

STATE OF MINNESOTA

Office of the State Auditor



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State Auditor

TAX INCREMENT FINANCING COUNTY GUIDE

May 2004

Description of the Office of the State Auditor

The Office of the State Auditor serves as a watchdog for Minnesota taxpayers by helping to ensure financial integrity, accountability, and cost-effectiveness in local governments throughout the state.

Through financial, compliance, and special audits, the State Auditor oversees and ensures that local government funds are used for the purposes intended by law and that local governments hold themselves to the highest standards of financial accountability.

The State Auditor performs approximately 250 financial and compliance audits per year and has oversight responsibilities for over 4,300 local units of government throughout the state. The office currently maintains five divisions:

Audit Practice - conducts financial and legal compliance audits for local governments;

Government Information - collects and analyzes financial information for cities, towns, counties, and special districts;

Legal/Special Investigations - provides legal analysis and counsel to the Office and responds to outside inquiries about Minnesota local government law; as well as investigates allegations of misfeasance, malfeasance, and nonfeasance in local government.

Pension Oversight - monitors investment, financial, and actuarial reporting for over 700 public pension funds;

Tax Increment Financing (TIF) - promotes compliance and accountability in local governments' use of TIF through financial and compliance audits;

The State Auditor serves on the State Executive Council, State Board of Investment, Land Exchange Board, Public Employee's Retirement Association Board, Minnesota Housing Finance Agency, and the Rural Finance Authority Board.

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**TAX INCREMENT FINANCING
COUNTY GUIDE**

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TAX INCREMENT FINANCING COUNTY GUIDE

Welcome to the Minnesota State Auditor's Tax Increment Financing County Guide.

This guide was made possible with support from members of the Auditor's TIF Panel. In particular, the following individuals provided invaluable assistance in reviewing and improving drafts of it:

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We've prepared this guide, and the checklist that accompanies it, to help county officials identify and administer the parts of the Tax Increment Financing Act that apply directly to them. When using it, please keep a few items in mind.

First, the TIF Act changes during almost every legislative session. Some of these changes are retroactive, while others are not. It is always important to make sure that the correct version of the law is being used.

Second, the guide covers the main rights and obligations that counties have under the TIF Act, but there may be specific issues that are not addressed in these materials. Again, please check the TIF Act or consult with an appropriate advisor if there are questions about a specific situation.

Finally, the State Auditor's office is here to help. If we can be of assistance, or if you have suggestions on ways to improve this guide, please do not hesitate to contact us.

Alternative Format

This document can be made available in alternative formats upon request. Call (651) 296-2551 [voice] or (800) 627-3529 [relay service] for assistance or visit the State Auditor's website: www.auditor.state.mn.us.

Questions

If you have any questions or require further assistance, the Tax Increment Financing, Investment & Finance Division can be reached by calling (651) 296-4716 or sending an email to tifdivision@osa.state.mn.us.

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Introduction

The Office of the State Auditor (OSA) has received requests for general guidelines to assist counties in administering tax increment financing (TIF) districts. The information provided below includes most, if not all, of the TIF Act provisions applicable to counties. The Department of Revenue has also distributed a Tax Increment Financing District Property Tax Procedures manual to guide county auditors in their administration of these complicated statutes. Remember that the law changes frequently. While this information is current as of May 1, 2004, it is important to ensure that there have not been any subsequent changes in the law before acting on the information contained in this guide.

A. Opportunity to Comment on Proposed New TIF Districts

Before forming a TIF district, the TIF authority must provide the county auditor and clerk of the school board with the proposed tax increment financing plan for the district and the authority's estimate of the fiscal and economic implications of the proposed TIF district. The auditor and clerk must provide copies of these documents to their respective boards. This information must be provided to the county auditor and the clerk of the school board at least 30 days before the public hearing that must be conducted by the city council or other municipal governing body before it approves the TIF district. The information on the fiscal and economic implications may be included in or as a part of the TIF plan. The 30-day requirement is waived if the county and school boards submit written comments on the proposal to the TIF authority after receipt of the information.¹

In addition, if the proposed TIF district is a housing or redevelopment district, the authority must provide at least 30 days written notice of the proposed TIF district to each county commissioner who represents part of the area proposed to be included in the district. The notice must contain a general description of the boundaries of the proposed district and the proposed activities to be financed by the district, an offer by the authority to meet with the county commissioner, and a solicitation of the commissioner's comments with respect to the district. The commissioner may waive the 30-day requirement by submitting written comments on the proposal and any modification of the proposal to the TIF authority after receipt of the information.

B. Municipality Approval

A county auditor may not certify the original net tax capacity of a district until the TIF plan proposed for that district has been approved by the municipality in which the district is located. If the

¹ Minn. Stat. § 469.175, subd. 2.

authority that proposes to establish a TIF district and the municipality are not the same, the authority must obtain the approval of its TIF plan by the municipality before the authority may use tax increment financing.²

C. Opportunity to Comment on Proposed TIF-Plan Modifications

A TIF authority may modify a TIF plan, but if the modification reduces or enlarges the geographic area of the TIF district or project area, increases the amount of bonded indebtedness, changes the amount of interest to be capitalized, increases the net tax capacity to be retained by the authority, increases total estimated tax increment expenditures, or designates additional property to be acquired by the authority, the modification may only be approved after the notice and after the discussion, public hearing, and findings required for approval of the original TIF plan.³

If the TIF-plan modification changes the type of district from housing, redevelopment, or economic development to another type of district, the TIF authority must follow the procedures for adoption of a new TIF plan, including certification of the net tax capacity of the district by the county auditor.

