



Tax Incremental Financing

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17

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Prepared by

Al Runde

Wisconsin Legislative Fiscal Bureau
One East Main, Suite 301
Madison, WI 53703

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This paper provides general background information on tax incremental financing (TIF) in Wisconsin. Included are a background of the TIF program, a description of the current tax incremental financing law, some summary statistics on participation and growth in TIF valuations and levies, and information about the impact of TIF on local governments.

Historical Background

Tax incremental financing is a mechanism for funding development and redevelopment projects. Although the concept of TIF existed as long ago as the early 1940s, California adopted the first TIF law in 1952. However, the widespread use of TIF did not occur in most states until the 1970s.

Wisconsin enacted its TIF law in 1975. Passage of the law was influenced by a reduced focus on redevelopment financing at the federal level and a state and national recession during 1974 and early 1975. The TIF law was an attempt to counteract that economic downturn by allowing cities and villages to work with the private sector to stimulate economic growth and employment through urban redevelopment projects.

A more general reason for the state's TIF law was a legislative determination that all taxing jurisdictions benefiting from urban redevelopment should share in its cost. Public improvements (such as sewers, streets, and light systems) usually result in an expanded local tax base. Although the cost of these improvements is normally financed entirely out of municipal revenue, it was argued that the county and school and technical college districts

also benefit from the expanded tax base. Tax incremental financing has the effect of making these overlying local taxing jurisdictions share in project costs.

Significant changes to existing TIF law occurred under 2003 Wisconsin Acts 126, 127, and 194. These acts amended the allowable uses of TIF districts and made other changes to state TIF law that will likely extend the life of certain TIF districts and increase the use of TIF districts as a local development tool in the state. The acts also provided for some state level oversight of TIF districts by the Department of Revenue (DOR).

In addition, 2003 Wisconsin Act 231 provided towns with the limited authority to create TIF districts for development projects related to agriculture, forestry, manufacturing, and tourism.

City and Village TIF Authority

City and village governments (town TIF authority will be discussed later) may create a TIF district if 50% or more of the proposed district's area is "blighted," in need of rehabilitation or conservation work, or suitable for industrial sites or mixed-use developments. Property that was vacant for the seven years preceding creation of a TIF district cannot comprise more than 25% of the district's area, unless the district is created to promote industrial development. Land acquired through condemnation is excluded from this requirement. An area designated as suitable for industrial sites must be zoned for industrial use both at the time the TIF district is created and throughout the life of the project.

Effective July 1, 2004, a TIF district may include areas suitable for mixed-use developments. Mixed-use developments may contain a combination of industrial, commercial, and residential use, except that lands proposed for newly-platted residential use may not exceed 35% of the area of real property within the district.

The TIF district boundaries are specifically identified in the district project plan. The boundaries cannot include any annexed territory that was not within the boundaries of the city or village on January 1, 2004, unless one of the following occurs: (a) three years have elapsed since the territory was annexed by the city or village; (b) the city or village enters into a cooperative plan boundary agreement with the town from which the territory was annexed; (c) the city or town enter into another kind of agreement relating to the annexation; or (d) the city or village pledges to pay the town an amount equal to the property taxes levied on the territory by the town at the time of the annexation for each of the next five years.

Base Value

Once a TIF district has been created, a "tax incremental base value" is established by DOR for property within the district at the time it was created. The base value includes the equalized value of all taxable property and the value of municipally-owned property, as determined by DOR. It does not include municipally-owned property used for certain municipal purposes (such as police and fire buildings and libraries). DOR has the authority to impose a fee of \$1,000 on cities and villages whenever the Department determines or redetermines the tax incremental base of a TIF district.

For districts created or amended on, or after, October 1, 2004, the application for certification of the original or amended tax incremental base must state the percentage of territory within the TIF district that the city or village estimates will be devoted to retail business at the end of the maximum

TIF district expenditure period, if that estimate is at least 35%.

Generally, the base value remains constant until the project terminates. However, a planning commission can also adopt an amendment to a TIF project plan at any time, for up to four times during the district's existence, in order to modify the boundaries of that district so as to add contiguous territory served by public works or improvements created as part of that district's project plan or to subtract territory from the district without eliminating the contiguity. The value of taxable property that is added to the existing district is determined by DOR. This value is then added to the original base value of the TIF district. If a district's project plan is amended on, or after, October 1, 2004, DOR must redetermine the district's tax incremental base on, or before, December 31 of the year in which the changes in the project plan take effect. (However, this would likely occur on the same time table as DOR's determination of base of TIF districts). In redetermining the base for these districts, DOR must also subtract from the district's tax incremental base the taxable value of any property being removed from the district by the amended plan.

Tax Increment

The "tax increment" equals the general property taxes levied on the value of the TIF district in excess of its base value (this is the "value increment"). The amount equals the value increment multiplied by the tax rate for all tax jurisdictions--municipal, county, school district, technical college district, and special purpose districts. Therefore, tax increments can only be generated by an increase in the equalized value of taxable property within a TIF district.

