FBT Closes $60M Sale-Leaseback in Record Time

Oct 26, 2010

Categories:

Experience

Early in October 2010, FBT was contacted by a long-time client to represent it in connection with a proposed sale-leaseback transaction involving 23 of its owned sites located in Illinois, Indiana, Kentucky and Ohio. From the beginning, time was a critical factor. There was a lot of speculation in Washington and throughout the country that the Bush Tax Cuts, scheduled to sunset on December 31, 2010, would not be extended by the Obama administration. The client was clear – if the transaction did not close by December 31, there would be no deal.

FBT immediately put a team in place, led by Tim Martin, Chair of the firm's Real Estate Practice Group, and assisted by Erik Lattig and Deborah Brewer (Louisville), Reid Lemasters, Mary Ann Schenk and Sue Keller (Cincinnati) and Don Smith and Carol Champneys (Indianapolis). The team immediately went to work on negotiating a letter of intent/term sheet with the prospective purchaser/lessor while, at the same time, preparing drafts of the Sale-Leaseback Agreement, preparing documents for delivery on each of the 23 sites, including title examinations, environmental reports, zoning certifications, surveys and property inspection reports. Given the short timeframe in which the team had to work, the parties reached a mutual understanding to work cooperatively to obtain and review due diligence items while the Sale-Leaseback Agreement, Deeds, Bill of Sales, Leases and other transactional documents were being negotiated and drafted.

By the end of November, it was still unclear as to what action, if any, the Obama administration would take regarding the extension of the Bush Tax Credits. During the first two weeks in December, negotiation and drafting of the Sale Leaseback Agreement, Deeds, Bill of Sales, Leases and other transactional documents were finalized, subject only to specific due diligence items pertaining to several of the sites. Closing was scheduled for December 17, 2010 at the title company's office in Chicago. The FBT team, together with counsel for the purchaser/lessor worked diligently to conclude the closing in escrow on December 17, 2010, with funding occurring the following week on December 20, 2010.

Ironically, on December 17, 2010, Congress voted to extend the Bush Tax Credits through 2011.