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# tax incremental financing

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# Tax Incremental Financing

Prepared by

Ryan Horton

Wisconsin Legislative Fiscal Bureau  
One East Main, Suite 301  
Madison, WI 53703  
<http://legis.wisconsin.gov/lfb>



# 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, and some summary statistics on participation and growth in TIF valuations and levies.

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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. However, since the measure of the tax base used in the state's equalizing aid formulas for school and technical college districts excludes the incremental value of TIF districts, most of these districts are compensated to some degree for their inability to tax this value. This is not true for counties and municipalities, since the state aid formula for them no longer includes any tax base equalizing component.

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 were intended to 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).

This paper discusses the several different types of TIF districts that can be created. Cities and villages have had general authority to create TIF districts since 1975 and environmental remediation TIF districts since 1998. More recently, towns and certain counties have been provided with limited authority to create TIF districts.

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## General 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. For a TIF district created before March 3, 2016,

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. TIF districts created after this date and land acquired through condemnation are excluded from this requirement. For a district created after October 1, 2015, any real property found within a declared industrial district 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.

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; (c) the city or village and the town enter into another kind of agreement relating to the annexation; or (d) the annexing municipality agrees to pay to the town an amount, equal to the property taxes levied on the annexed territory by the town at the time of the annexation, for each of the next five years.

TIF district boundaries generally cannot include any designated wetlands. However, a wetland that has been converted in compliance with state law to no longer be a wetland may be included in a TIF district.

## **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, as determined by DOR. (For districts created prior to October 1, 2015, the base value included the value of municipally-owned property excluding municipally-owned property used for certain municipal purposes, such as police and fire buildings and libraries.) Generally, the base value remains constant until a district terminates. However, the base value can be affected by TIF district project plan amendments or a when a TIF district is in a decrement situation (these situations are discussed below). 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.

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.

## **Territory Amendments**

A planning commission can 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 or subtracted to the existing district is determined by DOR. This value is then added to or subtracted from the original base value of the TIF district. The values used to subtract are based on the year when the parcel entered the TID. 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. For districts created before March 3, 2016, an amendment that adds territory that includes property owned and used by the municipality, that would have been included in the base value under prior law, would add value to the base for these districts. Similarly, an amendment that subtracts territory would reduce the base value when the removed property was owned and used by the municipality and part of the initial 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, or double the normal \$1,000 fee for addition or subtraction territory amendments.

A planning commission has the authority to amend a district project plan, to add or subtract contiguous territory from a district, or to extend its maximum lifespan by an additional three years if at any time during the life of the TIF district, the annual and total amount of tax increments to be generated over the life of the district are adversely impacted by 2013 Act 145 (an Act that increased state aid to technical college districts in order to reduce the statewide levy of such districts). The project plan amendment under this provision would not be subject to the limitation on the number of project plan amendments allowed over the

life of a district.

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.

### **TIF Districts in Decrement Situation**

Once during the life of a TIF district, a local legislative body may adopt a resolution requiring DOR to redetermine the incremental base value of a district that is in a "decrement situation" that has continued for at least two consecutive years. A decrement situation is a situation in which the aggregate equalized value of all taxable property located within a TIF district, on or about the date on which the local legislative body adopts a resolution requiring DOR action, is at least 10% less than the existing tax incremental base of that district.

Before a local legislative body may adopt this resolution, it must complete a financial analysis of the TIF district that, in addition to the items specified in the district's project plan, includes the following: (a) the annual and total amount of tax increments to be generated over the life of the district; and (b) the annual debt service costs on any bonds issued for the district by the city or village. If the city or village does not have the expertise to complete these requirements, it is required to hire an entity which has the needed expertise.

Also, before a resolution relating to a TIF decrement situation may be adopted, the local legislative body must amend its project plan so that at least one of the following occurs: (a) the project

plan specifies that 51% of the total value of public infrastructure improvements that occurs in the district must be financed by a private developer, or other private entity, in return for the city's agreement to repay the developer or other entity for those costs solely through the payment of cash grants (the developer must enter into a development agreement to receive these grants); (b) the project plan specifies that the city or village expects all project costs to be paid within 90% of the district's remaining life; or (c) the project plan specifies that expenditures may be made only within the first half of the district's remaining, allowable life, except that expenditures may be made after this period if the expenditures are approved by a unanimous vote of the joint review board. The starting point for determining a district's remaining life is the date on which the joint review board approves the resolution, and the ending point is the statutorily required termination date of the district.

