

STATE OF MINNESOTA

Office of the State Auditor



Rebecca Otto
State Auditor

TAX INCREMENT FINANCING COUNTY GUIDE

July 2014

Description of the Office of the State Auditor

The mission of the Office of the State Auditor is to oversee local government finances for Minnesota taxpayers by helping to ensure financial integrity and accountability in local governmental financial activities.

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 150 financial and compliance audits per year and has oversight responsibilities for over 3,300 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 - monitors investment, financial, and actuarial reporting for approximately 730 public pension funds; and

Tax Increment Financing - promotes compliance and accountability in local governments' use of tax increment financing 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



July 15, 2014

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INTRODUCTION

Welcome to the Office of the State Auditor’s Tax Increment Financing County Guide (Guide).

The Tax Increment Financing (TIF) Act is a complicated statute that has been frequently amended. New law is layered over the old, and the old law remains in effect for TIF districts in existence when changes are made. Five different types of districts each have their own provisions of law. Every year, special legislation is enacted to create exceptions.

In 1995, the Minnesota Legislature gave the Office of the State Auditor (OSA) primary oversight responsibility to ensure legal compliance with the TIF Act. This Guide was developed as a reference guide to help county officials and their staff identify and administer their TIF responsibilities with the goal of increased legal compliance.

The Guide is not legal advice or a substitute for legal advice. An attorney or financial advisor with TIF Act experience should be consulted before any important decision is made or significant action is taken. The OSA cannot give legal advice, but is available to discuss TIF issues in an educational context.

The Minnesota Department of Revenue (Revenue) also plays a significant role in oversight and legal compliance. As the executive branch agency with oversight authority over the state property tax system, Revenue is an appropriate place to seek guidance on issues that arise at the intersection of the state property tax system and the TIF Act.

For further assistance, please do not hesitate to contact the Office of the State Auditor (651-296-2551). E-mails may be sent to TIF@osa.state.mn.us. TIF Division staff can be reached at the contacts shown below.

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HOW TIF WORKS

TIF Basics

Tax increment financing (TIF) is a financing tool created by the Legislature to support local economic development, redevelopment, and housing development. As its name suggests, TIF finances development activity by “capturing” the incremental property taxes generated by the increased value of the new development. The capture of tax increments occurs within TIF districts that are comprised of parcels on which development activity occurs.

Without development, there is no increment. Once development occurs, tax increment is a revenue stream that can be used to finance a project directly or to reimburse qualifying expenditures. Tax increment expected in the future can be pledged to a bond that is used to pay for development in the present.

Tax increment financing is not a property tax abatement program. Owners of property located in a TIF district pay property taxes as they normally would. Instead of distributing the portion of property taxes generated by new development to the local taxing jurisdictions, that portion generated by new development, and only that portion, is used to pay for public improvements and qualifying costs that make the new development possible.

The costs that may be paid from tax increment revenue depend on the type of development activity taking place, the type of TIF district created, and the year in which the TIF district was created.¹ Examples of “qualifying costs” include: land and building acquisition, demolition of structurally substandard buildings, removal of hazardous substances, site preparation, installation of utilities, and road improvements.

A development authority initiates the creation of a TIF district. A development authority can be a city, an entity created by a city, or an entity created by a county.² Development authorities derive their authority from various development acts that underlie and are incorporated into the TIF Act by reference: the Housing and Redevelopment Authorities (HRA) Act, the Port Authorities Act, the Economic Development Authorities (EDA) Act, the Rural Development Financing Authorities Act, and the City Development District Act.³ These Acts authorize and limit the projects’ activities, while the TIF Act authorizes and limits the use of TIF to finance the projects.

TIF districts must be located within a project area. Project areas define the specific geographic areas in which these revenues can be spent and tax increment districts define the areas in which tax increments are captured. The TIF Act limits the circumstances in which increment may be spent outside the district but within the project area, commonly referred to as “pooling.”⁴

¹ See “Types of TIF Districts” and “A Brief History of TIF” at Appendices A and B.

² Counties and large metro towns may also be development authorities in certain instances.

³ Minn. Stat. § 469.174, subd. 2 (listing the statutory citations for the various development acts).

⁴ Minn. Stat. § 469.1763.

The development authority that initiates the use of TIF is required to make a finding, called a “but-for test,” that the development “would not reasonably be expected to occur solely through private development within the reasonably foreseeable future.”⁵ Therefore, TIF should not, in a general sense, capture tax base that would otherwise be available to all taxing jurisdictions, thereby diverting resources. It is intended to generally enable redevelopment or development that would not occur without the use of TIF.

TIF Mechanics

TIF’s basic concept of capturing new tax base and its incremental taxes to fund development requires application of some simple equations to make it work.

In its simplest form, property taxes equal a value multiplied by a tax rate, less any credits.

$$\text{PROPERTY TAX} = \text{VALUE} \times \text{RATE} - \text{CREDITS}$$

After values are determined and each jurisdiction adopts its property tax levy amount, the tax rates are calculated to raise enough gross taxes before credits to equal the levy amounts. Each jurisdiction’s rate equals its levy divided by the total value of its tax base.⁶

$$\text{RATE} = \text{LEVY} / \text{VALUE} \quad \text{or} \quad \text{RATE} \times \text{VALUE} = \text{LEVY}$$

Because TIF captures incremental taxes, one might wonder if taxing jurisdictions receive less than their levied amount. TIF does *not* divert levied amounts: captured value is ignored when calculating the tax rate. So, more specifically:

$$\text{RATE} = \text{LEVY} / \text{NON-CAPTURED VALUE}$$

The original value for a TIF district is the non-captured value. The difference between the current value and the original value is the captured value. Non-captured value raises the full levy amount.

$$\text{RATE} \times \text{NON-CAPTURED VALUE} = \text{LEVY}$$

Even though it is not included in calculating the tax rate, the rate is still applied to the captured value. Tax increment is generated as additional revenue above and beyond the jurisdictions’ levies. Only the original, non-captured value serves as tax base for the taxing jurisdiction’s levies and the captured value generates the tax increment that is used for development purposes.

$$\begin{aligned} \text{PROPERTY TAX LEVIES} &= \text{RATE} \times \text{NON-CAPTURED VALUE} \\ \text{TAX INCREMENT} &= \text{RATE} \times \text{CAPTURED VALUE} \end{aligned}$$

Credits reduce the amount of tax due from taxpayers. However, the State typically reimburses local governments to ensure that jurisdictions receive their full levy amount.⁷ Credits apply to

⁵ Minn. Stat. § 469.175, subd. 3(b)(2).

⁶ The sum of the individual rates for each jurisdiction yields the total tax rate.

the gross tax so a portion of credits reduces regular taxes and a portion reduces the tax increment. The Department of Revenue identifies each share when making credit reimbursements.

The final component of the “value times rate” equation is “value.” Minnesota’s concept of “value” is not simple. The value for most property tax calculations is called “net tax capacity” (NTC). The original and captured values for TIF are called original net tax capacity (ONTC) and captured net tax capacity. Net tax capacities are derived by multiplying the “taxable market value” (TMV) of a property by a percentage that varies according to its use classification (*e.g.*, commercial or residential homestead). These class rates allow different classes of property to be taxed at different proportions of market value (*e.g.*, the class rate for commercial property is double the rate for residential homesteads).⁸ The TMV is approximately the equivalent of “estimated market value” (EMV)--the value determined by assessors--but numerous exclusions and special features reduce the value that is subject to taxation for qualifying property.

Although most taxes in Minnesota are levied on NTC, some local levies are levied on a separately-defined value called “referendum market value” (RMV). TIF does not capture or affect RMV-based taxes; it only affects NTC-based taxes. More specifically, TIF only captures and affects *local* NTC-based taxes. The state property tax, which is levied on only certain classes of property, is levied on a separately-defined state net tax capacity (SNTC). TIF does not capture or affect the state NTC levy.⁹

The original local tax rate (OLTR) is also involved in the “value times rate” equation and is discussed in greater detail later in this Guide.¹⁰

⁷ Reimbursements have, at times, been reduced to address State budget deficits. This discussion ignores the effect of delinquency in payments by taxpayers.

⁸ Current class rates range from 0.45% to 2.00% based on a property’s use(s).

⁹ Minn. Stat. §§ 275.02; 275.025, subd. 1-2; and 469.177, subd. 1b.

¹⁰ Generally TIF districts receive increment created by increases in value. The OLTR was devised to prevent TIF districts from receiving increment caused by increases in tax rates. Such would-be increments from increasing tax rates are instead distributed to the affected jurisdictions as excess taxes--essentially as extra revenue.

RESPONDING TO PROPOSED TIF DISTRICTS

The TIF Plan

A TIF plan is the authorizing document created by the development authority and provided to the county to create a TIF district. A TIF plan states the objective of a TIF district, the activities to be undertaken, the type of district to be created, the estimated costs, and other details of the proposal. The plan defines and limits the activities that may be undertaken with the increments collected from the district.

Counties have no oversight responsibilities regarding the content of TIF plans, but are given an opportunity to comment on such plans and must identify information contained in them. Therefore, the following discussion of TIF plans is provided as educational background.

A TIF plan is required to contain the following information:¹¹

- statement of the objectives of an authority for improvement of a project;
- statement as to property within the project that the authority intends to acquire;
- list of any development activities that are proposed to take place for which the authority has entered into an agreement or designated a developer;
- description of any other specific development activities that are likely to occur and the date when that development is likely to occur;
- estimate of the cost of the project, including administrative expenses, and interest as a financing cost which will be paid or financed with tax increment from the district;
- estimate of the amount of bonds to be issued;
- estimate of the original net tax capacity of taxable real property within the district and any subdistrict;
- estimated captured net tax capacity of the TIF district at completion;
- duration of the TIF district and any subdistrict;
- estimated impact on all other taxing jurisdictions;
- satisfaction of the “but-for” findings, unless it is a housing district;
- identification of all parcels to be included in the district or any subdistrict;
- identification of any election to delay the receipt of first increment;
- the portion of captured net tax capacity shared with local taxing districts, if any;
- cost of county road improvements, if any; and
- an election to increase the pooling percentage for housing, if any.

In addition, a TIF plan may include additional documentation, such as:

- identification of the type of district being established with studies, analyses, and documentation supporting required findings that define the type of district;
- narratives, economic development studies, letters, and market value analysis information supporting the “but-for” findings;

¹¹ Minn. Stat. § 469.175, subd. 1.

- a finding by the municipality that the plan conforms to the general plan for the development or redevelopment of the municipality as a whole;
- facts supporting a determination that the TIF plan will afford the maximum opportunity, consistent with the sound needs of the municipality as a whole, for the development or redevelopment of the project by a private enterprise;
- proof of notification to the county auditor of any prior planned improvements on the properties in the district;
- maps of the development and TIF district boundaries;
- estimated cash flow assumptions;
- identification of the fiscal disparities computation method; and
- minimum assessment agreements, if any.

Notice and Opportunity to Comment

Notice of Proposed Plan

When a TIF district is proposed, the county must be given notice and an opportunity to be heard. The county may provide comments from two points of view: 1) as an impacted stakeholder and 2) as an administrator of the property tax system.

Before approving a TIF district, the development authority must provide the county auditor and clerk of the school board with the proposed TIF plan for the district and the authority's estimate of the fiscal and economic implications of the proposed TIF district. 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 is required before the TIF district can be approved. The estimate of the fiscal and economic implications of the proposed district may be included as a part of the TIF plan. The 30-day notice requirement is waived if the county board and the school board submit written comments on the proposal and any modifications to the development authority after receipt of the information.¹²

The county auditor must provide copies of these documents to the members of the county board, as directed by the board. The clerk of the school board must provide copies to members of the school board.

The TIF Act defines the "fiscal and economic implications of the proposed tax increment financing district" to include:¹³

- (1) an estimate of the total amount of tax increment that will be generated over the life of the district;
- (2) a description of the probable impact of the district on city-provided services such as police and fire protection, public infrastructure, and the impact of any general obligation tax increment bonds attributable to the district upon the ability to issue other debt for general fund purposes;

¹² Minn. Stat. § 469.175, subd. 2.

