

**Tax Incremental Financing**

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# Tax Incremental Financing

This paper provides general background information on tax incremental financing (TIF) in Wisconsin. Included are a background of the TIF program, a description of the current tax incremental financing law, some summary statistics on participation and growth in TIF valuations and levies, and information about the impact of TIF on local governments.

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## Historical Background

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Tax incremental financing is a mechanism for funding development and redevelopment projects. Although the concept of TIF existed as long ago as the early 1940s, California adopted the first TIF law in 1952. However, the widespread use of TIF did not occur in most states until the 1970s.

Wisconsin enacted its TIF law in 1975. Passage of the law was influenced by a reduced focus on redevelopment financing at the federal level and a state and national recession during 1974 and early 1975. The TIF law was an attempt to counteract that economic downturn by allowing cities and villages to work with the private sector to stimulate economic growth and employment through urban redevelopment projects.

A more general reason for the state's TIF law was a legislative determination that all taxing jurisdictions benefiting from urban redevelopment should share in its cost. Public improvements (such as sewers, streets, and light systems) usually result in an expanded local tax base. Although the cost of these improvements is normally financed entirely out of municipal revenue, it was argued that the county and school and technical college districts also benefit from the expanded tax base. Tax

incremental financing has the effect of making these overlying local taxing jurisdictions share in project costs.

Significant changes to existing TIF law occurred under 2003 Wisconsin Acts 126, 127, and 194. These acts amended the allowable uses of TIF districts and made other changes to state TIF law that will likely extend the life of certain TIF districts and increase the use of TIF districts as a local development tool in the state. The acts also provided for some state level oversight of TIF districts by the Department of Revenue (DOR).

In addition, 2003 Wisconsin Act 231 and 2005 Wisconsin Act 13 provided towns with the limited authority to create TIF districts. Similarly, 2005 Wisconsin Act 357 allowed certain counties with no cities or villages (Florence and Menominee counties) to create TIF districts.

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## City and Village TIF Authority

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City and village governments (town and county TIF authority will be discussed later) may create a TIF district if 50% or more of the proposed district's area is "blighted," in need of rehabilitation or conservation work, or suitable for industrial sites or mixed-use developments. Property that was vacant for the seven years preceding creation of a TIF district cannot comprise more than 25% of the district's area, unless the district is designated as suitable for industrial sites or mixed-use developments. Land acquired through condemnation is excluded from this requirement. An area designated as suitable for industrial sites must be zoned for industrial use both at the time the TIF district is created and throughout the life of the project.

Effective July 1, 2004, a TIF district may include areas suitable for mixed-use developments. Mixed-use developments may contain a combination of industrial, commercial, and residential use, except that lands proposed for newly-platted residential use may not exceed 35% of the area of real property within the district.

The TIF district boundaries are specifically identified in the district project plan. The boundaries cannot include any annexed territory that was not within the boundaries of the city or village on January 1, 2004, unless one of the following occurs: (a) three years have elapsed since the territory was annexed by the city or village; (b) the city or village enters into a cooperative plan boundary agreement with the town from which the territory was annexed; or (c) the city or town enter into another kind of agreement relating to the annexation. In order for the annexation of non-municipally owned land to be valid, the annexing municipality must pay to the town an amount equal to the property taxes levied on the territory by the town at the time of the annexation for each of the next five years.

### **Base Value**

Once a TIF district has been created, a "tax incremental base value" is established by DOR for property within the district at the time it was created. The base value includes the equalized value of all taxable property and the value of municipally-owned property, as determined by DOR. It does not include municipally-owned property used for certain municipal purposes (such as police and fire buildings and libraries). DOR has the authority to impose a fee of \$1,000 on cities and villages whenever the Department determines or redetermines the tax incremental base of a TIF district.

For districts created or amended on, or after, October 1, 2004, the application for certification of the original or amended tax incremental base must state the percentage of territory within the TIF

district that the city or village estimates will be devoted to retail business at the end of the maximum TIF district expenditure period, if that estimate is at least 35%.

Under 2005 Wisconsin Act 6, DOR may not certify the incremental base value of a mixed-use development TIF district if DOR determines that any of the following apply: (a) the lands proposed for newly-platted residential use exceed 35% of the real property within the district; or (b) tax increments received by the city or village are used to subsidize residential development and none of the conditions used in determining eligible costs in a mixed-use development apply (see project costs). If DOR certifies the incremental base for a mixed-use development and then determines that these conditions are not met, DOR may not certify the tax incremental base of any other TIF district in that city or village until the Department determines that the mixed-use development district complies with the 35% of real property maximum for residential use and at least one of the conditions used in determining eligible project costs in a mixed-use development is met.

Generally, the base value remains constant until the project terminates. However, a planning commission can also adopt an amendment to a TIF project plan at any time, for up to four times during the district's existence, in order to modify the boundaries of that district so as to add contiguous territory served by public works or improvements created as part of that district's project plan or to subtract territory from the district without eliminating the contiguity. The value of taxable property that is added to the existing district is determined by DOR. This value is then added to the original base value of the TIF district. If a district's project plan is amended on, or after, October 1, 2004, DOR must redetermine the district's tax incremental base on, or before, December 31 of the year in which the changes in the project plan take effect. (However, this would likely occur on the same time table as DOR's determination of the base of a TIF district). In

redetermining the base for these districts, DOR must also subtract from the district's tax incremental base the taxable value of any property being removed from the district by the amended plan and any value of real property owned by the city or village not previously removed from the district's base value.

An amendment that both adds and subtracts territory to a district is counted as one amendment. However, DOR has the authority to charge the municipality \$2,000 to redetermine the district's incremental tax base under such an amendment.

