



Research Memorandum

KANSAS INDUSTRIAL REVENUE BOND ENABLING STATUTES AND UTILIZATION

by Donna Shippen, Research and Evaluation Deputy Administrator
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Following the Legislative Service Office's (LSO) September 2021 presentation to the Joint Revenue Committee on industrial revenue bonds (IRBs) and Wyoming and New Mexico IRB statutes,¹ the Committee requested LSO research additional states that utilize IRBs as an economic development tool. LSO selected eight surrounding states for further research: Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, South Dakota, and Utah. Of these eight states, only Kansas uses IRBs frequently to encourage industrial development. This memo presents information regarding Kansas statutes that enable and incentivize the issuance of IRBs, and summarizes historic and recent Kansas IRB issues.

KANSAS IRB STATUTES AND USE

Like New Mexico local governments, Kansas cities and counties regularly use IRBs as a tool to encourage companies to locate or expand their commercial, manufacturing, or industrial operations in their communities. As in New Mexico, most Kansas IRB issues are taxable bonds, self-financed by the company borrower, which offer property tax or sales tax abatements. IRBs serve mainly as a vehicle for state and local tax incentives rather than a finance mechanism.

IRB Use as Economic Development Tool

Industrial revenue bonds have a long history of use as an economic development tool in the State of Kansas. In 1961, Kansas enacted the Economic Development Revenue Bond Act which enables cities and counties to issue IRBs. The following year, the City of Wichita issued its first IRB to Lear Jet to finance construction of the company's first U.S. manufacturing plant.² In the nearly 60 years since Bill Lear was enticed to make Wichita his company headquarters, the City has continued to recruit businesses by issuing more than 300 IRBs totaling more than \$6 billion.³

¹ See LSO research memo **21RM005 Industrial Revenue Bonds: General Information and Comparison of Wyoming and New Mexico Statutory Authority and Use, April 2021** and **LSO Industrial Revenue Bonds PowerPoint presentation, September 2021**.

² **City of Wichita, History of Economic Development in Wichita slide show**.

³ **City of Wichita, History of Economic Development in Wichita slide show**.

Wichita is not the only Kansas community to utilize IRBs. Kansas cities and counties are required to report IRB filings to the Kansas Board of Tax Appeals, which publishes an annual report on the Board's website.⁴ A review of 2018 IRB filings, the most recent available annual report, shows a total of 88 IRBs were issued by 35 Kansas cities and counties.⁵ Of these 88 IRB issues, 64 (73%) were issued in counties with a population greater than 100,000, 8 (9%) in counties with a population between 50,000 and 100,000, and 16 (18%) in counties with a population less than 50,000.⁶ Types of projects financed include commercial real estate developments, multifamily housing developments, hotel construction, and construction and equipment of warehouse and distribution centers. IRB principal amounts ranged from \$691,000 to \$120 million. Examples of IRB financed projects by county population size are listed below.

2018 IRBs issued in counties with population <50,000

- City of Arkansas \$691,000 bond issued to Kan Pak to equip a commercial warehouse and distribution facility⁷
- City of Ottawa \$6.95 million bond issue to Ottawa Lodging, LLC to construct a Holiday Inn hotel⁸
- Dodge City \$8 million bond issued to Sutherlands High Plains LLC for construction of a home improvement and hardware store⁹

2018 IRBs issued in counties with population 50,000 to 100,000

- City of Salina \$3.2 million bond issue to Samys OC for construction of an Old Chicago restaurant in the city's downtown redevelopment area¹⁰
- Reno County \$4 million bond issue to F&W Tractor for expansion of an existing Agri Center agricultural equipment dealership¹¹

⁴ The [Kansas Board of Tax Appeal reports webpage](#) lists IRB Filings and IRB Property Tax Exemptions, 2008-2018.