¹³ Minn. Stat. § 469.175, subd. 2(b).

- (3) the estimated amount of tax increments over the life of the district that would be attributable to school district levies, assuming the school district's share of the total local tax rate for all taxing jurisdictions remained the same;
- (4) the estimated amount of tax increments over the life of the district that would be attributable to county levies, assuming the county's share of the total local tax rate for all taxing jurisdictions remained the same; and
- (5) additional information regarding the size, timing, or type of development in the district requested by the county or the school district that would enable it to determine additional costs that will accrue to it due to the development proposed for the district.

Adopting Standard Questions in a Written Policy

A county or school board may adopt standard questions in a written policy to obtain information on the development authority's estimate of the fiscal and economic implications of the proposed TIF district.¹⁴ If a county or school district has not adopted standard questions, it may request additional information no later than 15 days after receipt of the TIF plan. The request does not require an additional 30 days of notice before the public hearing.¹⁵

Housing and Redevelopment Districts; Additional Notice and Comment

If the proposed TIF district is a housing or redevelopment district, the development authority must also provide 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 written notice must be delivered at least 30 days before the publication of the notice of the public hearing and must contain a general description of the boundaries of the proposed district, the proposed activities to be financed by the district, an offer by the authority to meet and discuss the proposed district with the county commissioners, and a solicitation of the commissioners' comments with respect to the district. The commissioners may waive the 30-day requirement by submitting written comments on the proposal and any modification of the proposal to the development authority after receipt of the information.¹⁶

Municipal Approval of TIF Plan

A county auditor may not certify the original net tax capacity (ONTC) 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 authority proposing the TIF district and the municipality are not the same, the authority must obtain the approval of its TIF plan from the municipality before the authority may use tax increment financing.¹⁷

¹⁴ Minn. Stat. § 469.175, subd. 2(b)(5).

¹⁵ *Id.*

¹⁶ Minn. Stat. § 469.175, subd. 2a.

¹⁷ Minn. Stat. § 469.175, subd. 3(a).

The municipality may approve a TIF plan only after holding a public hearing. The notice of the public hearing must be published in a newspaper of general circulation in the municipality at least once. The notice must be published not less than 10 days nor more than 30 days prior to the date of the hearing. The notice must include a map of the TIF district from which tax increment may be collected and a map of the project area in which tax increments may be expended.¹⁸

Before or at the time of approval of the TIF plan, the municipality must make a number of findings and provide, in writing, the reasons and supporting facts for each determination. The municipality must determine that: 1) the district is one of the allowed types of districts and it meets the criteria for its type; 2) it expects the conditions of the “but-for” test to be true; 3) the plan conforms to municipal development plans; 4) the plan will afford maximum opportunities for private enterprise; and 5) the method of computation under fiscal disparities has been elected, if applicable.¹⁹

TIF Plan Modifications

The TIF plan may be modified through an amendment proposed by the development authority.²⁰ Certain modifications require the same notice and public hearing as new districts require, while other modifications, being more administrative in nature, do not. The formal notice and hearing procedures are required if the modifications:

- reduce or enlarge the geographic area of the TIF district or project area;
- increase the amount of bonded indebtedness to be incurred;
- include a determination to capitalize interest on the debt that was not a part of the original plan;
- increase the portion of the captured net tax capacity to be retained by the authority;
- increase the estimate of the cost of the project that will be paid or financed with tax increment from the district; or
- designate additional property to be acquired by the authority.²¹

The formal notice and hearing procedures do not apply if the only modification is the elimination of parcels and the current net tax capacity of the eliminated parcels equals or exceeds the net tax capacity of those parcels in the ONTC, or if the authority agrees to reduce the ONTC by no more than the current net tax capacity of the eliminated parcels. In other words, no public hearing is needed if the elimination of the parcel does not increase the captured value of the district.²²

A change in the type of district is not a modification. The development authority must adopt a new TIF plan, including obtaining new certification of the net tax capacity of the district from the county auditor, to create a district of a different type.²³

¹⁸ *Id.*

¹⁹ Minn. Stat. § 469.175, subd. 3(b).

²⁰ Minn. Stat. § 469.175, subd. 4(a).

²¹ Minn. Stat. § 469.175, subd. 4(b).

²² Minn. Stat. § 469.175, subd. 4(e).

²³ Minn. Stat. § 469.175, subd. 4(c).

After five years following the date of certification of the original net tax capacity by the county auditor, the geographic area of a TIF district may be reduced, but not enlarged.²⁴

County Road Costs

When the county receives a proposed TIF plan or TIF-plan modification, it may examine the impact of the proposal 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, in the county's judgment, the following conditions exist:²⁵

- (1) the proposed TIF plan or amendment contemplates construction of a development that will substantially increase the use of county roads requiring construction of road improvements or other road costs; and
- (2) the road improvements or other road costs are not scheduled for construction within five years under the county capital improvement plan or other formally adopted county plan, and would not be needed within the reasonably foreseeable future if the proposed TIF plan were not implemented.

If the county elects to use tax increments to finance road improvements, it must notify the development authority and municipality within 45 days after receipt of the proposed TIF plan. The notice must include the estimated cost of the road improvements and a schedule for construction and payment of the cost. The development authority must then include the improvements in the TIF plan.²⁶

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 out of tax increment revenues, with or without interest. If the cost of the road improvements and other project costs exceed the projected amount of the tax increment, the county and the authority must negotiate an agreement, modifying the development plan or proposed road improvements so that the costs can be financed, before the TIF plan can be approved.²⁷

If the county and development authority or municipality are unable to agree on the need for or the cost of the county road improvements and the county or the municipality demands arbitration, the matter must be submitted to binding arbitration in accordance with the Uniform Arbitration Act and the Rules of the American Arbitration Association.²⁸

²⁴ Minn. Stat. § 469.175, subd. 4(f).

²⁵ Minn. Stat. § 469.175, subd. 1a(a).

²⁶ Minn. Stat. § 469.175, subd. 1a(b).

²⁷ *Id.*

²⁸ Minn. Stat. § 469.1762; *See* Minn. Stat. §§ 572B.01-.31 (Uniform Arbitration Act).

CERTIFICATION OF NEW/MODIFIED TIF DISTRICTS

District Certification

After a development authority requests certification of a TIF district, the county auditor must certify the district and any subdistrict as described in the TIF plan.

Form of Certification Request

The county auditor may specify reasonable form and content of the request for certification by an authority of a district or any modification.²⁹

The Department of Revenue's Certification Request Supplement summarizes many important elements in the TIF plan. TIF authorities initially fill out the majority of the form; county auditors complete the form by providing the certification request date, certification date, and base year information.

Certification Request Date and Certification Date

The certification request date (CRD) is the date that a request is postmarked or hand delivered.³⁰ The CRD is important because various provisions of TIF law are tied to this date. The effective dates of many TIF Act amendments are tied to the CRD. The CRD also determines the appropriate value-year to use in certifying the original net tax capacity (ONTC).

Other provisions of the TIF Act are tied to the actual certification date (CD). Various reporting requirements, the four-year rule, five-year rule, and six-year rule are all connected to the CD. The certification date is the date on which the ONTC is certified. The county auditor must certify the ONTC within 30 days after receipt of both the request and sufficient information to identify the parcels included in the district.³¹

Certification of the Original Net Tax Capacity

The ONTC is the tax capacity of all taxable real property within a TIF district for the previous assessment year if the request is made by June 30, or for the current assessment year if the request is filed after June 30.³² For example, a request for certification made on June 30, 2014, would use assessment year 2013 (pay 2014) values for the ONTC, but a request made July 1, 2014, would use assessment year 2014 (pay 2015) values.³³

²⁹ Minn. Stat. § 469.177, subd. 1(e).

³⁰ An equivalent to a postmark, such as a U.P.S. delivery code is also acceptable.

³¹ Minn. Stat. § 469.177, subd. 1(a).

³² Minn. Stat. § 469.174, subd. 7. Here, "real property" includes "any property normally taxable as personal property by reason of its location on or over publicly-owned property." *Id.* At subd. 7(d).

³³ In Minnesota, the values for one year are used in determining the taxes payable in the next year, and it is common to reference both the assessment year (AY) and payable year (*e.g.*, AY 2013/Pay 2014).

A request for certification received by the county auditor on or before June 30 of the calendar year must be recognized by the county auditor in determining local tax rates for the current and subsequent levy years. Requests received after June 30 will not be recognized in determining local tax rates in the current levy year but must be recognized in subsequent levy years.³⁴ Of course, values do not always increase in the first year, and any election to delay would also affect when there is captured value to be recognized.³⁵

The county auditor uses the description of the TIF district provided in the TIF plan to certify the ONTC. The development authority, however, must provide sufficient information to identify the parcels before the ONTC can be certified.³⁶ A parcel is a tract or plat of land established prior to the certification of the district as a single unit for purposes of assessment.³⁷ The county auditor must certify the amount of the ONTC within 30 days of the request date or once parcels are clearly identified. The county auditor need not wait for the availability of the original local tax rate in order to certify the ONTC.³⁸

The ONTC of real property exempt from taxation at the time of the request is zero, except for real property which is exempt by reason of public ownership by the requesting authority and which has been publicly owned for less than one year before the date of the request for certification. With these facts, the ONTC is the net tax capacity as most recently determined by the Commissioner of Revenue.³⁹

The ONTC of a designated hazardous substance site or subdistrict is determined as of the date the development authority certifies to the county auditor that the authority has made an agreement to take actions specified in a development response plan, or to otherwise provide funds to finance the development response plan. The ONTC equals (1) the net tax capacity of the parcel or parcels in the site or subdistrict as most recently determined by the Commissioner of Revenue, less (2) the estimated costs of the removal actions and remedial actions as specified in the development response action plan to be undertaken with respect to the parcel or parcels, (3) but not less than zero.⁴⁰

For redevelopment districts, if a parcel of property contained substandard buildings or improvements that were demolished or removed, and if the development authority elects to treat the parcel as occupied by the substandard buildings or improvements as provided by statute, the county auditor must certify the ONTC of the parcel using the greater of (1) the current NTC of

³⁴ Minn. Stat. § 469.177, subd. 6. This reference to levy years is consistent with the reference in Minn. Stat. § 469.174, subd. 7, to assessment years. For example, a request for certification on June 30, 2014, could first generate captured value for levies adopted in 2014, which determine taxes payable in 2015, due to AY 2014 (Pay 2015) values potentially exceeding the ONTC established with AY 2013 (Pay 2014) values. A July 1, 2014, request for certification, with its base year being AY 2014 (Pay 2015) values, could first generate captured value for AY 2015 (Pay 2016) that would be recognized in calculating rates for 2015 levies.

³⁵ See “Election to Delay,” at pg. 12.

³⁶ Minn. Stat. § 469.177, subd. 1(a).

³⁷ Minn. Stat. § 469.174, subd. 15.

³⁸ See Minn. Stat. § 469.177, subd. 1a.

³⁹ Minn. Stat. § 469.174, subd. 7(a).

⁴⁰ Minn. Stat. § 469.174, subd. 7(b).

the parcel, or (2) the estimated market value of the parcel for the year in which the building or other improvements were demolished or removed, but applying the class rates for the current year.⁴¹

For a redevelopment district established as a qualifying disaster area, the county auditor must certify the value of the land as the ONTC for any parcel in the district that contains a building that suffered substantial damage as a result of the disaster or emergency.⁴²

For a district located in an area declared to be a disaster area pursuant to federal, state, or local law, and for which a request for certification was made in the same calendar year as the disaster, the assessor must determine, upon the request of the municipality, the reduction in market value of properties in the district that is attributable to the physical effects of the disaster. The county auditor must use the reduced market value to certify the ONTC of the district.⁴³

County auditors should also identify any special legislation that might specify the ONTC for parcels in the district.