If DOR determines that all the statutory conditions related to the certification of the incremental base of a mixed-use development district are not met, the planning commission of a city or village may amend its project plan to ensure: (a) the percentage of newly-platted residential use does not exceed 35% of the real property of the district; and (b) at least one of the conditions used in determining eligible costs for mixed-use developments is met (see project costs). Such project amendments could occur even if the amendment would exceed the allowable number of project amendments for such districts.

### **Tax Increment**

The "tax increment" equals the general property taxes levied on the value of the TIF district in excess of its base value (this is the "value increment"). The amount equals the value increment multiplied by the tax rate for all tax jurisdictions--municipal, county, school district, technical college district, and special purpose districts. Therefore, tax increments can only be generated by an increase in the equalized value of taxable property within a TIF district.

### **Restriction on New TIF Districts**

Municipalities are allowed to establish any number of TIF districts. However, a city or village can only create a new district if there is a finding

that the equalized value of the proposed district plus the value increment of all existing districts does not exceed 12% of the total equalized value of property within the city or village. This limit also applies to any proposed amendment to a district that adds territory to the district.

The calculation of the limit is based on the most recent equalized value of taxable property of the proposed district, as certified by DOR, before the date on which a resolution is adopted creating the proposed district. DOR cannot certify the tax incremental base of a district before the Department reviews and approves the findings that the city or village creating the district is within these statutory limitations.

Under 2005 Wisconsin Act 328, a city or village may simultaneously create a TIF district and adopt an amendment to subtract territory from an existing TIF district, without adopting a resolution containing the 12% limit findings, if all the following occur: (a) the city or village includes with its application to DOR for creation of a TIF district a copy of the amendment to the existing district, which subtracts territory from that district; (b) the city or village provides DOR with certified appraisals which demonstrate the current fair market value of the taxable property for the district being created and the current fair market value of the property being subtracted from the existing TIF district under the project amendment; (c) the appraisals demonstrate that the taxable property being subtracted from the existing TIF district equals or exceeds the value that DOR believes is necessary to ensure that when the proposed district is created the 12% limit is met; and (d) the city or village certifies that no other TIF districts created under these provisions exist.

### **Project Plan and Public Hearing**

A TIF district must be created through a resolution adopted by the legislative body of a city or village. Before adopting a resolution creating a district, two public hearings are required: one to

discuss the proposed district and one to discuss the project plan. The hearings can be held together, but the hearing on the project plan must be held at least 14 days before adopting a resolution and the project plan must be available at this hearing.

Either before or at the same time this resolution is adopted, a district project plan must also be approved by the local legislative body. In addition, before it is adopted, the municipal attorney or a special counsel must review the plan and write a formal opinion advising whether the plan is complete and in compliance with the law.

A resolution creating a TIF district must declare that the district is a blighted area district, a rehabilitation or conservation district, an industrial district, or a mixed-use district, based on the identification and classification of the property included within the district. If the district is not exclusively blighted, rehabilitation or conservation, industrial, or mixed-use, this declaration must be based on which classification is predominant with regard to the area included in the district.

### **Joint Review Board**

A municipality that intends to create a TIF district or amend a district project plan must convene a joint review board, which can be either a temporary joint review board that is established for a specific district or a standing joint review board that remains in existence as long as a municipality has a district in existence. No TIF district can be created and no plan can be amended unless approved by a majority vote of the board within 30 days after a resolution is adopted.

The joint review board consists of one member representing each taxing jurisdiction that can levy taxes on property within the TIF district. If more than one of the same type of taxing jurisdiction has the power to levy taxes on property within the TIF district, the one with the greatest value in the district chooses the representative.

In addition, the following requirements relative to the composition of a temporary or standing joint review board apply to TIF districts created after October 1, 2004:

- if a proposed TIF district is located in a union high school district, the school board's seat on the board is held by two representatives, each of whom has one-half of a vote (one each from the union high school and the elementary school district);
- if a proposed TIF district is made up of more than one union high school district or more than one elementary school district, the union high school district or elementary school district with the greatest value within the proposed district chooses the representative;
- the school district representative must be the president of the school board, or his or her designee, who is either the school district's finance director or another person with knowledge of local government finances;
- the county representative must be the county executive or the chairperson of the county board, or the executive's or chairperson's designee, who is either the county treasurer or another person with knowledge of local government finances;
- the city representative must be the mayor or city manager, or his or her designee, who is either the person in charge of administering the city's economic development programs, the city treasurer, or another person with knowledge of local government finances; and
- the technical college district representative must be the district's director or his or her designee, who is either the district's chief financial officer or another person with knowledge of local government finances.

All members of the board must be appointed

and the board's first meeting must be held within 14 days after notice of the public hearing on the proposed TIF district or plan amendment. The public member and board chair are selected by a majority of the board members. Administrative support for the board is provided by the affected municipality.

A municipality proposing to create a TIF district must provide the joint review board with the following information and projections regarding the proposed district:

a. Specific items that constitute the project costs, the total dollar amount of project costs to be paid with tax increments, and the amount of tax increments to be generated over the life of the district.

b. The equalized value of the value increment when the project costs are paid in full and the district is terminated.

c. The reasons why the project costs may not or should not be paid by the owners of the property that will benefit from the public improvements within the district.

d. The share of the projected tax increments estimated to be paid by the owners of taxable property in each of the taxing jurisdictions overlying the district.

e. The benefits that the owners of taxable property in the overlying taxing jurisdictions will receive to compensate them for their share of the projected tax increments paid.

The board must base its decision on whether or not to approve creation of a TIF district on the following criteria: (a) whether the development expected in the district would occur without the use of TIF; (b) whether the economic benefits of the district, as measured by increased employment, business and personal income, and property values, are sufficient compensation for the

improvement costs; and (c) whether the benefits of the proposal outweigh the anticipated loss in tax revenues of overlying taxing districts.

