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Statement of Position TIF Pooling

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This Statement of Position is not legal advice and is subject to revision.

The Tax Increment Financing Act (TIF Act) permits, within limits, the use of tax increment revenues for what is generally known as “pooling” or “out-district” spending, which are not defined terms in the TIF Act.¹ Pooling occurs when tax increments are spent for qualified activities in the project area that are:

- outside the geographic boundaries of the TIF district, or
- inside the TIF district but are considered to be for out-district activities because they occur after an initial five-year period.²

Minnesota law distinguishes between “districts” and “project areas.”³ A project area is created pursuant to underlying development statutes; it is often a larger area than a TIF district and is the area in which tax increments may be spent.⁴ The TIF “district” is the geographic area in which development activity generates tax increment. The TIF Act requires most of a district’s tax increment to be spent on activities within the TIF district.

A project area may include one or more districts within its boundaries. The term “pooling” arose from the idea of districts pooling together to fund activity in the project area. The term has stuck in common usage even while it has come to describe any “out-district” expenditures, irrespective of whether funds from other districts are used.

General Pooling Authority

The TIF Act sets a minimum percentage of tax increment revenues that must be expended for activities within the district or used to pay bonds to the extent they financed activities in the district and sets a corresponding maximum percentage of tax increment revenues that may be pooled.⁵ This is often referred to as the “overall pooling limit” and is generally evaluated upon decertification of the district.

¹ The TIF Act can be found at Minn. Stat. §§ 469.174 to 469.1794 inclusive, as amended.

² See Minn. Stat. § 469.1763 (Restrictions on Pooling; Five-Year Limit). More information regarding timing restrictions can be found in a Statement of Position entitled: [TIF Five-Year Rule and Six-Year Rule](#).

³ 1982 Minn. Laws, ch. 523, art. 38, §§ 3 and 6.

⁴ The TIF Act defines the term “project” by referencing and incorporating the underlying development statutes. Minn. Stat. § 469.174, subd. 8.

⁵ Minn. Stat. § 469.1763, subd. 2. The minimum in-district percentage may also pay or secure the payment of debt service on credit enhanced bonds.

Limit Specifications

The authority to pool and the limit on the percentage of tax increment that can be pooled varies depending on the type of TIF district generating the tax increment, and on when a TIF district was established (as determined by the Certification Request Date (CRD)).⁶

As the following table shows, a redevelopment district with a CRD after June 30, 1995, may pool up to 25 percent of revenues derived from tax increment paid by properties in the district.⁷ Other types of districts with CRDs after June 30, 1995, are limited to 20 percent.⁸ All tax increment districts with a CRD on or before June 30, 1995, but after April 30, 1990, may pool up to 25 percent of revenues derived from tax increment paid by properties in the district.⁹

CRD date	Pooling Limit (% of increment)
After July 1, 1982 ¹⁰ to Apr. 30, 1990	No limits imposed
After Apr. 30, 1990 to June 30, 1995	25% for all types of districts
After June 30, 1995	25% for redevelopment districts 20% for other types of districts

It is important to understand which expenditures are considered to be made outside the district based on timing rather than location, and therefore to understand the Five-Year Rule.¹¹

In addition, an authority's administrative expenses are considered, with one exception, to be expenditures for activities outside the district, which reduces the amount of tax increment available for financing other qualified costs located outside the district.¹²

Calculation Details

There are important details to note when calculating the pooling limit for a district and whether expenditures are in compliance with the limit.

⁶ The CRD is distinguished from the actual certification date or the district's approval date and is the date the authority requested the certification of the district by the county auditor.

⁷ "Revenues derived from tax increment paid by properties in the district" is a defined term. See the section "Tax Increment Not Subject to Pooling Restrictions."

⁸ Minn. Stat. § 469.1763, subd. 2(a).

⁹ *Id.*

¹⁰ Districts with certification request dates on or before July 1, 1982, have all decertified. Pooling authority for these districts was subject to specific limitations previously codified under Minn. Stat. § 469.1764. See also 2014 Minn. Laws, ch. 308, art. 9, § 94.

¹¹ Please refer to the Statement of Position entitled: [TIF Five-Year Rule and Six-Year Rule](#).

¹² Minn. Stat. § 469.1763, subd. 2(c). If the only pooling expenditures for activities outside of the district are for affordable housing described in Minn. Stat. § 469.1763, subd. 2(d), administrative expenses will be considered as expenditures for activities in the district. See the section "Pooling Permitted for Non-Housing Districts for Housing Purposes."

First, only the “revenues derived from tax increments paid by properties in the district” are subject to pooling restrictions. Proceeds from the sale or lease of property purchased with tax increments, principal and interest received on loans or advances made with tax increments, interest or other investment earnings on or from tax increments, or repayments to an authority are not subject to pooling restrictions, even though they are all defined in the TIF Act as tax increment.¹³

Example

Consider a district with the following sources of funds:

\$470,000 of tax increment distributions from the county

\$5,000 of TIF credit reimbursements from the state

\$60,000 of lease proceeds from property purchased with tax increments

\$475,000 would be subject to pooling limits. This includes both the increment distributions from the county and the TIF credit reimbursements but excludes the \$60,000 of tax increments from lease proceeds.

