



REBECCA OTTO
STATE AUDITOR

STATE OF MINNESOTA

OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@osa.state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

Statement of Position TIF Plan Requirements

To form a tax increment financing (TIF) district, the TIF Act requires the development authority to describe in a TIF plan the project to be financed with tax increment and to provide specific information about the development activity that is to occur.¹ The TIF plan, created by the authority, reviewed by the county and school district, and approved by the municipality, authorizes the establishment of the TIF district.²

I. The Basics

The TIF plan must identify the development activity to take place within the project or project area.³ The TIF plan must include:

Statement of the Authority's Objectives

A number of types of TIF districts are in existence and each type has different statutory requirements governing its creation.⁴ The statement of an authority's objectives for improvement of a project should be tailored to the type of TIF district being created and to specific facts.⁵

¹ Minn. Stat. § 469.175, subd. 1. The TIF Act is found at Minn. Stat. §§ 469.174 through 469.1794 inclusive, as amended.

² A "tax increment financing district" is defined, in part, as "a contiguous or noncontiguous geographic area within a project delineated in the tax increment financing plan." Minn. Stat. § 469.174, subd. 9.

³ Minn. Stat. § 469.175, subd. 1(a) (1) through (4).

⁴ Common types of TIF districts currently in existence are: Redevelopment, Housing, Economic Development, and Renewal and Renovation. Office of the State Auditor, Tax Increment Financing Legislative Report for the Year Ended Dec. 31, 2011, at 14, fig. 6.

⁵ A "project" is a term used to identify the geographic area in which tax increment is to be spent to further proposed development activity. In addition, within the context of the TIF plan, "project" means the development activity that will occur within the TIF district and project area. *See, generally*, Minn. Stat. § 469.174, subd. 8. *See also* Minn. Stat. § 469.002, subd. 12.

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

Statement of Property

A statement as to property within the project that the authority intends to acquire must include the specific property by parcel name, identifiable property name, block, or other appropriate means.

List of Development Activities

The TIF plan should include development activities that are proposed to take place within the project and for which the authority has entered into an agreement or designated a developer.

Development activities vary depending on the type of TIF district. Specific development activities include:⁶

- (i) acquisition of land and buildings through condemnation or purchase;
- (ii) site improvements or preparation;
- (iii) installation of public utilities, parking facilities, streets, roads, sidewalks, or other similar public improvements;
- (iv) administrative activities; and
- (v) for housing districts, construction of affordable housing.

The list of development activities for which there are agreements or designated developers must identify: (i) the names of the parties or designated developer; (ii) the activity governed by the agreement or designation; and (iii) the expected date of completion of that activity.⁷

Other Specific Development Activity

TIF plans must include information on development activities that *will occur* within the TIF district and on development activities that *are expected to occur* within the TIF district. Other development activity to be financed with tax increment is likely to include activity for which a contract has not yet been signed. Identification or description of the type of other specific development activity reasonably expected to take place in the district and the date when the development activity is likely to occur should be included in the TIF plan.⁸

⁶ Minn. Stat. § 469.175, subd. 6 (c) (14). This list of development activities is not a comprehensive list. For more information on administrative costs, for example, see OSA's Statement of Position: TIF Administrative Costs. *See also* Sample Format in Attachment to this Statement of Position.

⁷ Minn. Stat. § 469.175, subd. 1(a) (3).

⁸ Minn. Stat. § 469.175, subd. 1(a) (4).

II. Estimates of the “Cost of the Project”

Cost estimates, including estimates of the “cost of the project” and “interest as a financing cost,” must be in the TIF plan.⁹ A 2009 Amendment to the TIF Act clarified the term, “cost of the project” to be costs, “including administrative expenses . . . , which will be paid or financed with tax increments from the district.”¹⁰

The cost of financing varies independently from the cost of the project. The 2009 Amendment clarified that “interest as a financing cost” is to be identified separately from the project costs in the TIF plan. If interest is to be paid with tax increment, the use of TIF to pay interest must also be separately identified in the TIF plan.

If an authority expects to exceed the estimated “cost of the project” stated in the TIF plan, or otherwise decides to increase the project costs, the authority must modify the TIF plan by using the same procedure required for approval of the original TIF plan.¹¹ The TIF plan must be modified before the additional tax increment expenditures are made.

An increase in financing cost, however, does not trigger a TIF plan modification. If the financing costs turn out to be less than the original estimate stated in the TIF plan, the difference in the estimated amount cannot be reallocated to project costs.

