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Statement of Position Pooling Restrictions and the Five-Year Rule

Pooling Restrictions and the Five-Year Rule were enacted in 1990 to minimize the amount of tax increment revenues spent outside the tax increment financing (TIF) district in which the revenues were generated and to ensure that tax increment revenues are spent within a reasonable time.

“Pooling” permits the expenditure of tax increment revenues outside a TIF district, but within the project area in which the district is located.¹ The restrictions imposed on pooling combined with the Five-Year Rule ensure that a substantial percentage of tax increment revenues generated by a TIF district will be spent within a reasonable time on development activities within that district.²

Pooling Restrictions

The Pooling Restrictions require that at least 75 percent of the tax increment generated from a TIF district be spent on activities in the TIF district that generates the tax increment.³ Up to 25 percent of the tax increment generated from a TIF district can be spent outside the district, but within the project area. However, all administrative expenses, up to 10 percent of the revenues generated by the district, are considered to be for activities outside the district.⁴ If administrative expenses constitute 10 percent of the tax increments generated by a redevelopment district, for example, only 15 percent of tax increment revenues from the district would remain available to be spent outside the district.

¹ “Pooling” is not defined in the TIF Act.

² Minn. Stat. § 469.1763, subd. 2 (a). Pooling Restrictions and the Five-Year Rule apply to TIF districts for which certifications were requested after April 30, 1990. 1990 Laws of Minn., Ch. 604, Art. 7, §§ 21, 30 and 31(a). Tax increment revenues collected in TIF districts prior to the effective date can be spent for qualifying purposes anywhere within a project area, and tax increment revenues need not be spent within 5 years.

³ Minn. Stat. § 469.1763, subd. 2. For TIF districts, other than redevelopment districts, for which the request for certification was made after June 30, 1995, the pooling percentage is 20 percent. In the case of a housing district, a housing project under Minn. Stat. § 469.174, subd. 11, is deemed to be an activity in the district. Tax increment for qualified housing can be spent outside the district and need not be within the geographic area of the project.

⁴ Minn. Stat. § 469.1763, subd. 2 (c).

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

The Five-Year Rule

The Five-Year Rule is designed to ensure that tax increment revenues are spent within the TIF district within a reasonable time after they have been collected. It applies only to revenues spent within the TIF district that generates the tax increment revenue. Seventy-five percent of the tax increment revenues generated from properties in a TIF district must be spent on activities within the district or to pay bonds, the proceeds of which are used to finance activities in the district before or within five years of certification of the district.⁵ Revenues are considered to have been expended for activities within the district only if one of the following occurs within five years after certification:

- (i) the revenues are actually paid to a third party;
- (ii) bonds are issued and sold to a third party or the bond proceeds are deposited in a reserve;
- (iii) binding contracts with a third party are entered into and the revenues are spent under the contractual obligation;
- (iv) activity costs are paid for and revenues are spent to reimburse a party for payment of the costs; or
- (v) expenditures are made for housing purposes or for public infrastructure purposes within a biotechnology and health sciences industry zone.⁶

The Five-Year Rule extends through the end of the fifth year after certification of the TIF district. For redevelopment districts or renewal and renovation districts certified after June 30, 2003, and before April 20, 2009, the Five-Year Rule has been extended to 10 years primarily to accommodate delays in development activities caused by the current recession.

Each year beginning with the sixth year following certification of the district, if the tax increment received from the county exceeds the costs spent on in-district obligations that year, the excess must be used to pay for:

- (i) outstanding bonds and contracts;
- (ii) credit enhanced bonds to which tax increment was pledged, but only to the extent that revenues of the district to which the credit enhanced bonds were issued are insufficient to pay the bonds; or

⁵ In 2010, the Legislature gave development authorities temporary expanded authority to stimulate the economic recovery through assistance to private development. Known as the Jobs Stimulus Program, it temporarily trumps the requirements of this Five-Year Rule. See Minn. Stat. § 469.1763, subd. 3.

⁶ Minn. Stat. § 469.1763, subd. 3. See also Minn. Stat. § 469.1763, subd. 2 (e) (infrastructure for biotechnology and health sciences industry zones are expenditures outside the district).

- (iii) additional expenditures authorized in the TIF plan for housing projects that have not been funded with the proceeds of bonds.⁷

Only the revenues derived from tax increments paid by the properties in the TIF district are subject to Pooling Restrictions and the Five-Year Rule.⁸ Proceeds from the sale or lease of property purchased with tax increments, principal and interest received on loans or advances made with tax increments, interest or other investment earnings on or from tax increments, repayments to an authority, and market value homestead credit paid to the authority are not subject to the restrictions, even though they are all tax increments.⁹

Decertification of the District

The TIF district must be decertified, and any pledge of tax increment to bonds discharged, once the outstanding bonds have been defeased and sufficient money has been set aside to pay for:

- (i) outstanding contractual obligations under the Five-Year Rule;
- (ii) housing projects specified in the TIF plan that have not been funded with the proceeds of bonds issued under the Five-Year Rule; and
- (iii) the additional expenditures permitted by the TIF plan for qualified low-income housing.¹⁰

⁷ See Minn. Stat. §§ 469.1763, subd. 3 (a) (2) and subd. 3 (b) (defining outstanding bonds); and Minn. Stat. §§ 469.1763, subd. 3 (a) (3) and subd. 3 (a) (4) (defining contracts).

⁸ Minn. Stat. § 469.1763, subd. 1 (d). Revenues derived from tax increments are paid to development authorities as tax increment settlement payments. A development authority receives its tax increment settlement payments from the county two times a year.

⁹ Tax increment revenues as defined in Minn. Stat. § 469.174, subd. 25 (2), (3), and (4) are expressly excluded from “revenues derived from tax increment paid by properties in the district.” See Minn. Stat. § 469.1763, subd. 1 (d).

¹⁰ Minn. Stat. § 469.1763, subd. 4 (b), and subd. 2 (d).