

# TIF Division Newsletter



## Reporting Reminder

A number of development authorities have yet to submit all of their required 2011 annual reporting forms. On October 1, 2012, notices to withhold tax increment will be sent to the county auditors of the districts that still have yet to file. These notices will direct the county auditors to hold the distribution of tax increment from these districts until the required forms have been submitted to the Office of the State Auditor (OSA).<sup>1</sup>

If you are having difficulty filing or are unsure if all of your 2011 TIF reports are filed, please contact the TIF Division at (651) 296-4716 or to [TIF@osa.state.mn.us](mailto:TIF@osa.state.mn.us).

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## Interfund Loans

The OSA has received many questions about TIF Interfund Loans. Below are responses to some of the questions received. For further information about the requirements for TIF Interfund Loans, please see our Statement of Position entitled [TIF Interfund Loans](#).

1. *What requirements must be met if a city or development authority's advance or loan is to be repaid with tax increment from the TIF district benefited by the advance or loan?*

If a city or development authority wants its loan or advance to be repaid with tax increment from the district, the governing body or the authority must approve a resolution that meets the following conditions:

- a. The loan or advance must be for tax increment eligible expenditures;
- b. The terms for repayment must be in writing and include, at a minimum, the principal amount, the interest rate, and the maximum term of the loan; and
- c. The resolution must be approved by the governing body or the authority before any money is transferred, advanced, or spent.

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<sup>1</sup> Minn. Stat. § 469.1771, subd. 2a.

TIF Statements of Position can be accessed by going to our website at:

[auditor.state.mn.us](http://auditor.state.mn.us)

At the top of the page, choose “For Local Officials”; then click “Statements of Position”

2. *When was the TIF Act amended to include any requirement related to interfund loans?*

The Minnesota Legislature amended the TIF Act in 2001 to require the loan or advance to be authorized by a resolution from the governing body before money is transferred, advanced, or spent.<sup>2</sup>

3. *What was the effective date for the requirement that interfund loans had to be authorized by resolution?*

The requirement that a resolution is necessary to authorize an interfund loan that is expected to be repaid with tax increment was effective on July 31, 2001.

4. *If a city previously loaned money from its general fund to a TIF district to acquire property within that district, can the city now approve a resolution authorizing the loan retroactively so that the loan can be repaid with tax increment?*

No. The loan or advance must be authorized by resolution before the money from the general fund is transferred, advanced, or spent.

5. *What if money was loaned, without any documentation, by a city to a TIF district before the July 31, 2001, effective date?*

No resolution or other document is required for a loan or advance made before August 1, 2001. The loan or advance was automatically ratified when the statute took effect. The loan or advance is subject to two restrictions: (i) the principal amount of the loan or advance is limited to the largest negative cash balance that existed at any time in the fund that received the undocumented loan or advance; and (ii) the rate of interest accrued or paid after July 31, 2001, may not exceed the maximum rate provided by law.<sup>3</sup>

6. *If the TIF plan for the TIF district states that the city intends to loan money to a TIF district for up-front costs, is it sufficient to satisfy the requirements of the law?*

If the TIF plan also includes, at minimum, the principal amount, the interest rate and the maximum term of the loan, a resolution by the city council approving the TIF plan is sufficient to meet the interfund loan resolution requirement. The required interfund loan information can be in the TIF plan, in a separate resolution, in a development agreement, or by motion of the council, so long as the motion is memorialized in writing.

7. *If the city council passes a resolution stating that, pursuant to the interfund loan provision, it intends to loan money to future TIF districts, is this language sufficient to satisfy the requirements of the law?*

*(continued)*

<sup>2</sup> Minn. Stat. § 469.178, subd. 7.

<sup>3</sup> Laws of 2001, Ch. 5, Art. 15, sec. 21. Effective date and transition language for Minn. Stat. § 469.178, subd. 7.

No, not unless it expressly states the principal amount of the loan, the interest rate to be charged, and the term of the loan. The resolution may include loans or advances to cover more than one TIF district.

*8. If a written interfund loan resolution cannot be found, but the council intended to pay itself back, would an affidavit by the council stating its intent be sufficient ?*

No. The language of the provision is clear that the resolution must be authorized before money is transferred, advanced, or spent and that the principal amount, the interest rate to be charged, and the maximum term of the loan, must be in writing.

*9. What is the maximum rate of interest that can be charged for an interfund loan? Where can the information be found?*

The maximum rate of interest that can be charged for an interfund loan is limited to the annual rate charged by the state courts, found at Minn. Stat. § 549.09, or by the Department of Revenue, found at Minn. Stat. § 270C.04, whichever is greater.<sup>4</sup> The interest rates change annually. Attachment A to our Statement of Position entitled [TIF Interfund Loans](#) provides a table listing the interest rate maximums by year, as well as identifying where the information can be found on the internet.

*10. When is the interest rate on an interfund loan set?*

Currently, the interest rate on an interfund loan is set as of the date on which a loan is authorized. Previously, the interest rate was set at the time the loan was made, causing interfund loans for one development activity to have multiple interest rates. By setting the interest rate as of the date a loan is authorized, it is more likely that only one interest rate will be applied.

*11. What if the TIF district doesn't generate sufficient tax increment to pay back the loan or advance?*

When an interfund loan is made, the municipality or authority assumes the risk that the obligation will not be repaid, or will not be paid in full, if sufficient TIF revenues are not available. If the TIF district does not generate sufficient tax increments to pay the city back, the city will not be paid for the loan with tax increment.

**Administrative Costs Not Outside the TIF District**

Review of the recently-submitted TIF reporting forms discloses that some development authorities are not aware that certain administrative costs paid for or financed with tax increment do not have to be included in the percentage of tax increment payments permitted for activities located outside the TIF district.<sup>5</sup> All administrative expenses are to be included in the percentage for activities outside of the TIF district, except for administrative expenses for housing that meets the requirements of qualified low-income housing.<sup>6</sup>

*(continued)*

<sup>4</sup> Minn. Stat. § 469.178, subd. 7.

<sup>5</sup> 2011 Annual Reporting Form: Project Costs, Line 21.

<sup>6</sup> Minn. Stat. § 469.1763, subd. 2 (d).

In addition, because the development authority does not have control over the amount of county administrative expenses, the county’s administrative expenses are not included in the percentage limitations for administrative expenses for activities outside the district.<sup>7</sup> For more information regarding administrative expenses, please see our Statement of Position entitled [TIF Administrative Expenses](#).

**Reminder about the Four-Year Rule**

A development authority must submit evidence to the county auditor that development activity has begun in accordance with the TIF plan within four years from the date of certification. If demolition, rehabilitation, renovation or other site preparation has not taken place on a parcel in a TIF district, then the county auditor must exclude the original net tax capacity of the parcel from the TIF district. Installation of utility service, including sewer and water systems, does not qualify as development activity. If subsequent qualifying activity takes place, the authority must certify to the county auditor that qualifying activity has taken place on the respective parcel and may request that the most recent net tax capacity of the parcel be added back to the original net tax capacity of the TIF district.<sup>8</sup>

The onset of the recent recession and the difficulty developers have had obtaining financing for development activities caused many development authorities to seek special legislation to waive or delay the four-year period. Realizing that many development authorities were facing similar problems, the Legislature increased the four-year period to six years for TIF districts certified on or after January 1, 2005, and before April 20, 2009.<sup>9</sup>

<sup>7</sup> Minn. Stat. § 469.176, subd. 3 (d).

<sup>8</sup> Minn. Stat. § 469.176, subd. 6 (a).

<sup>9</sup> Minn. Stat. § 469.176, subd. 6 (b).

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