Restriction on New TIF Districts

Municipalities are allowed to establish any number of TIF districts. However, a city or village can only create a new district if there is a finding

that the equalized value of the proposed district plus the value increment of all existing districts does not exceed 12% of the total equalized value of property within the city or village. This limit also applies to any proposed amendment to a district that adds territory to the district.

The calculation of the limit is based on the most recent equalized value of taxable property of the proposed district, as certified by DOR, before the date on which a resolution is adopted creating the proposed district. DOR cannot certify the tax incremental base of a district before the Department reviews and approves the findings that the city or village creating the district is within these statutory limitations.

Project Plan and Public Hearing

A TIF district must be created through a resolution adopted by the legislative body of a city or village. Before adopting a resolution creating a district, two public hearings are required: one to discuss the proposed district and one to discuss the project plan. The hearings can be held together, but the hearing on the project plan must be held at least 14 days before adopting a resolution and the project plan must be available at this hearing.

Either before or at the same time this resolution is adopted, a district project plan must also be approved by the local legislative body. In addition, before it is adopted, the municipal attorney or a special counsel must review the plan and write a formal opinion advising whether the plan is complete and in compliance with the law.

A resolution creating a TIF district must declare that the district is a blighted area district, a rehabilitation or conservation district, an industrial district, or a mixed-use district, based on the identification and classification of the property included within the district. If the district is not exclusively blighted, rehabilitation or conservation, industrial, or mixed-use, this declaration must be based on which classification is predominant with regard to

the area included in the district.

Joint Review Board

A municipality that intends to create a TIF district or amend a district project plan must convene a joint review board, which can be either a temporary joint review board that is established for a specific district or a standing joint review board that remains in existence as long as a municipality has a district in existence. No TIF district can be created and no plan can be amended unless approved by a majority vote of the board within 30 days after a resolution is adopted.

The joint review board consists of one member representing each taxing jurisdiction that can levy taxes on property within the TIF district. Generally, the school and technical college districts, county, and city or village each have one public member. If more than one of the same type of taxing jurisdiction has the power to levy taxes on property within the TIF district, the one with the greatest value in the district chooses the representative.

In addition, the following requirements relative to the composition of a temporary or standing joint review board apply to TIF districts created after October 1, 2004:

- if a proposed TIF district is located in a union high school district, the school board's seat on the board is held by two representatives, each of whom has one-half of a vote (one each from the union high school and the elementary school district);
- if a proposed TIF district is made up of more than one union high school district or more than one elementary school district, the union high school district or elementary school district with the greatest value within the proposed district chooses the representative;
- the school district representative must be the president of the school board, or his or her des-

ignee, who is either the school district's finance director or another person with knowledge of local government finances;

- the county representative must be the county executive or the chairperson of the county board, or the executive's or chairperson's designee, who is either the county treasurer or another person with knowledge of local government finances;

- the city representative must be the mayor or city manager, or his or her designee, who is either the person in charge of administering the city's economic development programs, the city treasurer, or another person with knowledge of local government finances; and

- the technical college district representative must be the district's director or his or her designee, who is either the district's chief financial officer or another person with knowledge of local government finances.

All members of the board must be appointed and the board's first meeting must be held within 14 days after notice of the public hearing on the proposed TIF district or plan amendment. The public member and board chair are selected by a majority of the board members. Administrative support for the board is provided by the affected municipality.

A municipality proposing to create a TIF district must provide the joint review board with the following information and projections regarding the proposed district:

- a. Specific items that constitute the project costs, the total dollar amount of project costs to be paid with tax increments, and the amount of tax increments to be generated over the life of the district.

- b. The equalized value of the value increment when the project costs are paid in full and the district is terminated.

- c. The reasons why the project costs may not or should not be paid by the owners of the property that will benefit from the public improvements within the district.

- d. The share of the projected tax increments estimated to be paid by the owners of taxable property in each of the taxing jurisdictions overlying the district.

- e. The benefits that the owners of taxable property in the overlying taxing jurisdictions will receive to compensate them for their share of the projected tax increments paid.

The board must base its decision on whether or not to approve creation of a TIF district on the following criteria: (a) whether the development expected in the district would occur without the use of TIF; (b) whether the economic benefits of the district, as measured by increased employment, business and personal income, and property values, are sufficient compensation for the improvement costs; and (c) whether the benefits of the proposal outweigh the anticipated loss in tax revenues of overlying taxing districts.

A majority of the joint review board members of a district can request in writing that DOR review the objective facts contained in any of the documents submitted by the city or village relating to a proposed TIF district or proposed district amendment. DOR must make a determination within 10 working days as to whether the information submitted to the board complies with the statutory requirements for those documents or whether any of the information contains a factual inaccuracy. These documents can include the public records, planning documents, and the resolution passed by the city or village that creates or amends a TIF district. The board's request to DOR must specify which particular objective fact or item the board members believe is incomplete or inaccurate.

If DOR determines that the information submitted with a TIF district proposal is not in compli-

ance with what is required by statute or contains a factual inaccuracy, DOR must return the proposal to the city or village. The joint review board must request, but cannot require, that the city or village that created the TIF district resolve the problems with its proposal and resubmit the proposal to the board. If the city or village resubmits its proposal, the board must review the resubmitted proposal and vote to approve or deny the proposal. The joint review board must inform the city or village of its decision no later than 10 working days after receiving DOR's written response. If the city or village then resubmits a proposal to the joint review board, the board has to inform the city or village of its decision on the resubmitted proposal no later than 10 working days after receiving the city's or village's resubmitted proposal.