⁵ [Kansas Board of Tax Appeals, 2018 IRB Listings report.](#)

⁶ Kansas county population data based on 2018 population certified by the [Kansas Division of the Budget, July 1, 2019.](#)

⁷ [City of Arkansas Board of City Commissioners Agenda, December 4, 2018.](#)

⁸ [The Ottawa Herald, Hotel project receives city approval, May 2019.](#)

⁹ [City of Dodge City Ordinance no. 3690, June 18, 2018](#)

¹⁰ [The Hays Daily News, Old Chicago Pizza opening Monday in downtown Salina, December 13, 2018.](#)

¹¹ [Reno County Resolution No. 2018-288, November 27, 2018.](#)

2018 IRBs issued in counties with population >100,000

- City of Lenexa \$5.1 million bond issue to Zongcheng Packaging USA, Inc. to construct and equip a commercial warehouse/office facility¹²
- City of De Soto \$12.2 million bond issue to K Ten Place, LLC to construct a luxury apartment complex¹³
- City of Edgerton \$28 million bond issue to Coldpoint Logistics Real Estate, LLC for expansion of an existing warehouse and cold-storage distribution facility¹⁴
- City of Overland Park \$44.75 million bond issue to Overland One, LLC for construction of a 108,000 square foot Class A corporate office campus¹⁵
- City of Olathe \$102 million bond issue to Garmin International for construction of a 750,000 square foot manufacturing and distribution center¹⁶

Kansas cities and counties issue mostly taxable IRBs, which are not subject to Internal Revenue Code regulations.¹⁷ Typically the project company self-finances the bond or obtains a commercial loan outside of the bond issue to cover payments of principal and interest.¹⁸ Most Kansas IRB bond agreements involve a lease-leaseback arrangement whereby the company borrower retains title to the financed property and leases the property to the city or county issuing the bond.¹⁹ The city or county then leases the financed property back to the company.²⁰ By not taking title to the financed property, the city or county avoids any tax liability.²¹

Kansas Economic Development Revenue Bonds Act²²

The Kansas Economic Development Revenue Bonds Act authorizes cities and counties of the state to issue revenue bonds for the purpose of paying all or part of the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing purposes and to enter into leases or lease-purchase agreements for such facilities.²³ The Act requires lease and lease-purchase agreements to provide

¹² [Lenexa City Council meeting minutes, February 20, 2018](#)

¹³ [City of De Soto Ordinance No. 2433](#)

¹⁴ [The Gardner News, Edgerton considers industrial revenue bonds for Coldpoint, "Project Mustang, May 2018.](#)

¹⁵ [City of Overland Park, Review of Applications for Economic Development Revenue Bonds & Property Tax Abatement;](#)

¹⁶ [City of Olathe Legal Notice published in The Gardner News, October 24, 2018.](#)

¹⁷ Tax-exempt bonds are regulated by the Internal Revenue Code. For more information, please see LSO research memo [21RM005](#).

¹⁸ Personal communication with Sarah Steele, J.D. Gilmore & Bell bond counsel, October 2021.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² K.S.A. 12-1740 – 12-1749

²³ K.S.A. 12-1740.

a rental sufficient to repay the principal of and interest on the revenue bonds.²⁴ The statute further specifies revenue bonds issued under the Act shall not be general obligations of the issuing city or county, but payable solely out of rentals received from the facility.²⁵

IRB Property Tax Incentives

According to the Kansas Department of Commerce, “nearly every local government bond issuer” provides property tax abatements as an additional incentive for companies to locate in their community.²⁶ The Kansas tax code limits IRB property tax abatements to a maximum period of ten years and prohibits property tax exemptions for retail enterprises.²⁷ Local government bond issuers may exempt up to 100% of property taxes minus any capital outlay levy imposed by local school districts.²⁸

The relatively high property tax rates in Kansas no doubt help incentivize IRB property tax abatements. According to a June 2021 Kansas Policy Institute article, Kansas has some of the highest property tax rates in the nation.²⁹ A comparison of 2017 property tax rates for the largest city in each of the 50 states plus Washington D.C. ranked Wichita the 12th highest city for commercial property tax rate (2.683%) and 26th for industrial property tax rate (1.463%).³⁰ By comparison, Cheyenne ranked 49th for industrial property tax rate (0.664%).³¹

Cities and counties calculate the percentage of property tax abatement based on a variety of criteria, such as number of jobs created and amount of new capital investment. See **Figure 1** for the criteria utilized by the City of Wichita and surrounding Sedgwick County.

²⁴ K.S.A. 12-1742.

²⁵ K.S.A. 12-1743.