The geographic area of a TIF district may be reduced, but may not be enlarged after five years following the date of certification of the original net tax capacity by the county auditor or after August 1, 1984, for TIF districts authorized prior to August 1, 1979.⁴

D. Recovering County Costs and Multi-County Expenditures

1. County Road Costs

When the county receives a copy of a plan for a proposed TIF district or a TIF-plan modification for an existing TIF district, it should examine the impact of the proposed development or redevelopment on county roads. The county board may require the authority to pay all or a portion of the cost of county road improvements out of tax increment revenues, if: (1) the proposed TIF plan or an amendment to the plan contemplates development that will require construction of road improvements or result in other road costs because of a substantial increase in the use of county roads; and (2) the road improvements are not scheduled for construction within five years under the county capital improvement plan or another formally adopted county plan, and would not be needed within the reasonably foreseeable future if the tax increment financing plan were not implemented.⁵

If the county elects to use increments to finance the road improvements, it must, within 45 days of receiving the proposed TIF plan, notify the TIF authority and municipality of the estimated cost of

² Minn. Stat. § 469.175, subd. 3.

³ Minn. Stat. § 469.175, subd. 4(a).

⁴ Minn. Stat. § 469.175, subd. 4(b).

⁵ Minn. Stat. § 469.175, subd. 1a(a). *See also* Minn. Stat. § 469.176, subd. 4h(b).

the road improvements and a schedule for construction and payment of the cost. The authority must include the improvements in the tax increment financing plan. The improvements may be financed with the proceeds of tax increment bonds or the authority and the county may agree that the county will finance the improvements with county funds to be repaid in installments, with or without interest, out of increment revenues.

If the cost of the road improvements and other project costs exceed the projected amount of the increment revenues, the county and the authority must attempt to negotiate an agreement that will permit financing of the costs before the tax increment financing plan may be approved.⁶ If the county and the TIF authority or municipality cannot reach a negotiated agreement about financing road improvements with tax increment, either party may elect to have the dispute resolved by binding arbitration.⁷

2. County Administrative Expenses

A county may require a TIF authority to reimburse the county auditor's expenses arising from the county's administration of the authority's TIF districts. Payment may be required by February 15 of the year after the year in which the expenses are incurred. The county auditor must submit to the authority a record of costs incurred by the county auditor in order to obtain payment, but the amount of these payments is not required to be set forth in the TIF plan for the project.⁸

If the county and the TIF authority or the municipality are unable to agree on the proper amount of the county's administrative expenses, either party may elect to have the dispute resolved by binding arbitration.⁹

3. Multi-County Use Prohibited

If a municipality is located in more than one county, tax increment from parcels located in one county must be spent for the benefit of a project located or conducted within that county, unless the county boards of each of the counties involved agree to waive this requirement.¹⁰

E. Request for Certification of a New/Modified TIF District

After a TIF authority adopts and a municipality approves a TIF plan for a new TIF district, or a modification of an existing TIF district that expands the geographic area of the district, the TIF

⁶ Minn. Stat. § 469.175, subd. 1a(b).

⁷ Minn. Stat. § 469.1762.

⁸ Minn. Stat. § 469.176, subd. 4h(a).

⁹ Minn. Stat. § 469.1762.

¹⁰ Minn. Stat. § 469.176, subd. 4i.

authority must request certification of the parcels in the TIF district.

1. Date Certification Request Received

A request for certification of a new TIF district or a modification to an existing TIF district received by the county auditor on or before June 30 of the calendar year is recognized by the county auditor in determining local tax rates for the current and subsequent levy years. Requests received after June 30 of the calendar year are not recognized in determining local tax rates for the current levy year but are recognized in determining local tax rates for subsequent levy years.¹¹

2. Prior Planned Improvements

A TIF authority must accompany its request for initial certification or its notice of a district enlargement to the county auditor with a list of building permits that have been issued for properties within the TIF district during the 18 months immediately preceding approval of the tax increment financing plan by the municipality. The county auditor must increase the original net tax capacity of the district by the net tax capacity of each improvement for which a building permit was issued.¹²

3. Parcels not Includable in TIF Districts

A parcel or part of a parcel that qualified under the provisions of section 273.111 or 273.112 or chapter 473H (Agricultural and open space preservation statutes) for taxes payable in any of the five calendar years before the filing of the request for certification may be included in the TIF district only for: (1) a district in which 85% or more of the square footage of the planned buildings and facilities are used as a qualified manufacturing facility or a qualified distribution facility or a combination of both; or (2) a qualified housing district.

¹¹ Minn. Stat. § 469.177, subd. 6.

¹² Minn. Stat. 469.177, subd. 4.

A distribution facility means buildings and other improvements to real property that are used to:

- (i) store or warehouse tangible personal property;
- (ii) take orders for shipment, mailing, or delivery;
- (iii) prepare personal property for shipment, mailing, or delivery; and
- (iv) ship, mail, or deliver property.

A manufacturing facility includes space used for manufacturing or producing tangible personal property, including processing resulting in the change in condition of the property, and space necessary for and related to the manufacturing activities.

