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## Statement of Position
## Redistribution of Tax Increment

The Tax Increment Financing (TIF) Act requires that tax increment be returned to the county for redistribution (i) when TIF expenditures are made in violation of the TIF Act; (ii) when tax increment generated exceeds the total costs authorized for expenditure in a district's TIF plan; or (iii) when tax increment has been distributed after the maximum duration limit of a TIF district.[1]

**Improper Expenditure of Tax Increment**

If an authority expends tax increment for a purpose not permitted under the TIF Act, because (i) tax increment was collected from a property that did not qualify for inclusion or retention in a TIF district, (ii) tax increment was expended for a non-qualifying purpose, or (iii) tax increment was expended on activities outside the geographic area authorized, the authority or the municipality must pay to the county auditor an amount equal to the expenditures made in violation of the law.[2]

When tax increment is returned to the county in which a development authority is located, the county auditor redistributes the tax increment to the city or town, county, and school district in direct proportion to their respective local tax rates for the year in which the redistribution is to be made.[3] Special taxing districts are not included in the redistribution.

If the county auditor receives the payment from a municipality before 60 days have passed since a municipality's receipt of the state auditor's notification of noncompliance requiring payment and before commencement of legal action by the county attorney to compel payment, the municipality will receive its proportional share when the county auditor redistributes the money. If the payment is not made within the time required, the municipality will not be included in the redistribution.[4]

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[1] Minn. Stat. §§ 469.174 - .1794, inclusive, as amended.
[2] Minn. Stat. § 469.1771, subd. 3.
[3] Minn. Stat. § 469.176, subd. 2(c) (4).
[4] Minn. Stat. § 469.1771, subd. 5(a).

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**Excess Tax Increment**

When the amount of tax increment generated by a district exceeds the total costs authorized for expenditure in a district's TIF plan, it becomes excess increment.[5] The TIF Act limits how this excess increment can be used. It can be used 1) to prepay any outstanding bonds; 2) to discharge the pledge of tax increment for any outstanding bonds; 3) to pay into an escrow account dedicated to the payment of any outstanding bonds; or 4) it can be returned to the county for redistribution.[6] In this context, the term, "outstanding bonds," is limited to mean "bonds which are secured by increments from the district."[7]

Excess tax increment exists in any year in which tax increment remains after a TIF district has sufficient funds to pay all debt obligations and other financial commitments authorized by its TIF plan for the life of the district.[8]

Authorities are to determine annually the amount of excess increment as of December 31 of the year. The determination must be based on the TIF plan in effect on December 31 and on the increments and other revenues received as of December 31 of that year. The authority must return the excess increments to the county auditor within nine months (by September 30).[9]

If excess tax increment is expended on activities other than those related to repayment of bonds as enumerated above, the authority or the municipality must pay to the county auditor an amount equal to the expenditures made in violation of the law.

The county auditor is responsible for distributing the excess tax increment to the municipality, county, and school district in which the TIF district is located.[10] After the county auditor distributes the money in direct proportion to the local tax rates of the municipality, county, and school district, the county auditor must report the amount of any excess tax increment distributed to a school district to the Commissioner of Education within 30 days of the distribution.[11]

**Tax Increment Obtained After Maximum Duration Limit**

If the county auditor distributes tax increments to an authority for a TIF district (i) after the maximum duration limit for the district, or (ii) from delinquent property taxes paid on

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[5] *See* Minn. Stat. § 469.176, subd. 2 (excess increment).
[6] Minn. Stat. § 469.176, subd. 2(c).
[7] Minn. Stat. § 469.176, subd. 2(c) and (f).
[8] Excess tax increment should not be confused with excess taxes: they are two different concepts. The redistribution of excess tax increment refers to properly determined tax increment that exceeds the amount authorized for expenditure. Excess taxes are the amount of taxes attributable to the current tax rate being greater than the original local tax rate. The formula for distribution of excess taxes takes into account the extent to which a jurisdiction's rates are creating the excess. *See* Minn. Stat. § 469.177, subd. 9.
[9] Minn. Stat. § 469.176, subd. 2(a).
[10] Minn. Stat. § 469.176, subd. 2(c) (4).
[11] Minn. Stat. § 469.176, subd. 2(e).

a parcel in a TIF district, but the tax increment is received after decertification of the district and after all its outstanding obligations have been paid, the authority must return the tax increment to the county auditor for redistribution.

If delinquent property taxes have been collected after decertification of a district and if there are no outstanding TIF obligations in that district, the delinquent property taxes are regular property taxes, not excess tax increment and not excess taxes. They must be distributed in the same way as all property taxes are distributed in the county.

To the extent that nonpayment of property taxes on a parcel in the district caused a municipality or other TIF authority to pay a district's outstanding bonds or contractual obligations from sources other than tax increment or to not pay them at all, payments of the delinquent property taxes are tax increment.[12] Municipalities and other TIF authorities must be reimbursed by the county auditor from the payments made for delinquent taxes in an amount sufficient to cover the payments that had been made on the bonds and on any other contractual obligation using non-TIF funds, but not more than the amount of the payment for delinquent taxes. This reimbursement by the county auditor using tax increment is unusual in that it allows the use of tax increment to reimburse a municipality for spending non-TIF money on a TIF project.[13]

The authority must provide the county auditor with information regarding the payment of the outstanding bonds and other contractual obligations and any other information necessary to administer the payment, as requested by the county auditor.[14]

**Disposition of Payments**

If the authority does not have sufficient tax increment or other available funds to make repayment of the amount expended in violation of the TIF Act, the municipality that approved the TIF district must make the repayment. If funds for repayment are not available, the municipality must levy property taxes. If the payment is made voluntarily and is timely, the redistribution by the county auditor to the local taxing jurisdictions will include payment to the municipality. [15]

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[12] Minn. Stat. § 469.176, subd. 1f.
[13] The TIF interfund loan provision, Minn. Stat. § 469.178, subd. 7, does not apply here.
[14] Minn. Stat. § 469.176, subd. 1f.
[15] Minn. Stat. § 469.1771, subd. 5.