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Statement of Position TIF Pooling

The Tax Increment Financing Act (TIF Act) permits the use of a strategy generally known as “pooling.” “Pooling,” not a defined term in the TIF Act, allows tax increments to be spent for qualified activities outside the boundaries of the TIF district from which the tax increments were collected, but within the project area.

The 1982 Minnesota Legislature authorized pooling when it created a distinction between “districts” and “project areas,” both being areas where tax increment could be spent.¹ A TIF “district,” however, is the geographic area in which development activity generates tax increment. Most of a district’s tax increment must be spent within the TIF district to finance its development activity.

A project area may include one or more districts within its boundaries.² No “pooling” occurs when the district and the project area share the same boundaries.

In addition, pooling “outside of the district” sometimes refers to expenditures on activities within the geographic area of the district that are defined as being outside of the district due to their timing.³

I. General Pooling Authority

The authority to pool and the limit on the percentage amount of tax increment that can be pooled has varied over time, and still does vary, depending on when a TIF district was established (the Certification Request Date (CRD)) and on the type of TIF district generating the tax increment.

As the table below shows, a redevelopment district with a CRD after June 30, 1995, may spend up to 25 percent of revenue derived from tax increment paid by properties in the

¹ 1982 Minn. Laws, ch. 523, art. 38, §§ 3 and 6.

² The TIF Act defines the term “project” by referencing and incorporating the underlying Development Acts. Minn. Stat. § 469.174, subd. 8.

³ More information regarding timing restrictions can be found in a Statement of Position entitled: TIF Five-Year and Six-Year Rule (Obligations incurred after the first five years are generally considered “out-district” expenditures for pooling purposes even if expended within the boundaries of a TIF district.).

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district. Other types of districts with CRDs after June 30, 1995, are limited to 20 percent.⁴ All tax increment districts with a CRD on or before June 30, 1995, but after May 1, 1990, may spend up to 25 percent of revenue derived from tax increment paid by properties in the district.⁵

CRD date	Pooling Explicitly Authorized	Limit (% of increment)
Before August 1, 1979	No ⁶	Not Applicable
August 1, 1979 to July 1, 1982	Yes, on or before May 20, 2014. No, after May 20, 2014 ⁷	Not Applicable
After July 1, 1982 to Apr. 30, 1990	Yes	No limits imposed
After Apr. 30, 1990 to June 30, 1995	Yes	25% for all types of districts
After June 30, 1995	Yes	25% for redevelopment districts 20% for other types of districts

As referenced above, expenditures made after the first five years after certification are generally considered to be made outside of the district. In addition, an authority’s administrative expenses are considered to be spent “outside” the district, which reduces the amount of tax increment available for financing other qualified costs located outside the district. A county’s administrative expenses, however, are not subject to the percentage limits and are not required to be identified in the TIF plan.⁸

II. Additional Pooling Authority for Specific Purposes

In addition to general pooling authority, the TIF Act authorizes pooling for certain specific purposes or to address certain problems.

⁴ Minn. Stat. § 469.1763, subd. 2.

⁵ *Id.*

⁶ Before the enactment of the 1979 TIF Act, several separate state statutes authorized the use of tax increment in Minnesota. These state statutes are generally referred to as the underlying Development Authority Acts. Because they did not require a tax increment plan, there was no need to address the concept of pooling.

⁷ See 2014 Minn. Laws, ch. 308, art. 9, § 94. Previous authorization to pool found in Minn. Stat. § 469.1764 was explicitly repealed in 2014. Any remaining unexpended tax increments from a district subject to section 469.1764 must be distributed as excess increments to the city, county, and school district on or before December 31, 2014.

⁸ Minn. Stat. § 469.176, subd. 4h (a).

A. Pooling Permitted for Deficits

The 1997 to 2001 property tax reform changes created a reduction in the amount of tax increments generated. In turn, the smaller stream of tax increment caused shortages when it came time to pay debt service or contract obligations. The Legislature authorized development authorities and municipalities to pool tax increments from various districts if necessary to eliminate a deficit, notwithstanding the various restrictions on the use of increment.⁹

- Only a TIF district with a request for certification date earlier than August 1, 2001, can receive pooled increments to make payments on pre-existing obligations.
- Pooling may be used only to make payments on debt service or contract obligations that fit the statutory definition of pre-existing obligations and can be applied only to bonds or binding contracts that were entered into before August 1, 2001.
- A municipality can make the transfer of tax increments without regard to whether the transfer or expenditure was authorized by the TIF plan for the district and notwithstanding the various restrictions in the TIF Act on the use of tax increment.
- A municipality can transfer tax increments generated from a district of one development authority, such as a Housing and Redevelopment Authority (HRA), to cover the shortfall of a pre-existing obligation in a district of another development authority, such as an Economic Development Authority (EDA), as long as the municipality had established each of the development authorities and their districts.

B. Pooling Permitted for Housing Districts

Tax increment spent for a housing project is treated as being spent within the TIF district, regardless of where the housing project is located.¹⁰ Percentage limitations imposed by the Legislature on pooling are not applicable as long as the tax increment is spent for low- and moderate-income housing.

