TAX INCREMENT FINANCE
IN
INDIANA

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Real Estate/Land Use
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Education
Indiana University Maurer School of Law - Bloomington, J.D., *summa cum laude*, 1992;
Indiana University, B.S. in Business, 1989

Bar Admissions
Indiana, 1992

Court Admissions
U.S. District Court for the Northern District of Indiana, 1992;
U.S. District Court for the Southern District of Indiana, 1992;
U.S. Court of Appeals for the Seventh Circuit, 1998

Steve Hardin practices with the firm's real estate and land use group and represents developers, contractors, landlords, tenants and property owners in a variety of real estate transactions. His areas of expertise include the acquisition, zoning, development, leasing and disposition of and economic incentives for office, retail, industrial and residential properties.

The Indiana University business graduate spent four years in the real estate development business before returning to IU to earn his law degree in 1992. Steve is active in a number of professional, industry and community organizations. He also is a frequent author of articles and presenter at seminars on real estate issues. Steve publishes a regular *Real Estate Alert* for the real estate community.

Representative Projects

- Southeast Fishers — a 600-acre mixed-use development involving six individual developers in Fishers/Geist area
- Promenade of Noblesville — a 160-acre mixed-used development in Noblesville
- Aurora — 300-acre mixed-use development in Westfield
- Fishers Marketplace — a 104-acre mixed-use development in Fishers
- Hamilton Healthcare Campus — a 130,000 square foot medical office development in Noblesville
- Villages at Brookside — a 300-acre mixed-use development in McCordsville
- Meridian & Main II — a 30-acre mixed-use redevelopment project in Carmel
- River Place – a $350 Million mixed-use development in Fishers

Honors

- *Chambers USA: A Guide to America's Leading Business Lawyers* (recommended in real estate and recognized each year since 2005)
- Hamilton County Builders' Council — Associate Member of the Year, 2007
- Indiana State Bar Association — President's Citation, 2001
- Indiana Bar Foundation — Fellow, 2001-present
- *Indianapolis Business Journal* — Forty Under 40 Award, 2001
- United Way of Central Indiana — Bradford B. Boyd Award, 2001
- Indiana University School of Law — Order of the Coif; Order of the Barristers; Chicago Bar Association Moot Court Competition, Overall Team Champions and Best Brief Award, 1991
- Hamilton County Leadership Academy, 2002-03
- Ardath Burkhart Board Leadership Series, 1998-99

Civic Activities

- Builders Association of Greater Indianapolis (2001-present): Government Affairs Committee (Chairman, 2007-08; Hamilton County Liaison, 2003-08); Hamilton County Council, Director, 2004-present
- Pro Bono Counsel for Habitat for Humanity of Hamilton County, 2009-present
- Fishers, Noblesville and Westfield Chambers of Commerce, 2002-present
- Hamilton County Alliance, 2002-present
- S.P.O.R.T.S. — Baseball Coach, 2006-2008
- Hamilton Southeastern Schools Foundation — Board Member, 2007-present
- Amy Beverland Elementary School — Dad's Club, President, 2000-02

Professional Associations

- Indiana State Bar Association: Land Use Section (Chair, 2008 - present; Chair-Elect, 2006-08; Secretary-Treasurer, 2001-05); Nominating Committee, 2006; Multijurisdictional Practice Task Force, 2001-02; Long-Range Planning Committee, Vice Chair, 2001; Board of Governors, 1999-2000; Young Lawyers Section (Chair, 1999-2000; Chair Elect, 1998-99; Secretary-Treasurer, 1997-98)
- Hamilton County Bar Association, 2001-present
- Indiana Bar Foundation, 2000-present
- American Bar Association — Real Property Section: Environmental Litigation Committee; Young Lawyers Division Assembly, Delegate, 1997-2001
- American Inns of Court, 1993-2002

Memberships

- Geist Christian Church — Member, 2003-present
- International Violin Competition of Indianapolis — Board of Directors, 1997-2002
- Paul I. Cripe Charitable Foundation — Board of Directors, 2001-present
- Marion County Family Advocacy Center — Board of Directors, 2001-02
- Hamilton County Fifty Club, 2004-present