The Amendment also requires that the total estimated costs to be paid with tax increment cannot exceed the amount of estimated tax increment to be generated from the development activity in the district.¹² Costs that exceed that amount will not be paid for or financed with tax increment and, therefore, are not “costs of the project” and should not be included in the TIF plan.¹³

III. Bonds

The use of bonds allows the “cost of the project” to be paid over time as tax increment becomes available. An estimate of the total amount of bonds expected to be issued over the life of the TIF district is required to be included in the TIF plan.¹⁴

⁹ Minn. Stat. § 469.175, subd. 1(a) (5) (i).

¹⁰ See Minn. Stat. § 469.175, subd. 1(a) (5) (i); see 2009 Minn. Laws, ch. 88, art. 5, §4, and ch. 101, art. 2, § 90. The 2009 Amendment made clearer what “cost of the project” is not: It is not the total public and private costs of the development activity, or all public costs necessary to make the development occur, or those items that, “but for” their expenditure, the development activity would not occur.

¹¹ Minn. Stat. § 469.175, subd. 4(a) (5).

¹² Before the 2009 Amendment, TIF plans commonly contained estimates of total project costs that could be paid from a variety of sources. These estimates, which would often total many times the estimated tax increment to be generated by the development activity, distorted the amount of tax increment activity actually occurring.

¹³ If non-TIF expenditures are included in the TIF plan document, they must be identified separately.

¹⁴ Minn. Stat. § 469.175, subd. 1(a) (5) (ii). For additional information, see the OSA’s Statement of Position, TIF Bond Financing of Project Costs. See Sample Format in Attachment to this Statement of Position.

The definition of “bonds” in the TIF Act is broad and includes some instruments that may not commonly be thought of as bonds. The term, “bonds,” includes the following:¹⁵

- general obligation or revenue bonds issued by an authority under section 469.178 of the TIF Act;
- obligations issued in aid of a project under any other law, except private activity bonds, prior to August 1, 1979;¹⁶
- refunding bonds;
- notes, including pay-as-you-go (PAYG) notes;
- interim certificates;
- debentures; and
- interfund loans or advances qualifying under section 469.178, subd. 7.

IV. Original Net Tax Capacity

The TIF plan must contain a statement of the original net tax capacity (ONTC) of the taxable real property located within the TIF district and in any subdistrict. All properties located within the TIF district have a known net tax capacity at the time the district is established.¹⁷ Upon adoption of a TIF plan, the county auditor for the county in which the district is located is required, upon request of the authority, to certify the ONTC of the TIF district.¹⁸

V. Estimated Captured Net Tax Capacity

The TIF plan must include the estimated captured net tax capacity.¹⁹

The difference between the estimated net tax capacity at completion of the district and the ONTC equals the estimated captured net tax capacity. To determine an accurate estimate of tax increment to be generated by development activity in the district, the captured net tax capacity is multiplied by the original local tax rate (OLTR).²⁰

The method of calculation must be reasonable. Factors that may be taken into account include: market forces, inflation, and future phases of development activity. A TIF plan that contains a seemingly unsupported estimate captured net tax capacity may receive a request by the OSA to provide additional information.

¹⁵ See Minn. Stat. § 469.174, subd. 3. Interfund loans, in particular, are not thought of as bonds and are often overlooked.

¹⁶ Obligations issued in aid of a project under any other law are government bonds issued in aid of a project, as “project” is defined in Minn. Stat. § 469.174, subd. 8.

¹⁷ See Minn. Stat. § 469.175, subd. 1(a) (5) (iii).

¹⁸ Minn. Stat. § 469.177, subd. 1(a).

¹⁹ Minn. Stat. § 469.175, subd. 1(a) (5) (iv).

²⁰ The county auditor certifies the OLTR in effect for the same taxes payable year applicable to the ONTC certified for the district. This resulting tax capacity rate is the OLTR for the life of the district. See, generally, Minn. Stat. § 469.177 (computation of tax increment).

VI. Duration Limit and Existence of Any Subdistrict

The TIF plan should identify the duration limit of the district. Each type of TIF district has a different statutory maximum duration limit.²¹ In addition, at the time of approval of the TIF plan, a municipality may provide for a shorter maximum duration limit than the statutory limit. If the original TIF plan provides a shorter maximum duration limit, the shorter limit applies unless the authority later modifies the plan.²² The identification of a duration limit should be specific, clear, and free of tentative qualifications (*i.e.*, a “reservation of rights”) so as to give the county auditor a date certain to apply.