To be a qualified facility, the owner or operator of a manufacturing or distribution facility must also agree to pay at least 90% of the facility's employees at a rate equal to or greater than 160% of the federal minimum wage for individuals over the age of 20.¹³

4. Certification of Original Net Tax Capacity and Original Local Tax Rate

Upon request of the TIF authority, the county auditor must certify the original net tax capacity of a tax increment financing district and that portion of the district overlying any subdistrict. In each subsequent year, the auditor must certify the amount by which the original net tax capacity has increased or decreased as a result of:

- (i) a change in tax exempt status of property within the district and any subdistrict;
- (ii) reduction or enlargement of the district; or
- (iii) changes in prior planned improvements.¹⁴

At the time of the initial certification of a TIF district's original net tax capacity, the county auditor must certify the original local tax rate that applies to the district or subdistrict. The original local tax rate is the sum of all the local tax rates that apply to a property in the district or subdistrict, and is the rate in effect for the same taxes payable year applicable to the tax capacity values certified as the district's or subdistrict's original tax capacity. The resulting tax capacity rate is the original local tax rate for the life of the district or subdistrict.¹⁵

¹³ Minn. Stat. § 469.176, subd. 7.

¹⁴ Minn. Stat. § 469.177 subd. 1.

¹⁵ Minn. Stat. § 469.177 subd. 1a.

The original local tax rate and any other tax rate or amount used to calculate the amount of tax increment does not include any rate or amount attributable to a state levy.¹⁶

5. Adjustments to Original Net Tax Capacity

If the classification of property located in a district changes to a classification with a different assessment ratio under Minnesota Statutes, Section 273.13, the original net tax capacity of that property must be redetermined at the time its use is changed. The redetermined original net tax capacity should be set as if the property had originally been in the same class in which it is classified after its use is changed.¹⁷

If previously tax exempt real property in a TIF district becomes taxable, the amount to be added to the original net tax capacity of the district equals the net tax capacity of the real property as most recently assessed under Minnesota Statutes, Section 273.18. If that assessment was made more than one year prior to the date of title transfer rendering the property taxable, the amount to be added equals the net tax capacity assessed by the assessor at the time of the transfer.¹⁸

If previously taxable property in a TIF district becomes tax exempt or is removed from the district, the amount to be subtracted from the original net tax capacity of the district is the amount of original net tax capacity initially attributable to the property in question.¹⁹

If the net tax capacity of a property increases because it no longer qualifies under the Minnesota Agricultural Property Tax Law or the Metropolitan Agricultural Preserves Act, or because platted, unimproved property is improved or three years pass after approval of the plat under section 273.11, subdivision 1, the increase in net tax capacity must be added to the original net tax capacity.²⁰

If a parcel of property contained a substandard building that was demolished or removed and if the authority elects to treat the parcel as occupied by a substandard building under section 469.174, subdivision 10, paragraph b, the county auditor must certify the original net tax capacity of the parcel using the greater of: (1) the current net tax capacity of the parcel; or (2) the estimated market value of the parcel for the year in which the building was demolished or removed, but applying the class rates for the current year.²¹

¹⁶ Minn. Stat. § 469.177, subd. 1b.

¹⁷ Minn. Stat. § 469.177, subd. 1(b).

¹⁸ Minn. Stat. § 469.177, subd. 1(c).

¹⁹ Minn. Stat. § 469.177, subd. 1(e).

²⁰ Minn. Stat. § 469.177, subd. 1(d).

²¹ Minn. Stat. § 469.177, subd. 1(f).

6. Certification of Captured Net Tax Capacity

The county auditor must certify the amount of the captured net tax capacity to the authority each year, along with the proportion that the captured net tax capacity bears to the total net tax capacity of the real property within the tax increment financing district and any subdistrict for that year. An authority may retain part or all of the captured net tax capacity, but the portion that the authority intends to retain must be clearly stated in the TIF plan.²²

7. Tax Increment, Relationship to Chapters 276A and 473F

a. Unless the governing body elects pursuant to paragraph (b) the following method of computation applies to a district other than an economic development district for which the request for certification was made after June 30, 1997:

(1) The original net tax capacity and the current net tax capacity shall be determined before the application of the fiscal disparity provisions of chapter 276A or 473F. Where the original net tax capacity is equal to or greater than the current net tax capacity, there is no captured net tax capacity and no tax increment determination. Where the original net tax capacity is less than the current net tax capacity, the difference between the original net tax capacity and the current net tax capacity is the captured net tax capacity. This amount less any portion thereof which the authority has designated, in its tax increment financing plan, to share with the local taxing districts is the retained captured net tax capacity of the authority.

(2) The county auditor shall exclude the retained captured net tax capacity of the authority from the net tax capacity of the local taxing districts in determining local taxing district tax rates. The local tax rates so determined are to be extended against the retained captured net tax capacity of the authority as well as the net tax capacity of the local taxing districts. The tax generated by the extension of the lesser of (A) the local taxing district tax rates or (B) the original local tax rate to the retained captured net tax capacity of the authority is the tax increment of the authority.²³

b. The following method of computation applies to any economic development district for which the request for certification was made after June 30, 1997, and to any other district for which the governing body makes an election by resolution approving the TIF plan:

(1) The original net tax capacity shall be determined before the application of the application of the fiscal disparity provisions of chapter 276A or 473F. The

²² Minn. Stat. § 469.177, subd. 2.