Before the joint review board submits its decision to the city or village, a majority of the joint review board members of a district can request in writing that DOR review the objective facts contained in any of the documents submitted by the city or village relating to a proposed TIF district or proposed district amendment. DOR must make a determination within 10 working days as to whether the information submitted to the board complies with the statutory requirements for those documents or whether any of the information contains a factual inaccuracy. These documents can include the public records, planning documents, and the resolution passed by the city or village that creates or amends a TIF district. The board's request to DOR must specify which particular objective fact or item the board members believe is incomplete or inaccurate.

If DOR determines that the information submitted with a TIF district proposal is not in compliance with what is required by statute or contains a factual inaccuracy, DOR must return the proposal to the city or village. The joint review board must request, but cannot require, that the city or village that created the TIF district resolve the problems with its proposal and resubmit the proposal to the board. If the city or village resubmits its proposal, the board must review the resubmitted proposal and vote to approve or deny the proposal. The joint review board must inform the city or village of its decision no later than 10 working days after receiving DOR's written response. If the city or village then resubmits a proposal to the joint review board, the board has to inform the city or village of its decision on the resubmitted proposal no later than 10 working days after receiving the city's or village's resubmitted proposal.

For districts created or amended after October 1, 2004, the joint review board's resolution creating a TIF district or amending the project plan of an

existing TIF district must contain a positive assertion that, in the board's judgment, the development described in the documents the board has reviewed would not occur without the creation of the district. In addition, for these districts, the board must notify the governing body of every local governmental unit that is not represented on the board, and that has the power to levy taxes on property within the proposed TIF district, prospectively of meetings of the board and of the agendas of each meeting for which notification is given.

### **Project Costs**

The TIF project plan must list and estimate the project costs of improving the district. All project costs to be repaid through the allocation of tax increments must directly relate to the elimination of blight or directly serve to rehabilitate or conserve the area or to promote industrial development, whichever is consistent with the district's purpose. Project costs may include, but are not limited to, costs related to capital development (such as public works or improvements), environmental remediation, removal of lead contamination from buildings and infrastructure, financing, real property assembly, professional services, imputed administrative services, and organizational activities (such as the cost of preparing environmental impact statements), and any payments made to a town that relate to the property taxes levied on any recently annexed territory to be included in a TIF district. In addition, for projects created before September 30, 1995, expenditures associated with newly-platted residential development are considered eligible costs.

Under 2007 Act 57, a city or village may incur project costs to be repaid with tax increments in an area that is within a one-half mile radius of the district's boundaries and within the city or village that created the district. Before the city or village could incur such costs, the joint review board would have to approve of the proposed expenditures.

Project costs that are eligible to be repaid

through the allocation of tax increments may also include expenditures associated with newly-platted residential development in a mixed-use development TIF district. However, such costs are only eligible project costs provided one of the following applies: (a) the density of the residential housing is at least three units per acre; (b) the housing is located in a conservation subdivision, as defined by statute; or (c) the housing is located in a traditional neighborhood, as defined by statute.

In addition, for districts created after October 1, 2004, cash grants made by the city or village to owners, lessees, or developers of land that is located within the TIF district can be considered eligible costs if the grant recipient has signed a development agreement with the city or village. However, if the city or village anticipates that the proposed TIF district project costs may include such cash grants, the city or village must include a statement in the public notice of the hearing on the creation of the district indicating that such grants may be made.

Eligible project costs do not include: (a) the cost of constructing or expanding administrative buildings, police and fire facilities, libraries, and community and recreational buildings; (b) the cost of constructing or expanding school buildings; (c) the cost of constructing or expanding any facility that historically has been financed in that municipality exclusively with user fees; (d) general government operating expenses; (e) expenses unrelated to the planning and development of a TIF district; and (f) costs incurred prior to creation of a TIF district (except costs directly related to planning for the district). Only the share of all other eligible project costs that solely relate to or directly benefit the district can be funded from tax increments.

To implement the project plan, a special fund is created in which all tax increments must be placed. With limited general exceptions (which are described below), the monies in the fund can only be used to finance the district's eligible project costs. Tax increments in excess of the project costs

listed and estimated in the project plan cannot be expended. Also, eligible project costs must be reduced by the amount of investment earnings and by the amount of user fees or charges received in connection with the implementation of the TIF project plan.

### **Expenditure Period**

For most TIF districts, expenditures can be incurred until five years prior to the unextended termination date of the district. Costs incurred as a result of condemnation are not subject to these limitations.

### **Allocation of Tax Increments and Project Termination**

Regardless of the time period allowed for TIF district project expenditures, tax increments can only be allocated to the local body creating the district for a specified period. The allocation of increments may occur up until the required termination period for the district, which can vary depending on when a district was created and depending on the type of district.

A TIF district must be terminated when the earliest of the following occurs: (a) all project costs of that district are reimbursed through the receipt of tax increments; (b) the local government body, by resolution, dissolves the district; (c) 27 years after the district is created for blighted and redevelopment districts created after September 30, 1995, and before October 1, 2004; (d) 23 years after the district is created for districts created after September 30, 1995, and before October 1, 2004, that are established on the finding that 50% or more, by area, of the real property within the district is suitable for industrial sites; (e) 27 years after the district is created for districts created before October 1, 1995; (f) 20 years after the district is created for districts created on or after October 1, 2004, that are established on the finding that 50% or more, by area, of the real property within the district is suitable for industrial sites or mixed-use development; or (g) 27 years after the district is

created for districts created on or after October 1, 2004, that are established on the finding that 50% or more, by area, of the real property within the district is a blighted area or in need of rehabilitation or conservation work.