For districts created or amended after October 1, 2004, the joint review board's resolution creating a TIF district or amending the project plan of an existing TIF district must contain a positive assertion that, in the board's judgment, the development described in the documents the board has reviewed would not occur without the creation of the district. In addition, for these districts, the board must notify the governing body of every local governmental unit that is not represented on the board, and that has the power to levy taxes on property within the proposed TIF district, prospectively of meetings of the board and of the agendas of each meeting for which notification is given.

Project Costs

The TIF project plan must list and estimate the project costs of improving the district. All project costs to be repaid through the allocation of tax increments must directly relate to the elimination of blight or directly serve to rehabilitate or conserve the area or to promote industrial development, whichever is consistent with the district's purpose. Project costs include, but are not limited to, costs related to capital development (such as public works or improvements), environmental remediation, removal of lead contamination from buildings

and infrastructure, financing, real property assembly, professional services, imputed administrative services, and organizational activities (such as the cost of preparing environmental impact statements), and any payments made to a town that relate to the property taxes levied on any recently annexed territory to be included in a TIF district. In addition, for projects created before September 30, 1995, expenditures associated with newly-platted residential development are considered eligible costs.

Project costs that are eligible to be repaid through the allocation of tax increments may also include expenditures associated with newly-platted residential development in a mixed-use development TIF district. However, such costs are only eligible project costs provided one of the following applies: (a) the density of the residential housing is at least three units per acre; (b) the housing is located in a conservation subdivision, as defined by statute; or (c) the housing is located in a traditional neighborhood, as defined by statute.

In addition, for districts created after October 1, 2004, cash grants made by the city or village to owners, lessees, or developers of land that is located within the TIF district can be considered eligible costs if the grant recipient has signed a development agreement with the city. However, if the city or village anticipates that the proposed TIF district project costs may include such cash grants, the city or village must include a statement in the public notice of the hearing on the creation of the district indicating that such grants may be made.

Eligible project costs do not include: (a) the cost of constructing or expanding administrative buildings, police and fire facilities, libraries, and community and recreational buildings, unless the structure was destroyed by a natural disaster before January 1, 1997; (b) the cost of constructing or expanding school buildings; (c) the cost of constructing or expanding any facility that historically has been financed in that municipality exclusively with user fees; (d) general government operating

expenses; (e) expenses unrelated to the planning and development of a TIF district; and (f) costs incurred prior to creation of a TIF district (except costs directly related to planning for the district). Only the share of all other eligible project costs that solely relate to or directly benefit the district can be funded from tax increments.

To implement the project plan, a special fund is created in which all tax increments must be placed. With limited general exceptions (which are described below), the monies in the fund can only be used to finance the district's eligible project costs. Tax increments in excess of the project costs listed and estimated in the project plan cannot be expended. Also, eligible project costs must be reduced by the amount of investment earnings and by the amount of user fees or charges received in connection with the implementation of the TIF project plan.

Expenditure Period

For most TIF districts, expenditures can be incurred until five years prior to the unextended termination date of the district. Changes made under 2003 Act 126 result in unspecified expenditure periods for TIF districts created before October 1, 1995, and for districts created after September 30, 1995, and before October 1, 2004, that are suitable for industrial site development. Under prior law, the expenditure periods for these districts were 10 years for TIF districts created before October 1, 1995, and seven years for districts created after September 30, 1995, and before October 1, 2004, that are suitable for industrial site development. Costs incurred as a result of condemnation are not subject to these limitations.

Allocation of Tax Increments and Project Termination

Regardless of the time period allowed for TIF district project expenditures, tax increments can only be allocated to the local body creating the district for a specified period. The allocation of in-

crements may occur up until the required termination period for the district, which can vary depending on when a district was created and depending on the type of district.

A TIF district must be terminated when the earliest of the following occurs: (a) all project costs of that district are reimbursed through the receipt of tax increments; (b) the local government body, by resolution, dissolves the district; (c) 27 years after the district is created, or five years after the final project cost is incurred, for blighted and redevelopment districts created after September 30, 1995, and before October 1, 2004; (d) 23 years after the district is created, or five years after the final project cost is incurred, for districts created after September 30, 1995, and before October 1, 2004, that are established on the finding that 50% or more, by area, of the real property within the district is suitable for industrial sites; (e) 27 years after the district is created, or five years after the final project cost is incurred, for districts created before October 1, 1995; (f) 20 years after the district is created, or five years after the final project cost is incurred, for districts created on or after October 1, 2004, that are established on the finding that 50% or more, by area, of the real property within the district is suitable for industrial sites or mixed-use development; or (g) 27 years after the district is created, or five years after the final project cost is incurred, for districts created on or after October 1, 2004, that are established on the finding that 50% or more, by area, of the real property within the district is a blighted area or in need of rehabilitation or conservation work.