²³ Minn. Stat. §§ 469.177, subd. 3(a)(1) and (2).

current net tax capacity shall exclude any fiscal disparity commercial-industrial net tax capacity increase between the original year and the current year multiplied by the fiscal disparity ratio determined pursuant to section 276A.06, subdivision 7, or 473F.08, subdivision 6. Where the original net tax capacity is equal to or greater than the current net tax capacity, there is no captured net tax capacity and no tax increment determination. Where the original net tax capacity is less than the current net tax capacity, the difference between the original net tax capacity and the current net tax capacity is the captured net tax capacity. This amount less any portion thereof which the authority had designated, in its tax increment financing plan, to share with the local taxing districts is the retained captured net tax capacity of the authority.

(2) The county auditor shall exclude the retained captured net tax capacity of the authority from the net tax capacity of the local taxing districts in determining local taxing district tax rates. The local tax rates so determined are to be extended against the retained captured net tax capacity of the authority as well as the net tax capacity of the local taxing districts. The tax generated by the extension of the lesser of (A) the local taxing district tax rates or (B) the original local tax rate to the retained captured net tax capacity of the authority is the tax increment of the authority.²⁴

An election by the governing body pursuant to paragraph (b) must be submitted to the county auditor by the authority at the time of the request for certification.²⁵ The method of computing tax increment remains the same for the duration of the district, except that the governing body may elect to change its election from the method of computation in paragraph (a) to the method in paragraph (b).²⁶

F. Assessment Agreements

An authority may enter into a written agreement that establishes a minimum market value of land, existing improvements, or improvements to be constructed in a district. The assessment agreement must be presented to the county assessor (or city assessor as applicable). The assessor must review all relevant records, and may, if appropriate, certify that the market value assigned to land and improvements are reasonable. The assessment agreement should be filed and recorded in the office of the county assessor or the registrar of titles of each county where the real estate or any part thereof is situated.²⁷

G. Distribution of Excess Taxes on Captured Net Tax Capacity

²⁴ Minn. Stat. §§ 469.177, subd. 3(b)(1) and (2).

²⁵ Minn. Stat. § 469.177, subd. 3(b)(3).

²⁶ Minn. Stat. § 469.177, subd. 3(c).

²⁷ Minn. Stat. § 469.177, subd. 8.

For TIF districts with certification request dates after May 1, 1988, the county auditor must certify the original local tax rate for the district. Applying the local taxing jurisdictions' tax rates to the net tax capacity captured by the TIF district may yield an amount of tax revenue that is greater than the limited amount of tax increment. The difference between the amount of tax revenue generated by applying the local taxing district tax rates to the captured net tax capacity and the limited amount of tax increment is excess taxes. Excess taxes are not tax increment, although the sum of excess taxes and the net tax increment from a TIF district sometimes is called the district's gross tax increment. The excess taxes are distributed to the local taxing districts whose local tax rate increases produced the excess taxes.²⁸

Excess taxes due to the increase in the tax rate over the rate in effect when the TIF district was certified are to go to the county, city, and school district based on the increase in their respective rates.

Within 30 days after making a distribution of excess taxes to a school district, the county auditor must report to the Department of Education the amount of excess taxes the school district received, so that the school district's state aid may be adjusted downward.²⁹

TIF authorities have told the OSA that the computer software used by many counties to compute and generate reports regarding property tax settlements labels distributions of excess taxes on captured net tax capacity as "excess TIF." This label has led some TIF authorities to believe these excess taxes are tax increment, which they are not, and to record the deposit of them into funds containing tax increment. This confusion has resulted in some TIF authorities improperly failing to segregate tax increment from these excess taxes, contrary to the statutory requirement to segregate tax increment.³⁰

H. Deduction for OSA's TIF Enforcement Activities

The county treasurer is required to deduct a percentage of distributed tax increment and pay it to the state treasurer to finance the OSA's TIF enforcement activities. The Department of Revenue has calculated the TIF enforcement deduction rate for taxes payable in 2002 and thereafter to be 0.36 percent.³¹

I. Adjustments to Date of Decertification and Early Decertification

A county auditor should be aware of certain TIF authority actions or TIF Act provisions that may affect the maximum duration limit of a TIF district or parcels that make up the TIF district.

²⁸ Minn. Stat. § 469.177, subd. 9(a).

²⁹ Minn. Stat. § 469.177, subd. 9(c).

³⁰ Minn. Stat. § 469.177, subd. 5.

³¹ Minn. Stat. § 469.177, subd. 11.

1. Waiving Receipt of Tax Increment

Typically, a request to waive or decline a tax increment payment occurs in an early year of a district when only a small amount of increment is generated. Tax increment is waived or declined in an attempt to delay by one or more years the maximum duration limit of the district, if the district's statutory maximum duration limit is based on the first receipt of tax increment.

