



ADMINISTRATIVE RULES OF MONTANA



36.23.121 TAX INCREMENT REVENUE BONDS

- (1) The department may accept as evidence for a loan tax increment revenue bonds subject to the following terms and conditions:
 - (a) The urban renewal plan or industrial district ordinance shall contain a tax increment financing provision as authorized in 7-15-4282 to 7-15-4293 , MCA.
 - (b) All tax increments shall be irrevocably pledged and appropriated and shall be credited as received to the debt service fund for the bonds and shall be applied, to the extent required, to pay debt service on the bonds and maintain the reserve account required in (1) (c) . The bonds shall be secured by a first lien on the tax increment, which lien may be granted on a parity with the lien securing other outstanding or additional revenue bonds of the municipality payable from the tax increment, which collectively are referred to as parity bonds.
 - (c) The payment of principal of and interest on the bonds and any parity bonds shall be secured by a reserve account, to be established and thereafter maintained from the available tax increment in an amount deemed sufficient by the department to provide adequate security for the bonds.
 - (d) The estimated tax increment to be received by the municipality and any other revenues pledged to the payment of the bonds, which collectively are referred to as pledged revenues, are determined by the governing body of the municipality to be sufficient to pay the principal of and interest on the bonds and other outstanding parity bonds when due.
 - (e) The municipality shall agree not to issue additional parity bonds payable from or secured by the tax increment and other pledged revenues, if any, without the prior written consent of the department, which consent shall not be granted unless either:
 - (i) the pledged revenues collected in the last completed fiscal year were equal to at least 130% of the maximum annual debt service, during the term of the outstanding parity bonds, on all outstanding parity bonds and the additional parity bonds proposed to be issued; and
 - (ii) the pledged revenues collected in the last completed fiscal year adjusted and provided in (2) were, and the pledged revenues estimated to be received in the next succeeding three fiscal years, adjusted as provided in (2) , are estimated to be, equal to at least 140% of the maximum annual debt service, during the term of the outstanding parity bonds, on all outstanding parity bonds and the additional parity bonds proposed to be issued.

- (A) For this purpose, the tax increment received by the municipality in the last completed fiscal year may be adjusted by adding any increase in tax increment which would have resulted from applying the tax rates effective for the last completed fiscal year to the value, as determined by certification of the county assessor, of any projects which have been completed in the urban renewal area or industrial district before the date of issuance of the additional parity bonds and the taxable values of which as so completed are not included in the "actual taxable value" of the urban renewal area or industrial district.
- (2) For purposes of (1) (e) (ii) , in estimating the tax increment to be received in any future fiscal year, the municipality shall assume that:
 - (a) 90% of the taxes levied in the urban renewal area or industrial district will be collected in any fiscal year;
 - (b) no taxes delinquent in a prior fiscal year will be collected in any subsequent fiscal year; and
 - (c) there will be no increase in the tax increment to be received in any future fiscal year resulting from:
 - (i) the projected inflation in property values or projected increases in tax levies;
 - (ii) the completion of improvements to real property which are under construction at the time of the issuance of the additional parity bonds unless the improvements are substantially completed at the time of the issuance of the additional parity bonds and officers of the municipality certify that they reasonably believe that the improvements will be completed within the period for which the estimate is to be made;
 - (iii) the completion of an improvement to real estate for which construction has not commenced or is not substantially completed at the time of the issuance of the additional parity bonds unless:
 - (A) the municipality has entered into an agreement with the person or entity undertaking the improvement wherein the person or entity agrees to complete the improvement in accordance with a described plan and within the period for which the estimate is to be made and to pay and satisfactorily secure to the municipality, in the event the improvement is not completed in accordance with the described plan, the difference between the estimated tax increment to be derived from such improvement and the actual tax increment derived therefrom, adjusted upwards to reflect reductions in the mill rates from those assumed in the estimate; and
 - (B) the officers of the municipality certify that they reasonably believe that the improvements will be completed within the period for which the estimate is to be made;
 - (iv) improvements to be completed later than the end of the second full fiscal year following the issuance of the additional parity bonds, provided, however, that in estimating the tax increment to be derived from future development in cases under (2) (c) (ii) or (iii) , the municipality shall assume the taxable value of the development upon completion to be 66 2/3% of the estimated taxable valuation; or