Adjustments to ONTC may need to be made each year after the original certification.⁴⁴

Certification of the Original Local Tax Rate

The county auditor must certify the original local tax rate (OLTR) that applies to the TIF district or subdistrict at the time the initial certification of the original net tax capacity is made. The OLTR is the sum of all the local tax rates that apply to a property in the district or subdistrict. The OLTR is the rate in effect for the same payable year applicable to the tax capacity values certified as the original net tax capacity. The resulting tax capacity rate is the original local tax rate for the life of the district or subdistrict unless special deficit authority is used or a special law provides otherwise.⁴⁵

The OLTR should be certified at the time of the initial certification of the ONTC, but the tax rate is sometimes not available within 30 days of the request for certification, especially for requests for certification made after June 30. The original local tax rate can be certified when it becomes available.

Form of Certification

The Department of Revenue provides a sample certification form in its [Auditor/Treasurer Manual](#) on its website.

⁴¹ Minn. Stat. § 469.177, subd. 1(f), and Minn. Stat. § 469.174, subd. 10.

⁴² Minn. Stat. § 469.177, subd. 1(g), and Minn. Stat. § 469.174, subd. 10(a)(4).

⁴³ Minn. Stat. § 469.177, subd. 1c.

⁴⁴ See “Annual County Responsibilities,” at pg. 20.

⁴⁵ Minn. Stat. § 469.177, subd. 1a. As an example, if a district had a request for certification of June 30, 2014, its ONTC is based on AY 2013 values and the tax rate for taxes payable 2014 is the OLTR because AY 2013 values are used for taxes payable in 2014. A district with a request for certification made on July 1, 2014, would have the rate for taxes payable in 2015 as its OLTR. Special deficit authority under Minn. Stat. § 469.1792, subd. 3, allows the authority to elect for the OLTR to not apply.

TIF District Codes and Names

When a county certifies a new district and establishes the district within its records and computer system, codes and names that facilitate ease of communication between the county, the development authority, the Department of Revenue, and the OSA should be used. It is helpful to accompany any code with the name of a district when sharing information. The name should reflect the name used in the TIF plan and/or any other common name communicated by the development authority. For example, if the city of “Tiftown” approves a TIF plan for “TIF 1-1” and the city refers to it in the request for certification as “TIF 1-1 Widget Industries,” then incorporating such information into the name in county records provides more information and clarity than simply referring to the district by a code, like “#1401.”

First Receipt of Increment

When certifying a district, the county auditor must understand the impact of the first receipt of tax increment on duration limits. The duration limit of a TIF district begins when the first tax increment revenues are received by the development authority.⁴⁶ A TIF district will usually receive its first increment one to two years after it is certified by the county. Increment is generated whenever the current net tax capacity exceeds the ONTC, even if the current NTC reflects only market forces or partial development activity. The size and timing of the first receipt of increment may be difficult to predict. As a result, the clock on the duration limit of the TIF district may start earlier than expected, surprising some authorities.

Election to Delay

To ensure a district receives the maximum amount of tax increment, an authority may make an election to delay the first receipt of a district’s tax increment.⁴⁷ This election is not available for economic development districts. To make such an election, the authority specifies in the TIF plan the first year it will receive tax increment revenues, up to a maximum of four years following the year of approval of the district.⁴⁸ The election must be specific. General statements in the plan, such as “elects to delay within the first four years” or “elects to delay receipt of tax increment,” are insufficient to constitute an election.

The county auditor should be informed by the development authority of its election to delay receipt of the district’s first tax increment revenues. The OSA recommends submission of a written notice of the election to the county auditor, with a copy of the page in the TIF plan showing the election was made. It should also be identified on the Certification Request Supplement or any alternate form required by the county auditor.

⁴⁶ Minn. Stat. § 469.176, subd. 1b(a).

⁴⁷ Minn. Stat. § 469.175, subd. 1(b). The current election to delay provision was enacted in 2008. A previous delay provision, repealed in 2001, had a minimum market value component that is not a feature of the current provision.

⁴⁸ Minn. Stat. § 469.175, subd. 1(b).

If a specific year is not identified in the TIF plan, but the development authority subsequently elects to delay receipt of the first tax increment revenues, the TIF plan must be modified. The same procedure required for approval of the original TIF plan, which includes a notice, a public hearing, and findings, is required for its modification.⁴⁹ As a practical matter, the election cannot be made after the district has received its first tax increment revenues.

Any other action to waive or decline to accept an increment has no effect on the duration limit. The development authority is deemed to have received an increment for any year in which it waived or declined to accept an increment, regardless of whether the increment was paid to the authority.⁵⁰

Prior Planned Improvements

The county auditor must increase the original net tax capacity of a TIF district by the net tax capacity of each improvement for which a building permit was issued during the 18 months immediately preceding approval of the TIF plan. A development authority must provide a list of properties for which building permits have been issued within the TIF district when it requests initial certification or provides notice of a district enlargement. This procedure is meant to ensure that TIF districts are not capturing value growth that occurred without TIF assistance.⁵¹

Parcels Not Includable in TIF Districts

With few exceptions, parcels that qualified under the Green Acres, Open Space, Rural Preserve, or Agricultural Preserve programs in any of the five calendar years before the filing of the request for certification cannot be included in a TIF district.⁵² The parcels may be included in the TIF district only for: (1) a district in which 85 percent or more of the square footage of the planned buildings and facilities is used as a qualified manufacturing facility, or a qualified distribution facility, or a combination of both; or (2) a housing district.⁵³

Multi-County Use Prohibited

Generally, tax increment derived in one county may not be expended in another county, even on the same project. If a TIF district is located in a municipality that is situated in more than one county, tax increment from parcels located in one county must be spent for the direct and primary 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.⁵⁴

⁴⁹ Minn. Stat. § 469.176, subd. 1.

⁵⁰ Minn. Stat. § 469.176, subd. 1b(c).

⁵¹ Minn. Stat. § 469.177, subd. 4.

⁵² Minn. Stat. § 469.176, subd. 7. *See* Minn. Stat. §§ 273.111, 273.112, 273.114, and ch. 473H, respectively.

⁵³ Minn. Stat. § 469.176, subd. 7.

⁵⁴ Minn. Stat. § 469.176, subd. 4i.

Creation of a Hazardous Substance Subdistrict

A development authority may create a hazardous substance subdistrict (HSS) by certifying to the county auditor at the time a TIF plan or modification is adopted that the development authority has entered into an agreement for the removal or remedial actions required by the development response action plan. The development response action plan must have been approved by the Pollution Control Agency.

Fiscal Disparities

To calculate tax increment, the county auditor must take into account the fiscal disparity choice made by the governing body. The revenue redistribution known as “fiscal disparities” was created by the Legislature to provide equitable sharing of new commercial-industrial (C/I) tax base to promote regional development.⁵⁵ A percentage of the growth in C/I tax capacity is contributed to an area-wide fiscal disparities pool, competing with TIF which captures and uses the increase in tax capacity.

The order in which these calculations are addressed matters. If a TIF district captures all of the incremental value first, the municipality’s required fiscal disparities contribution would have to consume a greater share of its non-captured C/I value and would result in higher local tax rates. Alternatively, making the fiscal disparity contribution first reduces the capture of increment.

To address these alternatives, the TIF Act provides two methods of tax increment calculation in relation to fiscal disparities. “Option A” is the default; “Option B” must be elected. Under Option A, the new value in a TIF district is captured by the TIF district and the fiscal disparities contribution comes from outside the district. Under Option B, the new value in a TIF district contributes its share of the fiscal disparities contribution, leaving less value for the TIF district to capture.⁵⁶

An election for calculation pursuant to Option B must be submitted to the county auditor by the authority at the time of the request for certification.⁵⁷ 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 Option A to Option B.⁵⁸

Required Decertification Date

The county auditor must identify the date on which a district is required to decertify. This date is typically calculated according to the statutory duration limits provided in the TIF Act, which typically depend on the date of the first receipt of increment. The county auditor must document

⁵⁵ Separate programs exist for the Metro and Iron Range areas. See Minn. Stat. ch. 473F (Metro program) and ch. 276A (Iron Range program).

⁵⁶ The election applies to TIF districts that have certification request dates after June 30, 1997. Economic development districts with a request for certification made on or before June 30, 2014, are required to use Option B. See “Annual County Responsibilities,” at pg. 20 for more detail about the calculation of increment.

⁵⁷ Minn. Stat. § 469.177, subd. 3(b)(3).

⁵⁸ Minn. Stat. § 469.177, subd. 3(c).

when the first receipt occurs and adjust the required decertification date as necessary. If an earlier date has been specified in the TIF plan by the development authority as the required maximum decertification date, then that date is the maximum decertification date. Special legislation may also set an alternate, controlling duration limit.⁵⁹

Shared Captured Net Tax Capacity

The county auditor must determine whether the development authority has elected to retain only a portion of the captured NTC. If the development authority has elected in the TIF plan to retain only a portion of the captured NTC, the portion that the authority chooses not to retain is shared and distributed among the affected taxing jurisdictions by the county auditor.⁶⁰

⁵⁹ See Minn. Stat. § 469.176, subd. 1b. For more information, see “Duration Enforcement” under “Annual County Responsibilities,” at pg. 26.

⁶⁰ Minn. Stat. § 469.177, subd. 2(a)(2). For more information, see “Calculation of Tax Increment” under “Annual County Responsibilities,” at pg. 23.

DECERTIFICATION OF TIF DISTRICTS

The county auditor must decertify a district once certain events occur. Decertification terminates a TIF district. Decertification occurs when the county auditor removes all parcels from a district and the district no longer receives tax increment.⁶¹ The county auditor must decertify a TIF district when the earliest of the following events occur:

- (1) the applicable maximum statutory duration limit is reached;⁶²
- (2) a shorter duration limit provided by the municipality at the time the TIF plan was approved is reached;⁶³
- (3) required actions for decertification under the Six-Year Rule are completed;⁶⁴ or
- (4) a development authority's written request for early decertification is received or the date specified in such a request is reached.⁶⁵

Decertification Request Form

The county auditor must complete Part B of the Confirmation of Decertified TIF District Form when it is received from the development authority.⁶⁶ The form ensures that the development authority and county are in agreement as to a district's decertification. It confirms the date it was decertified, the amount and date of the final distribution, and whether any increment was returned to the county as of the date of the form.

The form is to be submitted to the OSA within 90 days after decertification. The need to return increment should not delay submission of this form. Increment that is returned after the form has been submitted is reported on the TIF Annual Reporting Form. If a TIF district is decertified early, a copy of the resolution authorizing the decertification must also be submitted to the OSA.

Delinquent Taxes Received After Decertification

Delinquent property tax revenues collected after a TIF district is decertified may be distributed by the county auditor to the development authority as tax increment *if* three conditions are met:

- (1) the parcel on which the property taxes were paid must have been part of the TIF district at the time it was decertified;
- (2) the property taxes must have been delinquent, not merely past due, at the time the TIF district was decertified;⁶⁷ and

⁶¹ Minn. Stat. § 469.174, subd. 28. Decertification terminates the district and increment collection, but a development authority must continue to submit TIF Annual Reporting Forms to the OSA until no assets remain.

⁶² See Minn. Stat. §§ 469.176, subd. 1a to 1g.

⁶³ When the initial TIF plan is approved, the municipality may specify a shorter duration limit than the TIF Act requires. See Minn. Stat. § 469.176, subd. 1.

⁶⁴ See Minn. Stat. § 469.1763, subd. 4.

⁶⁵ Minn. Stat. § 469.177, subd. 12.

⁶⁶ The development authority completes Part A and is responsible for submitting it to the OSA.

⁶⁷ 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.

- (3) the failure to pay the delinquent property taxes when they were due must have either caused the development authority to be unable to pay obligations or must have forced it to use non-TIF funds to pay the obligations.⁶⁸

If the delinquent property taxes collected after a TIF district has been decertified do not meet these requirements, the county auditor should distribute the funds as ordinary property tax revenue, not as excess tax increment.

⁶⁸ Minn. Stat. § 469.176, subd. 1f.

VIOLATIONS OF THE TIF ACT

Receipt of a Notice to Withhold Tax Increment

Upon receipt of a Notice to Withhold Increment from the OSA, the county auditor must withhold tax increment that would otherwise be distributed. The TIF Act requires development authorities to file various statements and reports with the OSA. If the OSA has not received a copy of the disclosure or reports by the first day of October of the year in which they are due, the OSA notifies the county auditor in writing to hold the distribution of tax increment from TIF districts not in compliance.

