

TAX INCREMENT FINANCING

LEGAL COMPLIANCE MANUAL

TAX INCREMENT FINANCING

Introduction

Tax increment financing (TIF) is a financing tool created to promote economic development, redevelopment, and housing in areas where it would not otherwise occur. A TIF authority may be a city, county, or an entity created by a city or county, such as a housing and redevelopment authority (HRA) or economic development authority (EDA). The TIF authority creates, and the municipality approves the establishment of, the TIF district. The county auditor certifies a TIF district and determines the original net tax capacity.

The authority captures the property tax revenues generated by the increase in net tax capacity resulting from the new development and uses this increase in property tax revenues, (the tax increments), to finance qualifying expenditures related to the new development. These qualifying expenditures generally relate to acquisition, clean up, and preparation of the site for construction. Each TIF district has a term of years depending on the type of district. Once the costs are paid and the TIF district is decertified, the tax base becomes fully available to the county, city, and school district for financing local services.

The Office of the State Auditor prepares Statements of Position to provide an educational resource to local governments, auditors and the public. Statements of Position on Tax Increment Financing topics are available on the Office of the State Auditor website. See <http://www.auditor.state.mn.us/default.aspx?page=statements>.

Auditors should determine whether any special laws applicable to the municipality or authority affect the general legal standards related to tax increment financing. Special laws are common with TIF, and are found in Table 1 of Minnesota Statutes.

Minn. Stat. Section	TAX INCREMENT FINANCING	Yes	No	Workpaper Reference
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Part I. Segregation/Tax Increment Revenues

§ 469.174, subd. 25	Note: Tax increment includes: 1. Taxes paid by the captured net tax capacity, but excluding any excess taxes, as computed under section 469.177; 2. The proceeds from the sale or lease of property, tangible or intangible, to the extent the property was purchased by the authority with tax increments received after June 30, 1997; 3. Principal and interest received on loans or other advances made by the authority with increments after June 30, 1997; 4. Interest or other investment earnings on or from tax or from tax increments received after July 1, 1997; and 5. Repayments or return of tax increments made to the authority under agreements for districts for which the request for certification was made after August 1, 1993.			
§ 469.177, subd. 5	Did the authority segregate tax increment from this district in a special account or accounts on its official books and records, or segregate it as otherwise established by resolution to be held by a trustee for the benefit of bondholders?			

Part II. Interfund Loans

§ 469.178, subd. 7	For interfund loans made after July 31, 2001, to finance TIF eligible expenditures, was the loan or advance authorized by resolution before the money was transferred, advanced, or spent, whichever is earliest?			
§ 469.178, subd. 7	Are the terms and conditions for repayment of the loan in writing, and do they include, at a minimum, the principal amount, the interest rate, and the maximum term?			
§ 469.178, subd. 7	Does the interest rate on the loan or advance not exceed the greater of the rates specified under section 270C.40 or 549.09?			
§ 469.178, subd. 7	Note: An authority or municipality may advance or loan money to finance TIF expenditures from "its General Fund or any fund under which it has legal authority to do so."			

Part III. Four-Year Knock Down Rule

§ 469.176, subd. 6	Note: If, after four years from the date of certification of the original net tax capacity of the district, no demolition, rehabilitation, or renovation of property or other site preparation, including qualified improvement of a street adjacent to a parcel but not installation of utility service including sewer and water systems, has commenced on a parcel in the district, no additional increment may be taken from that parcel, and the original net tax capacity of that parcel shall be excluded from the original net tax capacity of the district.			
	Did the TIF authority submit to the county auditor, by February 1 of the fifth year following the year in which the parcel was certified, evidence that the required activity has taken place on each parcel in the district?			

Part IV. Decertification

§ 469.177, subd. 12	A. Was this TIF district decertified when the earliest of the following times was reached:			
	1. The statutory maximum duration limit under section 469.176, subdivisions 1b to 1g;			
§ 469.176, subd. 1	2. the maximum duration limit as provided in the TIF plan;			

