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Statement of Position TIF Interfund Loans

Tax increment financing (TIF) uses the increase in property taxes (tax increment) that is expected to result from new development or redevelopment to pay for at least part of the development. Because development must occur before TIF revenues can be collected, the TIF district commonly incurs debt during the development process. In order to finance the new development or redevelopment, a development authority or municipality may loan or advance money to the TIF district from its general fund or any other fund from which it has legal authority to do so.¹ Such an interfund loan or advance is defined as a “bond” in the TIF Act, and can be repaid with tax increment if the loan and the financed costs meet the requirements of Minnesota statutes.²

For all interfund loans, the authority or the municipality assumes the risk. If the development does not occur or if the tax increment generated is insufficient to cover the principal payments on the interfund loan, the interfund loan will not be repaid. Following are statutory requirements for interfund loans and Office of the State Auditor (OSA) recommendations for interfund loan documentation best practices.

Form of Loan

Interfund loans may be structured where the transfer, advance or expenditure represents the full principal amount of the loan, or may be structured as draw-down or line-of-credit obligations of the lending fund.³

Interest Rate

The maximum rate of interest that can be accrued or paid for loans dated after August 1, 2001, is limited to the annual rate charged by the Minnesota state courts or by the

¹ Minn. Stat. § 469.178, subd. 7(a).

² Minn. Stat. § 469.178, subd. 7 and 469.174, subd. 3(b)(5). For qualifying TIF expenditures, *see* Minn. Stat. § 469.176, subd. 4, other limitations under § 469.176-.1763, definitions under § 469.174, and § 469.1794.

³ Minn. Stat. § 469.178, subd. 7(d). Statutory language expressly recognizing interfund loans structured as draw-down or line-of-credit obligations was added during the 2017 legislative session. This new language was generally viewed as a clarification rather than a change in authority. *See* 2017 Minn. Laws, 1st Spec. Sess., ch. 1, art. 6, sec. 8.

Minnesota Department of Revenue, whichever is greater.⁴ The maximum interest rate is set as of the date a loan is authorized unless the written terms and conditions allow the maximum interest rate to fluctuate with adjustments to the interest rates charged by the Minnesota state court or by the Department of Revenue.⁵ An authority or municipality may also decide not to charge interest on an outstanding interfund loan obligation.

Authorizing Resolution

All interfund loans made on or after August 1, 2001, must be authorized by resolution of the governing body of the municipality or of the authority, whichever has jurisdiction over the fund from which the loan or advance is authorized.⁶ The resolution may generally grant to the municipality or the authority the power to make interfund loans under one or more TIF plans or for one or more districts.⁷ This avoids the need for separate resolutions for each individual loan when multiple transfers, advances, or expenditures are anticipated.

The law also addresses the required timing of the authorizing resolution. Any resolution authorizing an interfund loan may be adopted either before or after the adoption of the TIF plan or the creation of the TIF district that will repay the loan.⁸ However, the timing of the authorizing resolution relative to the making of the loan depends on the date the loan was made.

For loans made before May 31, 2017, the resolution authorizing the loan must have been adopted before the money was transferred, advanced, or spent, whichever was earliest.⁹

For loans made on or after May 31, 2017, the resolution must be adopted not later than 60 days *after* money is transferred, advanced, or spent, whichever is earliest.¹⁰

Written Terms and Conditions

Under Minnesota law, the terms and conditions for repayment of the interfund loan must be in writing, and include, at minimum, (i) the principal amount, (ii) the interest rate to be charged, and (iii) the maximum term.¹¹

⁴ Minn. Stat. §§ 469.178, subd. 7(d), 270C.40 and 549.09. *See* Attachment A. Loans made prior to August 1, 2001, were not limited for interest accrued or paid prior to August 1, 2001, but any interest accrued or paid on or after August 1, 2001, is subject to the interest rate limits.

⁵ Minn. Stat. § 469.178, subd. 7(d).

⁶ Minn. Stat. § 469.178, subd. 7(b). Prior interfund loans were ratified by the law enacting interfund loan requirements. *See* 2001 Minn. Laws, 1st Spec. Sess., ch. 5, art. 15, sec. 3.

⁷ Minn. Stat. § 469.178, subd. 7(c).

⁸ Minn. Stat. § 469.178, subd. 7(c). Statutory language expressly recognizing interfund loan resolutions adopted prior to TIF plan adoption or TIF district creation as valid was added during the 2017 legislative session, but this language was generally viewed as a clarification rather than a change in authority. *See* 2017 Minn. Laws, 1st Spec. Sess., ch. 1, art. 6, sec. 8.

⁹ Minn. Stat. § 469.178, subd. 7(2016).

¹⁰ Minn. Stat. § 469.178, subd. 7(b).

