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Statement of Position
Excess Increments

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

The Tax Increment Financing (TIF) Act requires TIF authorities to return excess increment to the county auditor and to decertify the TIF district, subject to exceptions relating to plan modifications and outstanding pay-as-you-go (PAYG) notes, once collection of excess increments begins.[1] Generally, excess increments are increments collected in excess of the total costs authorized by the TIF plan.

Background

The excess increments provision was part of the original TIF Act enacted in 1979.[2] In its original form, the provision required annual increments exceeding the amount necessary to pay the current debt obligations of costs authorized by the plan to be used to pay outstanding debt – specifically to: (a) prepay any outstanding bonds, (b) discharge the pledge of tax increment to outstanding bonds, or (c) pay into an escrow account dedicated to the payment of outstanding bonds – or be returned to the municipality, county, and school district. As originally enacted, the provision prevented increments from being used for broader purposes and prompted quicker repayment of debt. This allowed for decertification of the district and the return of captured value to the tax base. There was not, however, an explicit decertification requirement.

Over time, the calculation of excess increments became more complicated. In addition to having to identify debt that was due or not yet due, calculations also had to factor in costs paid from sources other than tax increment.[3] This was because, prior to a 2003 law change, TIF plans generally included full project costs and not estimates of what would be paid with tax increments.[4] In 2005, the legislature further modified the calculation to account for transfers of increments. This change was made to address deficits caused by property tax reforms in the late 1990s and 2001.[5] Against the backdrop of the ever-increasing complexity of calculating excess increment, the legislature created an exemption in 2008 for authorities that applied when total costs authorized by the TIF plan exceeded increment collections by 20 percent.[6]

[1] Minn. Stat. § 469.176, subd. 2.
[2] Minn. Stat. § 273.75, subd. 2 (1979) as enacted by Laws 1979, ch. 322, § 5.
[3] *See* Minn. Stat. § 469.176, subd. 2(b)(2)(i-iii) (2024).
[4] *See* Laws 2003, ch. 127, art. 10, § 6, and further clarifications under Laws, 2009, ch. 88, art. 5 § 4 and ch. 101, art. 2, § 90.
[5] Minn. Stat. § 469.176, subd. 2(b)(2)(iv) (2024) as enacted by Laws 2005, ch. 152, art. 2, § 12.
[6] Minn. Stat. § 469.176, subd. 2(g) (2024) as enacted by Laws 2008, ch. 154, art. 9, § 7.

Other TIF Act provisions enacted and refined over time – primarily the Five-Year Rule and Six-Year Rule – have proven effective in limiting use of increments for broader purposes and promoting earlier decertification of TIF districts.[7]

Recognizing this evolution, the 2026 Legislature simplified the calculation of excess increments. The calculation became a cumulative comparison of the total collected increments to the total authorized costs without factoring current-versus-future debt payments or other sources and uses.[8] Additionally, it added the decertification requirement, eliminated the calculation exemption, clarified the impact of plan modifications that increase authorized costs, and addressed the unique characteristics of PAYG notes with respect to the decertification requirement.

Calculation of Excess Increment

Under current law, authorities must annually determine the amount of excess increments for a district, if any.[9] While the authority may make this determination at any time, the Excess Increment Calculation (EIC) Tab of the TIF annual reporting form that is required to be submitted to the State Auditor is designed to help in the determination.

Excess increments equal the excess of: (1) total increments collected from the district since its certification, reduced by any excess increments returned for all prior years, over (2) the total costs authorized by the TIF plan to be paid with increments from the district, increased by the sum of cumulative transfers of increments from the district made under the pooling for deficits provision through December 31 of the year.[10]

Example

A district has collected $750,000 of increment through 2026 and returned $10,000 of excess increments for 2025 (but did not decertify due to having an outstanding qualifying PAYG note). The TIF plan authorizes $720,000 of tax increment expenditures. The district has not made any transfers to other districts under the pooling for deficits provision. Excess increments for 2026 would be calculated as:

Total Tax Increment Revenues Since Certification:	$	750,000
(minus) Prior Year Excess Increment Returned to the County Auditor:	$	10,000
Subtotal A:	$	740,000
Total Costs Authorized by the TIF Plan (To Be Paid with Tax Increment):	$	720,000
(plus) Transfers Under Pooling for Deficits Authority:	$	0
Subtotal B:	$	720,000
Excess Increment (Subtotal A minus Subtotal B):	$	20,000