A resolution requiring DOR to redetermine the base of a TIF district in a decrement situation may not take effect unless it is approved by a joint review board acting as it would act if the district's project plan was to be amended. Upon such approval, DOR is required to redetermine the tax increment base of the district. DOR assesses a fee of \$1,000 associated with redetermining the base of a district in a decrement situation.

### **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.

2017 Wisconsin Act 223 provides that for any agreement between the taxing jurisdiction and a

developer regarding a TIF district entered into prior to April 5, 2018, the definition of "tax increment" also includes any state aid for exempt personal property paid to the district. 2017 Wisconsin Act 59 (2017-19 biennial budget) created a state aid program administered by DOR to make payments to each local taxing jurisdiction, including TIF districts, that imposed property taxes on personal property assessed as non-manufacturing machinery, tools, and patterns as of January 1, 2017. More information on this provision can be found in the Legislative Fiscal Bureau's informational paper entitled, "Targeted Municipal Aid Programs."

DOR is required to charge a municipality a \$150 annual fee for each of its active TIF districts. If a municipality fails to pay this annual fee for one of its TIF districts by April 15<sup>th</sup>, DOR cannot certify the annual tax increment of that TIF district in that municipality.

### **Restriction on New TIF Districts -- 12% Limit**

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. In determining whether a newly-created TIF district is in compliance with the 12% limit, DOR must exclude any parcel in that district that is also located in an existing



district.

If DOR determines that a local legislative body exceeds the 12% limit, DOR must notify the city or village of its noncompliance in writing. DOR has to provide this written notice no later than December 31<sup>st</sup> of the year in which DOR receives the completed TIF district application or amendment forms. If DOR notifies a city or village of noncompliance, the city or village must either rescind the approval of the proposed TIF district's project plan resolution or remove parcels from the amended or proposed district's boundaries so that the city or village is in compliance with the 12% limit.

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.

A proposed TIF district that would overlap the boundaries of an existing multijurisdictional TIF district (described later) may only be created if the creation is approved by resolutions adopted by all of the following: (a) the governing bodies of each of the multijurisdictional TIF district's participating cities or villages; and (b) the multijurisdictional TIF district's joint review board.

## **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 city or village that intends to create a TIF district or amend a district project plan must convene a standing joint review board that remains in existence as long as a municipality has a district in existence. If a municipality creates more than one TIF district consisting of different overlying taxing jurisdictions, it must create a separate standing joint review board for each construction of overlying taxing jurisdictions. No TIF district can be created and no plan can be amended unless approved by a majority vote of the board within 45 days after a resolution is adopted. The public notice of all meetings of the joint review board must

be a class one notice and must be published at least five days in advance of the meeting. The joint review board is required to meet annually on July 1, or as soon as the municipality's updated annual report describing the status of each existing TIF district becomes available, to review the performance and status of each existing TIF district governed by the board.

The joint review board consists of a public member and 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 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.

### **TIF District Creation**

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

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

- 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.

- 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 ("but for" criteria); (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 either no later than 10 working days after receiving DOR's written response, or if the city or village then resubmits a proposal to the joint review board, no later than 10 working days after receiving the city's or village's resubmitted proposal.

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 or mixed-use 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.

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.

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, except a parking structure that supports redevelopment activities;

(d) general government operating expenses; (e) expenses unrelated to the planning and development of a TIF district; (f) costs incurred prior to creation of a TIF district (except costs directly related to planning for the district); and (g) direct or indirect expenses related to operating a rail fixed guideway transportation system in the city of Milwaukee. 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**

A TIF district's expenditure period is the period of time during the life of the district when expenses may be incurred to implement approved projects. The maximum expenditure period for all districts (except environmental remediation districts created before November 29, 2017, which have a 15-year expenditure period) ends five years before the unextended maximum life of the TIF district.

### **TIF District Termination**

The allocation of tax 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. Furthermore, for a TIF district created on or after March 3, 2016, the termination date may be increased by one year if that district's project plan is adopted after September 30 and before May 15, or within the period when the municipality has received aggregate tax increments in an amount equal to the aggregate of all project costs under the project plan, whichever is earlier.

At any time during the district's existence, a city or village may request that the joint review board extend the life of the district by an additional three years if the total amount of tax increments to be generated throughout the life of the district were adversely affected by 2013 Act 145 (an Act that increased state aid to technical college

districts in order to reduce the statewide levy of such districts). This extension would be in addition to other extensions allowed under law and DOR would be allowed to allocate tax increments for the additional three 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.