For interfund loans made before August 1, 2001 that lack documentation specifying the principal amount, state law requires that the principal amount of the loan or advance be limited to a maximum amount equal to the largest negative cash balance that existed at any time in the fund that received the undocumented loan or advance.¹²

As a best practice, the OSA recommends that the municipality or authority prepare a *single written document* at the time of making the loan with the principal amount of the loan, the interest rate (or zero interest if appropriate), the structure of the loan, and the maximum term of the loan. This document will be helpful both for reference when an authority or municipality experiences staff turnover and for ease and efficiency when working with the OSA during compliance reviews.

The written terms of the loan may be modified or amended in writing by the municipality or the authority before the latest decertification of any TIF district from which the loan is to be repaid.¹³

Reporting

Minnesota law requires that the municipality or authority annually report to the OSA (a) any interfund loan made in the calendar year and its amount, and (b) any amendment to an interfund loan made in the calendar year.¹⁴ For questions regarding TIF reporting requirements, please contact the TIF Division staff or visit the OSA website.

¹¹ Minn. Stat. § 469.178, subd. 7(d).

¹² 2001 Minn. Laws, 1st Spec. Sess., ch. 5, art. 15, sec. 3.

¹³ Minn. Stat. § 469.178, subd. 7(d).

¹⁴ Minn. Stat. § 469.178, subd. 7(e).

Table 1: Comparison of Interfund Loan Requirements by Date of Loan

	Date of Interfund Loan		
	On or after May 31, 2017	August 1, 2001, to May 31, 2017	Before August 1, 2001
Resolution Required?	Yes	Yes	No
Timing of Adoption of Resolution?	No later than 60 days after the earliest of money transfer, advance or spending. Can be before or after TIF plan adoption or creation of district.	Before the earliest of money transfer, advance or spending. Can be before or after TIF plan adoption or creation of district.	N/A
Written Terms Required?	Yes. At a minimum, must include: <ul style="list-style-type: none"> • Principal amount • Interest rate • Maximum term 	Yes. At a minimum, must include: <ul style="list-style-type: none"> • Principal amount • Interest rate • Maximum term 	Not required. If no written terms, principal amount is deemed limited to a maximum equal to largest negative cash balance that existed in the fund that received the undocumented loan or advance.
Modification of Written Terms?	Permitted if done in writing before last decertification of any district from which loan repayment is to occur.	Permitted if done in writing before last decertification of any district from which loan repayment is to occur.	Permitted if done in writing before last decertification of any district from which loan repayment is to occur.
Interest Rate Limit?	Limited to greater of annual rate charged by state courts or Department of Revenue. Maximum rate is set as of date loan is authorized unless written terms allow for fluctuation with rates set by state courts or Department of Revenue.	Limited to greater of annual rate charged by state courts or Department of Revenue. Maximum rate is set as of date loan is authorized unless written terms allow for fluctuation with rates set by state courts or Department of Revenue.	No limit for interest accrued or paid before August 1, 2001. For interest accrued or paid on or after August 1, 2001, limited to greater of annual rate charged by state courts or Department of Revenue. Maximum rate is set as of date loan is authorized unless written terms allow for fluctuation with rates set by state courts or Department of Revenue.
Form of Loan?	May be structured: <ul style="list-style-type: none"> • Where the expenditure, transfer or advance is the full principal, or • As a draw-down or line-of-credit obligation. 	May be structured: <ul style="list-style-type: none"> • Where the expenditure, transfer or advance is the full principal, or • As a draw-down or line-of-credit obligation. 	May be structured: <ul style="list-style-type: none"> • Where the expenditure, transfer or advance is the full principal, or • As a draw-down or line-of-credit obligation.
Reporting to OSA Required?	Yes. New loans and amendments in calendar year when made, annual reporting thereafter.	Yes. New loans and amendments in calendar year when made, annual reporting thereafter.	Yes. New loans and amendments in calendar year when made, annual reporting thereafter.
Assumption of Risk?	Municipality or development authority assumes all risk.	Municipality or development authority assumes all risk.	Municipality or development authority assumes all risk.

**TIF Interfund Loan
Interest Rate Maximums¹⁶**

State District Court

Year	M.S. 549.09 Rate ¹
2018	4%
2017	4%
2016	4%
2015	4%
2014	4%
2013	4%
2012	4%
2011	4%
2010	4%
2009	4%
2008	4%
2007	5%
2006	4%
2005	4%
2004	4%
2003	4%
2002	2%
2001	6%

Department of Revenue

Year	M.S. 270C.40 Rate ¹⁵
2018	4%
2017	4%
2016	3%
2015	3%
2014	3%
2013	3%
2012	3%
2011	3%
2010	3%
2009	5%
2008	8%
2007	8%
2006	6%
2005	4%
2004	4%
2003	5%
2002	7%
2001	9%

¹⁵ See the Minnesota Department of Revenue website at:
http://www.revenue.state.mn.us/individuals/individ_income/Pages/Interest_Rates.aspx.

¹⁶ See Minn. Stat. § 469.178, subd. 7 (limiting the maximum rate of interest to be charged to the greater of the rate specified in section 270C.40 or section 549.09).