Publications & Presentations

- "Advanced Real Estate – The Masters Series," ICLEF, 2009
- "Current Strategies for Economic Development Projects," ICLEF, 2009
- "Zoning and Planning Legal Update," Indiana Planning Association, 2009
- "Advanced Real Estate — The Masters Series," ICLEF, 2008
- "Practical Guide to Land Use Law," Municipal Law XXV, Indiana Association of Cities and Towns, 2008
- "Constitutional Limitations on Zoning Actions," Practical Guide to Zoning and Land Use Law, NBI, 2008
- "2008 Legislative Update," Land Use and Zoning, ICLEF, 2008
- "Analyze the Land Subdivision Process," Land Use Law: Current Issues in Subdivisions, Annexation and Zoning, NBI, 2007
- "The Power to Zone," Land Use and Zoning Law Litigation, NBI, 2007
- "The Law of Vested Rights and Nonconforming Uses In Indiana," Planning and Zoning, ICLEF, 2007
- "Land Use Law," Indiana Land Law, HalfMoon Seminars, 2007
- "Special Zoning Issues," Practical Guide to Zoning and Land Use Laws, NBI, 2006
- "Adoption and Amendment of Zoning Ordinance and Map," Practical Guide to Zoning and Land Use Laws, NBI, 2006
- "Zoning Litigation," Land Use and Zoning, NBI, 2006
- "The Effective Rezoning Presentation," Land Use and Zoning, ICLEF, 2005
- "Adoption and Amendment of Zoning Ordinance and Map and Special Issues in Zoning Law," A Practical Guide to Zoning and Land Use Law in Indiana, NBI, 2005
- "Land Use and Real Estate Law Update," 15th Year in Review, ICLEF, 2004
- "Conditional Zoning: Conditions, Commitments and Covenants," Real Estate Institute, ICLEF, 2003
- "Fundamental Zoning and Land Use Actions," Land Use and Zoning, NBI, 2003
- "Special Issues in Land Use Law," Zoning Law, NBI, 2003
- "Presenting the Effective Zoning Case," Zoning Law, ICLEF, 2002
- "Land Use Litigation," ISBA, 2001

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TAX INCREMENT FINANCE IN INDIANA

Legislative History

Tax increment finance ("TIF") laws currently exist in more than thirty states. The concept was originally used as a method to raise the required local share for federal urban renewal programs. It permitted local governmental units to recapture their contributions to renewal projects from the increased property taxes generated.

The original TIF legislation in Indiana was enacted in 1975. The legislation amended IC 36-7-14, the redevelopment statute applicable to units other than Indianapolis, and IC 36-7-15.1, applicable solely to Indianapolis. Although there were additional amendments in 1977, the statute remained dormant because of technical deficiencies until additional changes were adopted during the 1980 legislative session. While the primary TIF provisions are found in the two redevelopment statutes, IC 6-1.1-39 authorizes TIF for the repayment of state loans. The redevelopment law is generally the most useful TIF authority for governmental units.

General Overview of TIF

Statutory cites for TIF are IC 36-7-14 (which applies to (i) counties, cities, and towns other than Indianapolis and (ii) "excluded cities" in Marion County that elect to be governed by IC 36-7-14), IC 36-7-15.1 (which applies only to Indianapolis and to those excluded cities in Marion County that do not elect to be governed by IC 36-7-14), and IC 6-1.1-39 (which authorizes the use of TIF to pay loans from the state). This discussion will focus primarily on IC 36-7-14 and IC 36-7-15.1. Both statutes will be discussed generally, with any differences noted.

Redevelopment commissions can exercise their powers (other than eminent domain) in "economic development areas," the establishment of which does not require a finding of being an "area needing redevelopment." Thus, TIF bonds can be issued to fund development activities in non-blighted areas that promote job opportunities. It should be noted that, for bonds authorized to be issued by a redevelopment commission in a resolution adopted after June 30, 2008, the bonds may not be issued without the prior approval, by resolution, of the legislative body of the unit. See IC 36-7-15.1-28, IC 36-7-15.1-29 and IC 36-7-15.1-30 (Indianapolis); and IC 36-7-14-2.5, IC 36-7-14-41 and IC 36-7-14-43 (all other units).

<u>The basic purpose of TIF is as follows</u>:

1. In general, TIF provides for the temporary allocation to redevelopment districts of increased tax proceeds (known as "increment") in an allocation area generated by increases in assessed value. Thus, TIF permits units to use increased tax revenues stimulated by redevelopment to pay for the capital improvements needed to induce the redevelopment.