²⁶ [Kansas Department of Commerce, Industrial Revenue Bonds webpage.](#)

²⁷ K.S.A. 79-201a, *Second*.

²⁸ K.S.A. 12-1742 and personal communication with Sarah Steele, Gilmore & Bell, October 2021.

²⁹ [Kansas Policy Institute, Kansas has some of the nation’s highest property tax rates, June 28, 2021.](#)

³⁰ [Lincoln Institute of Land Policy and Minnesota Center for Fiscal Excellence, 50-State Property Tax Comparison Study, April 2018.](#)

³¹ Cheyenne was not included in the 2017 study’s largest cities ranking for commercial property tax rates. However, the [2015 Lincoln Institute study](#) ranked Cheyenne 52nd of 53 cities for commercial property tax rate.

Figure 1. Sedgwick County/City of Wichita Property Tax Exemption Criteria

Criteria	Percentage of property tax abatement
New Jobs	
5-25	30%
26-50	40%
>50	50%
New Capital Investment	
\$1M - <\$5M	40%
\$5M - \$10M	50%
>\$10M	60%
Additional Considerations	
Regional Growth Plan sector	10%
Utilizing state, federal or utility incentives	10%
Sustainable development/alternative energy use	15%
Investing in or funding entrepreneurship	25%
Talent attraction plan (must be documented)	25%
Locating in Redevelopment Area	25%
Community and workforce development benefits	25%

Source: Sedgwick County/City of Wichita Economic Development Guidelines, October 2020

The Sedgwick County/City of Wichita Economic Development Guidelines present the following property tax abatement calculation example:

If a company is projecting it would create 10 new jobs, it would qualify for a 30% abatement. If it is also investing \$4 million in facilities and/or machinery and equipment, it would qualify for an additional 40%, totaling 70%. If the company is in a Regional Growth Plan sector, add another 10% (now 80% total). If the company is also utilizing State of Kansas incentives, add another 10% for a total of a 90% abatement.³²

Cities and counties may require the financed company to make payments in lieu of taxes (PILOTs) equal to all or a portion of the abated taxes.³³ IRB agreements frequently require partial PILOT payments that gradually increase over the ten-year property tax abatement period.³⁴ For example, a 2018 \$10 million IRB issued by the City of Shawnee to Airtex, Inc. does not require any PILOT payments for the first six years, followed by PILOTs of 30% of property taxes due in Year 7, 40% of taxes due in Year 8, 60% of taxes due in Year 9, and 70% of taxes due in Year 10.³⁵

³² Sedgwick County/City of Wichita Economic Development Guidelines, October 2020, p. 17.

³³ Kansas Department of Commerce, Industrial Revenue Bonds webpage.

³⁴ Personal communication with Sarah Steele, Gilmore & Bell, November 2021.

³⁵ Kansas Board of Tax Appeals, 2018 IRB filings.

The Economic Development Revenue Bonds Act requires the local government bond issuer to prepare a cost-benefit analysis of the proposed property tax exemption to include the effect of the exemption on state revenues,³⁶ notify the school district within which the property proposed for exemption is located,³⁷ and conduct a public hearing on the granting of such exemption.³⁸ The city or county must also apply to the state Board of Tax Appeals for approval of any proposed property tax abatement.³⁹ According to the Board, IRB tax exemption applications are rarely denied.⁴⁰

IRB Sales Tax Incentives

As part of IRB agreements, cities and counties frequently offer sales tax exemptions for labor, building materials, machinery, and equipment purchased for new facilities.⁴¹ Proposed sales tax exemptions are not subject to Board of Tax Appeals approval, but must be included in the local IRB information statement the city or county is required to submit to the Board.⁴²

Just as Kansas property tax rates are higher than Wyoming's so too are sales taxes. Kansas has a statewide sales tax rate of 6.5% and allows local governments to collect a local option sales tax of up to 4%.⁴³ The average sales tax in Kansas is 8.69%.⁴⁴ By comparison, Wyoming's statewide sales tax rate is 4% and local governments may impose up to an additional 3%.⁴⁵ The average sales tax in Wyoming is 5.33%.⁴⁶

IRB Agreement Compliance⁴⁷

Sarah Steele, J.D., Wichita office of Gilmore Bell bond counsel, stated in her 25 years of practice she only recalls three companies who defaulted on bond payments. Ms. Steele termed the companies "not credit-worthy" and said such situations can be avoided if local governments

³⁶ If requested, the Kansas Department of Commerce will provide the cost-benefit analysis free of charge. The Department recommends a 1.3 cost-benefit ratio but the Board of Tax Appeals does not review the cost-benefit analysis or have a metric requirement for property tax exemption approval. Personal communication with Tim Zimmerman, Kansas Department of Commerce, Stephen Jones, Kansas Board of Tax Appeal, and Sarah Steele, Gilmore & Bell, October 2021.