The county auditor must hold:

- (1) 100% of the amount of tax increment that otherwise would be distributed, if the distribution is made after the first day of October 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.

The county auditor must distribute the withheld increment within 15 working days of receiving a written notice from the OSA lifting the hold. Interest accrued on the tax increment during the holding period may be retained by the county.⁶⁹

Distribution of Violation Payments

The county auditor must distribute as excess increment any payments received for violation of the law.⁷⁰ If a development authority improperly receives, spends, or transfers tax increment from a TIF district, the development authority must pay the county auditor an amount equal to the tax increment improperly collected, spent, or transferred.⁷¹ If the development authority is unable to make the payment, the municipality that approved the TIF district must use any available money to make the payment, including the levying of property taxes.⁷²

If the county auditor receives the violation payment more than 60 days after a municipality's receipt of the OSA's Notice of Noncompliance requiring the payment or after the commencement of an action by the county attorney to compel the payment, then no distribution may be made to the municipality that approved the TIF district.⁷³

⁶⁹ Minn. Stat. § 469.1771, subd. 2a(c) and (d).

⁷⁰ Minn. Stat. § 469.1771, subd. 5. If a county auditor receives an unidentified payment from a development authority or municipality related to a TIF district, the county auditor should contact the development authority, municipality, and/or the OSA for guidance in determining the nature of the payment and the statute controlling its redistribution.

⁷¹ Minn. Stat. § 469.1771, subds. 2 and 3.

⁷² Minn. Stat. § 469.1771, subd. 5.

⁷³ *Id.*

OSA Findings of Noncompliance

If the State Auditor finds evidence that an authority or municipality is not in compliance with the TIF law and the matter has not been resolved, the State Auditor will notify the governing body of the municipality that approved the TIF district of its findings. The governing body must respond, in writing, within 60 days after receiving the notification. The response must indicate whether the findings will be accepted, in whole or in part, or not at all.⁷⁴ Efforts to resolve the findings frequently occur both before and after the response. If the State Auditor finds evidence that an authority or municipality has violated a provision of the TIF law for which a remedy is provided and the matter has not been resolved, the State Auditor will forward the relevant information to the county attorney.

The county attorney uses his or her discretion to determine whether to bring an action to enforce compliance with the TIF Act. If the county attorney does not bring an action within 12 months after receipt of the initial notification by the State Auditor, the county attorney must notify the state auditor in writing.⁷⁵ If the municipality has still not addressed the violation, the State Auditor will then notify the attorney general.

⁷⁴ Minn. Stat. § 469.1771, subd. 1(c).

⁷⁵ Minn. Stat. § 469.1771, subd. 1(b).

ANNUAL COUNTY RESPONSIBILITIES

Adjustments to Original Net Tax Capacity

The county auditor must adjust the original net tax capacity (ONTC) of parcels when:

Classification of Property Changes

If the classification of property located in a TIF district changes to a classification with a different assessment ratio, the ONTC of that property must be redetermined at the time its use is changed.⁷⁶ The redetermined ONTC should be set as if the property had originally been in the same class in which it is classified after its use is changed.

Classification Rates Are Amended in Law

The increase or decrease in net tax capacity that results from an amendment of any law that governs the classification of real property and determines the percentage of market value to be assessed for ad valorem purposes must be applied proportionately to ONTC and captured net tax capacity of any TIF district.⁷⁷

Exempt Property Becomes Taxable

If previously tax-exempt real property located in a TIF district becomes taxable, an amount equal to the net tax capacity of the real property as most recently assessed under the six-year cycle of exempt property assessments will be added to the ONTC of the TIF district. If that assessment was made more than one year before the date of title transfer rendering the property taxable, the amount that will be added equals the net tax capacity assessed by the assessor at the time of the transfer.⁷⁸

The TIF Act provides additional guidance for dealing with improvements made to properties in a TIF district after the TIF district has been approved and before the property becomes taxable. At the request of the authority, the assessor must separately assess the estimated market value of the improvements and the county auditor must exclude the separately-assessed improvements when adjusting the ONTC. If substantial taxable improvements are made to a parcel after certification of the district and if the property later becomes exempt as a result of the development authority acquiring the property through foreclosure or exercise of remedies under a lease or other revenue agreement or as a result of tax forfeiture, the amount to be added to the ONTC as a result of the property again becoming taxable is the amount equal to the parcel's value that was included in the ONTC when the parcel was first certified.⁷⁹

⁷⁶ Minn. Stat. § 469.177, subd. 1(b), referencing classifications and ratios in Minn. Stat. § 273.13.

⁷⁷ Minn. Stat. § 469.177, subd. 7.

⁷⁸ Minn. Stat. § 469.177, subd. 1(c). Minn. Stat. § 273.18 requires assessments of exempt property and reporting by way of the Exempt Abstract in every sixth year.

⁷⁹ Minn. Stat. § 469.177, subd. 1(c).

Taxable Property Becomes Tax Exempt

If previously taxable property located in a TIF district becomes tax exempt, the amount to be subtracted from the ONTC of the TIF district is the amount equal to ONTC initially attributable to the property becoming exempt.⁸⁰

Enlargement of the Geographic Area

If a TIF district is enlarged by a TIF plan modification, the amount to be added to the ONTC is the amount equal to the net tax capacity of the added real property as most recently certified by the Commissioner of Revenue as of the date of the modification of the TIF plan.⁸¹

Reduction of the Geographic Area

If there is a reduction in the geographic area of the TIF district, the amount to be subtracted from the ONTC is the amount equal to the ONTC initially attributable to the property being removed.⁸²

Property No Longer Qualifies for Green Acres, Open Space, Ag Preserve, or Rural Preserve

If the net tax capacity of a property located in a TIF district increases because the property no longer qualifies for special treatment under the Minnesota Agricultural Property Tax Law (“Green Acres”), the Minnesota Open Space Property Tax Law, the Metropolitan Agricultural Preserves Act, or the Rural Preserve Property Tax Program, the increase in net tax capacity must be added to the ONTC of the TIF district.⁸³

Increased Values Under Plat Law

If the net tax capacity of a property located in a TIF district increases because platted, unimproved property is improved or market value is increased after approval of the plat pursuant to the plat law, the increase in net tax capacity is added to the ONTC of the TIF district.⁸⁴

Property No Longer Qualifies for the Homestead Market Value Exclusion

If property located within the TIF district no longer qualifies for the homestead market value exclusion (HMVE), and if the original construction of the affected property was completed before the date the ONTC of the TIF district was certified, an amount equal to the increase in the net tax capacity must be added to the ONTC of the TIF district.⁸⁵

⁸⁰ Minn. Stat. § 469.177, subd. 1(e).

⁸¹ See Minn. Stat. §§ 469.177, subd. 1(c) (describing ONTC adjustment), and 469.175, subd. 4(f) (providing a five-year restriction on enlargements).

⁸² Minn. Stat. § 469.177, subd. 1(e).

⁸³ See Minn. Stat. §§ 273.111, 273.112, 473H, and 273.114, respectively, and 469.177, subd. 1(d) (describing ONTC adjustment).

⁸⁴ See Minn. Stat. §§ 273.11, subd. 14a and 14b (plat law), and 469.177, subd. 1(d) (describing ONTC adjustment).

⁸⁵ See Minn. Stat. §§ 273.13, subd. 35 (HMVE), and 469.177, subd. 1(d) (describing ONTC adjustment).

Property Qualifies for an Exclusion

If property located within the TIF district qualifies in whole or in part for an exclusion from taxable market value, the amount to be subtracted from the ONTC of the TIF district equals the amount of ONTC initially attributable to the property being excluded.⁸⁶

Damage in a Disaster Area

For TIF districts located in a disaster area, ONTC adjustments may be made for taxes payable in the first calendar year beginning at least four months after the date of the disaster determination.⁸⁷

If the TIF district was certified before the date of the disaster area determination, the county auditor, upon the request of the municipality, must reduce the ONTC of the TIF district by an amount equal to the reduction in the net tax capacity of properties in the TIF district that are attributable to the physical effects of the disaster. The ONTC may not be reduced below zero. The assessor determines the amount of the reduction attributable to the physical effects of the disaster. The county auditor uses this amount to reduce the ONTC of the TIF district.⁸⁸

A TIF district with a request for certification date in the same calendar year as the disaster area determination but that does not meet the requirements discussed above, may have its ONTC certified based on the reduced market value attributed to the physical effects of the disaster.⁸⁹

Court-Ordered and Voluntary Abatements, Stipulation Agreements, and Commissioner Orders

If the net tax capacity of property located in a TIF district is reduced because of a court-ordered abatement, stipulation agreement, voluntary abatement made by the county assessor or auditor, or by order of the Commissioner of Revenue, the county auditor must apply the reduction to the TIF district. If the property has not been improved since the date of certification of the TIF district, the reduction is applied to the ONTC. If the abatement relates to improvements made after the date of certification, the reduction is applied to the captured net tax capacity.⁹⁰

Certification of Captured Net Tax Capacity

The county auditor must certify the amount of the captured net tax capacity to the development authority each year, along with the proportion that the captured net tax capacity bears to the total net tax capacity of the real property located within the TIF district and any subdistrict for that year. The development authority may retain part or all of the captured net tax capacity, but the portion that the development authority intends to retain must be clearly stated in the TIF plan.⁹¹

⁸⁶ Minn. Stat. § 469.177, subd. 1(e).

⁸⁷ Minn. Stat. § 469.177, subd. 1c (referencing disaster areas described in Minn. Stat. § 273.1231, subd. 3(a)(1)).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Minn. Stat. § 469.177, subd. 1(e).

⁹¹ Minn. Stat. § 469.177, subd. 2. See “Shared Captured Net Tax Capacity,” at pg. 15.

Calculation of Tax Increment

The calculation of tax increment is directly affected by the fiscal disparities program. Two optional methods of tax increment calculation address the interactions between the fiscal disparities program and tax increment financing. “Option A” is the default, used automatically unless “Option B” is elected. However, Option B is required for economic development districts with a request for certification on or before June 30, 2014. The election made at the time of the request for certification remains the method for the life of the district, unless the governing body elects to change its election from Option A to Option B. A governing body may not change its election from Option B to Option A.

Both options follow these steps to calculate tax rates and tax increment:

- The ONTC is determined before applying the fiscal disparities provision.
- Where the ONTC is equal to or greater than the Current NTC, there is no Captured NTC and no tax increment.
- Where the ONTC is less than the Current NTC, the difference between the ONTC and the Current NTC is the Captured NTC.
- The Captured NTC less any portion which the authority has designated in its tax increment financing plan to share with the local taxing districts is the Retained Captured NTC of the authority.
- The county auditor must exclude the Retained Captured NTC of the authority from the net tax capacity of the local taxing districts to determine local taxing district tax rates.
- The resulting local tax rates are to be extended against the Retained Captured NTC 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 OLTR, to the Retained Captured NTC of the authority, is the tax increment of the authority.⁹²

The difference between the two options is manifested in how the Current NTC (and therefore the Captured NTC and Retained Captured NTC) is determined.

Option A: Full TIF Capture--Fiscal Disparities Contribution from Outside the District

The Current NTC is to be determined before any fiscal disparity provisions of chapter 276A or 473F are applied. As a result, the fiscal disparities contribution will not reduce the amount of the Current NTC, and the amount of the Captured NTC and Retained Captured NTC will be larger than under Option B.

⁹² See Minn. Stat. § 469.177, subd. 3(a)(1) and (2) (Option A); and Minn. Stat. § 469.177, subd. 3(b)(1) and (2) (Option B).

Option B: Reduced TIF Capture--Fiscal Disparities Contribution from the TIF District

The Current NTC is to be determined after excluding any fiscal disparity commercial/industrial net tax capacity increase between the original year of the fiscal disparities program and the current year, multiplied by the fiscal disparity ratio.⁹³ As a result, the fiscal disparities contribution comes from the new value in the TIF district and reduces the Current NTC, Captured NTC, and Retained Captured NTC.