2. Depreciable personal property may be used as increment under limited circumstances.

<u>The basic TIF theory is as follows:</u>

1. Freeze property assessments at pre-development level in a designated area (an "allocation area").

2. Issue municipal bonds to finance portion of redevelopment.

3. As property values (and assessments) in area increase, use increment in tax revenues to meet debt service on issued bonds.

4. All public bodies benefiting from the redevelopment share the costs of public improvements associated with the redevelopment. When the redevelopment costs have been paid, the tax allocation is discontinued and all public bodies enjoy the benefits of increased property tax values.

<u>Some "PROS" of TIF are as follows:</u>

1. TIF makes redevelopment self-financed.

2. TIF is highly flexible because no referendum or petition approval is necessary (unless, in the case of units other than Indianapolis, special taxes are to be levied in addition to the increment), there is local control, and no debt limitation applies (unless, in the case of units other than Indianapolis, special taxes are to be levied, in which case the debt limit by statute is 2% of net assessed valuation).

3. TIF shifts the risk of redevelopment from taxpayers to bondholders.

<u>Some "CONS" of TIF are as follows:</u>

1. TIF assumes all increment is caused by redevelopment, to detriment of overlapping taxing districts.

2. Some increment may be result of other forces such as marketplace and demography.

3. Freezing tax base overlooks increased services other taxing districts may be called on to provide and may limit the ability of other taxing units to raise additional needed taxes or cause tax rates to increase to provide needed revenues.

4. "Pure" TIF bonds pose a greater risk to investors and, as such, bear higher interest rates than general obligation bonds.

Description of Procedure for Implementation

Creation of a Redevelopment Commission

1. Any city, town, or county may establish a Department of Redevelopment controlled by a board of five members (seven in a county unit that elects to have seven rather than five) ("Redevelopment Commission").

2. Three of the members of a municipal (city or town) Redevelopment Commission are appointed by the municipal executive (mayor for a city and president of the town council for a town), and two are appointed by the municipal legislative body (common council for a city and town council for a town). The municipal executive must also appoint an individual to serve as a nonvoting adviser to the Redevelopment Commission who must be a member of the school board of a school corporation that includes all or part of the territory served by the Redevelopment Commission.

3. The members of a county Redevelopment Commission are appointed as follows: (a) three members for Redevelopment Commissions with five members (four members for Redevelopment Commissions with seven members) shall be appointed by the county executive, and (b) two members for Redevelopment Commissions with five members (three members for Redevelopment Commissions with seven members) shall be appointed by the county fiscal body. The county executive must also appoint an individual to serve as a nonvoting adviser to the Redevelopment Commission who must be a member of the school board of a school corporation that includes all or part of the territory served by the Redevelopment Commission.

4. A member of a Redevelopment Commission must be at least eighteen years of age and must be a resident of the governmental unit he or she serves.

Redevelopment Plan

The Redevelopment Commission, utilizing city or county personnel and/or outside consultants, must prepare a redevelopment plan that will provide evidence to support the findings that the Redevelopment Commission must make by statute, describe the redevelopment or economic development activities to be undertaken, and provide other information required by statute or the Department of Local Government Finance (DLGF) and State Board of Accounts administrative TIF regulations. The preparation of the redevelopment plan often takes several weeks.

Declaratory Resolution

After the redevelopment plan is completed, the Redevelopment Commission passes a "Declaratory Resolution" which describes the "redevelopment project area" (a new term in the statute that replaces the prior term "redevelopment area") or economic development area, makes this area an allocation area, adopts a plan of redevelopment or economic development and makes required statutory findings. A "redevelopment project area" must be an "area needing redevelopment" (a new term in the statute that replaces the prior term "blighted area"), which is defined in IC 36-7-1-3 as an area in which normal development and occupancy are undesirable or impossible because of any of a number of factors. IC 36-7-1-3 reads as follows:

> "Area needing redevelopment" means an area in which normal development and occupancy are undesirable or impossible because of any of the following:
>
> (1) Lack of development.
>
> (2) Cessation of growth.
>
> (3) Deteriorated or deteriorating improvements.
>
> (4) Environmental contamination.
>
> (5) Character of occupancy.
>
> (6) Age.
>
> (7) Obsolescence.
>
> (8) Substandard buildings.
>
> (9) Other factors that impair values or prevent a normal use or development of property.