- (v) if the conditions in (1) (a) are not met, the department determines that there is adequate security for the payment of the bonds based on other terms, conditions, and limitations it imposes in its discretion.
- (3) The municipality shall agree not to adjust the tax incremental base of the urban renewal area or industrial district pursuant to 7-15-4287, MCA, so long as the bonds are outstanding.
- (4) The municipality shall agree that it will remit the annual surplus tax increment to other taxing jurisdictions pursuant to an agreement with such jurisdictions only if:
 - (a) the balance in the reserve account is equal to the required amount; and
 - (b) officers of the municipality certify that no default exists under the bond resolution or any collateral document securing payment of the parity bonds.
- (5) The municipality shall agree that, in the event the Montana Constitution or laws of Montana are amended to abolish or substantially reduce or eliminate real or personal property taxation and Montana law then or thereafter provides to the municipality an alternate or supplemental source or sources of revenue specifically to replace or supplement reduced or eliminated tax increment, then the municipality pledges, and covenants that it shall appropriate annually, subject to the limitations of then applicable law, to the debt service fund for the parity bonds from such alternate or supplemental revenues an amount that will, with money on hand in the debt service fund or available and to be transferred to the debt service fund during such fiscal year, be sufficient to pay the principal of, premium, if any, and interest on the outstanding parity bonds payable in that fiscal year.
- (6) Notwithstanding anything to the contrary contained in this subchapter, the opinion of bond counsel to be delivered by the borrower need not conclude that interest on the bonds is not includable in gross income for purposes of federal income taxation.
- (7) The department may waive, to the extent it finds such requirements inapplicable, any or all of the provisions contained in ARM 36.23.116.
- (8) The department may impose upon the municipality such additional terms, conditions, and covenants consistent with the provisions of the law authorizing issuance of the bonds, which may include terms, conditions, and covenants to be imposed upon any owner or user of facilities located in the urban renewal area or industrial district or any guarantor of the obligations thereof, that it deems necessary to make the bonds creditworthy and to protect the viability of the program.
- (9) In addition to other items required by statute or other provisions of these rules, an application for a loan to be evidenced and secured by tax increment revenue bonds shall be accompanied by:
 - (a) a map depicting the boundaries of the urban renewal area or the industrial district and showing the authorized land uses therein;
 - (b) audited financial statements of the urban renewal area or the industrial district for the last two completed fiscal years, if available;
 - (c) one or more certificates as to:
 - (i) the ownership of property in the urban renewal area or the industrial district;
 - (ii) its base taxable value;

- (iii) its current incremental taxable value;
 - (iv) the estimated market value and taxable value of taxable property in the urban renewal area or the industrial district allocated among the various property tax classifications;
 - (v) the 10 largest taxpayers in the urban renewal area or the industrial district;
 - (vi) the mill rates of jurisdictions levying property taxes in the urban renewal area or industrial district for the last five years; and
 - (vii) the delinquency rate in property tax collections in the urban renewal area or the industrial district for the last five years;
- (d) a certified copy of the ordinance establishing the urban renewal area or the industrial district, as amended, including the tax increment financing provision;
 - (e) if a private person or entity is providing security for the bonds, audited financial statements of the person or entity for the last three fiscal years, together with copies of the principal loan documents, if any, to which such person or entity is a party;
 - (f) a pro forma financial statement (which need not be prepared by an accountant) showing pledged revenues sufficient to pay maximum annual debt service on the bonds and outstanding parity bonds, if any, and otherwise comply with applicable requirements of these rules, including a statement of all significant assumptions; and
 - (g) such other information as the department deems necessary to assess the feasibility of the project to be financed and the financial security of the bonds.

Authorizing statute(s): 75-6-205, MCA

Implementing statute(s): 75-6-224, MCA

History: NEW, 2005 MAR p. 457, Eff. 4/1/05.