A county or municipality containing a tax increment district that has terminated may adjust its allowable levy in the first year that DOR does not certify a tax increment. Under the adjustment, the county or municipal allowable levy is increased by a percentage equal to 50% of the quotient resulting from dividing the incremental value of the terminated district in the prior year by the municipality's prior year equalized value (less any TIF district value increment). Under 2017 Act 223, a similar adjustment is allowed for territory subtracted from a TIF district under a project plan amendment.

### **Donor TIF Districts**

A TIF district does not have to be terminated when all project costs have been reimbursed in certain cases where the tax increments of the TIF district (donor) that has paid off its project costs are 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.

Similar authority exists for 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.

Provided all the conditions that allow for donating tax increments are met, a TIF district may donate tax increments to or receive tax increments from an environmental remediation TIF district in the same city or village.

### **Distressed and Severely Distressed TIF Districts**

From October 1, 2008 through September 30,

2015, a municipality had the option to extend the life of a TID experiencing financial difficulty by adopting a resolution designating the TID as distressed or severely distressed. This allowed the TID additional time to pay off expenditures.

2009 Wisconsin Act 310 authorized cities and villages to extend the life of certain TIF districts if the municipality adopts a resolution finding that a TIF district's project costs exceed the expected revenues generated to pay off such costs during the original life of the district and declares the district distressed or severely distressed. In addition, such districts can receive positive tax increments from donor districts for an extended period of time. Under 2011 Wisconsin Act 41, municipalities had until October 1, 2015, to make such a declaration.

Prior to October 1, 2015, a TIF district could be declared severely distressed if the district met all the requirements necessary to be declared a distressed TIF district and had a value increment in any year that had declined at least 25% from the highest value increment certified by DOR over the course of the district's life. A severely distressed TIF district could be allocated tax increments and extend its life for up to 40 years after the district is created. In addition, a donor district to a severely distressed district could allocate positive tax increments to that district until the donor district has existed 40 years or the severely distressed district terminates, whichever occurs first.

A distressed or severely distressed TIF district may not do any of the following: (a) amend its project plan to add any new costs; (b) become part of a TIF district with overlapping boundaries; (c) expend funds outside the district's boundaries; (d) become a donor district; (e) add territory to the district; or (f) make an expenditure after its expenditure period, as determined before its designation as a distressed district, expires.

Tax increments allocated to a distressed or severely distressed TIF district that exceed the amount needed to meet the annual expenditures

identified in the district project plan must be used to retire any outstanding debt obligations of the district or to establish a reserve to be used only to retire those obligations.

The life of a distressed district can be extended and positive tax increments can be allocated for up to 10 years beyond the point in time the district would otherwise be required to terminate. Similarly, the life of a donor district can be extended and positive tax increments can be allocated to a distressed district for up to 10 years beyond the district's previously required termination date.

From October 1, 2008 through September 30, 2015, 88 TIF districts were declared distressed and 18 districts were declared severely distressed. In 2020, DOR reports that 17 of the 18 severely distressed districts and 77 of the 88 distressed TIF districts remain active.

### **Affordable Housing Extension**

A city or village with a TIF district that pays off its project costs can extend the life of the district for one year if the city or village does the following: (a) adopts a resolution that extends the life of the TIF district for a specified number of months and specifies how the city or village intends to improve its housing stock; and (b) forwards a copy of the resolution to DOR, notifying the Department that it must continue to authorize the allocation of tax increments to the district.

If DOR receives such notice, the Department must authorize the allocation of tax increments to the district during the TIF district's extended life, without regard to whether any other statutory requirements would otherwise require termination of the allocation of such increments. If a city or village receives such tax increments, it must use at least 75% of those tax increments to benefit affordable housing within the city or village in which the district exists. Affordable housing is defined as housing for which housing expenses cost no more than 30% of the household's gross

monthly income. A household consists of an individual and his or her spouse and all minor dependents. Any remaining portion of the increments must be used by the municipality to improve its housing stock.

### **Municipal 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. This report must contain at least the following information: (a) the TIF district name; (b) the district classification and scope; (c) the name of any developer named in the developer's agreement who receives financial assistance from tax increments; (d) the anticipated termination date; (e) the amount of tax increments to be deposited into a special fund for that district; (f) an analysis of the special fund for the district (see below); and (g) a contact person designed by the municipality to respond to the annual report. The municipality must file a copy of the report with DOR annually by July 1.