However, an "economic development area" does not have to be an "area needing redevelopment." Instead, the key findings in an "economic development area" relate to the plan. The plan must:

1. Promote significant opportunities for the gainful employment of its citizens;
2. Attract a major new business enterprise to the unit;
3. Retain or expand a significant business enterprise existing in the boundaries of the unit; or
4. Meet other purposes of IC 36-7-14-2.5, IC 36-7-14-41, and IC 36-7-14-43 (IC 36-7-15.1-28, IC 36-7-15.1-29, and IC 36-7-15.1-30 for Indianapolis).

<u>Plan Commission</u>

The unit's plan commission then determines by resolution whether the Declaratory Resolution and the redevelopment plan submitted by the Redevelopment Commission conform to the plan of development for the unit and approves or disapproves them. (In Indianapolis this determination is made by the Metropolitan Development Commission which also is the Redevelopment Commission.)

Other Governmental Approvals

In units other than Indianapolis, the municipal legislative body or county executive must then approve the order of the plan commission. In Indianapolis, a separate statute requires city-county council approval of any bond issue of the Redevelopment Commission. Also, in Indianapolis and all other units the establishment of an economic development area must be approved by the city-county council or the unit's legislative body, as appropriate.

Public Hearing

The Redevelopment Commission then publishes notice of the adoption of the Declaratory Resolution and gives notice of a public hearing and meeting to adopt a "Confirmatory Resolution." If the Declaratory Resolution includes a provision making the area an allocation area, the Redevelopment Commission must also file certain information with each taxing unit that is located wholly or partly in the allocation area, including the notice of the public hearing and a statement disclosing in detail the economic impact of the allocation area.

The public hearing is held and the Confirmatory Resolution is adopted. A property owner who fails to avail himself of the statutory remonstrance procedure cannot later attack the blight finding (now known as a finding of being an "area needing redevelopment"). Murray v. City of Richmond, 276 N.E.2d 519 (Ind. 1971).

Bond Issuance

The bond issue is structured with the help of a financial advisor who will do a feasibility study of the available tax increment. If a special tax is to be levied to pay all or, in units other than Indianapolis, a portion of the bonds, the Redevelopment Commission may have to undertake the referendum process or the petition/remonstrance procedures contained in IC 6-1.1-20. There are several exceptions to the applicability of these procedures, in particular where the special tax is to be used as a "back-up" and the Redevelopment Commission reasonably expects to have other funds (including tax increment) available to pay the debt service on the bonds. Additionally, approval of the legislative body will be required (by resolution) of any financing which is authorized by a resolution adopted by the Redevelopment Commission after June 30, 2008. An additional appropriation resolution must also be passed by the Redevelopment Commission and reported to the DLGF.

The Bond Resolution providing for the issuance of the bonds should allow for the issuance of parity bonds (i.e., additional bonds payable on an equal basis from the increment) and junior lien bonds (i.e., additional bonds payable on a subordinated basis from the increment) to finance additional redevelopment in the area. An Official Statement describing the bonds is typically prepared and the bonds are then sold by public bid, or so long as they are payable in whole or in part from TIF, at a private sale.

Amendment of Plan

The Declaratory Resolution or the redevelopment or economic development plan may be amended (including by enlarging the redevelopment project area or the economic development area) only by using the same procedures used in establishing the original area. In addition, in order to enlarge a redevelopment project area or economic development area, the Redevelopment Commission must find that the existing area does not generate sufficient revenue to meet the financial obligations of the original project, unless the Indiana Economic Development Corporation issues a finding approving the enlargement.

Deadlines

A Redevelopment Commission must immediately notify the DLGF upon declaration of an allocation area. Following such a declaration, the Redevelopment Commission must file with the county auditor a copy of the allocation area map, the resolution declaring the allocation area, and a list of parcel identification numbers of real property in the area. A Redevelopment Commission is required to make a determination before July 15 of each year with respect to the amount of incremental taxes to be raised in the following year. The Redevelopment Commission must give notice, by July 15, to the county auditor, the fiscal body of the county or municipality that established the department of redevelopment, and the officers authorized to fix budgets for each of the other taxing units that is wholly or partly located within the allocation area, stating the amount, if any, of excess assessed value the Redevelopment Commission has determined may be passed through to the respective taxing units.