Second, in determining whether the minimum percentage of expenditures for activities in the district and maximum percentage of expenditures for pooling have been met, any amounts returned to the county auditor as excess increment, as returns required under the Six-Year Rule for post-decertification distributions, or as remedies for improper receipt of tax increments, shall first be subtracted from the total revenues derived from tax increments paid by properties in the district.¹⁴ Doing so ensures that the percentages apply only to properly received increment revenues within the amounts authorized by the TIF plan. Any other amounts returned to the county auditor for purposes other than a remedy of improper expenditures, are considered to be expenditures for activities in the district.¹⁵

Example

Consider a district with a TIF plan that authorized \$500,000 of tax increment expenditures.

The district receives \$510,000 through the year in which decertification was required. They therefore return \$10,000 to the county as excess increment.

The district receives another \$15,000 of tax increment distributions in the year following the year decertification was required, either because they improperly failed to complete the decertification (and were required to return it as a remedy of this violation) or because the county auditor was unable to stop the extra year of collections (and the return of such distributions is required under the Six-Year Rule).

The limits would be calculated based on total tax increment revenues of \$500,000, not the \$525,000 that was actually received, because the \$10,000 return of excess increments and \$15,000 additional return are subtracted.

¹³ See Minn. Stat. § 469.1763, subd. 1(d). Tax increment revenues as defined in Minn. Stat. § 469.174, subd. 25, clauses (2) to (5) are expressly excluded from “revenues derived from tax increment paid by properties in the district.” The definition’s reference to “taxes paid by the captured net tax capacity” includes both distributions of tax increment collections by the county (the net amount paid by property owners) and any TIF credit distributions reimbursing the reductions of the gross taxes on captured value.

¹⁴ Minn. Stat. § 469.1763, subd. 2(f). See also Minn. Stat. § 469.176, subd. 2 (for excess increments); Minn. Stat. § 469.1763, subd. 4(g), (for returns required under the Six-Year Rule); and Minn. Stat. § 469.1771, subd. 2, (for remedies of improper receipt of increments).

¹⁵ Minn. Stat. § 469.1763, subd. 2(f).

Third, if pooling for deficits occurs (see the “Additional Pooling Authority for Specific Purposes” section), transfers for those purposes must be subtracted from total increments before calculating the overall pooling limit.¹⁶

Example

If TIF district 1-3 experienced a deficit caused by the 2001 tax reforms and \$150,000 of increment from TIF district 2-1 is transferred to TIF 1-3 to pay the bond, then \$150,000 must be subtracted from the total tax increment revenues of TIF 2-1 before determining the overall pooling limit of TIF 2-1.

Lastly, if the county requires payments of county administrative expenses (which are not required to be set forth in the TIF plan), or if tax increments are expended for county road costs that are included in a TIF plan subject to Minn. Stat. § 469.175, subd. 1a, such costs should be deducted before calculating the percentage limits as they are authorized uses by the county rather than the authority.¹⁷

Example

A TIF district collects and spends \$1.2 million of tax increment. This included \$2,000 paid for county administrative costs and \$123,000 for actual county road costs (despite the TIF plan authorizing up to \$130,000 for county road costs). \$125,000 should be deducted before calculating the overall pooling limit based on the remaining \$1,075,000 of tax increment revenues.

Additional Pooling Authority for Specific Purposes

In addition to general pooling authority, the TIF Act authorizes pooling for certain specific purposes or to address certain problems.

Pooling Permitted for Deficits

The 1997 to 2001 property tax reforms reduced the amount of tax increments generated thereafter.¹⁸ In turn, the smaller stream of tax increment left some authorities with insufficient increment to pay debt service or contract obligations. The Legislature authorized development authorities and municipalities to pool tax increments from other districts if necessary to eliminate a qualifying deficit, notwithstanding the various restrictions on the use of increment.¹⁹

- This extra authority to pool increment is limited to a defined “deficit” amount, which is determined after identifying what could be pooled under the regular pooling authority. The deficit is not simply the amount of the outstanding debt obligations.²⁰
- Only a TIF district with a request for certification date earlier than August 1, 2001, can receive pooled increments to make payments on pre-existing obligations.²¹

¹⁶ See Minn. Stat. § 469.1763, subd. 6(e)(1).

¹⁷ Minn. Stat. § 469.1763, subd. 2(a), and see Minn. Stat. § 469.176, subd. 4h.

¹⁸ See 1997 Minn. Laws, ch. 231, art. 1; 1998 Minn. Laws, ch. 389, art. 2; 1999 Minn. Laws, ch. 243; and 2001 Minn. Laws 1st Spec. Session, ch. 5.

¹⁹ See Minn. Stat. § 469.1763, subd. 6.

²⁰ Minn. Stat. § 469.1763, subd. 6(b). The deficit should be determined for the calendar year in which the pooling expenditures or transfer will be made and should be recalculated if pooling occurs over multiple years. Note that a technical flaw in the language specifying the determination of a deficit was corrected by 2023 Minn. Laws, ch. 64, art. 9, sec. 9.