A city or village that has created a TIF district on or after October 1, 2004, can request that the joint review board extend the life of the district for an additional three years. A city or village that has created a blighted or rehabilitation TIF district after September 30, 1995, and before October 1, 2004, can request that the joint review board extend the life of the district for an additional four years.

DOR must be notified of any request for extension at least one year prior to the required termination date of the districts. If DOR is not notified by that date, the request may be denied. Along with any request for an extension, the local body creating the district may provide the joint review board with an independent audit that demonstrates that the district is unable to pay off its project costs within the period required for the district. The joint review board has the authority to deny or approve a request if the request does not include the independent audit. The board must approve the request if the request includes the independent audit. If the joint review board extends the district's life, the district must be terminated at the earlier of: (a) the end of the extended period; or (b) when all project costs of the district have been reimbursed through the receipt of tax increments.

### **Donor TIF Districts**

Under one circumstance, a TIF district does not have to be terminated when all project costs have been reimbursed. Under this circumstance, the tax increments of the TIF district (donor) that has paid off its project costs can be shifted to pay off project costs of another TIF district (recipient). A donor district may allocate positive tax increments for up to 10 years to another district that has yet to pay off its aggregate project costs under its project plan if the districts were created before October 1, 1995 (or

before October 1, 1996, for first class cities), and if the following conditions are met: (a) both districts have the same overlying taxing jurisdictions; and (b) the donor TIF district is able to demonstrate, based on the positive tax increments that are currently generated, that it has sufficient revenues to pay for all project costs that have been incurred under the project plan for that district and sufficient surplus revenues to pay for some of the eligible costs of the recipient TIF district.

2003 Act 126 extended similar authority to TIF districts created after September 30, 1995 (or after September 30, 1996, for first class cities). Cities and villages can allocate tax increments among such districts if both districts have the same overlying taxing jurisdictions and the allocation of tax increments is approved by the joint review board. The recipient district may only use the allocation of tax increments from the donor district if the project costs in the recipient district are used to create, provide, or rehabilitate low-cost housing, to remediate environmental contamination, or if the recipient district was created upon a finding that not less than 50%, by area, of the real property within the district is blighted or in need of rehabilitation. These allocations of positive tax increments to a recipient district cannot be made unless the donor district has first satisfied all of its current-year debt service and project cost obligations. The life of these donor districts may not be extended.

### **Reporting Requirements**

Audits of a TIF district must be conducted within 12 months after each of the following occurs: (1) 30% of the project expenditures are made; (2) the end of the expenditure period; and (3) termination of the district. Municipalities must also prepare, and make available to the public, annual reports describing TIF project status, expenditures, and revenues.

Upon notification of termination of a district, DOR and the city or village must agree on a date on which the city or village will provide all of the following information related to the terminated TIF

district: (a) a final accounting of all expenditures made by the city or village; (b) the total amount of project costs incurred by the city or village; (c) the total amount of positive tax increments received by the city or village; and (d) the total amount of project costs, if any, not paid with tax increments that became obligations of the city or village after the district was terminated. If a city or village does not send the information within the agreed upon period, DOR is not allowed to certify the tax incremental base of any new or modified TIF district in the city or village unless the information on the terminated district is sent.

### **State Role**

There are a number of statutory procedures (such as public hearing requirements and project plan contents) that a city or village must follow if it chooses to use TIF. DOR, which administers the TIF law at the state level, must ensure that each required procedure is followed.

In addition, DOR has the authority to review the facts contained in the TIF documents submitted by the city or village for the proposed TIF district, if requested to do so by the joint review board.

The Department of Commerce must issue a biennial report to the Governor and the Legislature as to the social, economic, and financial impacts of TIF projects.

### **School District Capital Improvements**

Under 1999 Act 17, a school board, by two-thirds vote, can create a capital improvement fund for the purpose of financing the cost of acquiring and improving school sites, constructing or improving school facilities, and major maintenance of school facilities if the following conditions are true: (1) if a TIF district that is located in whole or in part in the school district terminates before the maximum number of years that it could have existed; and (2) the value increment of the TIF district exceeds \$300 million.

In each year that the school board adopts a resolution by a two-thirds vote, until the year after the year in which the TIF district would have been required to terminate, the school district is allowed to deposit the percentage specified in the resolution, up to 100%, of the school district's portion of the positive tax increment of the TIF district into the capital improvement fund. The school board must use the balance of the school district's portion of the positive tax increment to reduce the school property tax levy that otherwise would be imposed. The positive tax increment for each year is calculated by the Department of Revenue. No monies other than the specified tax increment percentage can be deposited in the fund.

Monies cannot be expended or transferred to any other fund from the capital improvement fund without approval by a majority of voters in a school district at referendum on the question. If a referendum is adopted authorizing the use of monies in the capital improvement fund, then the Legislative Audit Bureau must conduct an audit to determine whether the monies have been used only for the purposes approved in the referendum. Also, any school board taking action to establish a capital improvement fund must report to the Governor and to the Joint Committee on Finance, by January 1 of each odd-numbered year, describing the use of the monies deposited in the fund and the effects of that use.

Act 17 specifies that a school district's revenue limit for any year is increased by the amount deposited in the capital improvement fund in that school year. Also, any expenditures from the capital improvement fund are excluded from shared costs for purposes of calculating equalization aid.

Although Act 17 establishes two general criteria to meet in order to create a capital improvement fund, to date only one TIF district, in the Village of Pleasant Prairie, satisfies the \$300 million value increment threshold.

In May, 2000, the Board of the Kenosha School District adopted a resolution creating a capital

improvement fund to utilize the value increment from the Village of Pleasant Prairie's TIF district. No other district in the state has created a capital improvement fund under the provisions of Act 17. According to District officials, through the 2008 tax year, the District has not used the fund to finance the cost of District facility construction or improvement projects.