The analysis of the special fund must include the following information: (a) the balance in the special fund at the beginning of the fiscal year; (b) all amounts deposited in the special fund by source, including all amounts received from another tax incremental district; (c) an itemized list of all expenditures from the special fund by category of permissible project costs; and (d) the balance in the special fund at the end of the fiscal year, including a breakdown of the balance by source and a breakdown of the balance identifying any portion of the balance that is required, pledged, earmarked, or otherwise designated for payment of, or securing of, obligations and anticipated project costs. Any portion of the ending balance that has not been previously identified and is not identified in the analysis, pledged, earmarked, or otherwise designated for payment of, or securing of, obligations or

anticipated project costs must be designated as surplus.

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.

### **DOR's Authority**

The state has a limited authoritative role in overseeing TIF districts and any disputes concerning TIF law. However, there are a number of statutory procedures (such as public hearing requirements and project plan contents) that a municipality 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.

DOR has the authority to review the facts contained in the TIF documents submitted by the municipality for the proposed TIF district, if requested to do so by the joint review board. Additionally, DOR must designate a format for the annual reports required of municipalities with a TIF district and must require that these reports be filed electronically.

DOR must post the municipal TIF district reports on its website filed with the Department for each existing district within 45 days after the report is received from the municipality. If a

municipality provides DOR sufficient evidence before the July 1 due date that an annual report is in the process of being completed, the Department may grant a 30 day extension. If the report is not timely filed after the 30 day extension or by July 1 for a municipality that did not provide an estimated report, DOR must notify the municipality that the report is past due. If the report is not filed within 60 days of the date on the notice, the Department will charge the municipality a fee of \$100 per day for each day the report is past due, up to a maximum penalty of \$6,000 per report. If the political subdivision does not pay within 30 days of issuance, DOR is required to reduce and withhold the amount of the shared revenue payments to the political subdivision, in the following year, by an amount equal to the unpaid penalty.

DOR receives revenues from the fees charged to municipalities when DOR determines or re-determines a TIF district's base value and from the annual fees assessed on the active TIF districts of each municipality. In 2019-20, DOR received \$289,800 in revenue from these fees to cover its administrative costs associated with the TIF program.

DOR is required to indicate in its fiscal estimate for any bill that affects TIF districts or property tax assessments whether the bill will increase or decrease the increments for existing TIF districts or whether the bill's effect on such tax increments are indeterminate.

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### **Multijurisdictional TIF District Authority**

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Two or more cities or villages are permitted to enter into an intergovernmental cooperation agreement to jointly create a multijurisdictional tax incremental district if all of the following apply: (a) the district's borders contain territory in all of the cities or villages that are a party to the agreement; (b) the district is contiguous; and (c) at least



one parcel in each participating city or village touches at least one parcel in at least one of the other cities or villages. Unless specifically excluded or modified, all other authorities, provisions, and requirements specified under general TIF law also apply to multijurisdictional TIF districts.

The cooperation agreement must contain provisions that specify at least all of the following with regard to the proposed multijurisdictional tax incremental district:

- a detailed description of how all of the participating cities or villages will be able to exercise the powers authorized them regarding TIF districts and meet the requirements necessary to create a TIF district.
- a detailed description of how determinations will be made that relate to incurring debt, expending funds for project costs, and distributing positive tax increments.
- the extent to which one of the cities or villages will be authorized by all of the other participating cities or villages to act on behalf of all of them on some or all matters relating to the district.
- a binding dispute resolution procedure to be used by the cities or villages to resolve, in a timely fashion, any disputes between the participating cities or villages related to the agreement or to the district. The procedure must include a dissolution provision that allows all of the participants to agree to jointly dissolve the district at any time before a dispute is settled. It must also describe in detail how, and under what circumstances, the district may be dissolved and must specify how the district's assets, liabilities, and any other outstanding obligations will be distributed among the participating cities or villages.
- a detailed description of the proposed membership of the joint review board. Each participating city or village may appoint one public member to the joint review board. If more than one

school district, technical college district, or county overlies the proposed multijurisdictional TIF district, each of them may select a representative to the joint review board, unless they opt out of this authority by resolution.