Extension of Deadline for Establishment of Allocation Areas and Expiration Provision

The previously existing sunset date of December 31, 2005, for the creation of an allocation area has been extended. In 2005, the General Assembly provided for a five year extension to December 31, 2011, and provided for automatic five year extensions thereafter unless the General Assembly enacts a law terminating the automatic extensions and designates a final sunset date.

Projects That May be Funded

Generally, bonds payable from TIF may be used to finance the cost of redevelopment and the construction of public improvements in the redevelopment project area or projects that directly serve or benefit that area. For example, the proceeds of TIF bonds may be used for property acquisition and redevelopment activities including the construction of "local public improvements," such as public ways, sidewalks, sewers, waterlines, parking facilities, and park or recreational areas.

The specific permitted uses of property tax proceeds generated from the increased assessed value are the following:

1. Paying the principal of and interest on obligations payable solely from TIF.
2. Establishing, augmenting, or restoring the debt service reserve for TIF bonds.
3. Paying the principal of and interest on TIF bonds payable from TIF and a special taxing district tax levied by the commission.

4. Paying the principal of and interest on bonds issued by the "unit" to pay for local public improvements that are physically located in or physically connected to the allocation area.

5. Paying premiums on the redemption before maturity of TIF bonds.

6. Paying leases entered into by the Redevelopment Commission for public improvements.

7. Reimbursing the "unit" for expenditures made by it for local public improvements that are physically located in or physically connected to the allocation area.

8. Reimbursing the "unit" for rentals paid by it for a building or parking facility that are physically located in or physically connected to the allocation area.

9. For property taxes due and payable before January 1, 2009, paying all or a portion of a property tax replacement credit to taxpayers in the allocation area.

10. Paying expenses incurred by the Redevelopment Commission for local public improvements that are in or serve the allocation area.

11. With certain limitations, reimbursing public and private entities for expenses incurred in training employees of industrial facilities located in the allocation area.

12. With certain limitations, paying the costs of carrying out certain "eligible efficiency projects" (as defined in IC 36-9-41-1.5) within the "unit."

Traditional Types of Redevelopment Bonds

With respect to pure tax increment bonds, all increased taxes over the base assessment go to pay off the bonds and no other source of payment is used. Some advantages are that there is no debt limit, that they can be sold at private sale, that no special tax levy is needed, and that the referendum and petition/remonstrance procedures need not be followed. A disadvantage is that the interest rate is higher because the risk to bondholders is greater.

With respect to pure special benefits tax bonds, a special tax levy in the entire redevelopment district (which for a city or town includes all of the territory within the city's or town's corporate boundaries, and for a county includes all of the territory in the county except for the territory within a municipality that has a Redevelopment Commission) raises taxes to pay off the bonds and no other source of payment is used. Some advantages are that these bonds offer greater security to the bondholder (which should result in a lower interest rate), and that the structure is simpler (e.g., no reserve fund is needed). Some disadvantages are that these bonds require that a new tax be levied, that the referendum or petition/remonstrance procedures may have to be followed to the extent that the purpose of the bond issue is to finance a project costing more than $2 million (or, if less, 1% of the total gross assessed value of the property within the redevelopment district, if that amount is at least $1 million), that a debt limit applies in all units except Indianapolis, and that these bonds must be sold by public bid.

With respect to "hybrid" bonds, tax increment is used as the primary source of payment, but if it is not sufficient, a special tax is levied. Some advantages are that these bonds are most flexible because they offer the best of both worlds in that they might not require the raising of taxes, but there is that option; that they can be used for a smaller redevelopment project area where not much increment is generated; that a debt service reserve may not be needed because a tax can always be levied for any shortfall in the available increment; and that they can be sold at private sale. Also, in addition to other available exceptions to the applicability of the referendum and petition/remonstrance procedures, if a Redevelopment Commission can reasonably expect to pay debt service from the tax increment revenues, the referendum and petition/remonstrance procedures need not be followed. Some disadvantages are that they might require the imposition of a special tax, that the debt limit applies to all units except Indianapolis, and that they might tie up TIF so as to prohibit a future pure TIF bond issue.