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### **Town TIF Authority**

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Under 2005 Wisconsin Act 13, towns that have cooperative plans with cities or villages that have plans to annex all or part of the town have authority to create a TIF district. Also, under 2003 Wisconsin Act 231, town governments are provided the authority to create certain industry-specific TIF districts.

### **TIF Districts in Towns with Cooperative Plans**

Under 2005 Act 13, a town government may exercise all the powers of cities and villages relative to state TIF law. If the town board exercises this authority, the board is subject to the same duties and liabilities as the common council of a city or village board under state TIF law.

A town may only create a TIF district using this authority if all of the following apply: (a) the town enters into a cooperative plan with the city or village, under which part or all of the town will be annexed by the city or village in the future; (b) the city or village into which the town territory will be annexed adopts a resolution approving the creation of the TIF district; and (c) the TIF district is located solely within territory that is to be annexed by a city or village. A town is required to submit a copy of the cooperative plan to which it is a party to DOR along with its application to create a TIF district. Through 2007, one cooperative TIF district has been created, by the Town of Madison in Dane County.

## Industry-Specific Town TIF Districts

2003 Act 231 provides towns, and the joint review boards of town TIF districts, much of the same authority and the same powers relative to TIF districts that are provided cities and villages. However, the use of this TIF authority by towns is limited to specific types of TIF projects. In addition, towns may not exercise any TIF powers within the extraterritorial zoning jurisdiction of a city or village, unless the city or village adopts a resolution approving the town's exercise of its TIF powers within the extraterritorial zoning jurisdiction. Through 2007, one industry-specific TIF district has been created, by the Town of Weyauwega in Waupaca County.

The TIF district base and increment for these TIF districts are established and certified each year by DOR in the same manner as city or village TIF districts. DOR also has authority to assess a \$1,000 fee for determining or redetermining a town TIF district base.

### Allowable Project Types

The only TIF projects for which a town may expend funds or incur obligations for project costs related to an industry-specific district are the following: (a) agricultural projects, identified under the North American Industry Classifications (NAICs) industry numbers as crop production (111), animal production (112), support activities for agriculture (1151), support activities for animal production (1152), and farm product refrigerated warehousing and storage (493120); (b) forestry projects, identified as forestry and logging (113) and support activities for forestry (1153); (c) manufacturing projects, identified as animal slaughtering and processing (31161), wood product (321) and paper manufacturing (322), and ethyl alcohol manufacturing (325193); or (d) tourism projects, including recreational and vacation camps (721214), recreational vehicle parks and campgrounds (721211), race-tracks (711212), dairy product stores (445299), and public golf courses (71391).

Residential development that has a necessary and incidental relationship to each of these allowable project types is also an eligible project type. Eligible project type costs can also include retail development that is limited to retail sale of products produced by an agricultural, forestry, or manufacturing project within the TIF district.

The town board resolution creating an industry-specific TIF district must declare the district to be an agricultural, forestry, manufacturing, or tourism project district, and must identify the NAICs industry numbers of each project activity for which project costs are expended. In addition, the resolution must contain the following findings:

a. that not less than 75%, by area, of the real property in the district is to be used for a single allowable project type, and in accordance with the project type declared for the district in the resolution;

b. that either the equalized value of taxable property of the district plus all existing districts does not exceed 7% of the total equalized value of taxable property within the town or the equalized value of taxable property of the district plus the value increment of all existing districts within the town does not exceed 5% of the total equalized value of taxable property within the town;

c. that the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district; and

d. that the project costs of the district are limited and relate directly to promoting agriculture, forestry, manufacturing, or tourism development.

In addition, the resolution must confirm that any real property within the district that is intended for a manufacturing project is zoned industrial and will remain zoned industrial for the life of the district.

### **Amended TIF Projects**

Not more than once during the five years after an industry-specific TIF district is created, the planning commission may adopt an amendment to the town project plan in order to modify the district's boundaries by adding territory to the district that is contiguous to the district and that is served by public works or improvements that were created as part of the district's project plan. Expenditures for project costs that are incurred because of an amendment to a project plan may be made for up to two years after the date on which the town board adopts a resolution amending the project plan.

### **Annexed Territory**

If after January 1 of any year, a city or village annexes town territory that contains part of an industry-specific, town TIF district, DOR shall redetermine the TIF base of the district by subtracting from the district base the value of the taxable property that is annexed from the existing district as of the following January 1. If the annexation becomes effective on January 1 of any year, the redetermination shall be made as of that date. The TIF district base, as redetermined due to annexation, is effective only if it less than the original TIF district base.

If a city or village annexes territory that is part of an industry-specific, town TIF district, the city or village must pay the portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, are required to negotiate an agreement on the amount that must be paid.

### **Allocation of Tax Increments, Expenditure Period, and Project Termination**

DOR is required to authorize the allocation of tax increments to the town that created the industry-specific TIF district. The allocation of tax increments shall occur each year until the

Department either receives a written notice from the town that a TIF district has been terminated or sixteen years after the tax incremental district is created, whichever is sooner.

Expenditures may be made for an industry-specific, town TIF district project for up to five years after the district is created. Costs incurred as a result of condemnation are not subject to these limitations. Expenditures authorized by the adoption of an amendment to the town TIF project plan may occur for up to two additional years, but may not exceed seven years.

An industry-specific, town TIF district terminates when the earliest of the following occurs: (a) the aggregate tax increments allocated to the district equal the aggregate of all project costs under the project plan and any amendments to the project plan for the district; (b) eleven years after the last expenditure identified in the original, unamended project plan is made; (c) the town board approves a resolution to dissolve the district, at which time the town becomes liable for all unpaid project costs actually incurred which are not paid; or (d) the DOR Secretary determines that tax increments have been used to pay for ineligible costs and orders that the district be terminated.