Distribution of Excess Taxes on Captured Net Tax Capacity

The county auditor must determine and distribute excess taxes caused by increases in the tax rate. When the current local tax rate exceeds the original local tax rate (OLTR), excess taxes will be generated on captured net tax capacity. Tax increment is limited to the tax generated by extending the lesser of (A) the current local taxing district tax rates or (B) the OLTR to the retained captured net tax capacity.⁹⁴ 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.⁹⁵ Excess taxes should not be confused with “excess increments” which are properly generated tax increments that exceed the amount authorized or needed for TIF expenditures. Excess taxes are not tax increment.⁹⁶

Excess taxes are distributed to the municipality, county, and school district in a manner that reflects the extent to which each governmental unit’s local tax rate produced the excess taxes. Each governmental unit’s share of the excess taxes equals the total amount of excess taxes multiplied by a fraction. The fraction for each unit is the increase (if any) in its local tax rate since the year of the OLTR, divided by the total amount of increases in the tax rates for the municipality, county, and school district.⁹⁷ Other taxing jurisdictions do not receive a share of the excess taxes. If the entire increase in the local tax rate is attributable to a taxing jurisdiction other than the municipality, county, or school district, then the excess is distributed to the municipality, county, and school district in proportion to their respective local tax rates.⁹⁸

Example Calculation of Excess Taxes:

Current Local Tax Rate: 125% (County 45%, City 40%, Sch. Dist. 30%, Others 10%)
OLTR: 100% (County 38%, City 25%, Sch. Dist. 34%, Others 3%)
Retained Captured NTC: \$10,000

Tax Increment = $100\% \times \$10,000 = \$10,000$ (100% is the lesser of 100% or 125%)
Excess Taxes = $(125\% \times \$10,000) - (100\% \times \$10,000) = \$12,500 - \$10,000 = \$2,500$

⁹³ The fiscal disparities ratio is determined pursuant to Minn. Stat. § 276A.06, subd. 7, or § 473F.08, subd. 6.

⁹⁴ Minn. Stat. § 469.177, subd. 3(a)(2) and 3(b)(2).

⁹⁵ Minn. Stat. § 469.177, subd. 9(a).

⁹⁶ The sum of excess taxes and the net tax increment from a TIF district is sometimes commonly referred to as the district’s gross tax increment.

⁹⁷ This is the total of the three numerators, which may not necessarily equal the total difference in the tax rates.

⁹⁸ Minn. Stat. § 469.177, subd. 9(a).

Distribution Fractions: (Numerators are increases, if any. Denominators are the sum of all three numerators.)

County =	7% / 22%
City =	15% / 22%
School District =	0% / 22%

Excess Tax Distributions:

County =	\$2,500 x 7/22	= \$795
City =	\$2,500 x 15/22	= \$1,705
School District =	\$2,500 x 0/22	= \$0

The county auditor must report to the Commissioner of Education the amount of excess taxes distributed to the school district so that the amounts may be deducted from the school district's state aid payments and levy limitation.⁹⁹ The report must be made within 30 days after making a distribution of excess taxes to a school district.

Distribution of Excess Tax Increment

The county auditor must distribute excess tax increment received from a development authority.

The development authority must annually determine the amount of excess increment, if any, for a TIF district and use it as permitted for outstanding obligations or return it within nine months after the end of the year. Excess increment generally equals the total increment collected since certification that is greater than the total costs authorized by the TIF plan to be paid with tax increment.¹⁰⁰

The county auditor must distribute excess increment to the city or town, county, and school district in which the TIF district is located in direct proportion to each of their respective local tax rates.¹⁰¹

The county auditor must also report to the Commissioner of Education the amount of excess tax increment distributed to a school district within 30 days after making a distribution of excess tax increment to a school district.¹⁰²

OSA Enforcement Deduction

The county treasurer must deduct a percentage (0.36 percent) of all increment distributed to an authority or municipality and pay it to the Commissioner of Minnesota Management and Budget (MMB).¹⁰³ The cost of financial reporting of TIF information and the cost of examining and auditing authorities' use of TIF by the OSA are paid from this deduction of tax increment.

⁹⁹ Minn. Stat. § 469.177, subd. 9(c).

¹⁰⁰ Minn. Stat. § 469.176, subd. 2(a) and (b). The specific calculations recognize obligations paid with other sources, obligations not yet due, and any previously returned excess increment.

¹⁰¹ Minn. Stat. § 469.176, subd. 2(c)(4).

¹⁰² Minn. Stat. § 469.176, subd. 2(e).

¹⁰³ Minn. Stat. § 469.177, subd. 11. The Department of Revenue calculated the TIF enforcement deduction rate for taxes payable in 2002 and thereafter to be 0.36 percent.

The OSA requires counties to annually submit a TIF Enforcement Deduction Form to the OSA which identifies the amounts transmitted to MMB. The form can be found at www.auditor.state.mn.us by clicking “Forms” and selecting “TIF Forms.” The OSA notifies county treasurers annually by e-mail when the form is due.

Duration Enforcement

The county auditor must identify the duration limit of a TIF district and terminate increment payments when the limit is reached. A TIF district’s duration limit is counted most commonly from the first receipt of tax increment.¹⁰⁴ Any increment from taxes payable in the year in which the district terminates is paid to the authority.¹⁰⁵ A limit that runs 25 years after first receipt of tax increment actually allows payment of 26 years of increment.

The TIF Act imposes duration limits according to the type of district. The current limits for new TIF districts allow collection of tax increment for the following durations:¹⁰⁶

- **Economic Development Districts:** 9 years (8 years after first receipt)
- **Renewal and Renovation Districts:** 16 years (15 years after first receipt)
- **Soils Condition Districts:** 21 years (20 years after first receipt)
- **Housing Districts:** 26 years (25 years after first receipt)
- **Redevelopment Districts:** 26 years (25 years after first receipt)

The TIF Act has been amended many times, and older districts have different duration limits. The following chart summarizes current law based on the type and the certification request date of TIF districts. Please note that special laws may provide additional alternate duration limits.

¹⁰⁴ Some exceptions for districts with earlier request for certification dates are identified in the table on the following page.

¹⁰⁵ See Minn. Stat. § 469.176, subd. 1b(b). This applies only to a duration limit based on the receipt of an increment.

¹⁰⁶ Minn. Stat. § 469.176, subd. 1b(a).

Dist. Type	Certification Request Date	Brief Summary of Duration Limit (See text of the cited TIF Act for details)	Citation of Law Change (Minn. Stat. §§ 469.176, subd. 1 or 1b, or 273.75, subd. 1)
Economic Development Districts			
	7/1/00 to present	After eight years after first receipt	2000, ch. 490, art. 11, sec. 25
	6/1/93 to 6/30/00	After nine years from the date of the first receipt, or 11 years from approval of the TIF plan, whichever is less	1993 ch. 375, art. 14, sec. 10
	8/1/79 to 5/31/93	After eight years from the date of first receipt, or ten years from approval of the TIF plan, whichever is less	1979 ch. 322, sec. 5
Renewal and Renovation Districts			
	5/1/90 to present	After 15 years after first receipt	1990 ch. 604, art. 7, sec. 15
	4/1/90 to 4/30/90	After 15 years after first receipt provided certain actions were not taken	1990 ch. 604, art. 7, sec. 15 and 31
Soils Condition Districts			
	7/1/97 to present	After 20 years after first receipt	1997 ch. 231, art. 10, sec. 6
	5/2/88 to 6/30/97	After 12 years from approval of the TIF plan	1988 ch. 719, art. 12, sec. 15
Housing Districts			
	8/1/01 to present	After 25 years from the date of first receipt	2001 1 st Spec. Sess. ch. 5, art. 15, sec. 10
	6/1/93 to 7/31/01	After 20 years from the date of first receipt if the minimum market value election was made, or after 25 years from the date of first receipt if no election was made ¹⁰⁷	1993 ch. 375, art. 14, sec. 10
	8/1/79 to 5/31/93	After 25 years from date of first receipt	1979 ch. 322, sec. 5
Redevelopment Districts			
	8/1/01 to present	After 25 years from the date of first receipt	2001 1 st Spec. Sess. ch. 5, art. 15, sec. 10
	6/1/93 to 7/30/01	After 20 years from the date of first receipt if the minimum market value election was made, or after 25 years from the date of first receipt if no election was made ¹⁰⁸	1993 ch. 375, art. 14, sec. 10
	8/1/79 to 5/31/93	After 25 years from date of first receipt	1979 ch. 322, sec. 5

Several other provisions in the TIF Act provide further guidance regarding duration limitations.

Pre-1979 Districts

TIF districts created prior to August 1, 1979, have all been decertified and no longer receive increment.¹⁰⁹

¹⁰⁷ The minimum market value provision was found at Minn. Stat. § 469.175, subd. 1(b), prior to repeal in 2001.

¹⁰⁸ The minimum market value provision was found at Minn. Stat. § 469.175, subd. 1(b), prior to repeal in 2001.

¹⁰⁹ The special duration limits for Pre-1979 districts can be found at Minn. Stat. § 469.176, subd. 1c.

Hazardous Substance Subdistricts

Tax increment may be paid to the development authority from the parcel for longer than the period otherwise provided for the overlying district if a parcel of a district is part of a designated hazardous substance site or a hazardous substance subdistrict (HSS). 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.¹¹⁰

Receipt of increment as a result of a reduction in the original net tax capacity for the HSS does not affect the duration limit for the overlying district.¹¹¹

Effect of Modification

Modification of a TIF plan will not extend the durational limits of a TIF district.¹¹²

Extension to Recover Cleanup Costs

The duration of a district may be extended 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 it has been established; (2) the development 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. In addition, the development authority must obtain approval from the municipality for the extension.

The duration extension is limited to ten years after the district otherwise would have terminated, or the number of additional years necessary to collect increment equal to the cleanup costs paid by the municipality out of funds other than tax increments, whichever is less. Cleanup costs are the actual costs of removal and remediation, including testing and engineering, and do not include financing or interest costs. Cleanup costs must be reduced by any reimbursements or amounts recovered from private parties or other responsible parties.¹¹³

¹¹⁰ Minn. Stat. § 469.176, subd. 1e. For districts with a request for certification date of June 1, 1993, to July 31, 2001, the 25 years from the date of commencement of the extended period is 20 years from the commencement date if the authority elected the minimum market value provision of Minn. Stat. § 469.175, subd. 1(b), as was in effect prior to repeal in 2001. 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 Minn. Stat. § 469.174, subd. 7(b), and is received after the date of the certification under Minn. Stat. § 469.174, subd. 7(b).

¹¹¹ Minn. Stat. § 469.176, subd. 1b(d).

¹¹² Minn. Stat. § 469.176, subd. 1d.

¹¹³ Minn. Stat. § 469.176, subd. 1g.

Interest Reduction Programs

The TIF Act allows the use of tax increment to finance the cost of an interest reduction program if specific conditions are met. One of the conditions is that tax increments may not be collected for a program for more than 15 years after the date of the first interest rate reduction payment.¹¹⁴

A county auditor should affirm the 15-year limit with the development authority when identifying the duration limit for the TIF district. If the TIF plan authorizes additional uses of tax increment, then tax increment received after the limit for the interest reduction program may be used for other purposes.

Four-Year Knock-Down Rule

The county auditor is required to enforce the four-year knock-down rule.¹¹⁵ If development activity does not occur on a parcel within four years after the TIF district's certification, the parcel must be dropped from the TIF district. For districts certified on or after January 1, 2005, and before April 20, 2009, the four-year period ends on December 31, 2016. Development activity includes demolition, rehabilitation, or renovation of property and other site preparation, including qualified improvement of a street adjacent to a parcel but not installation of utility service including sewer or water systems. Qualified improvements of a street are limited to construction or opening of a new street, relocation of a street, and substantial reconstruction or rebuilding of an existing street.

Evidence of each parcel's qualifying activity must be submitted by the development authority to the county auditor by February 1 of the fifth year following the year in which the parcel was certified as included in the TIF district. The county auditor should compare the TIF plan and the evidence provided to ensure the two are consistent.¹¹⁶

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 ONTC of 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.¹¹⁷

Modification of TIF Plans

A county auditor must make appropriate adjustments in response to TIF plan modifications. Most modifications that would require some adjustment also require the same notice and hearing requirements as new TIF districts require.¹¹⁸

¹¹⁴ Minn. Stat. § 469.176, subd. 4f.