Use of Redevelopment Authority

If a Redevelopment Commission issues bonds ("hybrid bonds") that are expected to be paid from TIF or other revenues but will have a tax back-up, then the referendum and petition/remonstrance procedures will not apply to such issues. However, the debt limitation still may be an issue. An ideal financing mechanism would not require a taxpayer petition, would have TIF as the primary source of payment, would have a "general obligation" backup, would allow any revenue from the project (e.g., parking revenues) or other revenues available to the Redevelopment Commission to be pledged to pay the bonds, and would not count against any statutory or constitutional debt limitation of the redevelopment district or the unit. The 1987 General Assembly gave municipalities the power to establish "Redevelopment Authorities" to accomplish these purposes. The Redevelopment Authority would issue the bonds and construct the project which would consist of any property that the Redevelopment Commission could finance with bonds. The project would be leased to the Redevelopment Commission and the lease would be paid from TIF, a "general obligation" tax, county option income tax revenues, project revenues, any other revenues available to the Redevelopment Commission or the unit, or a combination of these sources. No taxpayer petition is required for the bonds, no debt of the redevelopment district or the city is created and project revenue can be used to pay debt service. A public hearing is required before the lease can be executed, approval of the DLGF and the fiscal body of the unit must be obtained, and taxpayers can remonstrate and obtain a hearing before the DLGF.

TIF/IDB'S

In recent years, a creative financing structure has emerged (sometimes referred to as TIF/IDB's (i.e., industrial development bonds with a tax increment finance component)) that can be used to provide economic incentives from a unit (i.e., city, town, or county) to a proposed developer.

The basic structure of the transaction is as follows:

1. The unit (in conjunction with the unit's economic development commission) sells taxable economic development revenue bonds to a subsidiary or affiliate of the developer that is acceptable to the unit.

2. The proceeds of the Bonds are loaned by the unit to the developer pursuant to a loan agreement for economic development purposes and used by the developer to finance all or a portion of its development.

3. To secure the developer's obligation to repay the loan under the loan agreement, the developer executes a promissory note in favor of the unit agreeing to repay the loaned amounts.

4. Prior to the issuance of the bonds, the unit's Redevelopment Commission pledges the TIF revenues generated in an economic development area that includes the developer's property to offset the developer's obligation to pay on its promissory note to the unit.

5. The loan agreement between the unit and the developer provides for a credit mechanism whereby to the extent TIF is available to pay on the bonds, the requirement of the developer to repay its promissory note is credited/offset.

6. To secure the unit's obligations to pay the bonds, the unit enters into a trust indenture with a trustee. The unit assigns the promissory note to the trustee.

Local Concerns in Issuing Redevelopment Bonds

Some typical local concerns in issuing redevelopment bonds are:

1. The complexity of the method of computing increment and determining net assessed values;

2. The perception of other taxing units that their ability to raise revenue will be restricted or that their tax rates will be increased (the "hidden tax" objection);

3. The impact of tax abatements on TIF;

4. General concerns regarding size of area;

5. Issues concerning single project financing vs. development of a larger area;

6. The potential unlimited duration of TIF areas;

7. The issue of capturing existing increment as opposed to leveraging new development;

8. The prospect that additional security (such as corporate guarantees or letters of credit) might be necessary for the financing;

9. The fact that computation of the tax increment involves a “netting out” process that considers tax exemptions, deductions, and delinquencies; and

10. The shaping of an area in such a way as to conform to the requirement for findings of an “area needing redevelopment” (except in economic development areas) and to concerns about the size of an area expressed in the DLGF administrative and State Board of Accounts’ TIF regulations.

Marketing Concerns in Issuing Redevelopment Bonds

Some typical concerns in issuing redevelopment bonds are as follows:

1. Obtaining a rating may be necessary due to the increased risk of TIF bonds.

2. Obtaining bond insurance may be desirable to lower the interest rate, but this must be balanced with the cost of the insurance.

3. A feasibility study will be necessary to determine how much future increment can be expected to pay off the bonds (i.e., the coverage ratio).

4. A financial advisor should be retained to help with structuring the issue (e.g., maturity schedules, reserves, capitalized interest), feasibility studies, obtaining a rating, evaluating the necessity of bond insurance, preparing the Official Statement, and marketing the bonds.

TIF Issues Subsequent to Initial Offering

Whenever a county, city, or town is issuing its first TIF bond it should be sure it is structured to allow subsequent issues. A parity bond provision should be added to allow subsequent TIF issues on a parity with the first issue so long as the projected TIF revenue is at least equal to some multiple, such as 1.25, of the projected debt service on all the parity bonds. Even if in the future this parity bond test cannot be met, junior lien TIF bonds can still be issued so long as the original bond resolution allowed any available TIF left after debt service on the first bonds to be used, to the extent available, to pay debt service on other TIF bonds.

