



REBECCA OTTO
STATE AUDITOR

STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@osa.state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

Statement of Position Redistribution of Tax Increment

The Tax Increment Financing (TIF) Act requires that tax increment be returned to the county for redistribution (i) when tax increment is collected or TIF expenditures are made in violation of the TIF Act; (ii) when tax increment generated exceeds the total costs authorized for expenditure in a district's TIF plan; or (iii) when tax increment has been distributed after the maximum duration limit of a TIF district.¹

Improper Collection or Expenditure of Tax Increment

If an authority includes or retains a parcel in a TIF district that does not qualify for inclusion or retention, the authority must pay to the county auditor an amount equal to the increment collected from the property and the property must be removed from the district.² Examples include, but are not limited to, the inclusion of parcels that qualified for Open Space, Green Acres, Rural Preserves, or Metropolitan Agricultural Preserves programs in the five years before certification was requested (that do not meet the manufacturing or housing exceptions), and parcels that do not meet the qualifications for the type of district (such as including a parcel in a housing district that is not part of a housing project).³

If an authority expends tax increment (i) for a purpose not permitted under the TIF Act, because the expenditure was for a project that is not permitted or for an expenditure not permitted for the district, or (ii) on activities outside the geographic area authorized, the authority or the municipality must pay to the county auditor an amount equal to the expenditures made in violation of the law.⁴

The county auditor is responsible for redistributing the returned tax increment to the city or town, county, and school district in direct proportion to their respective local tax rates for the year in which the redistribution is to be made.⁵ Special taxing districts are not included in the redistribution.

¹ Minn. Stat. §§ 469.174 - .1794, inclusive, as amended.

² Minn. Stat. § 469.1771, subd. 2.

³ See Minn. Stat. §§ 469.176, subd. 7 (parcels not includable in districts), and district type definitions and limitations under 469.174 and 469.176.

⁴ Minn. Stat. § 469.1771, subd. 3.

⁵ Minn. Stat. § 469.1771, subd. 5, directs the county auditor to distribute violation payments in the same manner as excess increments under Minn. Stat. § 469.176, subd. 2(c)(4).

Reviewed: December 2018
Revised: December 2018

2007-3003

If the county auditor receives the payment from a municipality before 60 days have passed since a municipality's receipt of the state auditor's notification of noncompliance requiring payment and before commencement of legal action by the county attorney to compel payment, the municipality will receive its proportional share when the county auditor redistributes the money. If the payment is not made within the time required, the municipality will not be included in the redistribution.⁶

If the authority does not have sufficient tax increment or other available funds to make repayment of the amount expended in violation of the TIF Act, the municipality that approved the TIF district must make the repayment. If funds for repayment are not available, the municipality must levy property taxes. If the payment is made voluntarily and is timely, the redistribution by the county auditor to the local taxing jurisdictions will include payment to the municipality.⁷

Excess Tax Increment

When the amount of tax increment generated by a district exceeds the total costs authorized for expenditure in a district's TIF plan, it becomes excess increment.⁸ The TIF Act limits how this excess increment can be used. It can be used 1) to prepay any outstanding bonds; 2) to discharge the pledge of tax increment for any outstanding bonds; 3) to pay into an escrow account dedicated to the payment of any outstanding bonds; or 4) it can be returned to the county for redistribution.⁹ In this context, the term, "outstanding bonds," is limited to mean "bonds which are secured by increments from the district."¹⁰

Excess tax increment exists in any year in which tax increment remains after a TIF district has sufficient funds to pay all debt obligations and other financial commitments authorized by its TIF plan for the life of the district.¹¹

Authorities must determine annually the amount of excess increment as of December 31 of the year. The determination must be based on the TIF plan in effect on December 31 and on the increments and other revenues received as of December 31 of that year. A subsequent amendment to a TIF plan to increase authorized costs does not eliminate the excess increment determined for previous years. The authority must return the excess increments to the county auditor within nine months (by September 30).¹²

⁶ Minn. Stat. § 469.1771, subd. 5(a).

⁷ Minn. Stat. § 469.1771, subd. 5.

⁸ See Minn. Stat. § 469.176, subd. 2 (excess increment).

⁹ Minn. Stat. § 469.176, subd. 2(c).

¹⁰ Minn. Stat. § 469.176, subd. 2(c) and (f).

¹¹ Excess tax increment should not be confused with excess taxes: they are two different concepts. The redistribution of excess tax increment refers to properly determined tax increment that exceeds the amount authorized for expenditure. Excess taxes are the amount of taxes attributable to the current tax rate being greater than the original local tax rate. The increment is limited to the taxes generated by the original local tax rate. The formula for distribution of excess taxes takes into account the extent to which a jurisdiction's rates are creating the excess. See Minn. Stat. § 469.177, subd. 9.

¹² Minn. Stat. § 469.176, subd. 2(a).

If excess tax increment is expended on activities other than those related to repayment of bonds as enumerated above, the authority or the municipality must pay to the county auditor an amount equal to the expenditures made in violation of the law.

The county auditor is responsible for distributing the excess tax increment to the municipality, county, and school district in which the TIF district is located.¹³ After the county auditor distributes the money in direct proportion to the local tax rates of the municipality, county, and school district, the county auditor must report the amount of any excess tax increment distributed to a school district to the Commissioner of Education within 30 days of the distribution.¹⁴

Tax Increment Obtained After Maximum Duration Limit

If the county auditor distributes tax increments to an authority for a TIF district (i) after the maximum duration limit for the district, or (ii) from delinquent property taxes paid on a parcel in a TIF district, but the tax increment is received after decertification of the district and after all its outstanding obligations have been paid, the authority must return the tax increment to the county auditor for redistribution.

If delinquent property taxes have been collected after decertification of a district and if there are no outstanding TIF obligations in that district, the delinquent property taxes are regular property taxes, not excess tax increment and not excess taxes. They must be distributed in the same way as all property taxes are distributed in the county.

To the extent that nonpayment of property taxes on a parcel in the district caused a municipality or other TIF authority to pay a district's outstanding bonds or contractual obligations from sources other than tax increment or to not pay them at all, payments of the delinquent property taxes are tax increment.¹⁵ Municipalities and other TIF authorities must be reimbursed by the county auditor from the payments made for delinquent taxes in an amount sufficient to cover the payments that had been made on the bonds and on any other contractual obligation using non-TIF funds, but not more than the amount of the payment for delinquent taxes. This reimbursement by the county auditor using tax increment is unusual in that it allows the use of tax increment to reimburse a municipality for spending non-TIF money on a TIF project.¹⁶

The authority must provide the county auditor with information regarding the payment of the outstanding bonds and other contractual obligations and any other information necessary to administer the payment, as requested by the county auditor.¹⁷

If the authority does not have sufficient tax increment or other available funds to make repayment of the amount expended in violation of the TIF Act, the municipality that

¹³ Minn. Stat. § 469.176, subd. 2(c) (4).

¹⁴ Minn. Stat. § 469.176, subd. 2(e).

¹⁵ Minn. Stat. § 469.176, subd. 1f.

¹⁶ The TIF interfund loan provision, Minn. Stat. § 469.178, subd. 7, does not apply here.

¹⁷ Minn. Stat. § 469.176, subd. 1f.

approved the TIF district must make the repayment. If funds for repayment are not available, the municipality must levy property taxes. If the payment is made voluntarily and is timely, the redistribution by the county auditor to the local taxing jurisdictions will include payment to the municipality.¹⁸

¹⁸ Minn. Stat. § 469.1771, subd. 5.