- a detailed description of the responsibilities of each city's or village's planning commission, the membership and authority of the planning commission for the district, and the operating procedures to be followed by the district's planning commission.
- a detailed description of the responsibilities of each city's or village's clerk, treasurer, assessor, and any other officer or official to carry out the requirements of this section, and a detailed description of which clerk, treasurer, assessor, officer, or official will be responsible for each task specified under the TIF law.
- identification of the city or village that will be the lead city or village for purposes of completing any required documents or tasks or other DOR requirements, which city or village will be responsible for submitting the district's creation documents, and which city or village will be responsible for submitting the district's project plan amendment documents.
- a statement that all of the participating cities or villages agree that the district's application will be submitted in its entirety as one complete application by the lead city or village, as determined by DOR.
- consistent with the requirements for any TIF district, a statement that the entire district will terminate at one time as a single entity and that the lead city or village will submit to DOR all necessary notices and reports relating to the termination of the district.
- a detailed description of the procedures the participating cities or villages will follow to determine the following: (a) whether the district's

life may be extended, as generally allowed for TIF districts; and (b) how the project plan or boundaries of the district may be amended, as allowed for other TIF districts.

- a description of how any annexation costs incurred by a participating city or village will be shared among all of the participating cities or villages if the annexed territory is part of the district.

### **Limitations**

A multijurisdictional TIF district can only be created if each public joint review board member of a participating city or village votes with the majority to approve the resolution creating the district. Multijurisdictional TIF districts may not become a donor district, or receive tax increments from a donor district, as allowed for other TIF districts. In addition, these districts may not incur project costs for any area that is outside of their boundaries. However, effective October 1, 2016, any town eligible to create an industry-specific town TIF district may also be part of a multijurisdictional TIF district.

For most TIF districts, the equalized value of the proposed district plus the value increment of all existing districts may not exceed 12% of the total equalized value of property within the city or village. For multijurisdictional TIF districts, the 12% limit is applied on an aggregate basis to all cities or villages that are part of the district. Further, the limit is allowed to be exceeded if the part of the multijurisdictional district in an individual city or village causes that city or village to exceed its 12% limit. However, in such instances, the limit can be only exceeded if the governing bodies of all the taxation districts that overlay that city or village adopt a resolution approving the creation of the multijurisdictional TIF district even though the creation of the district would cause the 12% limit to be exceeded.

### **DOR's Authority**

DOR may require each participating city or

village to submit any forms it prescribes without regard to: (a) whether a particular city or village is the lead city or village; and (b) the responsibility of each participating city or village as specified in the multijurisdictional TIF agreement. A copy of the agreement, as signed by all of the participating cities or villages, must be forwarded to DOR by the lead city or village.

Regardless of the number of municipalities participating in a multijurisdictional TIF district, DOR is only allowed to impose one fee for the certification of the district's base value or for any amendment to the base value. Unless the agreement provides otherwise, the lead city or village is responsible for any fees imposed by the Department. Similarly, DOR may only impose one annual administrative fee for each multijurisdictional TIF district. DOR may only allocate tax increments to a city or village participating in a multijurisdictional TIF district if that city's or village's portion of the district has a positive value increment. Through 2019 (base year), no multijurisdictional TIF districts have been created.

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### **TIF Districts within an Electronics and Information Technology Manufacturing Zone**

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2017 Wisconsin Act 58 ("Foxconn") permits the Wisconsin Economic Development Commission (WEDC) to designate not more than one Electronics and Information Technology Manufacturing (EITM) zone in the state. WEDC designated that EITM zone in the Village of Mount Pleasant in Racine County on November 10, 2017. [For further information about this EITM zone, see the Legislative Fiscal Bureau's informational paper entitled "Business Tax Credits"].

Act 58 requires that a TIF district that is created within an EITM zone be an industrial site or mixed-use development. Most existing TIF laws

would apply to an EITM zone TIF district except as indicated below.

The Act specifies that the 12% limit requirement for TIF districts does not apply to a resolution creating an EITM TIF district. Additionally, if the creating city or village creates another TIF district, the value increment of the EITM TIF district would not be included in the calculation of the 12% limit.

For an EITM zone TIF district the allowable life of the district and the period during which DOR may allocate positive tax increments to the district is increased from 20 years to 30 years. EITM TIF districts are also exempt from the existing TIF law requirement that no expenditure may be made later than five years before the unextended termination date of the TIF district. Rather, any allowable expenditure can be made up to 30 years after the district is created. However, an EITM TIF district cannot be used as a donor district to allocate positive tax increments to another TIF district.