A city or village that has created a TIF district on or after October 1, 2004, can request that the joint review board extend the life of the district for an additional three years. A city or village that has created a blighted or rehabilitation TIF district after September 30, 1995, and before October 1, 2004, can request that the joint review board extend the life of the district for an additional four years.

DOR must be notified of any request for extension at least one year prior to the required termination date of the districts. If DOR is not notified by that date, the request may be denied. Along with any request for an extension, the local body creating the district may provide the joint review board with an independent audit that demonstrates that the district is unable to pay off its project costs within the period required for the district. The joint review board has the authority to deny or approve a request if the request does not include the independent audit. The board must approve the request if the request includes the independent audit. If the joint review board extends the district's life, the district must be terminated at the earlier of: (a) the end of the extended period; or (b) when all project costs of the district have been reimbursed through the receipt of tax increments.

Donor TIF Districts

Under one circumstance, a TIF district does not have to be terminated when all project costs have been reimbursed. Under this circumstance, the tax increments of the TIF district (donor) that has paid off its project costs can be shifted to pay off project costs of another TIF district (recipient). A donor district may allocate positive tax increments for up to 10 years to another district that has yet to pay off its aggregate project costs under its project plan if the districts were created before October 1, 1995 (or before October 1, 1996, for first class cities), and if the following conditions are met: (a) both districts have the same overlying taxing jurisdictions; and (b) the donor TIF district is able to demonstrate, based on the positive tax increments that are currently generated, that it has sufficient revenues to pay for all project costs that have been incurred under the project plan for that district and sufficient surplus revenues to pay for some of the eligible costs of the recipient TIF district.

Act 126 extended similar authority to TIF districts created after September 30, 1995 (or after September 30, 1996, for first class cities). Cities and vil-

lages can allocate tax increments among such districts if both districts have the same overlying taxing jurisdictions and the allocation of tax increments is approved by the joint review board. The recipient district may only use the allocation of tax increments from the donor district if the project costs in the recipient district are used to create, provide, or rehabilitate low-cost housing, to remediate environmental contamination, or if the recipient district was created upon a finding that not less than 50%, by area, of the real property within the district is blighted or in need of rehabilitation. These allocations of positive tax increments to a recipient district cannot be made unless the donor district has first satisfied all of its current-year debt service and project cost obligations. The life of these donor districts may not be extended.

Reporting Requirements

Audits of a TIF district must be conducted within 12 months after each of the following occurs: (1) 30% of the project expenditures are made; (2) the end of the expenditure period; and (3) termination of the district. Municipalities must also prepare, and make available to the public, annual reports describing TIF project status, expenditures, and revenues.

Upon notification of termination of a district, DOR and the city or village must agree on a date on which the city or village will provide all of the following information related to the terminated TIF district: (a) a final accounting of all expenditures made by the city or village; (b) the total amount of project costs incurred by the city or village; (c) the total amount of positive tax increments received by the city or village; and (d) the total amount of project costs, if any, not paid with tax increments that became obligations of the city or village after the district was terminated. If a city or village does not send the information within the agreed upon period, DOR is not be allowed to certify the tax incremental base of any new or modified TIF district in the city or village unless the information on the terminated district is sent.

Specific Exceptions to General Provisions

During recent legislative sessions, several exceptions to general TIF provisions have been created for specific municipalities. The appendix to this paper describes the most significant of these exceptions.

State Role

There are a number of statutory procedures (such as public hearing requirements and project plan contents) that a city or village must follow if it chooses to use TIF. The Department of Revenue, which administers the TIF law at the state level, must ensure that each required procedure is followed.

In addition, as mentioned earlier, Acts 126 and 127 provide DOR the authority to review the facts contained in the TIF documents submitted by the city or village for the proposed TIF district, if requested to do so by the joint review board.

The Department of Commerce must issue a biennial report to the Governor and the Legislature as to the social, economic, and financial impacts of TIF projects.

School District Capital Improvements

Under 1999 Act 17, a school board, by two-thirds vote, can create a capital improvement fund for the purpose of financing the cost of acquiring and improving school sites, constructing or improving school facilities, and major maintenance of school facilities if the following conditions are true: (1) if a TIF district that is located in whole or in part in the school district terminates before the maximum number of years that it could have existed; and (2) the value increment of the TIF district exceeds \$300 million.

In each year that the school board adopts a resolution by a two-thirds vote, until the year after the year in which the TIF district would have been

required to terminate, the school district is allowed to deposit the percentage specified in the resolution, up to 100%, of the school district's portion of the positive tax increment of the TIF district into the capital improvement fund. The school board must use the balance of the school district's portion of the positive tax increment to reduce the school property tax levy that otherwise would be imposed. The positive tax increment for each year is calculated by the Department of Revenue. No monies other than the specified tax increment percentage can be deposited in the fund.

Monies cannot be expended or transferred to any other fund from the capital improvement fund without approval by a majority of voters in a school district at referendum on the question. If a referendum is adopted authorizing the use of monies in the capital improvement fund, then the Legislative Audit Bureau must conduct an audit to determine whether the monies have been used only for the purposes approved in the referendum. Also, any school board taking action to establish a capital improvement fund must report to the Governor and to the Joint Committee on Finance, by January 1 of each odd-numbered year, describing the use of the monies deposited in the fund and the effects of that use.

Act 17 specifies that a school district's revenue limit for any year is increased by the amount deposited in the capital improvement fund in that school year. Also, any expenditures from the capital improvement fund are excluded from shared costs for purposes of calculating equalization aid.

Although Act 17 establishes two general criteria to meet in order to create a capital improvement fund, to date only one TIF district, in the Village of Pleasant Prairie, satisfies the \$300 million value increment threshold.

In May, 2000, the Board of the Kenosha School District adopted a resolution creating a capital improvement fund to utilize the value increment from the Village of Pleasant Prairie's TIF district. No other district in the state has created a capital

improvement fund under the provisions of Act 17. According to District officials, through the 2004 tax year, the District has not used the fund to finance the cost of District facility construction or improvement projects.

Town TIF Authority

Under 2003 Wisconsin Act 231, town governments are provided the authority to create TIF districts. The Act provides towns, and the joint review boards of town TIF districts, much of the same authority and the same powers relative to TIF districts that are provided cities and villages. However, the use of the TIF authority is limited to specific types of TIF project types. In addition, towns may not exercise any TIF powers within the extraterritorial zoning jurisdiction of a city or village, unless the city or village adopts a resolution approving the town's exercise of its TIF powers within the extraterritorial zoning jurisdiction.

The TIF district base and increment for a town TIF district are established and certified each year by DOR in the same manner as city or village TIF districts. DOR also has authority to assess a \$1,000 fee for determining or redetermining a town TIF district base.

Allowable Project Types

The only TIF projects for which a town may expend funds or incur obligations for project costs are the following: (a) agricultural projects; (b) forestry projects; (c) manufacturing projects; or (d) tourism projects, which include the North American Industry Classifications (NAICs) industry numbers for recreational and vacation camps (721214), recreational vehicle parks and campgrounds (721211), racetracks (711212), dairy product stores (44529), and public golf courses (71391).

Residential development that has a necessary and incidental relationship to each of these allowable project types is also an eligible project type. Eligible project type costs can also include retail development that is limited to retail sale of products produced by an agricultural, forestry, or manufacturing project within the TIF district.

The town board resolution creating a TIF district must declare the district to be an agricultural, forestry, manufacturing, or tourism project district, and must identify the NAICs industry numbers of each project activity for which project costs are expended. In addition, the resolution must contain the following findings:

(a) that not less than 75%, by area, of the real property in the district is to be used for a single allowable project type, and in accordance with the project type declared for the district in the resolution; and

(b) that either the equalized value of taxable property of the district plus all existing districts does not exceed 7% of the total equalized value of taxable property within the town or the equalized value of taxable property of the district plus the value increment of all existing districts within the town does not exceed 5% of the total equalized value of taxable property within the town.

Amended TIF Projects

Not more than once during the five years after a TIF district is created, the town planning commission may adopt an amendment to a project plan to modify the district's boundaries by adding territory to the district that is contiguous to the district and that is served by public works or improvements that were created as part of the district's project plan. Expenditures for project costs that are incurred because of an amendment to a project plan may be made for up to two years after the date on which the town board adopts a resolution amending the project plan.

Annexed Territory

If after January 1 of any year, a city or village annexes town territory that contains part of a TIF district created by the town, DOR shall redetermine the TIF base of the district by subtracting from the district base the value of the taxable property that is annexed from the existing district as of the following January 1. If the annexation becomes effective on January 1 of any year, the redetermination shall be made as of that date. The TIF district base, as redetermined due to annexation, is effective only if it is less than the original TIF district base.

If a city or village annexes territory that is part of a town TIF district, the city or village must pay the portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, are required to negotiate an agreement on the amount that must be paid.

Allocation of Tax Increments, Expenditure Period, and Project Termination

DOR is required to authorize the allocation of tax increments to the town that created the TIF district. The allocation of tax increments shall occur each year until the Department either receives a written notice from the town that a TIF district has been terminated or sixteen years after the tax incremental district is created, whichever is sooner.

Expenditures may be made for a town TIF district project for up to five years after the district is created. Costs incurred as a result of condemnation are not subject to these limitations. Expenditures authorized by the adoption of an amendment to the town TIF project plan may occur for up to two additional years, but may not exceed seven years.

A town TIF district terminates when the earliest of the following occurs: (a) when the aggregate tax increments allocated to the district equal the aggregate of all project costs under the project plan and any amendments to the project plan for the district; (b) eleven years after the last expenditure

identified in the original, unamended project plan is made; (c) when the town board approves a resolution to dissolve the district, at which time the town becomes liable for all unpaid project costs actually incurred which are not paid; or (d) the DOR Secretary determines that tax increments have been used to pay for ineligible costs and orders that the district be terminated.

DOR Review of Town TIF Districts

Certain persons may make a written request for a DOR review of a town TIF district to determine whether money expended, or debt incurred, by the district in the prior year complied with the requirements related to the type of district created and the allowable project costs that can be incurred by such districts. The request must contain the grounds on which the request is based, and must be filed with the Department no later than July 1. The following persons may request such a review: (a) an owner of taxable property that is located in the town that has created the district; (b) an owner of taxable property that is located in a taxing jurisdiction which overlies the town in which the district is located; (c) an owner of taxable property in a city or village that borders the town in which the district is located; (d) a taxing jurisdiction that overlies the town in which the district is located; or (e) a city or village that borders the town in which the district is located.

DOR may deny any request for a review if the Department, based on a review of the request, believes that insufficient grounds exist to support the alleged noncompliance. DOR must send a written notification of its decision to the person who made the request for review and to the town. If DOR grants a request for review, the Department is required to hold a hearing. DOR must send written notification of the hearing to the clerk of the town that created the district, the person who requested the review, the clerk of each overlying taxing jurisdiction, and the clerk of every city or village that borders the town.

The DOR Secretary, or a designee, must preside at the hearing and receive testimony and evidence on all issues that are related to the request for review. Following the hearing, the Secretary shall make a determination as to whether or not the town is in compliance with the statutory requirements relative to allowable project costs for the type of town TIF district created.

If it is determined that the town has made expenditures or incurred debts that are not allowed under the statutes, the DOR Secretary must either order the town to pay back all ineligible costs to the district's overlying taxing jurisdictions or order the district to be terminated. The pay back of ineligible costs to the overlying taxing jurisdictions would be done on a proportional basis that relates to each jurisdiction's share of the tax increment and would have to be made from funds other than tax increments that were allocated to the town associated with the district. If the Secretary orders the district to be terminated, the town is liable for all unpaid project costs that have been incurred. Any person or unit of government that received a notice of DOR review may appeal the Secretary's decision to the circuit court in Dane County.

Environmental Remediation TIF Districts

The 1997-99 biennial budget (1997 Act 27) created a tax increment financing option for local units of government (cities, villages, towns, and counties) to recover the costs of remediation of environmental pollution. The statutes related to the creation of environmental remediation TIF (ER-TIF) districts were further modified under the 1999-01 biennial budget (1999 Act 9).

The ER-TIF tax increment is determined in the same manner as tax increments for regular TIF districts. Tax increments can be used to fund eligible

costs for the shorter of the following periods: (1) 16 years after DOR establishes the ER-TIF district increment base; or (2) once all eligible costs associated with the remediation of the pollution have been paid. The Department of Natural Resources (DNR) must certify to DOR when the remediation of contamination at sites identified in the site investigation report is complete.

Prior to 1999 Act 9, DOR could certify the tax increment base of an ER-TIF district only after DNR certified that the remediation was complete. Act 9 allows DOR to certify the tax increment base prior to completion of the contamination remediation. However, the Act specifies that prior to DOR certification of the tax increment base, the political subdivision must provide the following: (1) a certificate from DNR indicating that DNR has approved the site investigation report that relates to the affected parcels of property; (2) information on eligible costs already incurred within the district; and (3) a DNR-approved, detailed remedial action plan containing cost estimates for anticipated eligible costs within the proposed ER-TIF district and a schedule for completion of the remedial action.

Eligible Properties

Act 9 made several changes to the types of properties that can be included in an ER-TIF district. The Act deleted the requirement that the property on which an environmental remediation tax increment may be used to defray the costs of remediation must be owned by a county or municipality at the time of the remediation. As a result, an ER-TIF district may include private properties. However, only public expenditures are eligible for reimbursement. Counties and municipalities can also use ER-TIF to pay the costs of remediating environmental pollution of groundwater regardless of whether or not the county or municipality owns the property above the groundwater. ER-TIF districts may only include contiguous parcels of property and those parcels must be within the political subdivision creating the district.

Eligible Costs

Eligible costs that may be funded from positive environmental remediation tax increments include capital costs, financing costs, administrative costs, and professional service costs associated with the investigation, removal, containment, or monitoring of, or the restoration of soil, air, surface water, sediments, or groundwater affected by, environmental pollution. Eligible costs that can be paid from tax increments specifically include: (1) property acquisition costs; (2) demolition costs, including asbestos removal; (3) the cost of removing and disposing of underground storage tanks or abandoned containers containing hazardous substances; and (4) costs associated with groundwater investigations and remediation that occur outside the boundaries of the ER-TIF district.

Eligible costs must be incurred within 15 years after the district is created. In addition, all eligible costs must be public expenditures.

No costs incurred after DNR notification that a remedial action has been completed are considered eligible costs, except: (1) monitoring costs incurred within two years after the notification date; and (2) costs identified as a required condition of site closure.

Eligible costs must be reduced by the following: (1) any amounts received from the person(s) responsible for the discharge of a hazardous substance on the property; (2) the amount of net gain from the sale of the property by the local unit of government; and (3) any amounts received, or reasonably expected to be received, from a local, state, or federal program aimed at remediation of contamination within the district, if these amounts do not have to be reimbursed or repaid.

Through 2003, seven environmental remediation TIFs have been created.

Statistics on TIF Usage

Table 1 shows the number of TIF districts that have been established between 1976 and 2003. In addition, the table indicates the number of districts created in each year that have subsequently terminated or dissolved and the number that remain in existence. Of the 1,280 TIF districts that have been created, 36.2% have been terminated or dissolved and 63.8% remain in existence.