Calculations are based on the TIF plan in effect on December 31 of the year being reviewed and increments received as of December 31 of the year.[11] For example, when determining excess increments for the year 2026 in the annual reporting forms due to the Statue Auditor in August of 2027, excess increments are based on the plan in effect on December 31, 2026, and cumulative increment received through December

[7] See the Statement of Position on the TIF Five-Year Rule and Six-Year Rule for more information.
[8] *See* 2026 Minn. Laws, ch. 128, art. 6, sec. 1.
[9] Minn. Stat. § 469.176, subd. 2(a).
[10] Minn. Stat. § 469.176, subd. 2(d). The pooling for deficits provision is found at Minn. Stat. § 469.1763, subd. 6. Only three districts reported such transfers for 2024.
[11] Minn. Stat. § 469.176, subd. 2(a).

31, 2026.[12] Therefore, if the TIF plan was modified in 2027 to increase authorized costs, this would not impact the calculation of excess increments for 2026.

The subtraction for excess increments returned to the county auditor for a prior year can be more complicated than one might expect.

First, increments that are returned to the county auditor to remedy previous improper receipt or expenditure of increments are usually not considered return of excess increments for purposes of the calculation. Such increments are only included in the calculation if they were excess increments to begin with.

Second, note that authorities may return unneeded increments prior to any excess increments being calculated, or in addition to the calculated excess increments. We generally refer to these additional returns as "surplus" increments rather than "excess" increments. Returns of surplus increments must not be included in the calculation's subtraction for excess increments returned for a prior year, at least not initially when they have not yet been determined to be excess increments for a prior year. When excess increments or additional excess increments are subsequently computed, the already returned surplus increments can then be considered returns of prior year excess increments to the appropriate extent. The following example illustrates this further.

Example

Continuing with the previous example, assume the authority had returned a total of $35,000 of increments in 2026 ($10,000 for 2025 excess increment and $25,000 being surplus tax increments that were not needed). The return of the $10,000 of prior year excess increments is included in the 2026 computation, and the returns of surplus increments are not included in the 2026 computation. However, for the 2027 excess increments calculation, the authority could identify that $20,000 of the $25,000 returned in 2026 were now returns of prior year excess increments because $20,000 of additional excess increments were computed for 2026. The subtraction of prior year excess returned increases to $30,000 ($10,000 for 2025 excess and $20,000 for 2026 excess). Excess increments (assuming no additional increment was returned in 2027) for the two years would be calculated as:

	2026	2027
Total Tax Increment Revenues Since Certification:	$ 750,000	$ 770,000
(minus) Prior Year Excess Increment Returned to the County Auditor:	$ 10,000	$ 30,000
Subtotal A:	$ 740,000	$ 740,000
Total Costs Authorized by the TIF Plan (To Be Paid with Tax Increment):	$ 720,000	$ 720,000
(plus) Transfers Under Pooling for Deficits Authority:	$ 0	$ 0
Subtotal B:	$ 720,000	$ 720,000
Excess Increment (Subtotal A minus Subtotal B):	$ 20,000	$ 20,000

On the 2026 TIF Annual Reporting Form, reporting of returned increments should show a return of $10,000 of excess increments and $25,000 of surplus increments in the current year column. On the 2027 TIF Annual Reporting Form, reporting of returned increments should show a return of $30,000 of excess increment and $5,000 of surplus increments in the prior years column and zeros in the current year column.

[12] January settlement distributions for a payable year are not considered to be received in the payable year in this context (e.g. any January 2027 distribution would not generally be considered received by December 31, 2026) but would likely amount to additional excess increments that could be returned without delay.

Return and Distribution of Excess Increment

If an authority determines there are excess increments for a district, it must return the excess increments to the county auditor within nine months after December 31.[13] For example, excess increments determined for 2026 (as reported in 2027), must be returned to the county auditor by September 30, 2027.

The county auditor must distribute the excess increments that are returned to the city or town, county, and school district in which the TIF district is located in direct proportion to their respective local tax rates.[14] Although not specified in statute, county auditors have typically used the current local tax rates to allocate the redistributions.

The county auditor must, prior to February 1 of each year, report to the Commissioner of Education the amount of any excess tax increment distributed to a school district for the preceding taxable year. For example, returned increments distributed in October 2026 must be reported to the Department of Education by February 1, 2027.

