

Managing Maximum Indebtedness

Association of Oregon Redevelopment Agencies
2013 Spring Meeting
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Why Bond Lawyers Care

- Validity opinions for borrowings
- Not legally authorized if exceeding maximum indebtedness limit

Blame the Constitution

- Increment can only be used to pay for indebtedness
- **Article IX, Section 1c.** Financing redevelopment and urban renewal projects. The Legislative Assembly may provide that the ad valorem taxes ...may be divided so that the taxes levied against any increase in the assessed value...**shall be used to pay any indebtedness incurred for the redevelopment or urban renewal project....**
- **Article XI, Section 11(15)** If ad valorem property taxes are divided as provided in section 1c, Article IX of this Constitution, in order to fund a redevelopment or urban renewal project, then notwithstanding subsection (1) of this section, the ad valorem property taxes levied against the increase shall be used **exclusively to pay any indebtedness incurred for the redevelopment or urban renewal project.**

Also blame the statutes

- Urban renewal plans must include a maximum indebtedness limit

457.010(10) “Maximum indebtedness” means the amount of the principal of indebtedness included in a plan pursuant to ORS 457.190 and does not include indebtedness incurred to refund or refinance existing indebtedness.

It's a really big deal

- Initial maximum indebtedness is limited for new plans
- Ability to increase is limited unless concurrence
- Increasing maximum indebtedness triggers same notice requirements as adoption of initial plan
- Maximum indebtedness needs to be stated in supernotice

Maximum “Indebtedness” is Misleading

- Because it’s actually a spending limit
- Maximum indebtedness = Maximum expenditure
- Causes confusion for tracking
- Includes increment and interest earnings on increment

Boils down to two requirements

- Only spend increment on indebtedness
- Only spend increment up to maximum indebtedness limit

Every expenditure is indebtedness unless it falls within an exception

- Principal amount of borrowings
 - Short term borrowings like “du jours”
 - Lines of credit
 - Long term borrowings
- Loans/grants to third parties
- Any other expenditure of increment under contract theory of indebtedness

Exceptions

- Principal and interest payments on borrowings that have already been counted towards limits
- Principal amount of a refunding bond
 - Pursuant to statute: “does not include indebtedness incurred to refund or refinance existing indebtedness.”
 - Borrowing to pay interest on an interim financing, funding reserves, etc., requires more analysis

Common questions when tracking expenditures

- Refundings
- Excluding debt service payments
- Lines of credit only up to amounts drawn
- Reserves not counted unless borrowed to fund the reserve
- Not just about formal borrowings
- Keeping records regularly rather than waiting until a borrowing arises
- Comingled funds

Contract Indebtedness

Need to consider every expenditure that doesn't fall within an exception

- Written agreement to support each payment
- State that it's to be paid from tax increment revenues

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