²¹ See Minn. Stat. § 469.1763, subd. 6(a).

- Pooling may be used only to make payments on debt service or contract obligations that fit the statutory definition of pre-existing obligations and can be applied only to bonds or binding contracts that were entered into before August 1, 2001.²²
- A municipality can transfer tax increments from a district without regard to whether the transfer or expenditure was authorized by the TIF plan for the district and notwithstanding the various restrictions in the TIF Act on the use of tax increment.²³
- A municipality can transfer tax increments generated from a district of one development authority, such as a Housing and Redevelopment Authority (HRA), to cover the shortfall of a pre-existing obligation in a district of another development authority, such as an Economic Development Authority (EDA) or the municipality itself, as long as the municipality had established each of the districts and the development authorities.²⁴
- As noted in the “General Pooling Authority” section, the overall pooling limit for the district that transfers increment under this authority must be calculated after deducting the increments transferred for this purpose.²⁵

Pooling Permitted for Housing Districts

In the case of a housing district, tax increment spent for a housing project is treated as having been spent within the TIF district.²⁶ Percentage limitations imposed by the Legislature on pooling are not applicable as long as the tax increment is spent for low- and moderate-income housing.

A “housing district” consists of a project, or a portion of a project, intended for occupancy by persons or families of low- and moderate-income. Income limitations for owner-occupied housing and residential rental property must be satisfied, and the square footage that can be used for nonresidential uses is limited to no more than twenty percent.²⁷

Pooling Permitted for Non-Housing Districts for Housing Purposes

An authority may elect, in the tax increment plan, to increase the pooling limit by ten percentage points for redevelopment districts, renewal and renovation districts, soils condition districts, and economic development districts if the extra pooling is used for a qualified low-income building or to assist owner-occupied housing that meets the income requirements of the TIF Act.²⁸ This extra pooling is authorized

²² See Minn. Stat. § 469.1763, subd. 6(b) and (c).

²³ See Minn. Stat. § 469.1763, subd. 6(b) and (e).

²⁴ See Minn. Stat. § 469.1763, subd. 6(d).

²⁵ See Minn. Stat. § 469.1763, subd. 6(e)(1).

²⁶ Minn. Stat. § 469.1763, subd. 2(b); Minn. Stat. § 469.174, subd. 11 (defining “housing district” and “housing project”).

²⁷ Minn. Stat. § 469.1761, subd. 1. Low- and moderate-income is defined in federal, state, or municipal law.

²⁸ Minn. Stat. § 469.1763, subd. 2(d). Low-income buildings must meet the definition of the term in section 42 of the Internal Revenue Code (IRC) and expenditures must not exceed the qualified basis of the housing as defined in section 42(c) of the IRC. Owner-occupied housing must meet the requirements of Minn. Stat. § 469.1761, subd. 2. In addition, this extra pooling was previously authorized for certain market-rate housing. The market value of the housing could not exceed the lessor of: 150 percent of the average-value, single-family home in the municipality; \$200,000 if located in the metropolitan area; or \$125,000 if located in Greater Minnesota. The increment for this market-rate housing had to be used to pay certain costs for a foreclosed family dwelling unit that was vacant for at least six months. This market-rate housing authority expired December 31, 2016, although expenditures may continue beyond December 31, 2016, if used to pay bonds or binding contracts that would meet the Five-Year Rule if December 31, 2016, were the last date of the Five-Year period.

notwithstanding the limitations imposed by the Legislature for these types of districts.²⁹ These expenditures of tax increment for housing purposes do not have to be made within the project area.³⁰

Under this authority, tax increment can be used only to acquire and prepare the site of the housing; acquire, construct, or rehabilitate the housing; or make public improvements directly related to the housing.

If all the expenses outside the district are for housing purposes under this authority, (not just the additional ten percent), administrative expenses are considered to be expenditures in the district, further expanding the allowable amount for these purposes.³¹

Tax Increment Not Subject to Pooling Restrictions

As noted in the “General Pooling Authority” section, only the revenues “derived from tax increments paid by the properties in the [TIF] district” are subject to pooling restrictions. This includes tax increment distributions from the county and any reimbursements of TIF credits. Proceeds from the sale or lease of property purchased with tax increments, principal and interest received on loans or advances made with tax increments, interest or other investment earnings on or from tax increments, or repayments to an authority are not subject to pooling restrictions, even though they are all defined in the TIF Act as tax increment.³²

²⁹ Minn. Stat. § 469.1763, subd. 2(d). For specific limitations for these types of districts on the use of tax increment, see Minn. Stat. § 469.176, subds. 4b, 4c, and 4j.

³⁰ Minn. Stat. § 469.1763, subd. 2(d).

³¹ Minn. Stat. § 469.1763, subd. 2(c).

³² Tax increment revenues as defined in Minn. Stat. § 469.174, subd. 25(2), (3), (4), and (5) are expressly excluded from “revenues derived from tax increment paid by properties in the district.” See Minn. Stat. § 469.1763, subd. 1(d).