- A “housing district” consists of a project, or a portion of a project, intended for occupancy by persons or families of low- and moderate-income. Income limitations for owner-occupied housing and residential rental property must be

⁹ See Minn. Stat. § 469.1763, subd. 6.

¹⁰ Minn. Stat. § 469.1763, subd. 2; Minn. Stat. § 469.174, subd. 11 (defining “housing district” and “housing project”).

satisfied, and the square footage that can be used for nonresidential uses is limited to no more than twenty percent.¹¹

- For “owner-occupied housing,” ninety-five percent of units must be purchased and occupied by individuals whose family income is less than or equal to the income requirements for qualified mortgage bond projects under section 143(f) of the Internal Revenue Code. A project meets the requirements only if all owner-financing is provided for mortgagors whose family income is 115 percent or less of the applicable median family income.
- “Residential rental property” must satisfy the income requirements for a “qualified residential rental project” as defined in section 142(d) of the Internal Revenue Code.¹²

C. Pooling Permitted for Non-Housing Districts for Housing Purposes

To assist with housing development, an authority may elect, in the tax increment plan, to increase the amount of expenditures for activities located outside the geographic area of the district. Tax increment generated from redevelopment districts, renewal and renovation districts, soils condition districts, and economic development districts can be used for housing purposes, including both low income and market-rate housing, notwithstanding the limitations imposed by the Legislature for these types of districts.¹³ The expenditures of tax increment for housing purposes do not have to be made within the project area.¹⁴

The temporary authority to develop market rate housing expires on December 31, 2016. Tax increment may continue to be used to pay bonds or binding contracts after December 31, 2016, if the bonds and binding contracts meet the Five-Year Rule.¹⁵

To qualify for “housing purposes,” the following requirements must be met:

- The authority may elect in the TIF plan for the district to increase by up to ten percentage points the permitted amount of tax increment to be spent for activities

¹¹ Minn. Stat. § 469.1761, subd. 1. Low- and moderate-income is defined in federal, state, or municipal law.

¹² The project meets the requirements if (i) twenty percent or more of the residential units in the project are occupied by individuals whose income is fifty percent or less of the area median gross income, or (ii) forty percent or more of the residential units in the project are occupied by individuals whose income is sixty percent or less of the area median gross income.

¹³ Minn. Stat. § 469.1763, subd. 2(d). For specific limitations for these types of districts on the use of tax increment, see Minn. Stat. § 469.176, subds. 4b, 4c, and 4j.

¹⁴ Minn. Stat. § 469.1763, subd. 2 (d).

¹⁵ Bonds and binding contracts would meet the Five-Year Rule if December 31, 2016, were considered to be the last day of the five-year period after certification, if the certification date is before January 1, 2016. 2014 Minn. Laws, ch. 308, art. 9, § 87.

located outside the district under the pooling limitations of Minnesota Statutes, section 469.1763, subdivision 2(a).

- Tax increment must be used exclusively to assist housing that meets the requirements for a “qualified low-income building,” as defined in section 42 of the Internal Revenue Code.
- The expenditures cannot exceed the “qualified basis” of the “qualified low-income building,” as defined under section 42 of the Code, less the amount of any credit allowed under the same section of the Code.
- Tax increment can be used only to acquire and prepare the site of the housing, acquire, construct, or rehabilitate the housing, or to make public improvements directly related to the housing; except, tax increment can be used temporarily to develop market rate housing pursuant to Minn. Stat. § 469.1763, subd. 2(d) (4).

Administrative expenses are considered to be expenditures in the district if all the expenses outside the district are for housing purposes only.

D. Pooling Permitted within a Biotechnology and Health Sciences Industry Zone

Tax increment generated from a district within a Biotechnology and Health Sciences Industry Zone (Zone) may be expended outside the district but within the Zone only for construction of public infrastructure necessary to support the activities of the Zone, and for land acquisition and other redevelopment costs incurred to correct the conditions that allowed for the designation of a redevelopment, renewal or renovation district.¹⁶ Qualifying expenditures within the Zone are treated as activities within the district. This authority expires for expenditures made after December 31, 2015, or for expenditures made after five years from the date of certification for districts certified before 2016, whichever is later.¹⁷

III. Tax Increment not Subject to Pooling Restrictions

Only the revenues “derived from tax increments paid by the properties in the [TIF] district” are subject to pooling restrictions. Proceeds from the sale or lease of property purchased with tax increments, principal and interest received on loans or advances made with tax increments, interest or other investment earnings on or from tax increments, or repayments to an authority are not subject to pooling restrictions, even though they are all are defined in the TIF Act as tax increment.¹⁸

¹⁶ See Minn. Stat. § 469.1763, subd. 2(e).

¹⁷ 2014 Minn. Laws, ch. 308, art. 9, § 87.

¹⁸ Tax increment revenues as defined in Minn. Stat. § 469.174, subd. 25(2), (3), and (4) are expressly excluded from “revenues derived from tax increment paid by properties in the district.” See Minn. Stat. § 469.1763, subd. 1(d).