

TIF Division Newsletter



The 2010 Jobs Bill and Tax Increment Financing

The Office of the State Auditor (OSA) is receiving inquiries regarding the Jobs Bill which was enacted into law by the 2010 Legislature.¹ To assist in creating jobs, development authorities are now authorized to spend tax increment revenues (i) generated by a new economic development district, or (ii) “legally available” from any type of existing district.

Revenues from Economic Development Districts. Section 31 of the Bill amends an existing subdivision of the TIF Act to permit tax increment revenues from an economic development district to be used to provide subsidies or assistance in any form to developments consisting of buildings and ancillary facilities if (i) the project will create or retain jobs in the state, (ii) construction of the project begins no later than July 1, 2011, and (iii) the request for certification of the district is made after June 30, 2009, and no later than June 30, 2011.²

Revenues from Existing Districts. Section 32 of the Bill amends the TIF Act to create a new subdivision.³ Development authorities are given temporary authority to use available and uncommitted tax increment revenues from any type of TIF district to assist in developments consisting of the construction or substantial rehabilitation of buildings and ancillary facilities, including direct investments in businesses necessary to finance the development. A direct investment was generally not a permitted use of tax increments under prior law. The temporary authority to spend tax increments in this manner expires on December 31, 2011.

It is not necessary to modify the TIF plan of an existing district that is providing the increment to take advantage of the benefits of the Jobs Bill. However, a written spending plan approved by the municipality, subject to a prior 10- to 30- day published notice and a public hearing, is required. The law is less clear about which tax increment revenues in existing TIF districts qualify for use. The OSA is taking the following position as to what constitutes increment available for use under Section 32:

1. 2010 Minn. Laws, Ch. 216, §§ 31 and 32.
2. 2010 Minn. Laws, Ch. 216, § 31 (to be codified at Minn. Stat. § 469.176, subd. 4c).
3. 2010 Minn. Laws, Ch. 216 § 32 (to be codified at Minn. Stat. § 469.176, subd. 4m).

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Any tax increment legally retained in an account of an existing TIF district after December 31, 2009, and not otherwise committed to qualifying expenditures, may be used for expenditures under Section 32 of the bill. Examples of “legally retained” increment include:

- i. excess increment from calendar year 2009, required to be returned to the county by October 1, 2010;⁴
- ii. excess increment from calendar year 2010, required to be returned to the county by October 1, 2011; and
- iii. increment from a district that met the conditions for the five-year rule mandatory decertification after December 31, 2009, but the tax increment remains in the authority’s account in 2010 or will be received in 2011 if the district does not otherwise reach its maximum duration at the end of 2010.⁵

Tax increment is considered not “legally retained” for Section 32 purposes if:

- i. the increment is excess increment from a prior year or years, and was required to be repaid to the county before December 31, 2009;
- ii. the district met the conditions for mandatory decertification under the five-year rule at any time prior to January 1, 2010; or
- iii. the authority inadvertently received increment after the maximum duration date.⁶

The legislature wants the OSA to report on development activity occurring as a result of the new legislation. Please submit spending plans to the OSA so the information can be compiled.⁷ The plans may be sent electronically to TIF@auditor.state.mn.us or can be mailed to the OSA in care of the Tax Increment Financing Division.

4. Minn. Stat. §469.176, subd. 2, defines “excess increment” while (a) requires an authority to return excess increments within nine months after the end of the year.

5. Minn. Stat. § 469.1763, subd. 4 (b).

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

7. Although the new law does not mandate filing the spending plans with the OSA, we request them pursuant to existing authority. *See, e.g.*, Minn. Stat. §§6.48-.51, 6.74.