¹¹⁵ Minn. Stat. § 469.176, subd. 6(a).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Minn. Stat. § 469.175, subd. 4(e).

The development authority must explicitly notify the county auditor of any modification that reduces or enlarges the geographic area of a TIF district or project area. After five years following the date of certification of the original net tax capacity by the county auditor, the geographic area of a TIF district may be reduced, but not enlarged.¹¹⁹

Assessment Agreements

County assessors and city assessors that have the powers of county assessors must review assessment agreements presented to them by development authorities and execute the following certification on the agreement if the assessor judges the agreement to be reasonable:

The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable.¹²⁰

Development authorities are authorized to make written assessment agreements with persons that establish a minimum market value for the land, existing improvements, and improvements to be constructed for the land they own or will own. The agreement may establish a fixed minimum market value or increase or decrease in later years from the initial minimum market value. The assessor must value property and assign a market value that may exceed, but may not be less than, the minimum market value established by the assessment agreement.

Agreements executed before July 1 of an assessment year will use the market value provided for the current assessment year. Agreements executed on or after July 1 become effective for the following assessment year. Assessment agreements terminate at the earliest of the date on which conditions for termination in the agreement are satisfied, the termination date specified in the agreement, or the date when tax increment is no longer paid to the authority due to the district's duration limitation.

The agreement must be filed for record and recorded in the office of the county recorder or registrar of titles in the county in which the property is situated.

No city assessor, county assessor, county auditor, board of review, board of equalization, Commissioner of Revenue, or court shall grant a reduction of the market value below the minimum market value established by the agreement.

Agreements may be modified or terminated by mutual consent of the current parties, with the approval of the governing body of the municipality. If a modification sets a minimum market value greater than the most recently available assessment, and if bond counsel does not conclude that termination is necessary to preserve the tax exempt status of outstanding bonds, the modification or termination must be approved by the governing bodies of the county and school district.¹²¹

¹¹⁹ Minn. Stat. § 469.175, subd. 4(f).

¹²⁰ Minn. Stat. § 469.177, subd. 8.

¹²¹ *Id.*

County Information Request

The county auditor must submit an annual County Information Request Form to the OSA. This form collects information used by the OSA to ensure compliance with the TIF Act. In addition to providing accurate information on first receipts of increment, increment distribution, returned increment, and decertification, it alerts the OSA to previously unreported new districts and supplies information on four-year rule enforcement activity, correction of error activity, and TIF administrative costs.

County auditors will receive an email request from the OSA for the report each January. The form is due the last week of February. The form can be found at www.auditor.state.mn.us by clicking “Forms” and selecting “TIF Forms.”

Reporting to the Department of Revenue

Every year, the county auditor must report TIF information to the Department of Revenue on the TIF Supplement to the Abstract of Tax Lists. The OSA obtains this data from Revenue. When the TIF Annual Reporting Forms are generated, the OSA prepopulates portions of the form with the net tax capacity data obtained from the TIF Supplement, as well as from other data previously by the authority.

County Administrative Expenses

To obtain payment for administrative expenses incurred by the county, the county auditor must submit to the development authority a record of costs incurred by the county auditor related to the administration of the authority’s TIF districts.¹²² A county may require a development authority to reimburse the county’s actual expenses arising from the administration of the authority’s TIF districts. The county may require payment of those expenses by February 15 of the year after the year in which the expenses are incurred.

If the county and development authority or municipality cannot agree on the amount of the county’s actual administrative costs to be reimbursed, either party may demand binding arbitration.¹²³ The matter will then be submitted to binding arbitration pursuant to the Uniform Arbitration Act and the Rules of the American Arbitration Association.

¹²² Minn. Stat. § 469.176, subd. 4h(a).

¹²³ Minn. Stat. § 469.1762.

Annual Disclosure and Financial Reporting

Each year by August 15, a development authority must publish in a newspaper of general circulation a statement for each district. The development authority must identify the newspaper to which the annual statement is submitted and provide a copy of the annual statement to the county board, county auditor, the State Auditor, and the governing body of the municipality by August 1 of the year in which it must be published.¹²⁴

In addition, development authorities must file TIF Annual Reporting Forms with the OSA. A copy must be provided to the county auditor. The annual disclosure and financial reporting requirements begin the year in which the ONTC of the TIF district was certified and ends when the following events have occurred:¹²⁵

- (1) decertification of the TIF district; and
- (2) expenditure or return to the county auditor of all remaining tax increment revenue.

Correction of Errors

The county auditor may undertake one or more corrective actions if, as a result of an error or mistake, the county auditor decertified a district, failed to certify a district, incorrectly certified a district, or otherwise failed to correctly compute the amount of tax increment.¹²⁶ The county auditor can choose a corrective action from those listed in the statute, or the county auditor can design a “custom” corrective action so long as the action is appropriate and “the amount of increment compensates for or offsets the error or mistake and correctly reflects application of the law.”¹²⁷

The county auditor must notify the authority and municipality, in writing, of its intent to take action to correct an error at least 30 days before taking action. The county must provide supporting information to describe the reason for the proposed action. If the municipality or authority objects before the 30-day period has expired, the matter must be submitted to the Commissioner of Revenue for a decision or resolution of the dispute. The Commissioner of Revenue shall consult with the Office of the State Auditor.¹²⁸

The county auditor must also notify the Commissioner of Revenue and the OSA of any corrections made.¹²⁹

¹²⁴ Minn. Stat. § 469.175, subd. 5. The statement must contain: the original net tax capacity, the current net tax capacity, and the captured net tax capacity; the month and year in which the authority received or anticipates receiving the first increment; the date on which the district must be decertified; the amount of principle and interest payment that are due for the current year on any nondefeased debt; and, if the fiscal disparities contribution under option A is elected, the amount of total increased property taxes to be paid from outside the district.

¹²⁵ Minn. Stat. § 469.175, subd. 6.

¹²⁶ Minn. Stat. § 469.177, subd. 13(a). The county auditor initiates the correction.

¹²⁷ Minn. Stat. § 469.177, subd. 13(a)(5).

¹²⁸ Minn. Stat. § 469.177, subd. 13(b).

¹²⁹ Minn. Stat. § 469.177, subd. 13(c).

Special Laws

Each year exceptions to the TIF Act are created by special legislation. Some of these exceptions may require actions by the county auditor. As of 2012, 122 TIF districts reported being subject to one or more special laws. The most common exceptions are: (1) extending the five-year deadline for entering into contracts or issuing bonds,¹³⁰ (2) extending the duration limits of a TIF district,¹³¹ (3) changing or eliminating requirements or findings needed to create a TIF district,¹³² and (4) changing the limitations on the use of tax increment.¹³³

The effective date language of a special law may indicate whether approval by the affected local government units, (typically the municipality), is required.¹³⁴ If a special law allows an extension of the duration limit of an existing TIF district or a longer duration limit than permitted by the TIF Act for a new TIF district, the “affected local government units” include the city or town, the school district, and the county.¹³⁵ The county board may decide whether to approve such a special law.

¹³⁰ See Minn. Stat. § 469.1763, subd. 3.

¹³¹ See Minn. Stat. § 469.176, subd. 1b.

¹³² See Minn. Stat. §§ 469.174 and 469.175.

¹³³ See generally Minn. Stat. §§ 469.176 (limitations on the use of tax increment), and 645.021-.024 (special laws).

¹³⁴ See Minn. Stat. §§ 645.021, subd. 2 (requiring local approval), and 645.023 (not requiring local approval).

¹³⁵ Minn. Stat. § 469.1782, subd. 2.

APPENDICES

The following materials are provided for additional information and assistance:

Appendix A - Types of TIF Districts

Appendix B - A Brief History of TIF

Appendix C - TIF Checklist for County Officials

APPENDIX A

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TYPES OF TIF DISTRICTS

Five different types of TIF districts are currently authorized by the TIF Act:¹³⁶

- Redevelopment districts
- Economic development districts
- Housing districts
- Renewal and renovation districts
- Soils condition districts

There are two additional types of districts: districts established prior to the enactment of the TIF Act (called “Pre-1979 districts”) and districts created by special laws, (“uncodified districts”). One type of subdistrict -- a hazardous substance subdistrict -- can be established within a TIF district.

Each type of TIF district has different requirements for its creation, different restrictions on the use of tax increment revenue, and a different maximum duration limit.

Districts Specifically Authorized by the TIF Act

Redevelopment Districts: The purpose of a redevelopment district is to eliminate blighted conditions.¹³⁷ Redevelopment districts are designed to conserve the use of existing utilities, roads, and other public infrastructure, and to discourage urban sprawl. Qualifying tax increment expenditures include acquiring sites containing substandard buildings, streets, utilities, paved or gravel parking lots, or other similar structures; demolishing and removing substandard structures; eliminating hazardous substances; clearing the land; and installing utilities, sidewalks, and parking facilities. These TIF-financed activities are generally considered a means to “level the playing field” so that blighted property can compete for development with bare land. The statutory maximum duration limit is 25 years after receipt of the first increment, allowing 26 years of increment.¹³⁸

Economic Development Districts: The purpose of an economic development district is to: (i) discourage commerce, industry, or manufacturing from moving to another state or city; (ii) increase employment in the State; or (iii) preserve and enhance the tax base.¹³⁹ Tax increment revenue from economic development districts is used primarily to assist manufacturing, warehousing, storage and distribution, research and development, telemarketing, and tourism. Commercial development (retail sales) is excluded by statute, except in certain “small cities.”¹⁴⁰ Economic development districts are short-term districts (nine years of increment).¹⁴¹

¹³⁶ Authority expired in 2012 for a sixth type, “compact development districts.” No such districts were ever created.

¹³⁷ Minn. Stat. §§ 469.174, subd. 10(a), and 469.176, subd. 4j.

¹³⁸ Minn. Stat. § 469.176, subd. 1b(a)(4).

¹³⁹ Minn. Stat. § 469.174, subd. 12.

¹⁴⁰ Minn. Stat. §§ 469.174, subd. 27, and 469.176, subd. 4c.

¹⁴¹ Minn. Stat. § 469.176, subd. 1b(a)(3).

Housing Districts: The purpose of a housing district is to encourage development of owner-occupied and rental housing for low- and moderate-income individuals and families. Tax increment revenue is used as a type of financial assistance. Tax increment revenue can be used in the construction of low- and moderate-income housing and to acquire and improve the housing site. The TIF Act's low- and moderate-income limits are the same income limits found in the Internal Revenue Code.¹⁴² The statutory maximum duration limit is 25 years after receipt of the first increment, allowing 26 years of increment.¹⁴³

Renewal and Renovation Districts: The purpose of a renewal and renovation district is similar to that of a redevelopment district, except the amount of blight to be removed may be less and the development activity is more closely related to inappropriate or obsolete land use. The statutory maximum duration limit is 15 years after receipt of the first increment, allowing 16 years of increment.¹⁴⁴

Soils Condition Districts: The purpose of a soils condition district is to assist in the redevelopment of land which cannot otherwise be developed due to the existence of hazardous substances, pollutants, or contaminants. The estimated cost of the proposed removal and remediation must exceed the fair market value of the land before the remediation is completed.¹⁴⁵ The statutory maximum duration limit is 20 years after receipt of the first increment, allowing 21 years of increment.¹⁴⁶

Other Types of Districts

Pre-1979 Districts: Districts created prior to the 1979 TIF Act have been identified as a separate type of district. They were required to decertify by August 1, 2009, and have decertified. However, many still have assets. The assets may still be used to pay administrative expenses, to pay bonds, and to pool for deficits.¹⁴⁷ Development authorities are required to submit Annual TIF Reporting Forms to the OSA until all tax increments have been expended or disposed of.

Uncodified Districts: Special laws have been enacted to address unique problems that permit the generation of tax increment revenue from a geographic area that does not meet the statutory definition of a TIF district. This type of district is referred to as an "uncodified" district. Examples of uncodified districts are housing transition districts in the cities of Crystal, Fridley, St. Paul, and Minneapolis, and a district addressing distressed rental properties in Brooklyn Park.