An action by the authority to waive or decline to accept a tax increment payment has no effect on a district's duration limit. The authority is deemed to have received a tax increment payment for any year in which it waived or declined to accept the payment, regardless of whether the increment was paid to the authority.³² This provision only applies to new economic development, renewal and renovation, and soils condition districts with certification requests dates after June 30, 2000.³³ As a result, the statutory maximum duration limits of economic development, renewal and renovation, and soils condition districts with initial certification request dates on or before June 30, 2000, may be affected by waiving or declining tax increment. As a practical matter, however, this law has no impact on the statutory maximum duration limit of many economic development districts, because their statutory maximum duration limits are frequently measured from approval of the TIF plan rather than first receipt of tax increment.³⁴

The law also did not effect statutory maximum duration limits for housing or redevelopment districts with certification request dates after May 31, 1993, or hazardous substance subdistricts. The only way to delay receiving tax increment from such a housing or redevelopment district or a hazardous substance subdistrict, and thus the only way to affect the statutory maximum duration limits of these districts and subdistricts, was to have included a provision in the TIF plan setting a minimum market value.³⁵ The authorization to include a minimum market value in a TIF plan, and thereby delay the receipt of the first tax increment from a housing or redevelopment district or a hazardous substance subdistrict, was repealed effective for TIF districts with certification request dates after July 31, 2001.³⁶ Therefore, for redevelopment or housing districts or hazardous substance subdistricts with certification request dates after July 31, 2001, the statutory maximum duration limit cannot be adjusted by setting a minimum market value in the TIF plan or waiving tax increment.

³² Minn. Stat. § 469.176, subd. 1b(c).

³³ The new law does not apply to geographic enlargements of TIF districts, provided the district's initial request for certification was on or before June 30, 2000.

³⁴ See Laws of Minnesota for 1997, ch. 231, art. 10, sec. 6.

³⁵ See Minn. Stat. §§ 469.175, subd. 1(b) and 469.176, subd. 1b(a)(4), 1b(c), and 1e.

³⁶ See Laws 1 Sp. 2001, ch. 5, art. 15, sec. 7, 10, and 11.

2. Shorter Duration Limit

A municipality may, at the time it approves of the initial TIF plan, provide for a shorter duration limit than the maximum specified in the TIF Act.³⁷ Therefore, the county auditor should review all TIF plans to determine whether a shorter duration limit is specified.

3. Three-Year “Knockout” Rule

If a TIF district has no qualifying activity within three years after certification of the district, the county auditor must decertify the district. A qualifying activity can be the sale of certain bonds, the authority’s acquisition of property within the district, or the construction of public improvements within the district.³⁸

Activity that takes place **before** a TIF district is certified is **not** a qualifying activity for purposes of the three-year rule, and the rule applies to the entire district and not individual parcels.

4. Four-Year “Knock Down” Rule

The county auditor is required to enforce the four-year “knock down” rule:

If, after four years from the date of certification of the original net tax capacity of the tax increment financing district pursuant to section 469.177, 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 or water systems, has been commenced on a parcel located within a tax increment financing district by the authority or by the owner of the parcel in accordance with the tax increment financing plan, no additional tax 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 tax increment financing district. If the authority or the owner of the parcel subsequently commences demolition, rehabilitation, or renovation or other site preparation on that parcel including qualified improvement of a street adjacent to that parcel, in accordance with the tax increment financing plan, the authority shall certify to the county auditor that the activity has commenced, and the county auditor shall certify the net tax capacity thereof as most recently certified by the commissioner of revenue and add it to the original net tax capacity of the tax increment financing district. The county auditor must enforce the provisions of this subdivision. The authority must submit to the county auditor evidence that the required activity has taken place for each parcel in the district. The evidence for a parcel must be submitted by February 1 of the fifth year following the year in which the parcel was certified as included in the district.

³⁷ Minn. Stat. § 469.176, subd. 1(a).

³⁸ Minn. Stat. § 469.176, subd. 1a.

For purposes of this subdivision, qualified improvements of a street are limited to (1) construction or opening of a new street, (2) relocation of a street, and (3) substantial reconstruction or rebuilding of an existing street.³⁹

This provision applies to each parcel individually rather than the TIF district as a whole. Demolition, rehabilitation, renovation, or other site preparation, including qualifying street improvements, must be made on each parcel in accordance with the TIF plan within four years after certification of the TIF district.

The TIF authority must submit evidence of each parcel's qualifying activity to the county auditor. Because the qualifying activity must be authorized by the TIF plan, the county auditor should review the TIF plan and the qualifying activity documentation to see if the two are consistent and should require information from the authority that is sufficient to make this evaluation.

If no demolition, rehabilitation, renovation or other site preparation has taken place on a parcel, or if the activity that did occur was not authorized by the TIF plan, the original net tax capacity of the parcel must be excluded from the TIF district. If subsequent qualifying activity takes place, the most recent net tax capacity of the parcel is added back to the original net tax capacity of the TIF district.

J. Decertification

The county auditor is required to decertify each TIF district at the appropriate time:

The county auditor shall decertify a tax increment financing district when the earliest of the following times is reached:

(1) the applicable maximum duration limit under section 469.176, subdivisions 1a to 1g;

(2) the maximum duration limit, if any, provided by the municipality pursuant to section 469.176, subdivision 1;

* * *

(4) upon completion of the required actions to allow decertification under section 469.1763, subdivision 4; or

(5) upon receipt by the county auditor of a written request for decertification from the authority that requested certification of the original net tax capacity of the district or its successor.

Minn. Stat. § 469.177, subd. 12.

³⁹ Minn. Stat. § 469.176, subd. 6.

