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### **Statement of Position**

#### **Election to Delay Receipt of First TIF Revenues**

The duration of a tax increment financing (TIF) district is calculated from the year in which the first tax increment revenues are received. For districts other than economic development districts, the TIF Act permits an authority to make an election as to when it will receive the first tax increment revenues.<sup>1</sup>

There are at least three situations for which a development authority may find that an election to delay would be useful: to prevent assessment timing surprises, to avoid partial development assessments, or to facilitate maximum increment streams for large projects.

#### **Preventing Assessment Surprises**

The date on which a development authority requests certification of a new district by the county auditor determines which year will be the district's "base year" for valuation purposes.<sup>2</sup> If a request for certification is made on or before June 30<sup>th</sup>, the previous assessment year's value is the base-year original net tax capacity (ONTC). If a request for certification is made on or after July 1<sup>st</sup>, the current assessment year's value is used for the ONTC.<sup>3</sup> Tax increment is generated when the current net tax capacity exceeds the ONTC.

In some instances, factors unrelated to TIF development activity may result in current net tax capacity being greater than ONTC, in which case an authority could receive tax increment earlier than expected or planned. Authorities that want more certainty as to when increment will first be received may use the election to set the year for first receipt of increment and avoid surprise increments resulting from unrelated assessment factors.

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<sup>1</sup> The TIF Act can be found at Minn. Stat. §§ 469.174 to 469.1794, inclusive, as amended. This provision (found at Minn. Stat. § 469.175, subd. 1(b) and 2008 Minn. Laws, ch. 154, art. 9, § 4) is effective for districts for which the request for certification was made after June 30, 2008. A previous provision for delaying first receipt of tax increment had been codified at this same citation but was repealed for districts with a request for certification after July 31, 2001. The prior provision used a minimum market value election rather than the election of a specific year. *See* Minn. Stat. § 469.175, subd. 1(b) (2000).

<sup>2</sup> Minn. Stat. § 469.174, subd. 7(a).

<sup>3</sup> For example, a request for certification made on June 30, 2018, would cause assessment year 2017 values to be used for the ONTC. Alternatively, a request for certification on July 1, 2018, would cause assessment year 2018 to be used for the ONTC. *See* Minn. Stat. § 469.174, subd. 7, and Minn. Stat. § 469.177, subd. 6.

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

## **Avoiding Partial Development Assessments**

When a TIF plan is approved, the development authority typically has expectations of when a development will be complete. An election may be useful to avoid capturing a year of partial development activity.

A development authority, for example, might request certification on or after July 1, 2018, and expect that only a small portion of development activity would be completed before the 2019 assessment date. The authority may wish to avoid starting the district's duration with minimal tax increments for taxes payable in 2020. An election would allow the duration to start with full 2021 tax increments that reflect development activity being completed by the 2020 assessment.

Before making the election, however, a development authority may wish to consider whether it is more important to start receiving increment as soon as possible, even if the first year is a partial development year, or whether it is more important to improve the district's financial viability by starting with a year of more substantial tax increment revenues.

## **Facilitating Maximum Tax Increment Streams**

When a development authority creates a tax increment financing district for a larger project with high costs and/or lengthy development schedules, a development authority may chose to delay the first receipt of increment in order to maximize the district's revenues.

To illustrate, pollution clean-up or other extensive site remediation may require considerable time for a site to be made buildable, and even longer for development activity to be completed. Districts might rely on multiple phases of development activity across multiple parcels. If a development authority needs full increment capture from a fully-completed development for the full statutory term of a district to generate sufficient tax increment revenues to pay necessary costs, the development authority may wish to wait until the activity is fully completed before receiving its first tax increment revenue.

## **Procedure**

When an authority decides to make an election, the authority must specify in the TIF plan the first year it elects to receive tax increment revenue, up to a maximum of four years following the year of approval of the district.<sup>4</sup> General statements, such as "elects within the first four years" or "elects to delay receipt of tax increment" do not constitute an election. Counties will not recognize the election unless a specific year is identified.

Clarity in making an election is important. A phrase such as "first receipt of increment will occur in 2020" is unclear as to whether it is expressing a mere expectation (as is

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<sup>4</sup> Minn. Stat. § 469.176, subd. 1(a) (2) (referencing "specified limit" in connection with the election).

commonly done in TIF plans even when no election is intended), or is intended to express an election under this provision. The Office of the State Auditor (OSA) recommends authorities use the term “elects” in a phrase that references the statutory citation (such as “...elects pursuant to Minn. Stat. § 469.175, subd. 1(b) to receive first increment in...” to achieve clarity.

The OSA also recommends that a development authority making an election submit a written notice of its election to the county auditor, citing the page in the TIF plan where the election was made. This will help ensure that the election is not overlooked or unrecognized by the county auditor. The election must also be identified on the Plan Collection Form for New Districts that is submitted to the OSA.

If an election had not been identified in the original 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 notice, a public hearing, and findings, is required for its modification. The election cannot be added after the district has already received its first tax increment revenue.