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Tax Increment Financing Division Newsletter

- ***TIF Legislative Report Mailed on January 23rd***
- ***When Are PAYGO Payments Not Legal Expenditures?***

Legislative Report Mailed on January 23rd

The TIF Legislative Report, with TIF reports through December 31, 2004 and TIF audits through December 31, 2005, was distributed and mailed on January 23rd. The report is also available on the State Auditor's website at www.auditor.state.mn.us

When Are PAYGO Payments Not Legal Expenditures?

We are coming across pay-as-you-go (PAYGO) financing issues that warrant further discussion. A PAYGO financing is an obligation, not secured by the city or authority, for which the TIF authority does not receive bond or loan proceeds or an advance and does not pay up-front development costs. Some PAYGO obligations, whether under a development agreement, TIF limited revenue note, or other obligation, state only that the developer gets a percentage of the tax increment received from a developed parcel. Without more, this constitutes an illegal expenditure. It is necessary to document the purpose for which the TIF revenues are expended.

Payment of PAYGO Notes Limited to Authorized Expenditures. Even if a development agreement states the purpose for which TIF revenues will be expended, the developer is required to provide invoices or other forms of validation substantiating that such costs were actually incurred by the developer. If the amount expended was less than the percentage the developer was to receive, the principal amount of the note cannot exceed the amount actually expended.

Pooling for Deficits Not Authorized on PAYGO Notes. Reform of the property tax system in years 1997 through 2001 (Tax Reform) substantially reduced TIF revenues available to TIF authorities. Some authorities have been making payments under PAYGO contracts that exceed the available increments by transferring (pooling) increments from other districts or using non-increment revenues. Section 496.1763, subdivision 6 of the TIF Act (pooling for deficits) does not apply to pre-2001 PAYGO obligations. The only way to increase the available increment would be to uncap the original local tax rate or to change the fiscal disparities option (if applicable). Authorities need to check to make sure payment of such PAYGO obligations reflects the reduction in TIF revenues available after Tax Reform. If payment doesn't reflect this reduction, the excess amount paid on the obligation would constitute an illegal expenditure.

If you have any questions please contact us:

Arlin Waelti
651-296-7979 Arlin.Waelti@state.mn.us

Kurt Mueller
651-297-3680 Kurt.Mueller@state.mn.us

Lisa McGuire
651-296-9255 Lisa.McGuire@state.mn.us

Suk Shah
651-296-7001 Suk.Shah@state.mn.us

Marsha Pattison
651-296-4716 Marsha.Patison@state.mn.us

Maggie Gebhard
651-296-7446 Maggie.Gebhard@state.mn.us