K. Maximum Duration Limits and Delinquent Taxes After Termination

1. A TIF authority is not entitled to receive tax increment after the following deadlines in each of the listed districts:

- a. Renewal and Renovation District**

15 years after receipt by the authority of the first tax increment.

- b. Soils Condition District**

20 years after receipt by the authority of the first tax increment.

- c. Economic Development District**

8 years after receipt by the authority of the first tax increment.

- d. Housing and Redevelopment District**

25 years from the date of receipt by the authority of the first increment.

Minn. Stat. § 469.176, subd. 1b(a).⁴⁰

For purposes of determining a duration limit that is based on the receipt of increment, any increment from taxes payable in the year in which the district terminates shall be paid to the authority. This does not affect a duration limit calculated from the date of approval of the TIF plan or based on a recovery of costs or to duration limits of pre-1979 districts, nor does it supersede the restrictions on the payment of delinquent taxes after termination.⁴¹

2. Pre-1979 Districts

For TIF districts created prior to August 1, 1979, no tax increment may be paid to the authority after the later of April 1, 2001, or the term of a nondefeased bond or obligation that was outstanding on April 1, 1990 secured by increment from the district or project area. Furthermore, in no case may tax increment from such a district be paid to an authority after August 1, 2009. If a district's termination date is extended beyond April 1, 2001, because bonds outstanding on April 1, 1990 had maturities extending beyond April 1, 2001, no increment collected from the district may be

⁴⁰ For economic development districts for which the request for certification was received by the county auditor on or before June 30, 2000, the maximum duration limit is after nine years from the date of the first receipt of increment or 11 years from approval of the tax increment financing plan, whichever is less. *See* Laws of Minnesota for 2000, ch. 490, art. 11, sec. 25.

⁴¹ Minn. Stat. § 469.176, subd. 1b(b).

expended after April 1, 2001, except to pay or repay: (1) bonds issued before April 1, 1990; (2) bonds issued to refund the principal of the outstanding bonds and pay associated issuance costs; (3) administrative expenses; (4) transfers permitted for pooling for deficits; and (5) any advance or payment made by the municipality after June 1, 2002, to pay obligations listed in 1 or 2 above. When sufficient money has been received to pay in full or defease obligations listed in 1, 2, and 5 above, the tax increment project or district must be decertified.⁴²

3. Hazardous Substance Subdistricts

Tax increment from parcels that are part of a designated hazardous substance site or a hazardous substance subdistrict may be paid to the authority for longer periods than those applicable to the overlaying district. The extended period for collection of tax increment begins on the date of receipt of the first tax increment from the parcel that is more than any tax increment received from the parcel before the date of the certification under Minnesota Statutes, section 469.174, subdivision 7, paragraph (b), and received after the date of certification to the county auditor described in Minnesota Statutes, section 469.174, paragraph (b). The extended period for collection of tax increment is the lesser of: (1) 25 years from the date of commencement of the extended period; or (2) the period necessary to recover the costs of removal actions or remedial actions specified in a development response action plan.⁴³

Receipt by a hazardous substance subdistrict of an increment as a result of a reduction in the original net tax capacity under Minnesota Statutes, section 469.174, subdivision 7, paragraph (b), does not constitute receipt of increment by the overlaying district for the purpose of calculating the duration limit.⁴⁴

4. Effect of Modifications

Modifying a tax increment financing plan typically does not extend the duration of a TIF district.⁴⁵

5. Extension to Recover Cleanup Costs

If approved by the municipality, an authority may extend the duration of a district beyond the limit that otherwise applies if: (1) contamination, hazardous substances, pollution, or other material requiring removal or remediation are found in the district after its established; (2) the authority elects not to create a hazardous substance subdistrict; and (3) the municipality pays for the cost of removal, cleanup, or remediation with non-TIF funds. The maximum duration extension permitted by this subdivision is the lesser of ten years after the district otherwise would have terminated or the number

⁴² Minn. Stat. § 469.176, subd. 1c.

⁴³ Minn. Stat. § 469.176, subd. 1e.

⁴⁴ Minn. Stat. § 469.176, subd. 1b(d).

⁴⁵ Minn. Stat. § 469.176, subd. 1d.

of additional years necessary to collect increments sufficient to reimburse the municipality for its non-TIF expenditures. Cleanup costs are limited to actual costs of removal and remediation, including testing and engineering, and do not include financing or interest costs or amounts recovered from private parties or other responsible parties.⁴⁶

6. Interest Reduction Programs

Tax increment may be collected for only a fixed number of years if it is used to fund an interest reduction (IR) program:

Revenues derived from tax increment may be used to finance the costs of an interest reduction program operated pursuant to section 469.012, subdivisions 7 to 10, or pursuant to other law granting interest reduction authority and power by reference to those subdivisions only under the following conditions: (1) tax increments may not be collected for a program for a period in excess of 15 years after the date of the first interest rate reduction payment for the program, (2) tax increments may not be used for an interest reduction program, if the proceeds of bonds issued pursuant to section 469.178 after December 31, 1985, have been or will be used to provide financial assistance to the specific project which would receive the benefit of the interest reduction program, and (3) tax increments may not be used to finance an interest reduction program for owner-occupied single-family dwellings.⁴⁷

This limitation applies to IR programs established after December 31, 1985, and TIF districts with certification request dates after December 31, 1985. IR programs financed with tax increment prior to December 31, 1985, were not subject to this provision.

