of "projects" qualify for IRB financing and include land, buildings, furniture, fixtures, and equipment. Projects do not need to include land; they can be for equipment only. Also, any land included in a project need not be owned in fee. The costs of projects that can be financed are limited to capital costs and transaction costs. Working capital generally cannot be financed with IRBs, nor is there any benefit associated with doing so.

What does Senate Bill 319 do?

Senate Bill 319 amended the County Industrial Revenue Bond Act to add two items to the list of "projects" qualifying for issuance of county IRBs: "(1) a commercial enterprise that has received a permit from the Energy, Minerals and Natural Resources Department for a mine that has not been in operation prior to issuance of the bonds for the project for which the enterprise will be involved; and (2) a commercial enterprise that has received any necessary state permit for a refinery, treatment plant or processing plant of energy products that was not in operation prior to issuance of the bonds for the project for which the enterprise will be involved." The term "energy products" is not defined by statute but could cover not only oil, gas and natural gas liquids, but also coal and uranium.

Can G&K help determine if Senate Bill 319 will benefit your project?

Yes. This alert is not intended to be an exhaustive analysis of Senate Bill 319 and whether IRBs will benefit a specific project. Nevertheless, if you are looking at spending significant capital for a mining or energy project, you might be able to save money by seeking counsel from the G&K team. Practicing tax law for nearly 30 years, Tim Van Valen focuses on the state and local tax needs of businesses with New Mexico operations, including the use of IRBs and other tax incentives. T.J. Trujillo and Dal Moellenberg, as well as Tim, have extensive experience providing legal advice and counsel to mining and energy companies.

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