Department of Local Government Finance

The TIF law provides that the DLGF and the State Board of Accounts shall make and prescribe those rules and procedures that they consider necessary for the implementation of the statutes. This authority resulted in the promulgation of DLGF and State Board of Accounts rules that first became effective March 1, 1989. The rules contain a number of provisions that require notice to the DLGF and to county auditors. The rules are also designed to assist Redevelopment Commissions and auditors in the calculation of the increment.

General Reassessment and "Trending"

DLGF regulations include a method for adjustment of the base assessment in an allocation area to neutralize any effect of the general reassessment of real property on tax increment. The adjustment is based on the comparative increases caused by the reassessment with respect to the allocation area and the county. Additionally, with the 2006 legislation that requires annual adjustments, IC 36-7-14-39(h) requires an annual adjustment to neutralize the effect of such annual adjustments. The DLGF retains discretion to see that the final adjustment will result in the production of an amount of tax increment that equals or exceeds the amount that would have been produced if the general reassessment had not occurred. It is extremely important that Redevelopment Commissions monitor the DLGF's actions in this regard. An adjustment following a general reassessment will affect the amount of tax increment that can be produced in an allocation area until the next general reassessment. It is unclear what effect the annual trending adjustments will have on tax increment.

Miscellaneous Items of Interest

Highlighted below are some additional provisions of the redevelopment statutes that may be of particular interest.

1. IC 36-7-14-3.5 protects the interests of the holders of bonds issued by a county Redevelopment Commission in the event a municipality withdraws from the county's redevelopment district by establishing its own Redevelopment Commission, or in the event a municipality that has a Redevelopment Commission annexes additional territory within the county.

2. IC 36-7-14 provides in a general way that a Redevelopment Commission has the power to contract for the construction of local public improvements or structures necessary for redevelopment or economic development. The redevelopment statute was amended several years ago to delete references to particular types of improvements or structures so as to eliminate any negative implication that a Redevelopment Commission may not contract for the construction of certain types of improvements or structures that are not specifically listed.

3. IC 36-7-14 does not require that a Redevelopment Commission must have completed two appraisals of the property proposed to be acquired at the time a declaratory resolution and redevelopment plan are adopted. Instead, the two appraisals are required to be obtained prior to commencing actual acquisition proceedings, and estimates will suffice at the time of the declaratory resolution.

4. IC 36-7-25 sets forth additional powers of Redevelopment Commissions. This chapter provides a Redevelopment Commission with the power to finance projects, improvements, or purposes that are not located in a redevelopment project area or economic development area if the projects, improvements, or purposes directly serve or benefit those areas. IC 36-7-25 also permits two or more units to jointly undertake redevelopment or economic development projects

in contiguous areas in the units' respective jurisdictions and specifically authorizes Redevelopment Commissions to enter into project agreements with private developers. Finally, IC 36-7-25 authorizes a Redevelopment Commission to enter into an agreement with a taxpayer limiting the taxpayer's right to challenge the taxpayer's assessment or property taxes or that otherwise secures TIF obligations.

5. The redevelopment statute contains a unique and creative tax increment financing mechanism for Redevelopment Commissions located in St. Joseph County. The act permits such a commission to create one or more "satellite" redevelopment project areas or economic development areas that are noncontiguous with the original area if a business is expected to relocate its operations from the original area to the satellite area, and such relocation will contribute to the need for redevelopment of the original area. The Redevelopment Commission may collect tax increment from the satellite area and use the increment to help remedy the need for redevelopment in the original area. While each satellite area must be located within the same county as the original area, the satellite area may be located outside the jurisdiction of the Redevelopment Commission if the commission obtains the consent of the city or town in which the satellite area is located (or the county if the satellite area is located in an unincorporated part of the county).

6. Redevelopment Commissions are permitted to designate taxpayers whose personal property will be subject to TIF allocation and distribution. In making such a designation, the Redevelopment Commission must find that the tax increment to be derived from the taxpayer's depreciable personal property in the allocation area is needed to pay debt service on (or provide security for) bonds issued by the Redevelopment Commission or to make lease payments (or to provide security for leases). The Redevelopment Commission must also find that: (a) the taxpayer's property in the allocation area will consist primarily of industrial, manufacturing, warehousing, research and development, processing, distribution, or transportation related projects; and (b) the taxpayer's property in the allocation area will not consist primarily of retail, commercial, or residential projects.