Decertification Requirement

If an authority determines there are excess increments for a district, it must, absent an outstanding qualifying pay-as-you-go contract and note (Qualifying PAYG Note), decertify the district within nine months after December 31.[15] For example, if the district does not have an outstanding Qualifying PAYG Note, and excess increments are determined for 2026 (as reported in 2027), the district must be decertified by September 30, 2027.

If the authority determines there are excess increments for a district, but the district has an outstanding Qualifying PAYG Note, decertification is not required by the excess increments provision. A "qualifying pay-as-you-go contract and note" is a defined term in statute and refers to PAYG notes that are considered to be for activities within the district under the Five-Year Rule.[16] As a result, the exception to the decertification requirement would not apply for a PAYG note solely for out-district (or "pooling") activities.

The exception to the decertification requirement for outstanding Qualifying PAYG Notes is meant to protect noteholders from unfairly being forced to forego repayment. With a PAYG Note, the increment generated by particular parcels within a district are pledged for repayment of the Note. Without the exception to the decertification requirement, if parcels not tied to the obligation of the PAYG Note were to generate enough increment to create excess increments, the entire district would decertify and no further increment from the parcels tied to the Note would be available either for repayment.

This exception to the decertification requirement, however, does not override the requirements to return excess increment and to stay within the total authorized costs. While the exception aims to help ensure Qualifying PAYG Notes may be paid, it is not a guarantee. Excess increments must be returned regardless of whether the decertification exception applies, and other provisions of TIF law may cause districts to terminate prior to the expected satisfaction of PAYG notes. Referring to the previous calculation examples, if the authority had already spent all but $5,000 of the $720,000 of authorized costs as of December 31, 2026, the authority would not be able to use more than $5,000 of 2027 increment to pay on the Qualifying PAYG Note and might not even be able to use that if there were not

[13] Minn. Stat. § 469.176, subd. 2(a).
[14] Minn. Stat. § 469.176, subd. 2(e). Redistribution of returned surplus increments should be done in the same manner.
[15] Minn. Stat. § 469.176, subd. 2(a). This exception for Qualifying PAYG Notes is similar to the exception in the decertification requirement under the Six-Year Rule (*see* Minn. Stat. § 469.1763, subd. 4(b)).
[16] "Pay-as-you-go contract and note" is defined under Minn. Stat. § 469.1763, subd. 4(e).

enough other increments available to return the excess increments calculated for 2027. Additionally, the details of a note's termination provision and the applicability of TIF laws in general may combine to affect the legal obligation to repay it and when it would be deemed outstanding.

Modifications to Increase Authorized Costs

Since excess increments for a year are based on the TIF plan in effect as of December 31 of the year in question, a subsequent modification of the TIF plan does not retroactively impact excess increment calculations for any prior year (as was noted earlier in the calculation section of this statement).

TIF plan modifications that increase authorized costs by an amount greater than the previously determined excess increment, however, may delay, avert, or reduce excess increments for the year of the modification and subsequent years. But with the decertification requirement now in place, there is a timing limitation for such TIF plan modifications, because decertified districts may not be revived by a plan modification.

A modification of the TIF plan that increases the total costs authorized to be paid with tax increments from the district by an amount greater than the excess increments must be made within nine months of the of the year for which excess increments have been determined in order to defer the decertification requirement.[17] For example, if excess increment is first determined for 2026 in the amount of $12,000, the TIF plan would have to be modified by September 30, 2027, and increase the authorized costs by more than $12,000 to defer decertification, which otherwise would have been required by that date.

The deferral of the decertification requirement caused by a TIF plan modification expires nine months following the next year for which: (1) the authority determines an amount excess increments exists, (2) there are no further approved modifications of the TIF plan that would further increase total costs authorized to be paid with increments from the district by an amount greater than the excess increment, and (3) the district has no outstanding Qualifying PAYG Note.[18] Continuing the example from the previous paragraph, if authorized costs were increased by $100,000, and excess increment is not computed again until it is determined for 2029, decertification would be required by September 30, 2030, absent a further modification or outstanding Qualifying PAYG Note.

"Excess Increment" vs "Excess Taxes"

Excess increments should not be confused with what is commonly referred to as "excess taxes" which are calculated when the taxes generated on captured value using current tax rates exceeds the tax increments, which are limited to what is generated using the original tax rate.[19] In county settlements to authorities, excess taxes may not always be clearly distinguished from excess increments, but these are separate concepts.

[17] Minn. Stat. § 469.176, subd. 2(b).
[18] Minn. Stat. § 469.176, subd. 2(c).
[19] *See* Minn. Stat. § 469.177, subd. 9.