Minn. Stat. Section	TAX INCREMENT FINANCING			Yes	No	Workpaper Reference
§ 469.1763, subd. 4	3.	beginning in the sixth year following certification of a post-1990 TIF district, sufficient tax increment revenues are available to pay, to defease, or to set aside to pay, outstanding bonds and binding contracts entered into before or within five years of the certification of the district; or				
§ 469.177, subd. 12	4.	upon the later of receipt by the county auditor of a written request for decertification from the authority or the decertification date specified in the request?				
	B	Did the authority file a confirmation of decertified TIF district form with its county auditor?				
	C.	Did the authority not receive any tax increment revenues from the county auditor following decertification of the district?				
§ 469.176, subd. 1c	D.	For TIF districts with certification request dates prior to August 1, 1979, has no tax increment been paid to the authority after August 1, 2009?				
Part V. Pooling Restrictions / Five-Year Rule / Six-Year Rule						
§ 469.1763, subds. 2, 3, 4	Compliance with Pooling Limits and the Six-Year Rule					
<p>Compliance with overall pooling limits are determined annually. In-district activities qualifying under the Five-Year Rule are determined at the end of the fifth year. Beginning in the sixth year, the pooling limit applies to each year's increment distributions in addition to the overall limit for all years, and the district must be decertified when the tax increment collected from properties in the district is equal to or more than the tax increment obligations for activities qualifying for under the Five-Year Rule as described in A through E below. Double counting is not permitted.</p> <p>This section applies only to TIF districts with certification request dates after April 30, 1990.</p> <ul style="list-style-type: none"> • The overall pooling limit requires redevelopment districts to spend 75% of increment on activities in the district and allows 25% to be spent outside the district but within the project area. • Districts other than redevelopment districts that that have a certification request date after April 30, 1990 and before July 1, 1995, are subject to the same 75%/25% limits. • Districts other than redevelopment districts with a certification request date after June 30, 1995, are limited to 80% in-district and 20% out-district. <p>The limit only applies to tax increment paid by properties in the district (distributed by the county to the TIF authority). It does not apply to tax increment from sale and lease proceeds, interest earnings, or repayments or returns of increments.</p> <p>For more information, see the Office of the State Auditor's Statements of Position entitled, TIF Pooling and TIF Five-Year Rule and Six-Year Rule.</p> <p>Note: The five-year period is <u>ten years</u> for redevelopment districts or renovation and renewal districts certified after June 30, 2003, and <u>eight years</u> for redevelopment districts certified after April 20, 2009, and before June 30, 2012.</p>						
§ 469.1763, subds. 2	1.	For increment collected to date from properties in the district, was the required in-district percentage (75% or 80%, <i>see above</i>), at a minimum, spent or reserved for expenditures on in-district activities described in A through E below?				

§ 469.1763, subd. 4	2. For increment collected in the current year, if the current year is the sixth year since certification of the district or later, were out-district expenditures less than the permitted pooling percentage where the required in-district percentage, at a minimum, has been spent or reserved for expenditures on in-district activities described in A through E below?			
§ 469.1763, subd. 4	3. If the current year is the sixth year since certification or later, and if the tax increment collected was equal to or more than the total tax increment expended or obligated to be expended on in-district activities as described in A through E, was the district decertified by the end of the year in which the tax increment revenues were collected?			
§ 469.1763, subds. 1 & 3	<p align="center">Tax Increment Expended on Activities Within the District</p> <p>A. Before or within five years after certification of the district the tax increment revenues are actually paid to a third party with respect to the activity.</p> <p>Note: "Third Party" is defined to mean "an entity other than (1) the person receiving the benefit of assistance financed with tax increments, or (2) the municipality or the development authority or other person substantially under the control of the municipality."</p>			
	B. Before or within five years after certification of the district, bonds, the proceeds of which must be used to finance the activity, are issued and sold to a third party where:			
	1. The bond proceeds, on the date of issuance are reasonably expected to be spent before the end of the later of (i) the five-year period, or (ii) a reasonably temporary period within the meaning of the use of that term under section 148(c)(1) of the Internal Revenue Code, or deposited in a reasonably required reserve or replacement fund.			
	2. Tax increment revenue was spent to repay the bonds.			
	C. Before or within five years after certification of the district, binding contracts with a third party are entered into for performance of the activity, and the tax increment is spent under the contractual obligation.			
	D. Before or within five years after certification of the district, the costs of the activity are paid, and tax increment is spent to reimburse a party for the payment of those costs, including interest on unreimbursed costs.			
	E. Expenditures are made for housing purposes as permitted by Minn. Stat. § 469.1763, subdivision 2, paragraphs (b) and (d) or for public infrastructure purposes within a biotechnology and health sciences zone as permitted by Minn. Stat. § 469.1763, subdivision 2, paragraph (e).			
§ 469.1763, subd. 1(b)	<p>NOTE: Revenues derived from tax increment are considered to have been expended on an in-district activity under Minn. Stat. § 469.1763, subdivision 2, only if one of the above occurs. An activity includes, for example, acquisition of property, clearing of land, site improvements, soil correction, removal of hazardous waste or pollution, installation of utilities and other similar activities, but only to the extent that tax increment revenues may be spent for such a purpose under the law.</p>			
§ 469.1763, subd. 2(b)	Bonds include refunding bonds if the original bonds meet the requirements.			

Part VI. Audit Conclusion

The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the client has complied with the legal provisions reviewed relating to Tax Increment Financing.

Conclusion:

