

Decisions for industrial development programs, or against them, have resulted from those points the court chose to emphasize—either public funds aiding private enterprise or, on the other hand, private enterprise benefiting the community. The question of cause and effect in this area will continue to be debated in the courts.

The Internal Revenue Code provides that interest on obligations of a State or any of its political subdivisions is not included in gross income.⁷ This includes revenue bonds and bonds issued by municipally owned corporations regardless of the purpose for which the bonds are issued.⁸ In 1957, the Internal Revenue Service ruled that bonds issued by an industrial development board authorized by a State would be considered as issued on behalf of a political subdivision of the State and therefore exempt from Federal tax.⁹

In a 1963 ruling,¹⁰ the Internal Revenue Service showed its disapproval of the "abuse of privilege" by some industrial corporations and acted to prevent the use of industrial development bonds as a means to circumvent the law. The IRS set forth specific requirements for tax exemption. The ruling stated that bonds issued by a nonprofit corporation formed under the general corporation laws of a State for the purpose of financing the acquisition, lease, and sale of industrial facilities would not be considered as having been issued on behalf of a political subdivision within the meaning of the code where: (1) the municipality did not have a beneficial interest in the corporation while its bonds were outstanding; (2) although the articles of incorporation provided that the corporate property would be transferred to the county, upon retirement of the bonds or dissolution of the corporation, there would not necessarily be a vesting of full legal title in the county since the corporation may never be dissolved or the bonds retired; and (3) neither the State nor any political subdivision had approved the specific bonds issued by the corporation even though they may have authorized the creation of the corporation and approved its general objectives.

B. LEASE RENTAL AND AUTHORITY FINANCING

1. NATURE OF FINANCING

When World War II ended in 1945, State and local governments were faced with a huge backlog of needed public facilities. Funds for these projects would have been expected to have come from State and municipal bond issues. But most States, as a result of excessive borrowing in the 19th century, had constitutional and statutory restrictions on the issuance of debt. These debt restrictions took the form of:

1. Prohibitions against public aid to private enterprise.
2. Debt limitations fixed as a percentage of property valuation.
3. Requirement of a referendum for all bond issues.
4. Maximum periods beyond which debt could not run.
5. Mandates that a direct tax be levied at the time the bonded debt is incurred and annually thereafter to pay the interest as it accrued and the principal at maturity.

⁷ Int. Rev. Code of 1954, sec. 103.

⁸ Rev. Rul. 54-106, Cum. Bull. 1954-1, p. 28.

⁹ Rev. Rul. 57-187, Cum. Bull. 1957-1, p. 65.

¹⁰ Rev. Rul. 63-20, Cum. Bull. 1963-1, p. 24.