

PUBLICATION

Use of Public Incentive Finance in Retail Developments

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"Public incentive financing" in the context of commercial real estate development provides a powerful stimulus for economic development. Traditionally, economic development has been focused on providing incentives to manufacturing and technology companies, with the main goal being job creation. Increasingly, however, economic development has begun to focus on sales tax generation and efforts by states, counties and municipalities to lure retailers capable of generating high sales tax revenue. One reason for this added focus is that, in many areas of the country, property taxes remain quite low, and sales taxes are the primary revenue drivers for communities. Further, while retail economic development has been used, historically, by larger metropolitan areas to facilitate large commercial developments, it is now being used to attract much smaller developments to less urban areas, providing counties and municipalities with much needed cash flow. In relative terms, the impact to a small municipality from the location of a Fred's or Dollar General store within its city limits can be equal to or greater than the benefits derived by a larger city from a Wal-Mart or Target development.

This article is intended as a primer for conceiving and structuring public incentive financing for a commercial real estate development. Public incentive financing transactions involve a varied cast of characters, including real estate developers, elected officials, economic developers, land planners, civil engineers, government employees, real estate lawyers, bond lawyers, investment bankers, and prospective tenants or purchasers in the finished project. Each of the participants is typically proficient in his area of expertise, but very few have a thorough working knowledge of the entire process. This article will attempt to broadly span the public incentive financing process and discuss several key concepts in structuring and negotiating a public incentive financing deal.

The context of public incentive financing, as used in this article, is the abatement of taxes or use of tax revenue to return the costs of public improvements back to a developer's proforma so that a project will become economically feasible. The reader should note that other types of public financing tools, such as tax credits and improvement districts, may also be statutorily created for specific types of projects. However, this article does not address project-specific legislation.