### **DOR Review of Industry-Specific TIF Districts**

Certain persons may make a written request for a DOR review of an industry-specific, town TIF district to determine whether money expended, or debt incurred, by the district in the prior year complied with the requirements related to the type of district created and the allowable project costs that can be incurred by such districts. The request must contain the grounds on which the request is based, and must be filed with the Department no later than July 1. The following persons may request such a review: (a) an owner of taxable property that is located in the town that has created the district; (b) an owner of taxable property that is located in a taxing jurisdiction which overlies the town in which the district is located; (c) an owner

of taxable property in a city or village that borders the town in which the district is located; (d) a taxing jurisdiction that overlies the town in which the district is located; or (e) a city or village that borders the town in which the district is located.

DOR may deny any request for a review if the Department, based on a review of the request, believes that insufficient grounds exist to support the alleged noncompliance. DOR must send a written notification of its decision to the person who made the request for review and to the town. If DOR grants a request for review, the Department is required to hold a hearing. DOR must send written notification of the hearing to the clerk of the town that created the district, the person who requested the review, the clerk of each overlying taxing jurisdiction, and the clerk of every city or village that borders the town.

The DOR Secretary, or a designee, must preside at the hearing and receive testimony and evidence on all issues that are related to the request for review. Following the hearing, the Secretary shall make a determination as to whether or not the town is in compliance with the statutory requirements relative to allowable project costs for the type of town TIF district created.

If it is determined that the town has made expenditures or incurred debts that are not allowed under the statutes, the DOR Secretary must either order the town to pay back all ineligible costs to the district's overlying taxing jurisdictions or order the district to be terminated. The pay back of ineligible costs to the overlying taxing jurisdictions would be done on a proportional basis that relates to each jurisdiction's share of the tax increment and would have to be made from funds other than tax increments that were allocated to the town associated with the district. If the Secretary orders the district to be terminated, the town is liable for all unpaid project costs that have been incurred. Any person or unit of government that received a notice of DOR review may appeal the Secretary's

decision to the circuit court in Dane County.

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### **County TIF Districts**

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Effective October 1, 2006, a county board of a county in which no cities or villages are located (Florence and Menominee counties) may exercise all the powers of cities and villages relative to state TIF law. If the county board exercises this authority, the board is subject to the same duties and liabilities as the common council of a city or village board under state TIF law. A board may not create a TIF district unless the town boards of each town in which the proposed district is to be located adopts a resolution approving the creation of the district.

The makeup of the joint review board of a TIF district created by a county is the same as for other TIF districts. However, the city or village representative would be replaced by a town representative, who would have to be the town board chair or the chair's designee.

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### **Environmental Remediation TIF Districts**

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The 1997-99 biennial budget (1997 Act 27) created a tax increment financing option for local units of government (cities, villages, towns, and counties) to recover the costs of remediation of environmental pollution. The statutes related to the creation of environmental remediation TIF (ER-TIF) districts were significantly modified under 1999 Wisconsin Act 9 and 2005 Wisconsin Act 418. Through 2007, 16 ER-TIF districts have been created.

An ER-TIF district means a contiguous geographic area within a political subdivision that is defined and created by resolution of the governing body of the political subdivision. The

district must consist solely of whole units of property, which are not currently in an active TIF district as assessed for general property tax purposes. Railroad rights-of-way, rivers, or highways may be included in an ER-TIF district only if they are continuously bounded on either side, or on both sides, by whole units of property as assessed for general property tax purposes. An ER-TIF district does not include any area identified as a wetland on a Department of Natural Resources (DNR) wetland map.

In order to create an ER-TIF district, the governing body of that political subdivision must adopt a resolution that does all of the following: (a) describes the boundaries of the district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included within the district; and (b) creates the district as of January 1 of the same calendar year for a resolution adopted before October 1 or as of January 1 of the next subsequent calendar year for a resolution adopted after September 30.

### **Eligible Properties**

1999 Act 9 made several changes to the types of properties that can be included in an ER-TIF district. The Act deleted the requirement that the property on which an environmental remediation tax increment may be used to defray the costs of remediation must be owned by a county or municipality at the time of the remediation. As a result, an ER-TIF district may include private properties. However, only public expenditures are eligible for reimbursement. Counties and municipalities can also use an ER-TIF to pay the costs of remediating environmental pollution of groundwater regardless of whether or not the county or municipality owns the property above the groundwater. ER-TIF districts may only include contiguous parcels of property and those parcels must be within the political subdivision creating the district.

### **Base Value**

An ER-TIF district base value means the equalized, aggregate value of taxable property that is certified by DOR, as of the January 1 preceding the date on which the ER-TIF district is created. DOR has the authority to assess a \$1,000 fee for determining or redetermining an ER-TIF district base.

DOR may certify the tax increment base prior to completion of the remediation of the contamination. However, prior to DOR certification of the tax increment base, the political subdivision must provide the following: (a) a certificate from DNR indicating that DNR has approved the site investigation report that relates to the affected parcels of property; (b) information on eligible costs already incurred within the district; (c) a DNR-approved, detailed remedial action plan containing cost estimates for anticipated eligible costs within the proposed ER-TIF district and a schedule for completion of the remedial action; (d) a statement from the municipality that all overlying taxing jurisdictions have been notified that the municipality intends to recover the costs of remediating environmental pollution on the property and have been provided a statement of the estimated costs to be recovered; (e) a statement, signed by the chief executive officer of the municipality, that the municipality has attempted to recover the costs of remediating environmental pollution on the property from the person who caused the environmental pollution; and (f) all forms required by DOR that relate to the determination of the ER-TIF tax incremental base.

