



STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

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Statement of Position Redistributions of Tax Increment

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

The Tax Increment Financing (TIF) Act requires that tax increment be returned to the county for redistribution (i) when tax increment is collected or TIF expenditures are made in violation of the TIF Act; (ii) when tax increment generated exceeds the total costs authorized for expenditure in a district's TIF plan; or (iii) when tax increment has been distributed after the required decertification of a TIF district.¹

Improper Collection or Expenditure of Tax Increment

If an authority includes or retains a parcel in a TIF district that does not qualify for inclusion or retention, the authority must pay to the county auditor an amount equal to the increment collected from the property and the property must be removed from the district.² Examples include, but are not limited to, the inclusion of parcels that qualified for Open Space, Green Acres, Rural Preserves, or Metropolitan Agricultural Preserves programs in the five years before certification was requested (that do not meet the manufacturing or housing exceptions), and parcels that do not meet the qualifications for the type of district (such as including a parcel in a housing district that is not part of a housing project).³

If an authority expends tax increment (i) for a purpose not permitted under the TIF Act, because the expenditure was for a project that is not permitted or for an expenditure not permitted for the district, or (ii) on activities outside the geographic area authorized, the authority or the municipality must pay to the county auditor an amount equal to the expenditures made in violation of the law.⁴

The county auditor is responsible for redistributing the returned tax increment to the city or town, county, and school district in direct proportion to their respective local tax rates for the year in which the redistribution is to be made.⁵ Special taxing districts are not included in the redistribution.

When increment is returned pursuant to a notice of noncompliance from the Office of the State Auditor or the commencement of an action by a county attorney, the municipality must be timely to receive its share. If the county auditor receives the payment from a municipality before 60 days have passed since

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

² Minn. Stat. § 469.1771, subd. 2.

³ See Minn. Stat. §§ 469.176, subd. 7 (parcels not includable in districts), and district type definitions and limitations under 469.174 and 469.176.

⁴ Minn. Stat. § 469.1771, subd. 3.

⁵ Minn. Stat. § 469.1771, subd. 5, directs the county auditor to distribute violation payments in the same manner as excess increments under Minn. Stat. § 469.176, subd. 2(c)(4).

a municipality's receipt of the state auditor's notification of noncompliance requiring payment and before commencement of legal action by the county attorney to compel payment, the municipality will receive its proportional share when the county auditor redistributes the money. If the payment is not made within the time required, the municipality will not be included in the redistribution.⁶

If the authority does not have sufficient tax increment or other available funds to make repayment of the amount expended in violation of the TIF Act, the municipality that approved the TIF district must make the repayment. If funds for repayment are not available, the municipality must levy property taxes.

Excess Tax Increment

When the amount of tax increment generated by a district exceeds the total costs authorized for expenditure in a district's TIF plan, it becomes excess increment.⁷ The TIF Act limits how this excess increment can be used. It can be used 1) to prepay any outstanding bonds; 2) to discharge the pledge of tax increment for any outstanding bonds; 3) to pay into an escrow account dedicated to the payment of any outstanding bonds; or 4) it can be returned to the county for redistribution.⁸ In this context, the term, "outstanding bonds," is limited to mean "bonds which are secured by increments from the district."⁹

Excess tax increment exists in any year in which tax increment, net of any previously returned excess increment, exceeds the total costs authorized by the TIF plan, less costs paid (or to be paid) by other revenues, and less principal and interest due after the current year.¹⁰

Authorities must determine annually the amount of excess increment as of December 31 of the year. The determination must be based on the TIF plan in effect on December 31 and on the increments and other revenues received as of December 31 of that year. A subsequent amendment to a TIF plan to increase authorized costs does not eliminate the excess increment determined for previous years. The authority must return the excess increments to the county auditor within nine months (by September 30).¹¹

If excess tax increment is expended on activities other than those related to repayment of bonds as enumerated above, the authority or the municipality must pay to the county auditor an amount equal to the expenditures made in violation of the law.

The county auditor is responsible for distributing the excess tax increment to the municipality, county, and school district in which the TIF district is located in direct proportion to their respective tax rates.¹² The county auditor must report the amount of any excess tax increment distributed to a school district to the Commissioner of Education by February 1 of each year.¹³

⁶ Minn. Stat. § 469.1771, subd. 5.

⁷ See Minn. Stat. § 469.176, subd. 2 (excess increment).

⁸ Minn. Stat. § 469.176, subd. 2(c).

⁹ Minn. Stat. § 469.176, subd. 2(c) and (f).

¹⁰ Minn. Stat. § 469.176, subd. 2(b). Excess tax increment should not be confused with excess taxes: they are two different concepts. The redistribution of excess tax increment refers to properly determined tax increment that exceeds the amount authorized for expenditure. Excess taxes are the amount of taxes attributable to the current tax rate being greater than the original local tax rate. Tax increment is limited to the taxes generated by the original local tax rate. The formula for distribution of excess taxes takes into account the extent to which a jurisdiction's rates are creating the excess. See Minn. Stat. § 469.177, subd. 9.

¹¹ Minn. Stat. § 469.176, subd. 2(a).

¹² Minn. Stat. § 469.176, subd. 2(c) (4).

¹³ Minn. Stat. § 469.176, subd. 2(e). Notification was required within 30 days of distribution prior to fiscal year 2022.

Tax Increment Obtained After Required Decertification

If the county auditor distributes tax increments to an authority for a TIF district after the required decertification of a district, the authority must return the tax increment to the county auditor for redistribution. For example, if the Six-Year Rule required decertification but the timing of the decertification notifications were such that the calculation and distribution of increments for an additional year were not prevented, the authority must return the amount of distributions.¹⁴ Moreover, if an authority fails to take action to decertify a district under the Six-Year Rule as required, subsequent distributions must be returned.¹⁵

The requirement to return increment also applies to distributions of delinquent property taxes collected after decertification of a district if they are improperly distributed as tax increment.¹⁶ Normally, payments of delinquent taxes made after decertification are not tax increments and must be distributed in the same way as all property taxes are distributed in the county. There is an exception when the nonpayment of property taxes in a timely manner caused a municipality or other TIF authority to pay a district's outstanding bonds or contractual obligations from sources other than tax increment or to not pay them at all, in which case the delinquent property taxes are tax increment and proper distributions.¹⁷ In these cases, the authority must provide the county auditor with information regarding the payment of the outstanding bonds and other contractual obligations and any other information necessary to administer the payment, as requested by the county auditor.¹⁸

¹⁴ Minn. Stat. § 469.1763, subd. 4(g)(4). Note that a county auditor has authority to preemptively redistribute unprevented increments under Minn. Stat. § 469.1763, subd. 4(g)(3), but if distributed, they must be returned.

¹⁵ Minn. Stat. § 469.1771, subd. 2. The authority is responsible for taking actions to decertify a district as required under Minn. Stat. § 469.1763, subd. 4(g), which differs from a county's responsibility to decertify districts upon their plan-specified duration limit, and failure to do so is improper retention of property in a TIF district.

¹⁶ Improper or erroneous distributions by the county after decertification should be returned to allow proper redistribution.

¹⁷ Minn. Stat. § 469.176, subd. 1f.

¹⁸ *Ibid.*