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Statement of Position TIF Jobs Stimulus Program

Tax increment revenue may be spent by a development authority only as permitted by the Tax Increment Financing Act (TIF Act).¹ In 2010, development authorities were given temporary expanded authority to use tax increment in ways not previously authorized. In 2011, the Legislature extended this authority by one year.² The purpose of this expanded authority was to stimulate economic recovery through assistance to *private* development, with particular emphasis on the retention and creation of construction jobs. The authority expressly excluded assistance to public projects. To underscore the immediacy of the need to create jobs, construction was required to have commenced no later than July 1, 2012.

The temporary authority to spend tax increments in this manner expired on December 31, 2012. This Statement of Position remains in effect to assist with reporting responsibilities.

The tax increment used for this temporary Jobs Stimulus Program came from one of two sources: tax increment generated 1) from expanded authority through an economic development district,³ or 2) through the use of available tax increment generated from existing TIF districts.⁴ The requirements were slightly different, depending on which of these two tax increment revenue sources were used.

Revenue from Economic Development Districts

Prior to the 2010 Jobs Stimulus Program, tax increment revenue from an economic development district could be used only for manufacturing, warehousing, research and development, telemarketing, and tourism facilities.⁵ Under the Jobs Stimulus Program, this tax increment could also be used to provide improvements, loans, subsidies, grants,

¹ The TIF Act is found at Minn. Stat. §§ 469.174 to 469.1794 (2012), inclusive, as amended.

² The dates in this Statement of Position have been changed to reflect the one-year extension provided by the 2011 Legislature.

³ Minn. Stat. § 469.176, subd. 4c (d) (2012).

⁴ Minn. Stat. § 469.176, subd. 4m (2012).

⁵ Minn. Stat. § 469.176, subd. 4c (a) (1) to (7) (2012).

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

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interest rate subsidies, or assistance in any form to developments consisting of buildings and ancillary facilities, subject to the following three conditions:

- (1) The municipality must have found that the project would create or retain jobs in Minnesota, including construction jobs, and that the construction of the project would not have commenced before July 1, 2012, without tax increment assistance;
- (2) The construction of the project must have begun no later than July 1, 2012; and,
- (3) The request for certification of the economic development district must have been made no later than June 30, 2012.⁶

The primary purpose of the 2010 Jobs Stimulus Program was to stimulate economic recovery by getting construction workers and others back to work as quickly as possible. Actual physical activity on the construction site by gainfully employed workers was the type of construction activity that must have occurred to meet the July 1, 2012, deadline.

Whether the use of tax increment was limited to traditional site improvements or whether it could have been used for actual construction of privately-owned buildings depends on which underlying development statute (the HRA Act, the EDA Act, the Port Authority Act, or the Municipal Development Districts Act) was the source of the development authority's powers. In most cases, the development statute required that tax increment revenue be spent for traditional site improvements. The TIF Act served as a limitation on these powers.

The authority and the municipality must have followed the same procedure to create an economic development district established for purposes of the Jobs Stimulus Program as they would have followed for the establishment of any economic development district.⁷ The TIF plan and any modifications should have been filed with the Department of Revenue and with the Office of the State Auditor.⁸

Consult your finance counsel for additional information on underlying development entities and their interaction with the TIF Act.

Revenue from Existing Districts

Under the Jobs Stimulus Program, development authorities were given temporary authority to use available and uncommitted tax increment revenue from any type of TIF district to assist private development consisting of the construction or substantial rehabilitation of buildings and ancillary facilities. The assistance that could have been

⁶ Minn. Stat. § 469.176, subd. 4c (d) (1) to (3) (2012) .

⁷ Minn. Stat. § 469.175, subd. 3 (2012).

⁸ Minn. Stat. § 469.175, subd. 4a (2012).

provided by the Jobs Stimulus Program included direct investments in businesses necessary to finance the development.⁹

The “*notwithstanding . . . any other law to the contrary*” language in this provision overrode many of the limitations of the TIF Act. For example, it trumped the requirement of the Five-Year Rule that requires that 75 percent of a district’s tax increment be reserved each year to cover outstanding debt or other contractual obligations.¹⁰ With the Jobs Stimulus Program, reserved tax increment could have been used if it had not been needed for annual debt service or contractual payments. The distinction between the use of tax increment from an economic development district established for purposes of the Jobs Stimulus Program and tax increment revenue generated from existing districts was that the tax increment from existing districts could have been spent on the actual construction or rehabilitation of buildings and ancillary facilities.

Three limitations applied to the use of tax increment revenue from existing districts: 1) Tax increment could not have been used for general government purposes; 2) tax increment could not have been used for the acquisition, construction, renovation, operation, or maintenance of a building used primarily and regularly for conducting the business of a municipality, county, school district, or any other local, state or federal government;¹¹ and, 3) tax increment could not have been used for county road costs or county administrative costs.¹² Tax increment could not have been spent if the increment had been pledged to pay bonds.¹³

Some examples of available and uncommitted tax increment from a tax increment district that could have been used in the Jobs Stimulus Program are:

1. Excess increment from calendar year 2009, required to be returned to the county by October 1, 2010;¹⁴
2. Excess increment from calendar year 2010, required to be returned to the county by October 1, 2011;
3. Tax increment reserved under the Five-Year Rule as required by law, but the authority had sufficient tax increment to pay annual debt service payments; and,
4. Tax increment from a district that met the conditions for the Five-Year Rule mandatory decertification after December 31, 2009, but the tax increment remained in the authority’s account in 2010 or would have been received in

⁹ Minn. Stat. § 469.176, subd. 4m (2012).

¹⁰ See Minn. Stat. § 469.1763, subd. 3 (2012).

¹¹ Minn. Stat. § 469.176, subd. 4g (2012).

¹² Minn. Stat. § 469.176, subd. 4h (2012).

¹³ Minn. Stat. § 469.176, subd. 4m (a) (2012).

¹⁴ Minn. Stat. § 469.176, subd. 2, defines “excess increments.” Subdivision 2(a) requires an authority to return excess increments within nine months after the end of the year.

2011 if the district had not otherwise reached its maximum duration at the end of 2010.¹⁵

Not all available and uncommitted tax increment could have been used in the Jobs Stimulus Program. Some examples of tax increment that could not be used are:

1. Excess increment from a prior year or years which was required to be repaid to the county before December 31, 2009;
2. Tax increment from a district that met the conditions for mandatory decertification under the Five-Year Rule at any time prior to January 1, 2010; or,
3. Tax increment the authority inadvertently received after the maximum duration date.¹⁶

Before an authority could have used revenue from existing districts for the Jobs Stimulus Program, a written spending plan approved by the municipality, subject to a prior 10- to 30-day published notice and public hearing, was required. The spending plan was required to have been submitted to the Office of the State Auditor. The Legislature had asked that the Office of the State Auditor collect and report information on the spending plans.¹⁷

¹⁵ Minn. Stat. § 469.1763, subd. 4 (b) (2012).

¹⁶ See Minn. Stat. § 469.176, subd. 1b (2012).

¹⁷ Although the law does not mandate filing the spending plans with the Office of the State Auditor, we request them pursuant to existing authority. Minn. Stat. § 6.74; see also §§ 6.48 to .51.