7. IC 36-7-14.5-12.5 permits a Redevelopment Authority located in a county in which a military base is either completely or partially closing to create an economic development area. The Redevelopment Authority must follow the procedures found in IC 36-7-14-41 regarding the creation of an economic development area by a redevelopment commission. IC 36-7-14.5-12.5 grants to a Redevelopment Authority broad powers to serve the economic development area.

8. The redevelopment statutes provide that residential assessed value will be included in the base assessed value for determining the tax increment revenues for an allocation area. This means that, generally, residential areas will not generate increment. An exception exists for allocation areas created (a) in economic

development areas on or before June 30, 1995 and (b) in redevelopment project areas before July 1, 1997.

9. The legislature has established a requirement for an evaluation of the redevelopment statutory provisions every four years beginning in 1999. The evaluation is to be a fiscal analysis to consider the effectiveness of the statute in creating new jobs, increasing income and increasing the tax base. The evaluation may also consider the tax burdens of property owners and the experiences of other states with similar provisions.

Housing Tax Increment Financing ("HOTIF")

In 2006, the General Assembly added additional sections to IC 36-7-14 to permit Redevelopment Commissions throughout the State to undertake a housing tax increment program (authority for which had previously been limited to Indianapolis). To undertake a housing tax increment program, a Redevelopment Commission must make the following findings:

1. Not more than twenty-five acres of the area included in the allocation area has been annexed during the preceding five years, and no area within the allocation area has been annexed within the preceding five years over a remonstrance of a majority of the owners of land within the annexed area.

2. The program cannot be accomplished by regulatory processes or by the ordinary operation of private enterprise because of:

   a. the lack of public improvements;

   b. the existence of improvements or conditions that lower the value of the land below that of nearby land; or

   c. other similar conditions.

3. The public health and welfare will be benefited by accomplishment of the program.

4. The accomplishment of the program will be of public utility and benefit as measured by:

   a. the provision of adequate housing for low and moderate income persons;

   b. an increase in the property tax base; or

   c. other similar public benefits.

5. At least one-third of the parcels in the allocation area established by the program are vacant.

6. At least 75% of the allocation area is used for residential purposes or is planned to be used for residential purposes.

7. At least one-third of the residential units in the allocation area were constructed before 1941.

8. At least one-third of the parcels in the allocation area have at least one of the following characteristics:

   a. The dwelling unit on the parcel is not permanently occupied.

   b. The parcel is the subject of a governmental order, issued under a statute or an ordinance, requiring the correction of a housing code violation or unsafe building condition.

   c. Two or more property tax payments on the parcel are delinquent.

   d. The parcel is owned by local, state, or federal government.

9. The total area within the county or municipality that is included in any allocation area established for a housing program does not exceed 150 acres.

The general rules to establish an allocation area for a housing program are essentially the same as for other types of areas. However, the Redevelopment Commission must consult with neighborhood groups and other interested parties before establishing an allocation area for a housing program. The tax increment deposited into an allocation fund created in conjunction with a housing program must be applied generally to the construction and renovation of residential housing and related property acquisition. Redevelopment Commissions may not exercise eminent domain in conjunction with a housing program.

Among the uses of tax increment attributable to such housing allocation areas, Redevelopment Commissions may grant a credit to each taxpayer located in the allocation area if the credit has been established by the municipal legislative body or the county executive by ordinance. Redevelopment Commissions may finance the costs of a housing program, but generally Redevelopment Commissions are limited to one bond financing to pay the costs of a housing program.

Effect of “Circuit Breaker” Legislation on TIF Financings

Indiana’s new “circuit breaker” legislation can be expected to limit the amount of tax increment revenues to the extent that it reduces tax revenues that would otherwise have been payable with respect to captured assessed value. The extent of the impact will vary from TIF district to TIF district. In some cases, the “circuit breaker” will cause projected debt service coverage to fall below 100%. Redevelopment Commissions -- particularly those with outstanding debt payable from TIF revenues -- need to carefully review the potential impact of the new legislation on future TIF collections.