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Statement of Position
TIF Five-Year Rule and Six-Year Rule

The Tax Increment Financing (TIF) Act was amended in 1990 to include a Five-Year Rule and a Six-Year Rule.[1] The general rationale for these Rules was to require an early commitment to the scope of costs needed to facilitate a development so that additional spending is not triggered merely by the availability of an increment revenue stream.[2] The idea behind the Six-Year Rule was to encourage earlier decertification to make the new value quickly available to the tax base.

The Five-Year Rule

The Five-Year Rule is designed to ensure that tax increment revenues are committed within the TIF district within a reasonable time (five years) after the district is certified. The Rule works in concert with both pooling restrictions and the Six-Year Rule, which limit the amount of tax increment that may be used to pay out-district expenditures.[3] Tax increment revenues are considered to have been expended for activities within the district only if one of the following occurs within five years after certification:

(i) the revenues are actually paid to a third party;[4]

(ii) bonds are issued and sold to a third party, tax increment revenues are or will be spent to repay the bonds, and the bond proceeds are to be handled pursuant to Minn. Stat. § 469.1763, subd. 3(a)(2), which generally requires that proceeds will be used to finance the activity and, on the date of

[1] Minn. Stat. § 469.1763. The Five-Year Rule and the Six-Year Rule were enacted at the same time and in the same bill as pooling restrictions. These rules generally apply to TIF districts for which certifications were requested after April 30, 1990. *See* 1990 Laws of Minn. ch. 604, art. 7, §§ 21, 30 and 31(a). Arguably, Tax increment revenues collected in TIF districts prior to the effective date need not be spent within five years.
[2] Minnesota House of Representatives, House Research, Five-Year Rule in TIF.
[3] *See generally* Minn. Stat. § 469.1763. The general pooling limitation requires that the amount of tax increment that may be spent "out-district" be limited to 20% or 25% of the total revenue derived from tax increments paid by properties in the district. The percentage limit differs, depending on the type of district. Minn. Stat. § 469.1763, subd. 2. For more information on pooling, see the OSA's Statement of Position on TIF Pooling.
[4] A "third party" is an entity that is not the party who benefits from the tax increment assistance and is not the development authority. Minn. Stat. § 469.1763, subd. 1(c).

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issuance, are reasonably expected to be spent within the five-year period or are deposited in a reasonably required reserve or replacement fund;

(iii) binding contracts with a third party are entered into for performance of the activity and the revenues are spent to satisfy the contractual obligation;

(iv) activity costs are paid for and revenues are spent to reimburse a party for payment of the costs, including interest on unreimbursed costs; or

(v) expenditures are made for housing purposes or for public infrastructure purposes within a biotechnology and health sciences industry zone.[5]

Obligations entered into after the first five years are "out-district" obligations, even though they are for costs actually incurred within the area of the district.

The Five-Year Rule extends for five years from the date of certification of the TIF district. It runs from the actual certification date, not the request for certification date or the application date.

For redevelopment districts or renewal and renovation districts certified after June 30, 2003, and before April 20, 2009, the Five-Year Rule was extended by the Legislature to ten years. For a redevelopment district certified after April 20, 2009, and before June 30, 2012, the Five-Year Rule was extended to eight years. These extensions were provided primarily to accommodate delays in development activities that occurred in the Great Recession.[6]

Only the revenues derived from tax increments paid by the properties in the TIF district are subject to the Five-Year Rule and the Six-Year Rule (discussed below).[7] Proceeds from the sale or lease of property purchased with tax increments, principal and interest received on loans or advances made with tax increments, interest or other investment earnings on or from tax increments, and repayments to an authority are not subject to the Rules, even though they are all tax increments.[8]

The Six-Year Rule

In the sixth year, and in each year following certification of the district, if the in-district percentage of the tax increment received from the county exceeds the costs spent on in-district obligations that year, the excess must be used only to pay or defease the following or be set aside to pay the following:

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[5] Minn. Stat. § 469.1763, subd. 3. *See also* Minn. Stat. § 469.1763, subd. 2(e).

[6] 2014 Minn. Laws ch. 308, art. 6, §3.

[7] Minn. Stat. § 469.1763, subd. 1(d). Revenues derived from tax increments are paid to development authorities as tax increment settlement payments. A development authority receives its tax increment settlement payments from the county two times a year.

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

(i) outstanding bonds and contracts;

(ii) credit enhanced bonds to which tax increment was pledged, but only to the extent that revenues of the district to which the credit enhanced bonds were issued are insufficient to pay the bonds; or

(iii) additional expenditures authorized in the TIF plan for housing projects that have not been funded with the proceeds of bonds or for public infrastructure purposes within a biotechnology and health sciences industry zone.[9]

By requiring the in-district percentage of tax increment to be used for these purposes in each year, the TIF Act subjects pooling to an annual limit in addition to the overall or cumulative limit.

The TIF district must be decertified, and any pledge of tax increment to bonds discharged, once the outstanding bonds have been defeased and sufficient money has been set aside to pay for:

(i) outstanding contractual obligations under the Five-Year Rule;

(ii) housing projects specified in the TIF plan that have not been funded with the proceeds of bonds issued under the Five-Year Rule; and

(iii) the additional expenditures permitted by the TIF plan for qualified low-income housing.[10]

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[9] *See* Minn. Stat. §§ 469.1763, subd. 3(a) (2) and subd. 3(b) (defining outstanding bonds); Minn. Stat. §§ 469.1763, subd. 3(a) (3) and subd. 3(a) (4) (defining contracts). A bond is legally "defeased" when all of the issuer's obligations related to payment of the bonds have been met. Generally, these obligations are in the documents authorizing the bonds.

[10] Minn. Stat. § 469.1763, subd. 4(b) and subd. 2(d).