



Why does the state reimburse Destiny USA for property taxes if it doesn't pay property taxes?

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By Rick Moriarty, The Post-Standard

State taxpayers reimburse developer Robert Congel for almost \$10 million a year in property taxes he doesn't pay on his Syracuse mall.

Congel's Carousel Center on the southern shore of Onondaga Lake is exempt from most property taxes for 30 years under a deal with the city. Nevertheless, Congel can claim income tax credits for the property taxes he avoids, thanks to the state's much-maligned Empire Zone program.

Those tax credits will be worth at least \$70 million through 2018, when the benefits expire.

The program, which costs the state \$600 million a year, ended two years ago. But companies already approved can continue to receive benefits for up to 14 years.

One of the biggest of those benefits is the property tax credit. It allows qualified businesses located in a state-designated Empire Zone to receive an income tax credit for the property taxes they pay. The amount of the taxes they can claim is based on a formula that considers job creation, wages and benefits, and capital investment.

The benefit is particularly generous because the businesses receive a cash refund for any credits left over after their state income tax liability is reduced to zero.

Congel pays \$800,000 a year in property taxes on the land under his mall, but he pays no taxes on the building itself. If it were fully taxed, he would have to pay \$19.4 million a year in property taxes.

Yet he has been able to claim \$10 million a year in property tax credits since 2007 because the state allows businesses to claim the credit if they make payments in lieu of property taxes.

Congel will make \$15.7 million in such payments this year. None of those payments will go to the city to support the city's schools or pay for police, fire, snowplowing or other city services.

Instead, they are devoted to the developer's debt payments on his mall. In effect, the city allows him to pay his mortgage with his property taxes.

Elizabeth Lynam, director of state studies at the fiscal watchdog Citizens Budget Commission, said she knows of no other business in the state that is claiming the property tax credit without paying taxes.

"It seems kind of like they're double dipping," she said.

This is not normally the way payments in lieu of taxes, or PILOTs, work. In Onondaga County, the arrangement is unique.

In most cases, a municipal industrial development agency exempts a property from taxes by taking nominal title to it. The deals almost always require the actual owner of the property to make payments "in lieu" of taxes to local governments and school districts. Those payments usually represent a big discount.

In Congel's case, the Syracuse Industrial Development Agency allowed the developer to use his PILOT money to pay off \$326 million in bonds issued by the agency to help finance his 1.3-million-square-foot expansion of the Carousel Center. The agency did not actually put up any of the money. It merely issued bonds in its name. Investors bought the bonds and are being paid back with the dedicated PILOT money.

The Syracuse Common Council first blessed the deal in December 2000, four months after Gov. George Pataki signed the Empire Zone program into law and just two weeks before it took effect.

In the years of wrangling that followed, Congel often pushed to increase the amount borrowed through the bonds — and the amount of debt payments that would be reimbursed by state taxpayers.

Initially, the city's industrial development agency contemplated issuing around \$200 million in bonds, but after intense lobbying by Congel, it wound up issuing \$326 million in bonds in 2007.

The greater the bond amount, the higher the payments in lieu of taxes necessary to repay the holders of the bonds. And the higher the payments in lieu of taxes, the greater the income tax credits Congel could claim under the Empire Zone program.

Vito Sciscioli, who helped to negotiate the tax deal as the city's economic development commissioner, said the city agreed to structure it to maximize the developer's Empire Zone benefits. The extra cash flow — courtesy of state taxpayers — would make possible an expansion that otherwise would not be financially feasible, he said.

"We knew the project was going to need assistance," he said. "It wasn't going to happen with the private marketplace."

Sciscioli said there was one other reason to tap many millions of dollars in state money for the mall. He said state government has fallen far short of its obligations to help the cash-strapped city pay for its schools and other services.

The Empire Zone program was a chance to get the state to help pay the cost of a development that would reclaim a former industrial site, generate sales tax revenue for local government and create jobs.

"The state should be subsidizing it," he said. "They've done enough to wreck the city."

Critics of the Empire Zone program view the arrangement differently.

Frank Mauro, executive director of the Fiscal Policy Institute, a labor-backed research and education organization that focuses on tax and economic issues, said Congel's ability to collect reimbursement from the state for property taxes he does not pay is "another sad commentary" on the state's economic development programs.

"He figured out a creative abuse under the Empire Zone law, and the city helped him effectuate this," Mauro said.

The developer's income tax records are not public. But companies in Empire Zones are required to file separate, non-binding reports listing the credits they plan to claim. Two of Congel's companies, Carousel Center Co. and Destiny USA Holdings LLC, have reported their plans to claim Empire Zone property tax credits totaling about \$10 million a year since the bonds were sold in 2007, according to those reports.

His Carousel Center Co. claimed property tax credits of \$7 million in 2005 and \$10 million in 2006, but those credits would have been tied to payments he made to the city before the bonds were sold.

The zone tax breaks for Congel's mall rank as the fourth largest out of 6,000 businesses in the Empire Zone program.

Carousel Center Co. can continue claiming the credits until its zone benefit term expires in 2015. Destiny USA Holdings can claim them until 2018.

As partnerships, Congel's companies do not actually pay income taxes or take the credits. Instead, they act as pass-through entities, passing their profits on to their owners, who report the income and credits on their personal tax returns.

So the Empire Zone tax breaks go directly to Congel and his partners and reduce or erase their state personal income taxes.

Jason Cornwall, a spokesman for the state's economic development agency, said the developer is doing nothing illegal. The law does not limit the credits just because the developer's payment in lieu of taxes are used to pay his mortgage, Cornwall said.

Congel had long promised to expand the Carousel Center, in phases, into a world-class tourist attraction with rooftop parks, an indoor canal with boats, a re-creation of a Tuscan village and thousands of hotel rooms. The addition that is scheduled for a grand opening Aug. 2 lacks such special features and instead will be a mix of outlet stores, traditional retailers, restaurants and entertainment establishments.

Congel told the city last month that the addition will be the final phase of the mall's expansion under the tax deal. Nevertheless, city officials said he gets to keep the property tax exemption. And Cornwall said he can continue to claim Empire Zone property tax credits.

Destiny USA executive David Aitken, a spokesman for Congel, said the developer is reinvesting the state's money back into the project.

"Destiny USA will generate far more in the form of new jobs, new taxes and new government revenues that the state will get their investment back many times over," he said.

There are 3,400 people employed at the mall, according to the mall company. When the expansion opens, the mall will employ 5,000, the company said.

The vast majority of the workers are employed by the mall's tenants. Congel's Carousel Center Co., which claims most of the state tax credits, reported in its 2010 business annual report that it employs 38 full-time and 20 part-time workers — at an average wage of \$8.76 an hour.