In 1996, the duration limit on TIF-financed IR programs was increased from 12 years to 15 years.⁴⁸ This increase was effective for TIF districts with certification request dates after April 30, 1996. For TIF districts created earlier, however, TIF authorities were authorized to make an irrevocable election to have the longer time period apply to those earlier TIF districts by adopting a resolution to that effect on or before December 31, 1996.⁴⁹ The county auditor should obtain copies of these resolutions.

An IR program may be the only activity of a district or it may be one of many activities within a district. If a TIF plan for a TIF district authorizes tax increment from that district to be used only for funding an IR program, then any tax increment that the TIF authority receives from that district after the IR-program limit has expired is excess increment and must be returned to the county

⁴⁶ Minn. Stat. § 469.176, subd. 1g.

⁴⁷ Minn. Stat. § 469.176, subd. 4f.

⁴⁸ See Laws 1996, ch. 471, art. 7, sec. 15.

⁴⁹ See Laws 1996, ch. 471, art. 7, sec. 35.

auditor. On the other hand, if the TIF plan authorizes the use of tax increment for other purposes, then increment received after the IR-program limit has expired may be used for those other purposes.

L. Delinquent Taxes After Decertification

A county auditor may distribute property tax revenue from a parcel formerly in a TIF district to the TIF authority as tax increment if the revenue is collected after the TIF district was decertified and if three conditions are met. First, the parcel on which the property taxes were paid must have been part of the TIF district at the time it was decertified. Second, the property taxes must have been delinquent, not merely past due, at the time the TIF district was decertified.⁵⁰ Third, the failure to pay the delinquent property taxes when they were due must have either caused the TIF authority to be unable to pay obligations or must have forced it to use non-TIF funds to pay the obligations.⁵¹ (If the delinquent property taxes collected after a TIF district was decertified do not meet these requirements, the county auditor should distribute the funds as ordinary property tax revenue, not excess tax increment).

M. Distribution of Excess Tax Increment

The TIF authority must annually determine the amount of excess increment, if any, for a TIF district. The determination must be based on the TIF plan in effect on December 31 of the year and the increments and other revenues received as of December 31 of the year. The authority must use the excess increment only to: (1) prepay any outstanding bonds; (2) discharge the pledge of tax increment for any outstanding bonds; (3) pay into an escrow account dedicated to the payment of any outstanding bonds; or (4) return the excess amount to the county auditor who must distribute the excess amount 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. Within 30 days after making a distribution of excess tax increment to a school district, the county auditor must report to the Department of Education the amount of excess tax increment the school district received, so that the school district's state aid may be adjusted downward.⁵²

N. Distribution of Violation Payments

If a TIF authority improperly spends, receives, or transfers tax increment, and the violation occurred after December 31, 1990, the TIF authority must pay an amount equal to the improperly spent, collected, or transferred tax increment to the county auditor.⁵³ If the TIF authority does not have

⁵⁰ Past-due property taxes become delinquent on the first business day in January of the year after the year in which the property taxes were payable. *See* Minn. Stat. § 279.02.

⁵¹ Minn. Stat. § 469.176, subd. 1f.

⁵² Minn. Stat. § 469.176, subd. 2.

⁵³ Minn. Stat. §§ 469.1771, subds. 2 and 3.

sufficient tax increment or other money available to make the penalty payment, the municipality that approved the TIF plan must pay the penalty.⁵⁴ The county auditor must redistribute any penalty payment received from a TIF authority or municipality.

A municipality is authorized to receive its share of a redistribution of a TIF repayment if the payment is made voluntarily or if it is made within 60 days of the municipality's receipt of the notice of noncompliance from the OSA. Whenever a county auditor receives a payment from a TIF authority or municipality related to a TIF district, the county auditor should contact the TIF authority, municipality, or the OSA's TIF Division for guidance in determining the nature of the payment and which statute controls its redistribution.

O. Suspension of Distribution of Tax Increment

A TIF authority must provide copies of annual disclosure statements to the county board, the county auditor, the school board, the state auditor, and to the municipality if different than the authority, for a year on or before August 1. At the same time, annual TIF reports for each TIF district must also be filed with the OSA, the county auditor, and the municipality, if different than the authority.⁵⁵

Failure to file these reports results in written notice to the authority from the OSA. If the reports remain unfiled by the third Tuesday in November of the year in which they are due, the OSA notifies the county auditor.

Upon receiving this written notice the county auditor must hold:

- (1) 25% of the amount of tax increment that otherwise would be distributed, if the distribution is made after the third Friday in November but during the year in which the disclosure or report was required to be made or submitted; or
- (2) 100% of the amount of tax increment that otherwise would be distributed, if the distribution is made after December 31 of the year in which the disclosure or report was required to be made or submitted.

Upon receiving the delinquent reports, the OSA will authorize the county to distribute the withheld increment to the TIF authority, which must be done within 15 days of the county's receipt of the notice. Interest accrued on the increment during the holding period, however, may be retained by the county.⁵⁶

P. Documentation for County TIF Files

⁵⁴ Minn. Stat. § 469.1771, subd. 5.

⁵⁵ Minn. Stat. § 469.175, subd. 6.

⁵⁶ Minn. Stat. § 469.1771, subd. 2a(c) and (d).