³⁷ All property taxes received by the State of Kansas are redistributed to public school districts or to educational building funds.

³⁸ K.S.A. 12-1749c. and 12-1749d.

³⁹ K.S.A. 12-1744a.

⁴⁰ Personal communication with Stephen Jones, Kansas Board of Tax Appeal, October 2021.

⁴¹ [Kansas Department of Commerce, Industrial Revenue Bonds webpage](#) and personal communication with Sarah Steele, Gilmore & Bell, October 2021.

⁴² Personal communication with Sarah Steele, Gilmore & Bell, October 2021.

⁴³ [Kansas Department of Revenue sales tax webpage](#).

⁴⁴ [Tax Foundation, Combined State and Average Local Sales Tax Rates, January 2021](#).

⁴⁵ W.S. 39-15-204.

⁴⁶ [Tax Foundation, Combined State and Average Local Sales Tax Rates, January 2021](#).

⁴⁷ Personal communication with Sarah Steele, Gilmore & Bell, October 2021.

perform their due diligence in reviewing a potential company borrower's financials. Because IRBs are conduit bonds rather than general obligations of the issuing government entity, the issuer is not liable in the event of a default.

Proceeds from the IRB issue are deposited in an account maintained by a trustee, such as a commercial trust department at a bank.⁴⁸ Should the company borrower default on payments, the trustee takes possession of the proceeds on behalf of the bond holder.⁴⁹

Ms. Steele has not heard of a company defaulting or refusing to make PILOT payments pursuant to a Kansas IRB agreement.

The City of Wichita and Sedgwick County have established procedures for ensuring compliance with IRB tax incentive agreements.⁵⁰ Tax abatements granted on real property are reviewed after an initial period of five years. Approval of continued abatement is contingent upon the company's performance in meeting employment, wage or other terms of the written IRB agreement. If the terms of the agreement have not been met, the City or County may exercise the agreement's "clawback" provisions. For example, if a company is 10% short of projected job creation, the clawback would be 10% of the value of abated taxes.

OTHER STATES

The remaining seven states (Colorado, Idaho, Montana, Nebraska, North Dakota, South Dakota, and Utah) surveyed by LSO have IRB enabling statutes but do not utilize IRBs frequently. The few IRBs issued in these states in recent years have been mostly tax-exempt qualified small issue bonds.⁵¹ It should be noted the IRB statutes in each of these states, with the exception of Utah, do not provide property tax exemptions for bond-financed projects. Rather the statutes specify the financed property is liable for all property taxes or full PILOT payments.

Utah's statute, the Industrial Facilities and Development Act, exempts property acquired or held by the county or municipality under the Act from all taxes imposed by the state, any county, any municipality, or any other political subdivision of the state, except for the corporate franchise tax.⁵² Based on interviews with Utah state and local economic development officials and bond counsel attorneys, it appears these statutory IRB tax exemptions are not commonly known and IRB issues are infrequent and on the decline.⁵³

⁴⁸ [Kansas Department of Commerce, Industrial Revenue Bonds webpage.](#)

⁴⁹ Personal communication with Sarah Steele, Gilmore & Bell, October 2021.

⁵⁰ [Sedgwick County/City of Wichita Economic Development Guidelines, October 2020](#), p. 21.

⁵¹ For more information on tax-exempt qualified small issue bonds, please refer to LSO research memo [21RM005](#).

⁵² Utah Code 11-17-10

⁵³ Personal communication with the Salt Lake City office of Gilmore Bell bond counsel, Salt Lake City Department of Economic Development, and Utah Governor's Office of Economic Development,

If you have any further questions, please do not hesitate to contact LSO Research at 777-7881.