Project costs can include expenditures or monetary obligations associated with public works or improvements within TIF districts located within an EITM zone. "Project costs" also include payments made by a city or village to a county or other municipality that issues obligations to finance the project costs of a TIF district within an EITM zone. Additionally, the creating city or village may incur project costs for any of the following, provided that the expenditures benefit the district: (a) territory that is located in the same county as the district; and (b) the cost of constructing or expanding fire stations, purchasing police and fire equipment, and the cost of general government operating expenses related to providing police and fire protection services, provided that the total of such expenditures do not exceed 15% of the total positive tax increments over the district's lifetime. Before any project costs may be incurred for any territory that is located outside of the EITM TIF district, but that is in the same county, the city or

village must obtain a certification from the Department of Administration (DOA) that specifies that DOA believes the proposed expenditure benefits the district. Any capital expenditures for the construction or expansion of fire stations and for police and fire equipment may only be made for the first 84 months following the district's creation, and any expenditures for constructing or expanding fire stations may be made only for fire stations located within a one-mile radius of the EITM zone.

If the resolution creating a TIF district within an EITM zone is adopted between January 1 and December 1, the Act specifies that the creation date would be either of the following dates, as specified in the resolution: (a) January 1 of the year in which the resolution is adopted; or (b) January 1 of the following year. The Act specifies that if a resolution is adopted between December 2 and December 31, the creation date is January 1 of the following year.

In accordance with the provisions of Act 58 and subsequent to the creation of the EITM zone, a 3,921-acre industrial TIF district (Village of Mount Pleasant TIF District No. 5) located within the designated EITM zone, received Joint Review Board approval on November 29, 2017 with an effective base value establishment date of January 1, 2018.

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### **Town TIF Authority**

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There are four separate and distinct manners in which a town may create a TIF district: (a) towns of certain size and equalized value can create a TIF district using the same authority as a city or village; (b) specific authority allowing the Town of Somers in Kenosha County, the Town of Brookfield in Waukesha County, the Town of Freedom in Outagamie County, and the Town of Cable in Bayfield County to create a TIF district;

(c) towns with a cooperative plan with a city or village that has plans to annex all or part of the town have the authority to create a TIF district; and (d) any town may create certain industry-specific TIF districts.

### **TIF Districts in Towns of Certain Size and Value**

A town in which the equalized value of all taxable property in the town is at least \$500 million, and the town's population is at least 3,500, may adopt a resolution creating a TIF district. The town must meet the equalized value and population thresholds in the year before the year in which the town adopts a resolution creating the district. The town may exercise all powers of a city or village to create a TIF district if the boundaries of the proposed district are within a sewer service area and sewer service is either currently extended to the proposed district or will be provided to the proposed district before the use or operation of any improvements to real property in the proposed district begins. The sewage treatment must be provided by a wastewater treatment facility that holds a state wastewater facility permit. In 2019 (base year), six towns of a certain size and value had 10 active TIF districts.

If the town board exercises this authority, it is subject to the same duties as a common council or village board. The town is also subject to the same duties and liabilities as a city or village under state TIF law. If a town creates a cooperative plan or industry-specific TIF district (both discussed below), the town may not take any action with regard to such districts except by acting under that other authority used to create those districts.

Before a town board may approve a project plan creating a TIF district using this authority, the board must ensure that the project plan specifies at least one of the following: (a) with regard to the total value of public infrastructure improvements in the district, at least 51% of this value must be financed by a private developer, or other private

entity, in return for the town's agreement to repay the developer or other entity for those costs solely through the payment of cash grants, and in order to receive such cash grants, the developer or other private entity must enter into a development agreement with the town; (b) the town expects all project costs to be paid within 90% of the proposed district's remaining life, based on the district's statutory termination date; or (c) expenditures may be made only within the first half of the proposed district's remaining life, except that expenditures may be made after this period if the expenditures are approved by a unanimous vote of the joint review board, but no expenditure may be made later than the statutorily allowed expenditure period under state TIF law. The starting point for determining a TIF district's remaining life is the date on which the district is created.

If any part of a TIF district that is created using this authority is annexed by a city or village, any assets or liabilities associated with that annexed territory, including a proportional share of any bonds or other debt associated with the district, are the responsibility of the annexing city or village. Also, if a city or village annexes any part of a district after January 1 of any year, DOR must redetermine the TIF base of the district by subtracting from the 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 is made as of that date. This redetermined base would only be effective if it less than the original tax incremental base of the district.

### **Specific Town TIF District Authority**

The Town of Somers in Kenosha County, the Town of Brookfield in Waukesha County, the Town of Freedom in Outagamie County, and the Town of Cable in Bayfield County, respectively, have specific authority to create TIF districts without satisfying certain statutory requirements. These towns may exercise all powers of cities and villages in creating a TIF district. If the town board

exercises the powers of a city or village, it is subject to the same duties as a common council or village board under state TIF law and is subject to the same duties and liabilities as a city or village. The Town of Cable may create only one tax incremental district and that district must not exceed 5% of the total equalized value of property within the town.