The county should obtain and keep on file the following information for each TIF district:

1. Initial TIF plan adopted by the TIF authority and approved by the municipality.
2. Any modification or amendments to the TIF plan.
3. Municipality's resolution approving the TIF plan, including the date the TIF plan was approved.
4. Documentation supporting the certification request date.
5. Dates the county auditor certified the TIF district and any geographic enlargements of the TIF district.
6. Copies of other documentation related to the district:
 - a. County notification to the Department of Education.
 - b. Special legislation.
 - c. Other relevant correspondence.
7. Statutory deadline dates:
 - a. Date that the district must be decertified.
 - b. Date the three-year knockout rule applies, as measured from the certification date.
 - c. Date the four-year knockdown rule applies, as measured from the certification date.
8. Settlement information, including the date the TIF district first received tax increment.

Q. Record Retention Requirements for County Auditor TIF Files

Minnesota Statute, sections 15.17 and 138.17-.19 require that records be retained indefinitely unless disposed of in accordance with a records retention schedule or other form approved by the Records Disposition Panel. There are four options regarding record retention:

- (1) Have records available forever.
- (2) Get approval on an "Application for Authority to Dispose of Records" to dispose of certain specific records. (An example of specific records would be check #'s 15883 through 18288 written from 3/14/92 through 6/18/94).
- (3) File a "Notification of Adoption of General Record Retention Schedule" with the MN Historical Society, after the governmental unit officially adopts the General Record Retention Schedule. The MN Historical Society signs and returns the notification form to the governmental unit.
- (4) Develop and adopt a specific schedule. This schedule is reviewed by the Department of Administration, then is sent to the OSA, Archives, and the Attorney General's Office for approval. The schedule is then returned to the governmental unit. Records must be retained according to this schedule.

Records not listed on the General Schedule cannot be destroyed without submitting either an "Application for Authority to Dispose of Records" (PR-1) or a "Minnesota Records Retention Schedule" (RM-00058).

The General Record Retention Schedule for Counties includes the Tax Increment File in the Auditor section of the schedule and requires that records be retained for 20 years after the year the record originates. This includes the information that the county auditor maintains about TIF districts. If the county or county HRA have districts of their own, the TIF district information is required to be retained for 10 years after the expiration of the TIF district.

R. Dealing With Deficits

The TIF Act contains four special provisions for dealing with deficits in a TIF district.

1. Pooling Permitted for Deficits.

The municipality of a TIF district may transfer available increment from other TIF districts located in the municipality, if the transfer is necessary to eliminate a deficit in the district to which the increments are transferred.⁵⁷

This TIF Act provision is an exception to the multi-county use prohibition, and the amount of tax increment an authority is allowed to spend outside of a TIF district. The municipality may only use this authority, however, only after it has used all available increments from the receiving authority to eliminate the insufficiency and exercised any permitted action under Minnesota Statutes, section 469.1792, subd. 3.

2. Special Taxing District

A city may establish a special taxing district within a TIF district only if it has determined that total increments from a TIF district will be insufficient to pay the amounts due in a year on preexisting obligations, and this insufficiency resulted from a reduction in property class rates enacted in the 1997 and 1998 legislative sessions. The city must also agree to transfer any available increments from other TIF districts in the city to pay preexisting obligations of the district allowed under the pooling permitted for deficits provisions discussed above.⁵⁸

If the TIF district does not qualify under these provisions, the city may still establish a special taxing district. If the city elects this provision, increments from the TIF district and the tax proceeds imposed by this provision may only be used to pay preexisting obligations and reasonable administrative expenses of the authority.

⁵⁷ Minn. Stat. § 469.1763, subd. 6.

⁵⁸ Minn. Stat. § 469.1791.

3. Special Deficit Authority

This special authority applies only to an authority with a preexisting TIF district for which: (1) the increments from the district are insufficient to pay preexisting obligations as a result of the class rate changes or the elimination of the state-determined general education property tax levy; or (2) the authority has a binding contract with a person and the authority is unable to pay the full amount of the contract, because of class rate changes or elimination of the state-determined general education property tax levy.

An authority with a district that meets these requirements may elect that: (1) the local tax rate does not apply to the district; and (2) the fiscal disparities contribution will be computed under Minnesota Statutes, section 469.177, subdivision 3, paragraph, regardless of the election that was originally made for the district.⁵⁹ The authority must meet these elections on an annual basis and notify the county auditor by July 1 of the year before the year in which the election is to be effective. The authority must provide notice and conduct a public hearing before adopting a resolution approving either of these electives.

4. Duration Extension to Offset Deficits

An authority may extend the duration limit of a TIF district if the increments from the district are insufficient to pay qualifying obligations, because of changes in the class rates and elimination of the state-determined general education property tax levy of 2001. However, the authority must first exercise its options under Minnesota Statutes, sections 469.1763 and 469.1792 before this provision applies.⁶⁰

Conclusion

It is well understood by TIF practitioners that each TIF district has unique characteristics and, as such, situations will arise that are not covered by the information contained in this guide. The OSA is always available to discuss TIF issues and provide assistance as needed. While using this guide, all TIF practitioners are encouraged to note potential problems and recommend improvements to the OSA.

⁵⁹ Minn. Stat. § 469.1792.

⁶⁰ Minn. Stat. § 469.1794.