



Applying for IDA benefits as a tenant in a multi-tenant building - by Louis Fiore

November 14, 2023 - Long Island



Louis Fiore

Industrial Development Agencies (IDAs) are public benefit corporations established pursuant to the NY General Municipal Law that provide benefits to for-profit companies in order to incentivize job creation and economic development. The typical applicant to the IDA is an owner or developer or a company planning on leasing an entire building. However, companies planning on leasing commercial or industrial space in a multi-tenant building should consider exploring the possibility of applying for IDA benefits.

Such benefits can include a property tax abatement pursuant to a Payment in Lieu of Taxes (PILOT) agreement, a sales exemption on building materials, furniture, fixtures and equipment purchased in connection with the project, and a mortgage recording tax exemption if there is mortgage financing funding the project. Typically, the mortgage recording tax exemption would not apply to a lease in a multi-tenant building.

There are a number of factors to consider before applying to an IDA, including:

Size of Project. IDA's will want to see a significant investment in improvements and equipment being made by the company. If the space requires minimal work and a significant amount of equipment is not being acquired, the IDA may not consider the project.

Landlord's Role. It also makes sense to approach the landlord prior to applying for IDA benefits. In order to receive IDA benefits, the company must show that it would not have signed the lease and embarked on the project "but for" the IDA granting the benefits. In most cases, the lease will need to be contingent upon the issuance by the IDA of a preliminary resolution. The landlord will also be required to execute a consent instrument allowing the premises to be sublet to the IDA and sub-sublet back to the company. Additionally, the lease should provide for a "net" rent with respect to real estate taxes to ensure that the company receives the entire benefit of the exemption. Finally, some IDAs require that a PILOT mortgage be recorded against the property to secure the landlord's obligations to pay the PILOT payments. It is unlikely that landlord and/or its lender will agree to that requirement.

Nature of the Benefits. The types of PILOT benefits offered by IDA can vary depending on the IDA and the size of the project. Some IDAs will offer to reduce the existing real estate taxes and phase back the taxes to full value over the term of the PILOT. However, some IDAs will not agree to a PILOT that reduces payments below the then current real estate taxes. In those cases, unless the project would result in a significant increase in taxes (absent a PILOT) or unless the sales tax exemption is significant, it may not make economic sense to pursue the application in light of the cost of the process.

IDA Employment Covenants. As part of the IDA transaction, the IDA will want the tenant to agree to commit to a certain number of jobs to be maintained at the premises. Failure to maintain those commitments can result in a termination of benefits and even a recapture or claw-back of previously received benefits.

Pursuing an IDA transaction as a tenant is an often-overlooked benefit that can provide a company with substantial economic benefits. While closing an IDA transaction can be complex and costly, it is well worth exploring for many commercial tenants.

Louis Fiore is a partner at Forchelli Deegan Terrana LLP, Uniondale, NY.

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