Table 1: Number of TIF Districts*

Year	Number Established	Number Terminated or Dissolved	Number Still in Existence
1976	5	5	0
1977	18	18	0
1978	20	16	4
1979	85	78	7
1980	74	65	9
1981	55	50	5
1982	24	21	3
1983	40	30	10
1984	20	16	4
1985	28	19	9
1986	26	19	7
1987	31	16	15
1988	47	25	22
1989	40	24	16
1990	39	11	28
1991	38	9	29
1992	45	9	36
1993	41	4	37
1994	75	7	68
1995	84	4	80
1996	60	6	54
1997	71	4	67
1998	44	2	42
1999	50	1	49
2000	68	2	66
2001	54	2	52
2002	48	0	48
2003	<u>50</u>	<u>0</u>	<u>50</u>
Total	1,280	463	817

*Includes seven ER-TIF districts.

Table 2 compares the change in aggregate TIF incremental values to the change in total equalized valuation for cities and villages, from 1995 to 2004. During this period, TIF incremental values have grown at a rate faster than the total equalized value and TIF incremental value as a percentage of equalized value has increased. In 2004, TIF incremental value as a percentage of total city and village equalized value was 3.9%.

Table 3 compares the growth in property tax increments (the levy amount collected by municipalities for TIF project costs) to the total levy in villages and cities. Over this period, tax increments grew at an average, annual rate that was 133.3% greater than that for the total levy. In 2003, tax increments represented 3.9% of the total tax levy in villages and cities.

Table 2: TIF Incremental Value Compared to Total Equalized Value (In Millions)

	TIF Incremental Value		City/Village Equalized Value		TIF Incremental Value as a % of City/Village Equalized Value
	Amount	% Change	Amount	% Change	
1995	\$3,809.3		\$129,379.4		2.9%
1996	4,102.9	7.7%	138,113.3	6.8%	3.0
1997	4,672.9	13.9	142,258.6	3.0	3.3
1998	5,142.9	10.1	155,723.1	9.5	3.3
1999	5,484.0	6.6	164,215.9	5.5	3.3
2000	6,235.7	13.7	177,431.2	8.0	3.5
2001	7,518.2	20.6	192,182.2	8.3	3.9
2002	8,004.2	6.5	205,679.1	7.0	3.9
2003	8,589.3	7.3	220,716.4	7.3	3.9
2004	9,588.8	11.6	243,100.2	10.1	3.9
Avg. Annual % Change		10.8%		7.3%	

Table 3: Tax Incremental Levies and Total Tax Levies – Villages and Cities (In Millions)

	Tax Increment Levies		Total Levy Villages and Cities		Tax Increments as a Percent of Total Levy
	Amount	% Change	Amount	% Change	
1994	\$103.8		\$3,871.2		2.7%
1995	112.8	8.7%	3,970.8	2.6%	2.8
1996	106.1	-5.9	3,749.2	-5.6	2.8
1997	117.9	11.1	3,898.2	4.0	3.0
1998	130.2	10.4	4,107.9	5.4	3.2
1999	137.2	5.4	4,203.7	2.3	3.3
2000	156.6	14.1	4,510.1	7.3	3.5
2001	185.1	18.2	4,786.1	6.1	3.9
2002	192.5	4.0	4,985.8	4.2	3.9
2003	201.8	4.8	5,194.5	4.2	3.9
Avg. Annual % Change		7.7%		3.3%	

Impact of TIF on the Net Revenues of Local Governments

K-12 School Districts

Although the school levy for elementary and secondary education makes up a large part of the tax increment (40.9% on average) and this suggests that K-12 school districts fund a major part of TIF project costs, many school districts are not adversely impacted by TIDs since districts are often compensated for the loss in local tax revenues through increases in state aids. From 1977-78 through 1992-93, school districts with TIF districts benefited from the state supplemental aid program, which, when fully funded, would for many school districts replace most of the lost tax revenues with increases in state aid.

State supplemental aid to school districts was computed by calculating equalization aid for each eligible school district twice, once with the TIF value increment included in the district's property wealth and once with the value increment excluded. Since the school equalization aid formula is based on the principal of equalizing tax base (neutralizing the effect of property wealth per pupil on total revenues), state supplemental aid would approximately equal the amount of tax revenue lost to the TIF district.

Although the state supplemental aid program had the potential to fully offset the loss of tax revenue, there are several factors which prevented the full replacement of lost tax revenues for all districts with TIFs. First, school districts with very high per pupil property values (zero-aid school districts) would not benefit from the state supplemental aid program since such districts are not eligible for equalization aid. Second, during the sixteen-year history of supplemental aid payments, the supplemental aid appropriation did not always equal the amounts determined by the aid calculation, resulting in a proration in payments during

six years. Also, due to cost concerns and other factors, there was a period of time (1983-84 to 1990-91) when new TIF districts were not allowed to be part of the supplemental aid program. In the last year, payments were made to 212 of the state's 427 school districts.