### **Eligible Costs**

Eligible costs that may be funded from positive environmental remediation tax increments include capital costs, financing costs, administrative costs, and professional service costs associated with the investigation, removal, containment, or monitoring

of, or the restoration of soil, air, surface water, sediments, or groundwater affected by environmental pollution. Eligible costs that can be paid from tax increments specifically include: (a) property acquisition costs; (b) demolition costs, including asbestos removal; (c) the cost of removing and disposing of underground storage tanks or abandoned containers containing hazardous substances; (d) costs associated with groundwater investigations and remediation that are located in the district, but extend beyond the boundaries of the district; and (e) cancellation of delinquent taxes, if the costs have not already been recovered by the municipality creating the district.

Eligible costs must be incurred within 15 years after the district is created. No costs incurred after DNR notification that a remedial action has been completed are considered eligible costs except those costs identified as a required condition of site closure. DNR must certify to DOR when the remediation of contamination at sites identified in the site investigation report is complete.

Eligible costs must be reduced by the following: (1) any amounts received from the person(s) responsible for the discharge of a hazardous substance on the property; (2) the amount of net gain from the sale of the property by the local unit of government; and (3) any amounts received, or reasonably expected to be received, from a local, state, or federal program aimed at remediation of contamination within the district, if these amounts do not have to be reimbursed or repaid.

### **Allocation of Tax Increments and Project Termination**

The ER-TIF tax increment is determined in the same manner as tax increments for regular TIF districts. A municipality may use an ER-TIF increment to pay the eligible costs on property within the district that is not included in a regular TIF district. Tax increments can also be used to fund the costs of remediating environmental pollution of groundwater without regard to whether the prop-

erty above the groundwater is owned by the municipality.

An ER-TIF project terminates and tax increments can no longer be used to fund eligible project costs after the shorter of the following periods: (1) 23 years after DOR establishes the ER-TIF district increment base; (2) once all eligible costs associated with the remediation of the pollution have been paid; or (3) the local government, by resolution, dissolves the district. Upon dissolving the district, the political subdivision becomes liable for all unpaid eligible project costs actually incurred that were not paid from tax increments.

### **Reporting Requirements**

A municipality that uses an ER-TIF tax increment to pay eligible costs of remediating environmental pollution is required to do all of the following: (a) annually, by May 1, provide updated reports describing the status of all ER-TIF projects, including revenues and expenditures, and send a copy of the report to all overlying taxing jurisdictions; (b) notify DOR within 10 days after the period of certification for a parcel or contiguous parcels of property has expired; and (c) not later than 12 months after the last expenditure is made, provide to all overlying taxing jurisdictions a report that includes an independent certified audit of the project to determine if all financial transactions were made in a legal manner and to determine if the district complied with these reporting requirements.

In addition, not later than 180 days after an ER-TIF district is terminated the local unit of government must provide DOR with all of the following on a form that is prescribed by the Department: (a) a final accounting of project expenditures that were made for the district; (b) the final amount of eligible costs that have been paid for the district; and (c) the total amount of tax increments that have been paid to the municipality. If a municipality does not provide this information, the Department may not certify the tax base of

another ER-TIF district for that municipality until the form is sent to the Department.

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**Statistics on TIF Usage**

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Table 1 shows the number of TIF districts that have been established between 1976 and 2007. In addition, the table indicates the number of districts created in each year that have subsequently terminated or dissolved and the number that remain in existence. Of the 1,590 TIF districts that have been created, 36.7% have been terminated or dissolved and 63.3% remain in existence. Since 2005, reflective of the passage of 2003 Wisconsin Act 126, and other recent TIF law changes that expanded local TIF authority, the number of TIF districts created has substantially increased.

Table 2 compares the change in aggregate TIF incremental values to the change in total equalized valuation for cities and villages, from 1999 to 2008. During this period, TIF incremental values have grown at a rate faster than the total equalized value and TIF incremental value as a percentage of equalized value has increased. The percentage increase in TIF incremental value was significantly higher in the years immediately following the passage of 2003 Wisconsin Act 126. In 2008, TIF incremental value as a percentage of total city and village equalized value was 5.0%.

Table 3 compares the growth in property tax increments (the levy amount collected by municipalities for TIF project costs) to the total levy in villages and cities. Over this period, tax increments grew at an average, annual rate that was 114% greater than that for the total levy. In 2007, tax increments represented 5% of the total tax levy in villages and cities.

**Table 1: Number of TIF Districts\***

Year	Number Established	Number Terminated or Dissolved	Number Still in Existence
1976	5	5	0
1977	18	18	0
1978	19	19	0
1979	86	85	1
1980	74	74	0
1981	55	55	0
1982	24	23	1
1983	40	34	6
1984	20	19	1
1985	28	23	5
1986	27	23	4
1987	30	18	12
1988	45	28	17
1989	40	28	12
1990	39	17	22
1991	37	13	24
1992	45	16	29
1993	41	10	31
1994	75	18	57
1995	85	14	71
1996	61	10	51
1997	73	9	64
1998	45	7	38
1999	50	3	47
2000	67	3	64
2001	54	5	49
2002	48	4	44
2003	50	0	50
2004	37	2	35
2005	110	1	109
2006	82	0	82
2007	<u>80</u>	<u>0</u>	<u>80</u>
Total	1,590	584	1,006

\*Includes 16 ER-TIF districts, one town TIF, and one cooperative district in a town.