¹⁴² Minn. Stat. § 469.1761.

¹⁴³ Minn. Stat. § 469.176, subd. 1b(a)(4).

¹⁴⁴ Minn. Stat. § 469.176, subd. 1b(a)(1).

¹⁴⁵ Minn. Stat. § 469.174, subd. 19.

¹⁴⁶ Minn. Stat. § 469.176, subd. 1b(a)(2).

¹⁴⁷ Minn. Stat. § 469.176, subd. 1c.

Subdistricts

Hazardous Substance Subdistricts: The purpose of a hazardous substance subdistrict (HSS) is to finance the cleanup of hazardous substance sites within a larger TIF district so that development or redevelopment can occur.¹⁴⁸ Before or at the time of approval of the TIF plan, or later by modification, the development authority may establish an HSS district by making required findings and by entering into a development action response plan that has been submitted to and approved by the Minnesota Pollution Control Agency (PCA).¹⁴⁹ The additional increment may be used only to pay for or reimburse specific costs identified in the statute related to cleanup of the hazardous substances, such as removal or remedial actions, pollution testing, purchase of environmental insurance, and related administrative and legal costs.¹⁵⁰ The statutory maximum duration limit for an HSS can extend beyond that of the overlying district. It begins on the date of receipt of the first increment from the parcel that is more than the tax increment received for the parcel to date. The extended statutory maximum duration limit is 25 years from the date the extended period began or the period necessary to recover the costs of the removal or remedial actions specified in the development response action plan, whichever occurs first.¹⁵¹

¹⁴⁸ Minn. Stat. § 469.175, subd. 7; *see* Minn. Stat. § 469.174, subd. 16.

¹⁴⁹ Minn. Stat. § 469.175, subd. 7; *see* Minn. Stat. § 469.174, subd. 17 (defining Development Actions Response Plan). The HSS captures additional increment by reducing the original net tax capacity to reflect the estimated costs of the actions required by the response plan. Increment is collected on the existing tax base; no increase in value is required to generate increment and, therefore, certification of a subdistrict yields immediate increment. *See* “Certification of the Original Net Tax Capacity,” at pg. 9. The development authority may request the help of the Attorney General to collect the costs of the cleanup, including administration and litigation expenses, from the actual polluters. The decision to recover such costs, however, is at the discretion of the Attorney General. Minn. Stat. § 469.175, subd. 7(e).

¹⁵⁰ Minn. Stat. § 469.176, subd. 4e.

¹⁵¹ Minn. Stat. § 469.176, subd. 1e.

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APPENDIX B

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A BRIEF HISTORY OF TIF

The complexities of Minnesota's Tax Increment Financing (TIF) Act are more easily understood with some knowledge of its history and development. The Act is complicated and the law is frequently amended. Different rules apply to similar districts. New law is layered over old. Old law remains in effect for certain districts and not for others. The rules that apply to the use of tax increment differ depending on the type of district and when the district was established or the law enacted.

The history of TIF in Minnesota can be divided in four time periods:

- (1) TIF's origins and early evolution (1940s through the end of the 1970s);
- (2) the development of a regulatory framework (1979 to 1986);
- (3) an era of scrutiny, reforms, and changes (1986 to 2000); and
- (4) a shift in the State's priorities away from TIF (2001 to present).

TIF's Origins and Early Evolution – 1940s to 1970s

TIF came into existence in the 1940s, when the post-war housing boom created expanding suburbs and cities were left to contend with urban decay and over-concentrations of low-income housing. California was the first to use TIF to counter urban flight.

Minnesota enacted the Municipal Housing and Redevelopment Act of 1947 which focused on demolition and clearance of blighted areas rather than on rehabilitation and renovation. The Act contained a provision for a "special benefit tax fund" that established the concept that has come to be known as TIF, but failed to provide a practical framework for its implementation.¹⁵²

Amendments in 1969 to the Municipal HRA Act introduced the terms "original taxable value" and "tax increment."¹⁵³ These amendments established the procedures and calculations necessary to administer the concept.

According to the Department of Revenue, just four cities were using TIF in 1974.¹⁵⁴ This number grew to 57 cities, capturing over \$62 million in assessed value and over \$7.4 million in tax increment by 1979.¹⁵⁵ This tremendous growth attracted legislative concern, and proposed restrictions were narrowly defeated in the 1978 session.

¹⁵² See 1947 Minn. Laws, ch. 487, § 28, subd. 5.

¹⁵³ 1969 Minn. Laws, ch. 1061, § 2.

¹⁵⁴ Property Taxes Levied in Minnesota: Summary Tables for Taxes Payable 2004 (Property Tax Bulletin), Minnesota Department of Revenue, Table 22.

¹⁵⁵ *Id.*

The Development of a Regulatory Framework – 1979 to 1986

In 1979, the League of Minnesota Cities developed a proposal to address concerns being raised by counties and the legislature that would be shaped into the Tax Increment Financing Act.¹⁵⁶ The Act's stated intent was to confirm both the "findings, declarations, and determinations" of the underlying statutes and to "establish a uniform set of standards and procedures to be followed when using this method of financing."¹⁵⁷ Although TIF was seen as a redevelopment tool, economic development districts were added to the Act to obtain broader support.

The 1979 TIF Act included many features now considered key:

- separation of TIF districts from the underlying project areas;
- three types of districts: redevelopment, housing, and economic development;
- a finding requirement often referred to as the "but-for" test;
- prohibition on enlargement after the first five years;
- duration limitations;
- limitations on the use of excess increments;
- limitations on administrative expenses;
- a "knock-down" provision on parcels with no activity;
- limitations on acquisition without development agreements;
- original value adjustments for change in exempt status and prior planned improvements;
- methods for treatment of fiscal disparities calculation; and
- bonding provisions.

From 1980 to 1986, early amendments to the TIF Act focused on clarifications and adjustments to improve implementation. During this time, the use of TIF continued to increase. The number of cities using TIF grew from 81 to 224, and the amount of both captured value and tax increment increased roughly eight fold.¹⁵⁸ This growth attracted increased attention.

An Era of Scrutiny, Reform, and Change – 1986 to 2000

Concerns about perceived abuses of TIF were raised by some legislators. Several reports issued in the late 1980s further fueled these concerns. In 1986, a program evaluation from the Office of the Legislative Auditor and working papers from the House Research Division brought attention to TIF.¹⁵⁹

¹⁵⁶ Enacted by 1979 Minn. Laws, ch. 322, §§ 1-8, and currently codified at Minn. Stat. § 469.174-.1794.

¹⁵⁷ 1979 Minn. Laws, ch. 322, § 2.

¹⁵⁸ Property Taxes Levied in Minnesota: Summary Tables for Taxes Payable 2004 (Property Tax Bulletin), Minnesota Department of Revenue, Table 22.

¹⁵⁹ Program Evaluation Division, Office of the Legislative Auditor, *Tax Increment Financing*, 1996. Michael, Joel, House Research Department, *Tax Increment Financing Project: An Introduction: Working Paper #1*, 1986. Wilson, Doug, House Research Department, *Tax Increment Financing Project: Background Data on the Use of Tax Increment Financing: Working Paper #2*, 1986. Michael, Joel and Steve Hinze, *Tax Increment Financing Project: An Estimate of the State Intergovernmental Aid Costs of Tax Increment Financing: Working Paper #3*, 1986. Michael, Joel, House Research Department, *Tax Increment Financing Project: The "But For" Test and Public Costs and Benefits: Working Paper #4*, 1987.

The Office of the Legislative Auditor’s evaluation was based on visits to 44 Minnesota cities and interviews with city officials. The report identified “major problems,” including:

- the use of TIF to capture, rather than induce, development;
- the inadequacy of the “but-for” test to ensure public benefits;
- the use of TIF for general public improvements;
- the use of pooling to expend increment rather than to pursue early decertification;
- the inadequacy of the blight test to ensure redevelopment and blight correction; and
- the lack of State oversight.

The report provided extensive recommendations for legislative consideration, but a technical recodification of TIF and development authority laws in 1987 delayed legislative action. Three consecutive years of substantial TIF reforms followed. Many of the reforms enacted were a direct response to the Office of the Legislative Auditor’s recommendations.¹⁶⁰

Some of the reforms that occurred during this three-year period are:

- enforcement of knock-down provisions by county auditors;
- expanded prohibitions on the use of TIF for government facilities;
- creation of soils condition districts, renewal and renovation districts, and hazardous substance subdistricts;
- authority to take county administrative costs from TIF;
- strengthened blight criteria;
- restrictions on increment usage for each type of district;
- reporting to and oversight by the Department of Revenue;
- aid reductions to offset state costs of increased school aids; and
- pooling restrictions.

A decade of annual legislative activity followed the initial reforms. In 1995, legal compliance oversight was transferred to the Office of the State Auditor.¹⁶¹

The reforms helped to taper the sharp increases in the use of TIF, and the Legislature turned its attention away from TIF and towards property tax reform.

A Shift of the State’s Priorities Away From TIF – 2001 to 2014

Reforms to the property tax system in 2001 had a significant impact on TIF. School aid interactions, which had been a significant source of the State’s interest in TIF, substantially diminished due to the state takeover of the general education levy. Class rate changes reduced high ratios on commercial/industrial property and caused TIF revenues to drop by 30 percent or

¹⁶⁰ See 1988 Minn. Laws, ch. 719, art. 12, §§ 1-30; 1989 Minn. Laws, ch. 1, §§ 6, 11, and 12; 1989 Minn. Laws, ch. 277, art. 2, §§ 62-64, and 69; 1989 Minn. Laws, ch. 335, art. 1, §§ 246-247; 1989 Minn. Laws 1st Spec. Sess., ch. 1, art. 14, §§ 1-19; and 1990 Minn. Laws, ch. 604, art. 7, §§ 1-31.

¹⁶¹ 1995 Minn. Laws, ch. 224, §§ 44 and 58; 1995 Minn. Laws, ch. 264, art. 5, §§ 1-49.

more, requiring legislative action to address TIF deficits. TIF aid reductions were repealed, and the new state property tax was excluded from TIF capture.¹⁶²

As time went by, concern over the abuse of TIF diminished and legislative attention has turned to other matters. Changes to the TIF Act have been more modest and have often addressed administrative issues. Notable changes since 2001 include:

- interfund loan resolution requirements (2001),
- excess increment calculation changes (2003),
- changes to the definition of tax increment (2005),
- county error correction procedures (2008),
- reporting requirement changes (2009),
- temporary extensions to four- and five-year rules (2009), and
- the Jobs Stimulus Program (2010).

As older districts have expired, tax increment usage has declined in total over recent years.

¹⁶² See 2001 Minn. Laws 1st Spec. Sess., ch. 5.

APPENDIX C

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TIF CHECKLIST FOR COUNTY OFFICIALS

This checklist highlights many of the functions that a county can or must perform with respect to administration of TIF districts. The checklist is not legal advice or a substitute for legal advice. It is an educational aid and is subject to revision. Please consult the TIF Act, the Guide and, for legal guidance, your attorney.

Upon Notification of a Proposed TIF District:

- County Auditor** must provide copies of the authority's proposed TIF plan and estimate of fiscal and economic implications of the proposed TIF district to County Board members upon receipt from the authority. Minn. Stat. § 469.175, subd. 2(a).
- County Board** may adopt standard questions on information requested for fiscal and economic implications in a written policy. Minn. Stat. § 469.175, subd. 2(b)(5).
- County Board** may, absent standard questions, request additional information within 15 days after receipt of the proposed TIF plan. Minn. Stat. § 469.175, subd. 2(b)(5).
- County Board** may submit written comments within 30 days of receipt of the authority's proposed TIF plan and estimate of fiscal and economic implications. Minn. Stat. § 469.175, subd. 2(a).
- County Commissioner** who represents the area of a proposed housing or redevelopment district may submit written comments on the proposal within 30 days of receiving written notice of the proposed district. Minn. Stat. § 469.175, subd. 2a.
- County Board** may notify the authority and municipality of its intent to use tax increments to finance county road improvements within 45 days after receipt of the proposed TIF plan. Minn. Stat. § 469.175, subd. 1a(b).