In addition, the TIF plan should contain a statement as to whether a subdistrict exists.

VII. Alternate Impact of TIF

The authority must make, and the TIF plan must contain, two alternate statements of impact of tax increment financing on the net tax capacities of all taxing jurisdictions in which the TIF district is located.²³ One statement must be based on the assumption that all estimated captured net tax capacity would be available to the taxing jurisdictions *without* creation of the TIF district. The second statement must be based on the assumption that none of the estimated captured net tax capacity would be available to the taxing jurisdictions without the creation of the district.

VIII. Support for Required Findings

One of the findings required when establishing a TIF district, commonly known as the “but-for” test, must be discussed in the TIF plan.²⁴

The TIF plan must include identification and descriptions of studies and analyses used to make the determination that, in the opinion of the municipality, 1) the proposed development would not reasonably be expected to occur solely through private development within the reasonably foreseeable future; and 2) the increased market value of the site without the assistance of tax increment would be less than the increased market value with the assistance of tax increment.²⁵ The reasons and supporting facts must include: 1) an estimate of the amount of market value increase of the site without the use of TIF; 2) an estimate of the increase in the market value that will result from the development being assisted with TIF; and 3) the present value of the projected tax increments for the maximum duration of the district permitted by the TIF plan.²⁶

²¹ Minn. Stat. § 469.176, subd. 1b (a).

²² Minn. Stat. § 469.176, subd. 1(a) (1) and (2). *See* Minn. Stat. § 469.175, subd. 4(b) (TIF plan modifications).

²³ Minn. Stat. § 469.175, subd. 1 (a) (6).

²⁴ Minn. Stat. § 469.175, subd. 3(b) (2). The requirements of this item do not apply if the district is a housing district.

²⁵ Minn. Stat. § 469.175, subd. 1(a) (7).

²⁶ Minn. Stat. § 469.175, subd. 3(d).

Before or at the time of approval of the TIF plan, the municipality must make certain additional findings.²⁷ The various findings and the reasons and supporting facts for each of them must be in writing, a copy of which is retained by the authority, and they must be made available to the public by the authority until the district has been terminated. These required additional findings do not need to be included in the TIF plan.

IX. Identification of Parcels

All parcels to be included in the district or any subdistrict must be identified in the TIF plan.²⁸ The parcels must be legally described, usually by using property identification numbers (or PINs). The legal description must be clearly stated to enable the county to correctly record all the parcels in the district in the county records.

X. Election to Delay Receipt of TIF

If an authority chooses to delay receipt of tax increment, that fact must be clearly stated in the TIF plan. The payment of the first tax increment may be delayed up to four years following the year of approval of the district.²⁹ The term of a TIF district is calculated beginning in the year in which the first tax increment is received.

The authority must identify in the TIF plan the year it elects to begin to receive tax increment. The specific year of the election must be clearly identified so that the county auditor recognizes the election.

²⁷ Minn. Stat. § 469.175, subd. 3(b).

²⁸ Minn. Stat. § 469.175, subd. 1 (a) (8).

²⁹ Minn. Stat. § 469.175, subd. 1(b). The election to delay receipt of the first tax increment does not apply to economic development districts. For additional information, see the OSA's Statement of Position, Election to Delay Receipt of First TIF Revenues.

Attachment

Following is an example of estimated total project costs in a format that could be used in a TIF plan. This format shows interest as a cost of the project, separate from the project’s development activity costs. Bonds and bond costs are also separated from project costs to assure that project costs are not counted twice.

Sample Format

Estimated Total Project Costs

Development Activity Costs

Land/building acquisition	\$ _____
Site improvements/preparation costs	\$ _____
Utilities.....	\$ _____
Other public improvements.....	\$ _____
Construction of affordable housing	\$ _____
Authority administrative costs ³⁰	\$ _____
County administrative costs	\$ _____
SUBTOTAL	\$ _____
Interest on bonds ³¹	\$ _____
TOTAL PROJECT COSTS	\$ _____

Estimated Amount of Bonds to Be Issued

Principal amount of bonds	\$ _____
Bond closing costs ³²	\$ _____
TOTAL BOND PROCEEDS	\$ _____

³⁰ For a definition of administrative costs or expenses, see Minn. Stat. § 469.174, subd. 14. If administrative expenses are to be paid with tax increment, administrative expenses should be included in the cost of the project in the TIF plan.

³¹ Interest costs include capitalized interest costs.

³² Closing costs include any bond discount and bond issuance costs.