If one of these towns creates a cooperative plan or industry-specific TIF district, the town would only be able to take action relative to that district under the statutes that allow for the creation of such a district and not using this specific authority.

Only the Town of Brookfield in Waukesha County and the Town of Freedom in Outagamie County have active TIF districts using this specific authority.

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

Certain town governments with cooperative plans may exercise all the powers of cities and villages relative to state TIF law. If a 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 2019 (base year), one cooperative TIF district has been created, by the Town of Madison in Dane County.

A city or village that annexes a cooperative

plan TIF district is responsible for administering the district. Further, all of the following general TIF law provisions apply to the district, as if the district was created by that city or village: (a) the 20- to 27-year life span of most districts and the termination requirements allowed for most TIF districts; (b) the project plan of the TIF district; (c) the procedures for amending a TIF district project plan; and (d) the procedures to extend the life of a TIF district. Parcels within the newly annexed TIF district would be excluded from the determination of the 12% limit on the creation of TIF districts by the city or village. DOR has the authority to allocate positive tax increments to a city or village that annexes or attaches such a town TIF district. For the purposes of implementing these provisions, the creation date of the annexed district would be the creation date of the district by the town.

### **Industry-Specific Town TIF Districts**

Towns, and standing joint review boards of industry-specific town TIF districts, have much of the same authority and the same powers relative to the 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 industry-specific 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. In 2019 (base year), two towns had an active agricultural-specific TIF district and two towns had an active tourism-specific TIF district.

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 re-determining a town TIF district base. Towns creating industry-specific TIF districts must follow the same reporting process as city and village TIF districts.

*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:

- 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;
- 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;

- 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
- 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 is 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.* 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.

*Expenditure Period.* 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.

*Project Termination.* 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.

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## County TIF Districts

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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 board of each town in which the proposed district is to be located adopts a resolution approving the creation of the district. In 2013, Florence County used its TIF authority to create a TIF district in the Town of Florence.

The makeup of the standing 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 - Created Prior to November 29, 2017

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Prior to November 29, 2017, municipalities that created an environmental remediation TIF (ER-TIF) district that were a separate type of TIF district with distinct statutory requirements, as described in detail in the Appendix. 2017 Wisconsin Act 70 sunset those provisions as of November 29, 2017, but authorized the creation of an ER-TIF district under general TIF law, with certain additional requirements (discussed in the next section).

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**Environmental Remediation TIF Districts -  
Created on or after November 29, 2017**

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Under 2017 Act 70, an ER-TIF district is a district in which most of the territory of the district consists of areas that contain significant environmental pollution. The maximum life of these districts is similar the periods allowed under general TIF law with the possibility of a 3-year extension. In order to create these ER-TIF districts, the governing body of the creating political subdivision must obtain a certified site investigation report from the DNR. In addition, the governing body must certify to the DOR that one of the project plan specifies one of the following: (a) that the municipality expects all project costs to be paid within 90% of the ER-TIF district’s remaining life; or (b) that expenditures may be made only within the first half of the tax incremental district’s remaining life, based on the district’s termination date, and the limitation on the expenditure period does not apply to any expenditure that addresses significant environmental pollution not identified in the original certified site investigation report.

An ER-TIF district, under Act 70, may not allocate positive tax increments to another TIF district that is not an ER-TIF district. In addition, a municipality may designate only one such ER-TIF district to which the 12 percent limit does not apply. Once the city makes this designation, it may not designate another ER-TIF district until the currently designated district terminates. When these ER-TIFs are created, DOR is required to set the base value to \$1. In 2019 (base year), two municipalities had active environmental remediation TIF district that had been created under the Act 70 provisions.

To obtain a certified site investigation report, the municipality is required to send to the DNR the following: (a) a detailed description of the significant environmental pollution that exists in the

proposed district; (b) a proposed remedial action plan that contains cost estimates for anticipated project costs; and (c) a schedule for the design, implementation, and construction that is needed to complete the remediation with respect to the proposed district in accordance with DNR rules. If DNR agrees with the municipality’s description of the conditions in the proposed district and approves of the proposed remedial action plan, the DNR must provide the municipality with written certification that it has approved the site investigation report. If DNR does not approve the report, the municipality may modify and resubmit the report.