**Table 2: TIF Incremental Value Compared to Total City/Village Equalized Value (In Millions)**

	City/Village TIF Incremental Value		City/Village Equalized Value		TIF Incremental Value as a % of City/Village Equalized Value
	Amount	% Change	Amount	% Change	
1999	\$5,484.0		\$164,215.9		3.3%
2000	6,235.7	13.7%	177,431.2	8.0%	3.5
2001	7,518.2	20.6	192,182.2	8.3	3.9
2002	8,003.7	6.5	205,679.1	7.0	3.9
2003	8,587.3	7.3	220,716.4	7.3	3.9
2004	9,596.1	11.7	243,100.2	10.1	3.9
2005	11,362.5	18.4	267,469.4	10.0	4.2
2006	13,206.2	16.2	292,130.6	9.2	4.5
2007	15,493.5	17.3	310,168.1	6.2	5.0
2008	15,911.8	2.7	319,125.1	2.9	5.0
Avg. Annual % Change		12.6%		7.7%	

**Table 3: Tax Incremental Levies and Total Tax Levies – Villages and Cities (In Millions)**

	Tax Increment Levies		Total Levy Villages and Cities		Tax Increments as a Percent of Total Levy
	Amount	% Change	Amount	% Change	
1998	\$130.2		\$4,107.9		3.2%
1999	137.2	5.4%	4,203.7	2.3%	3.3
2000	156.6	14.1	4,510.1	7.3	3.5
2001	185.1	18.2	4,786.1	6.1	3.9
2002	192.4	3.9	4,985.8	4.2	3.9
2003	201.8	4.9	5,194.5	4.2	3.9
2004	219.8	8.9	5,567.5	7.2	3.9
2005	243.6	10.8	5,694.5	2.3	4.3
2006	271.0	11.2	5,975.6	4.9	4.5
2007	319.6	17.9	6,333.0	6.0	5.0
Avg. Annual % Change		10.5%		4.9%	

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### Impact of TIF on the Net Revenues of Local Governments

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#### K-12 School Districts

Although the school levy for elementary and secondary education makes up a large part of the tax increment (40.8% on average) and this suggests that K-12 school districts fund a major part of TIF project costs, many school districts are not adversely impacted by TIDs since districts are often

compensated for the loss in local tax revenues through increases in state aids. From 1977-78 through 1992-93, school districts with TIF districts benefited from the state supplemental aid program, which, when fully funded, would for many school districts replace most of the lost tax revenues with increases in state aid.

State supplemental aid to school districts was computed by calculating equalization aid for each eligible school district twice, once with the TIF value increment included in the district's property wealth and once with the value increment

excluded. Since the school equalization aid formula is based on the principal of equalizing tax base (neutralizing the effect of property wealth per pupil on total revenues), state supplemental aid would approximately equal the amount of tax revenue lost to the TIF district.

Although the state supplemental aid program had the potential to fully offset the loss of tax revenue, there are several factors which prevented the full replacement of lost tax revenues for all districts with TIFs. First, school districts with very high per pupil property values (zero-aid school districts) would not benefit from the state supplemental aid program since such districts are not eligible for equalization aid. Second, during the sixteen-year history of supplemental aid payments, the supplemental aid appropriation did not always equal the amounts determined by the aid calculation, resulting in a proration in payments during six years. Also, due to cost concerns and other factors, there was a period of time (1983-84 to 1990-91) when new TIF districts were not allowed to be part of the supplemental aid program. In the last year, payments were made to 212 of the state's 427 school districts.

Although the supplemental aid program was repealed after 1992-93, the funding for the supplemental aid appropriation was transferred to the general equalization aid appropriation, and the equalization aid formula for school districts was modified, beginning in 1993-94, to exclude the incremental value of TIF districts from a school district's equalized property valuation. These changes, for the most part, maintained the same distribution of total aids that existed under the supplemental aids system, since supplemental aids were based on running the equalization formula with and without the TIF value increment. The current method may be more favorable to school districts with TIF districts since the compensation for the loss of tax revenue is built into the equalization formula and does not depend on the funding of a separate appropriation (where compensation could be prorated). However, collapsing of the separate

supplemental aid appropriation into the general equalization aid appropriation does obscure the state's role in compensating school districts for their lost tax base.

### **WTCS Districts**

State general aid to Wisconsin Technical College System (WTCS) districts is also inversely related to a district's equalized value per pupil and, like the current aid formula for K-12 districts, does not include the value increments from TIF districts in measuring equalized value per pupil. However, the aid formula is not as equalizing as that for K-12 districts, and will only partially offset (less than half) the lost revenue from a loss of tax base.

### **County Governments**

Prior to 2004, county governments participated in the shared revenue aid program, which had a tax-base equalizing effect similar to the general school aid formula. The measure of equalized value per capita used for counties in the shared revenue formula excluded the value increments of TIF districts located in the county. Thus, there was the potential for the shared revenue program to offset the loss in potential tax revenues. However, beginning in 2004, the county shared revenue formula was suspended indefinitely, except for utility aid, and counties now receive aid under a new program, named "county and municipal aid." This change ended the equalization aspect of the county aid program.

### **Municipal Governments**

The municipal distribution of the shared revenue program also contained a tax base equalizing aid formula within the aidable revenues component. However, beginning in 2004, the distribution formulas were suspended indefinitely, except for the utility aid component, and municipalities now receive aid under a new program, named "county and municipal aid." This ended the equalization aspect of the municipal aid program.

When it was in effect, the distribution formula for the aidable revenues component differed from that used for counties by including the TIF value increment in the measure of each municipality's per capita equalized value. As a result, the formation of a TIF district did not lower a municipality's measure of tax base and did not result in additional shared revenue payments due to a lower tax base. The rationale for this differential treatment was that the municipality was the main agent behind the TIF district and used the TIF tax increment to fund redevelopment in the TIF district. Redevelopment is a function

usually performed by the municipality.

Although the shared revenue program did not treat a TIF district as a loss of tax base for the municipality, the program did count the TIF tax increment (municipality's share only) as part of the municipality's revenue effort for purposes of the shared revenue payment. Shared revenue payments were positively related to the measure of revenue effort, but the increase in the shared revenue payment would have been less than the tax increment (municipality's share).