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“Act 9 Bonds” PILOT Agreements Executive Summary

A PILOT agreement is the only allowable property tax abatement in Arkansas.

- PILOTs are recognized tools to encourage economic development by providing a property tax abatement inducing a business to locate or expand in a jurisdiction.
- The property becomes exempt from tax after title is transferred to city or county ("locality").
- Taxpayer and locality must agree on a payment in lieu of taxes (PILOT) of at least 35% of the tax that would have been owed.
- The net effect is to abate up to 65% of tax for up to 30 years.

Industrial revenue bonds are used to structure the transaction.

- The PILOT requires entering a revenue bond structure. At a high level, this means:
  - Locality leases property to taxpayer.
  - Locality issues industrial revenue bonds (Act 9 bonds) backed by lease revenue—no financial risk to locality.
  - Entity related to taxpayer holds the bonds.
  - Lease and bond payments are handled by intercompany accounting.
- Taxpayer retains economic rights of ownership and operates the facility normally. Locality not involved in operation of enterprise.
- Taxpayer will make annual PILOT payment.
- PILOT revenue is distributed proportionately among the school district, county, and other applicable taxing authorities.

Approval requires a public hearing and locality approval.

- Before approval of a PILOT, a public hearing must be held with at least 10 days’ published notice.
  - Notice to school superintendent, DFA, and county assessor, collector, & treasurer.
- After holding the hearing, the county judge can enter an order or the city council can pass an ordinance approving PILOT and bond documents.

[1] *See* Ark. Code Ann. § 14-164-704(a)(1)(A).
[2] *See* Ark. Code Ann. § 14-164-217(a).
[3] *See* Ark. Code Ann. § 14-164-704(b); *see also* Ark. Code Ann. § 19-9-607.

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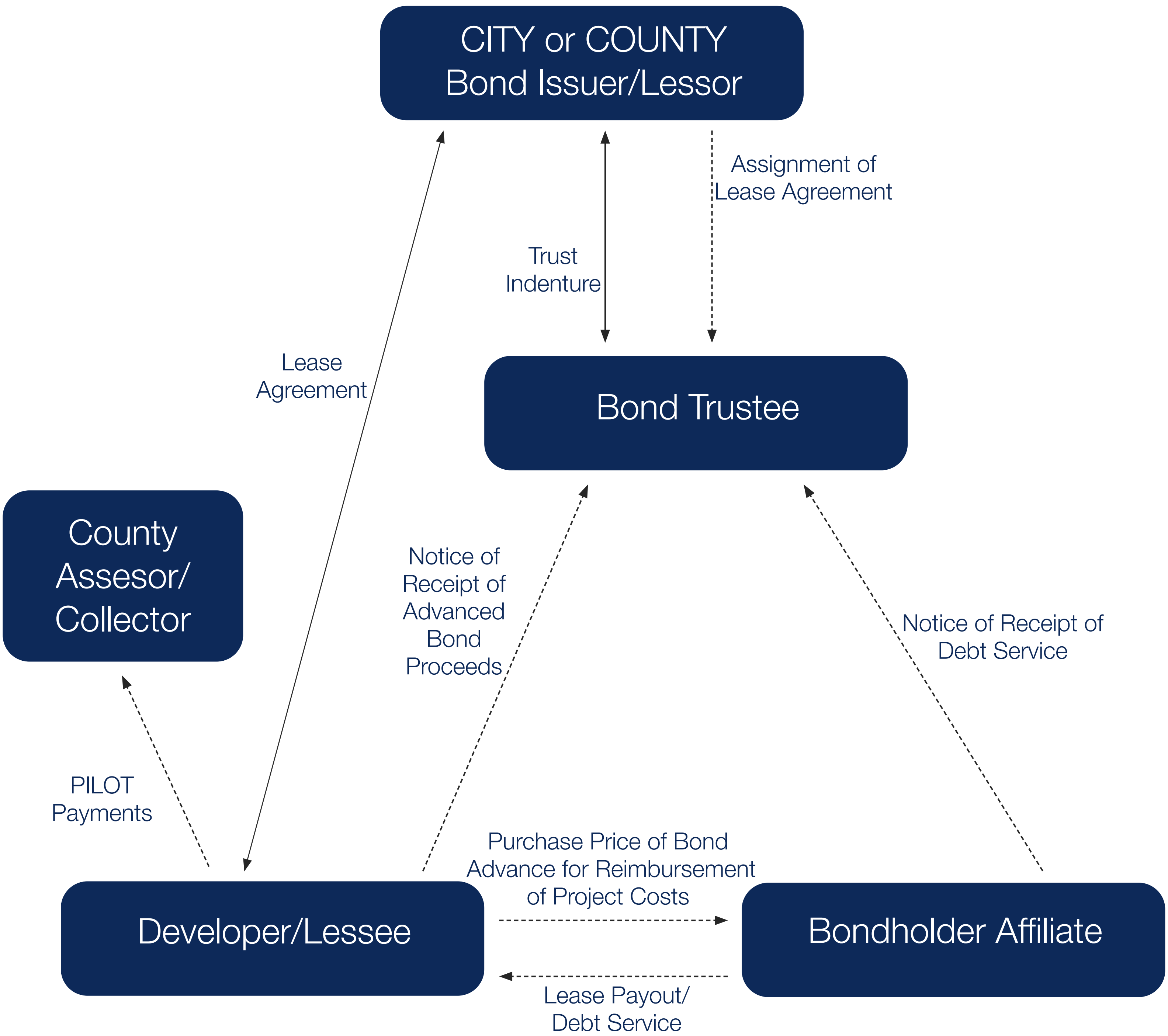
PILOT Structure with Affiliate as Bondholder



KUTAKROCK

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Kutak Rock is a national law firm with 21 offices across 15 states and the District of Columbia. We provide relentless attention to client service with a national footprint that allows us to serve our clients wherever their legal needs arise. Many of our 600+ attorneys are recognized leaders in their practices, allowing us to serve our clients across a wide range of subject-matter areas. We have earned a reputation across the U.S. for providing excellent legal services in a practical, cost conscious manner.

Kutak Rock's nationally recognized tax group is generally composed of three tax lawyer subgroups:

- Business/Transactional tax lawyers who represent the Firm's clients and work closely with other Firm practice groups to deliver tax advice and strategies in virtually all areas of tax law, including in the U.S. federal, state and local (SALT), international, federal transfer tax planning, trusts and estates, exempt organizations, and tax controversy spaces.
- Tax credit attorneys who regularly partner with lenders, investors, syndicators and developers, and other nonprofit sponsors on how best to structure and utilize federal tax credits of all kinds.
- Public finance tax lawyers who vitally support the Firm's highly respected public finance and tax-exempt bond practice.

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