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**Statistics on TIF Usage**

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Table 1 shows the number of TIF districts, other than ER-TIF districts that have been established between 1976 and 2019. In addition, the table indicates the number of districts created and the number that remain in existence. Of the 2,280 TIF districts that have been created, 41.9% have been terminated or dissolved and 58.1% remain in existence.

**Table 1: Number of TIF Districts**

<u>Years</u>	<u>Number Established</u>	<u>Number Still in Existence</u>
1976-80	201	0
1981-85	167	1*
1986-90	182	9
1991-95	285	93
1996-00	294	162
2001-05	286	238
2006-10	314	276
2011-15	254	250
2016-19	<u>297</u>	<u>296</u>
Total	2,280	1,325

\*Is a 37-year district that terminated in 2020.



Table 2 compares the change in aggregate TIF incremental values to the change in total equalized valuation for cities and villages, from 2011 to 2020. During this period as a whole, 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.

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 for all taxing jurisdictions for the past 10 years. Over this period, tax increments grew at an average, annual rate that was higher than the corresponding rate for the total levy.

**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	
2011	\$14,538.2		\$302,548.7		4.8%
2012	14,315.1	-1.5%	292,539.7	-3.3%	4.9
2013	14,431.4	0.8	290,807.2	-0.6	5.0
2014	15,165.7	5.1	299,497.4	3.0	5.1
2015	16,316.4	7.6	306,794.2	2.4	5.3
2016	17,146.7	5.1	318,397.6	3.8	5.4
2017	19,640.7	14.5	334,688.1	5.1	5.9
2018	20,607.6	4.9	352,355.3	5.3	5.8
2019	22,540.9	9.4	375,227.1	6.5	6.0
2020	26,377.9	17.0	397,442.6	5.9	6.6
Avg. Annual % Change		6.8%		3.1%	

**Table 3: Tax Incremental Levies and Total Tax Levies for all Taxing Jurisdictions – 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	
2010	356.0		7,091.6		5.0%
2011	348.0	-2.2%	7,149.6	0.8%	4.9
2012	358.9	3.1	7,228.7	1.1	5.0
2013	370.4	3.2	7,316.5	1.2	5.1
2014	374.2	1.0	7,204.4	-1.5	5.2
2015	402.0	7.4	7,373.2	2.3	5.5
2016	418.5	4.1	7,537.9	2.2	5.6
2017	471.6	12.7	7,758.4	2.9	6.1
2018	479.2	1.6	7,912.1	2.0	6.1
2019	512.1	6.9	8,241.1	4.2	6.2
Avg. Annual % Change		4.1%		1.7%	

## APPENDIX

### Environmental Remediation TIF Districts - Created Prior to November 29, 2017

1997 Wisconsin 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. 2017 Wisconsin Act 70 sunset the provisions governing ER-TIF districts as of November 29, 2017.

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. Any municipality creating an ER-TIF district must also convene a standing joint review board that must remain in

existence for the entire duration of the district's existence.

#### Eligible Properties

An ER-TIF district may include public or private properties, but 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 or project 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 property 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 or project 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.

### **Donor ER-TIF Districts**

A local governmental unit may adopt a resolution that allows the tax increments generated from one ER-TIF district to be used to pay the costs of environmental remediation in another ER-TIF district. In order for this to occur, the donor and recipient districts must have been created by the

same governmental unit. Also, the joint review board is required to approve a resolution allowing this to occur.

DOR is required to authorize positive tax increments generated by the donor district to the recipient district. The donor district must terminate when the recipient ER-TIF district has received enough tax increments to repay all of the eligible costs for remediation, or 23 years after the donor district was created, whichever is earlier.

Provided all the conditions that allow for donating tax increments are met, an ER-TIF district is permitted to donate tax increments to or receive tax increments from any type of TIF district that is in the same city or village.

### 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 July 1, provide updated reports describing the status of all ER-TIF projects, including revenues, expenditures, and requirements specified for city and village TIF district reports, 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.

### Statistics on ER-TIF Usage

Table 4 shows the number of ER-TIF districts established prior to November 29, 2017 and the number that remain in existence through 2019. Of the 21 ER-TIF districts created, seven have been terminated and 14 remain in existence. One county ER-TIF district was created in the Town of Matteson in Waupaca County.

**Table 4: Number of ER-TIF Districts Created Prior to November 29, 2017**

Base Year	Number Established	Number Still in Existence
2000	1	0
2001	2	1
2003	4	3
2004	1	1
2005	6	4
2007	2	2
2010	3	1
2014	1	1
2016	<u>1</u>	<u>1</u>
Total	21	14