Upon Receipt of a Request for Certification of a TIF District:

- County Auditor** should examine the following material:
 - Approved TIF Plan. Minn. Stat. § 469.175, subd. 2.
 - Documentation, such as a resolution, showing municipal approval of the TIF Plan by the municipality. Minn. Stat. § 469.175, subd. 3(a).
 - Supplementary documentation, such as resolutions, identifying elections not in the TIF plan.
 - Supplementary documentation, such as resolutions, identifying findings not in the TIF plan.
- County Auditor** must identify the authority's Request for Certification date, the deadline for the county auditor's certification (30 days after the request), and the base year.
Request for Certification Date: ___/___/___ Minn. Stat. § 469.177, subd. 1(a).
Deadline for Certification: ___/___/___ See Minn. Stat. § 469.177, subd. 1(a).
Base year: Assessment Year (AY) ___ for Taxes Payable in ___ Minn. Stat. § 469.177, subd. 6; See Minn. Stat. § 469.174, subd. 7.

- **County Auditor** must review the TIF plan and resolution(s) or other documentation to determine if they contain the following:
 - Election to delay first receipt of increment. Minn. Stat. § 469.175, subd. 1(b).
 - Special legislation that may impact or exempt the district from various TIF Act requirements.
 - Election to share captured net tax capacity. Minn. Stat. § 469.177, subd. 2.
 - Fiscal disparity election (if applicable). Minn. Stat. §§ 469.175, subd. 3(b)(5), and 469.177, subd. 3(b).
- **County Auditor** must review the TIF plan to confirm that it contains a parcel list and/or map that clearly identifies the boundaries of the district. Minn. Stat. §§ 469.175, subd. 1(a)(8); 469.175, subd. 3(a); and 469.177, subd. 1(a).
- **County Boards** with a municipality that spans more than one county may agree to waive the requirement that increment be spent within the county in which the increment is generated. Minn. Stat. § 469.176, subd. 4i.
- **County Auditor** must certify the original net tax capacity (ONTC) within 30 days after receipt of the request to certify provided that it has sufficient information to identify the parcels included in the TIF district. Minn. Stat. § 469.177, subd. 1. In preparing to certify the ONTC, the county auditor must:
 - Identify and exclude any parcels not includable in the TIF district. Minn. Stat. § 469.176, subd. 7.
 - Adjust for prior planned improvements. Minn. Stat. § 469.177, subd. 4.
 - Include any hazardous substance subdistricts. Minn. Stat. § 469.177, subd. 1.
 - Determine whether unique circumstances impact the ONTC calculation. Unique circumstances include:
 - The authority has elected to treat the parcel as occupied by a substandard building or improvements that had already been demolished or removed. Minn. Stat. § 469.177, subd. 1(f).
 - A parcel containing a building that suffered substantial damage as a result of a disaster or emergency is located in a redevelopment district qualifying as a disaster area. Minn. Stat. § 469.177, subd. 1(g) (citing Minn. Stat. § 469.174, subd. 10(a)(4)).
 - Special legislation pertaining to the ONTC exists. *See, generally*, Minn. Stat. §§ 645.021-.024 (Special Laws).
- **County Auditor** must certify the original local tax rate (OLTR). Minn. Stat. § 469.177, subd. 1a.
- **County Auditor** must establish within its property tax records:
 - Inclusion of parcels within carefully reviewed TIF district boundaries. Minn. Stat. §§ 469.175, subd. 1(a)(8); 469.175, subd. 3(a); and 469.177, subd. 1(a).
 - Recognition of the Election to Delay First Receipt of Increment. Minn. Stat. § 469.175, subd. 1(b).

- The duration limit of the district. Minn. Stat. § 469.177, subd. 12.
- The ONTC of the district. Minn. Stat. § 469.177, subd. 1.
- The OLTR of the district. Minn. Stat. § 469.177, subd. 1a.

Annual Responsibilities for TIF Districts:

- County Auditor** must check for first receipt of increment and adjust the duration limit if necessary. *See* Minn. Stat. § 469.175, subd. 1(b).
- County Auditor** must check for TIF plan modifications affecting the district, and make adjustments as needed.
- County Auditor** must check for recently-enacted special laws affecting the district, and make adjustments as needed.
- County Auditor** must adjust the ONTC values when:
 - Classification of property changes. Minn. Stat. § 469.177, subd. 1(b).
 - Classification rates are amended in law. Minn. Stat. § 469.177, subd. 7.
 - Exempt property becomes taxable. Minn. Stat. § 469.177, subd. 1(c).
 - Taxable property becomes tax exempt. Minn. Stat. § 469.177, subd. 1(e).
 - Geographic area of the district is enlarged. Minn. Stat. § 469.177, subd. 1(a) and (c); *See* Minn. Stat. § 469.175, subd. 4(f).
 - Geographic area of the district is reduced. Minn. Stat. § 469.177, subd. 1(e).
 - Property no longer qualifies for tax relief under the Green Acres, Open Space, Ag Preserve, or Rural Preserve programs. Minn. Stat. § 469.177, subd. 1(d).
 - Platted, unimproved property is improved or market value is increased after approval of the plat under the Plat Law Exclusion. Minn. Stat. § 469.177, subd. 1(d).
 - Property no longer qualifies for the Homestead Market Value Exclusion and the original construction of the home was completed before the ONTC of the district was certified. Minn. Stat. § 469.177, subd. 1(d).
 - Property qualifies in whole or part for an exclusion from taxable market value. Minn. Stat. § 469.177, subd. 1(e).
 - A municipality requests a reduction in market value for districts located in a disaster area. Minn. Stat. § 469.177, subd. 1c.
 - A court-ordered abatement, stipulation agreement, voluntary abatement by the assessor or auditor, or order by the Commissioner of Revenue reduces the net tax capacity and *the property has not been improved since the date of certification of the district.* Minn. Stat. § 469.177, subd. 1(e).
- County Auditor** must adjust the captured net tax capacity values when a court-ordered abatement, stipulation agreement, voluntary abatement by the assessor or auditor, or order by the Commissioner of Revenue reduces the net tax capacity *related to improvements made after the date of certification of the district.* Minn. Stat. § 469.177, subd. 1(e).

- **County Auditor** must certify the amount of captured NTC to the authority together with the proportion that the captured NTC bears to the total NTC of the real property in the TIF district and any subdistrict. Minn. Stat. § 469.177, subd. 2.
- **County Auditor** must calculate tax increment, apply the appropriate method of computation for fiscal disparities and exclude the retained captured NTC when computing local NTC-based tax rates. Minn. Stat. § 469.177, subd. 3.
- **County Auditor** must calculate and distribute *excess taxes* on captured NTC, and report distributions to school districts to the Commissioner of Education. Minn. Stat. § 469.177, subd. 9.
- **County Auditor** must distribute *excess increment* received, and report distributions to school districts to the Commissioner of Education within 30 days of the distribution. Minn. Stat. § 469.176, subd. 2(c)(4) and 2(e).
- **County Treasurer** must deduct the enforcement percentage from all increment distributed to a development authority and pay the deducted amount to the Commissioner of Management and Budget (MMB). Minn. Stat. § 469.177, subd. 11.
- **County Auditor** must provide the TIF Enforcement Deduction Form to the OSA summarizing deductions payments to MMB.
- **County Auditor** must receive from the development authority a copy of the annual financial report that the authority submits to the OSA by August 1 of each year. Minn. Stat. § 469.175, subd. 6(b).
- **County Auditor** and **County Board** must receive from the development authority by August 1 a copy of the annual statement that the authority must publish by August 15 of each year. Minn. Stat. § 469.175, subd. 5.
- **County Auditor** must pay to the district certain delinquent property taxes received after the termination of a district. Minn. Stat. § 469.176, subd. 1f.
- **County Auditor** may submit documented administrative costs incurred by the county auditor to the TIF authorities and may require payment by February 15 of the year after the year that the expenses were incurred. Minn. Stat. § 469.176, subd. 4h.
- **County Auditor** must enforce the Four-Year Knock-Down Rule: exclude the ONTC of such parcels from the ONTC of the district and cease capture of increment for the parcel. Minn. Stat. § 469.176, subd. 6.
- **County Auditor** must, upon certification from the development authority that activity has commenced on a parcel previously knocked-down under the Four-Year Knock-Down Rule, certify and add the NTC of such parcels to the ONTC of the district. Minn. Stat. § 469.176, subd. 6.
- **County Board** must decide whether to approve special legislation to lengthen a duration limit. Minn. Stat. § 469.1782, subd. 2.
- **County Auditor** must execute a development authority's election that the OLTR not apply when notified by the authority. Minn. Stat. § 469.1792, subd. 3 (authorized by special deficit authority).

- County Auditor** must execute a development authority's election to change the fiscal disparities election when notified by the authority. Minn. Stat. § 469.1792, subd. 3 (authorized by special deficit authority).
- County Auditor** must estimate a tax reform percentage for use in determining the maximum duration extension to offset deficits, and must apply the duration extension accordingly. Minn. Stat. § 469.1794, subd. 5(b).
- County Auditor** must submit the OSA's County Information Request Form to the OSA each February. Minn. Stat. § 469.175, subd. 6(b).
- County Auditor** must submit specific TIF data to the Department of Revenue. Minn. Stat. §§ 275.29 and 270C.89.
- County Assessor**, or city assessor with the powers of a county assessor, must review and certify assessment agreements. Minn. Stat. § 469.177, subd. 8.
- County Assessor** must value property in accordance with assessment agreements and recognize the appropriate termination of such agreements. Minn. Stat. § 469.177, subd. 8.
- County Recorder** must record assessment agreements. Minn. Stat. § 469.177, subd. 8.
- County Board** must decide to approve a modification or termination of an agreement when a modification sets a minimum market value that exceeds the most recently available assessment and a termination has been cleared by bond counsel. Minn. Stat. § 469.177, subd. 8.
- County Auditor** may correct errors or mistakes. Minn. Stat. § 469.177, subd. 13(a).
- County Auditor** must notify the development authority and municipality in writing of its intent to take action to correct an error at least 30 days before taking action. Minn. Stat. § 469.177, subd. 13(b).
- County Auditor** must notify the Commissioner of Revenue and the OSA of corrections made. Minn. Stat. § 469.177, subd. 13(c).

Decertification:

- County Auditor** must decertify a district when:
 - The applicable statutory duration limit is reached. Minn. Stat. § 469.177, subd. 12(1).
 - A shorter duration limit provided by the municipality at the time the TIF plan was approved is reached. Minn. Stat. § 469.177, subd. 12(2).
 - Required actions for decertification under the Six-Year Rule have been completed. Minn. Stat. § 469.177, subd. 12(4).
 - A written request for decertification has been received from the development authority. Minn. Stat. § 469.177, subd. 12(5).
- County Auditor** must complete Part B of the Confirmation of Decertification Form upon receipt from the development authority. Minn. Stat. § 469.175, subd. 6(b).

Upon Receipt of an OSA Notice to Withhold/Distribute Increment:

- County Auditor** must hold 100% of increment that would otherwise be distributed to a TIF district upon receiving a written notice from the OSA. Minn. Stat. § 469.1771, subd. 2a(b).
- County Auditor** must distribute withheld increment within 15 working days of receiving a written notice from the OSA lifting the hold. Minn. Stat. § 469.1771, subd. 2a(c).

Upon Receipt of an OSA Referral for Noncompliance:

- County Attorney** may bring action to enforce compliance and, if no action has been brought within 12 months of notification from the OSA of the violation, will notify the OSA in writing that it will not bring such action. Minn. Stat. § 469.1771, subd. 1(b).
- County Auditor** must distribute payments received for violations of the law as excess increment, with one exception. The county auditor will not make payments to the municipality that approved the district if the payment to the county auditor, in response to a notice of noncompliance, was not received within 60 days of the municipality's receipt of the notice of noncompliance or was received after action has commenced to compel the payment. Minn. Stat. § 469.1771, subd. 2, 3, and 5.