Although the supplemental aid program was repealed after 1992-93, the funding for the supplemental aid appropriation was transferred to the general equalization aid appropriation, and the equalization aid formula for school districts was modified, beginning in 1993-94, to exclude the incremental value of TIF districts from a school district's equalized property valuation. These changes, for the most part, maintained the same distribution of total aids that existed under the supplemental aids system, since supplemental aids were based on running the equalization formula with and without the TIF value increment. The current method may be more favorable to school districts with TIF districts since the compensation for the loss of tax revenue is built into the equalization formula and does not depend on the funding of a separate appropriation (where compensation could be prorated). However, collapsing of the separate supplemental aid appropriation into the general equalization aid appropriation does obscure the state's role in compensating school districts for their lost tax base.

WTCS Districts

State general aid to Wisconsin Technical College System (WTCS) districts is also inversely related to a district's equalized value per pupil and, like the current aid formula for K-12 districts, does not include the value increments from TIF districts in measuring equalized value per pupil. However, the aid formula is not as equalizing as that for K-12 districts, and will only partially offset (less than half) the lost revenue from a loss of tax base.

County Governments

Prior to 2004, county governments participated

in the shared revenue aid program, which had a tax-base equalizing effect similar to the general school aid formula. The measure of equalized value per capita used for counties in the shared revenue formula excluded the value increments of TIF districts located in the county. Thus, there was the potential for the shared revenue program to offset the loss in potential tax revenues. However, beginning in 2004, the county shared revenue formula will remain suspended indefinitely, except for utility aid, and counties will receive aid under a new program, named "county and municipal aid." This change ended the equalization aspect of the county aid program.

Municipal Governments

The municipal distribution of the shared revenue program also contained a tax base equalizing aid formula within the aidable revenues component. However, for 2002 and 2003, the distribution formulas authorized for each of the four shared revenue components, including aidable revenues, were suspended. Instead, each municipality received payments in 2002 and 2003 equal to 101% of the amount received in the previous year. Beginning in 2004, the distribution formulas will remain suspended indefinitely, except for the utility aid component, and municipalities will receive aid un-

der a new program, named "county and municipal aid." This ended the equalization aspect of the municipal aid program.

When it was in effect, the distribution formula for the aidable revenues component differed from that used for counties by including the TIF value increment in the measure of each municipality's per capita equalized value. As a result, the formation of a TIF district did not lower a municipality's measure of tax base and did not result in additional shared revenue payments due to a lower tax base. The rationale for this differential treatment was that the municipality was the main agent behind the TIF district and used the TIF tax increment to fund redevelopment in the TIF district. Redevelopment is a function usually performed by the municipality.

Although the shared revenue program did not treat a TIF district as a loss of tax base for the municipality, the program did count the TIF tax increment (municipality's share only) as part of the municipality's revenue effort for purposes of the shared revenue payment. Shared revenue payments were positively related to the measure of revenue effort, but the increase in the shared revenue payment would have been less than the tax increment (municipality's share).

APPENDIX

Specific Exceptions to Requirements on TIF Districts

City of Glendale

1. A TIF district project may be extended when the tax increments of one TIF district have been shifted to another district within the city because development in the recipient district has been impacted by environmental contamination and the project's costs have not been fully covered. However, the allocation of positive tax increments to the district impacted by environmental contamination cannot occur beyond 2002.

City of Kenosha

1. Any amendment to a TIF district project plan in the City that allows for the allocation of tax increments from that district to a second district where development is being affected by environmental contamination has 12 years after the creation of the second district to complete expenditures.

2. A TIF district project may be extended when the tax increments of one district have been shifted to another district within the city because development in the recipient district has been impacted by environmental contamination and the project's costs have not been fully covered. However, the allocation of positive tax increments to the district impacted by environmental contamination cannot occur beyond 2016 unless the allocation is approved by the joint review board.

3. Any TIF district that is amended to allow for the allocation of tax increments from that district to a second district that has been affected by environmental contamination must be terminated before the sum of the number of years for which expenditures are made in the second

district and tax increments from the original TIF district are allocated exceeds 42 years.

City of Oconomowoc

1. Allocation of tax increments may occur 38 years after the creation of a district whose plan is amended to include contiguous territory served by public works or improvements that were created as part of the district plan.

City of Oshkosh

1. A TIF district project may be extended when the tax increments of one district have been shifted to another district within the city because development in the recipient TIF district has been impacted by environmental contamination and the project's costs have not been fully covered. However, the allocation of positive tax increments to the district impacted by environmental contamination cannot occur beyond 2016.

City of Sheboygan

1. The period during which eligible expenditures can be incurred and be reimbursed through the allocation of tax increments may be extended from seven years to 13 years for TIF district number six. Eligible expenditures for the district could occur through December 31, 2004.

Village of Ashwaubenon

1. The period for which expenditures may be made in TIF district number two may be extended from three years to five years after the village board adopts an amended project plan adding territory to the district. Eligible expenditures for

the district could occur until July 30, 2001.

Village of Gilman

1. A TIF district project plan may be amended to modify the district's boundaries by adding contiguous properties that are served by public works improvements that were created

under the TIF project plan for up to eleven years after the district is created.

2. The period during which expenditures may be made under the amended plan may be extended from three years to five years after the amended plan is adopted.