

State Notes

TOPICS OF LEGISLATIVE INTEREST

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Tax Increment Financing in Michigan

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Tax increment financing (TIF) has been described as "the first tool that local governments pull out of their economic development toolbox".¹ It is a method that many communities use to finance different projects for commercial development, neighborhood revitalization, or other economic development purposes. Although TIF can be complicated and could be examined from a number of different perspectives (such as economic, policy, or organizational), this article explains briefly what tax increment financing is and how it works; the history of TIF and its evolution; the different types of TIF plans in Michigan and how they are used; and the number of TIF authorities in Michigan. The article also discusses topics addressed by recently proposed legislation.

How TIF Works

Tax increment financing allows an established TIF authority to "capture" property tax revenue from incremental increases in value in a determined area and spend the "tax increment revenue", or a percentage of the total increased collections, to develop the area or finance a specific project. In other words, the value of any improvements to property located in a designated TIF district does not go into the overall tax base of the community, but instead is reserved for, or "captured" by, the TIF district.

In Michigan statutes that authorize TIF, the decision to develop a TIF plan rests with a municipality. A municipality is given the authority both to create a TIF authority and designate the district where the TIF plan will be applied. The district does not necessarily have a limit in regard to its size, so districts range from relatively small to rather large. The assessed valuation of the property in the TIF district that is determined when a TIF plan is being implemented is called the "base value". The base value is used to measure increases in property taxable value over time. The taxable value of property can increase due to such events as a sale or transfer of ownership, major renovations or changes to the property itself, or inflation.

Residents in a newly created TIF district will continue to pay their taxes as they normally do and will not see any change in the amount they pay compared to the amount they would pay absent the TIF district. Local governments and authorities also continue to receive a share of local property taxes from taxpayers as they normally would. However, any increase in revenue attributable to an increase in assessed property values from the base value going forward is captured by the TIF authority. The increase in valuation is multiplied by the applicable tax rate, and the result is considered the tax increment revenue available for use by the authority.² The revenue may be used to pay for development projects in the district or used to secure bond issues for large public expenditures. A development project could be, for example, new infrastructure, including roads or bridges; new street lamps; the improvement, creation, or demolition of buildings; a new shopping center or stadium; parks; or water treatment facilities. The municipality and TIF authority ultimately determine how the tax increment revenue will be spent.

¹ James Krohe, Jr, *At the Tipping Point: Has Tax Increment Financing Become Too Much of a Good Thing?*, *Planning* 20, 21 (Mar 2007).

² The taxes that a TIF authority may capture depend on the statute under which the TIF authority is created. For example, when a downtown development authority is created, the State Education Tax is subject to capture under certain circumstances.

Theoretically, the captured revenue should be sufficient to pay the TIF authority's share of project costs. Once the authority receives tax increment revenue, it will spend that revenue to retire debt issued to finance projects or improve the district. The improvements and TIF spending should attract private investment to further develop the district. The district should then see an increase in assessed property values because of the improvements, generating more tax increment revenue to pay for public expenditures. The TIF plan, therefore, ideally will pay for itself while spurring development and private investment until it expires. The reality may be different, however, when property values decline due to economic downturns or other circumstances, or if the development does not generate the anticipated economic activity.

History and Evolution of TIF Use

The practice of tax increment financing started in California in 1952 for the purpose of financing the local share required by a Federal urban renewal program.³ The program required municipalities with populations greater than 50,000 to finance a portion of the cost of Federal redevelopment activities, which TIF assisted California in providing. Many TIF plans were originally created to address blight in certain geographic areas; the financing method was considered a tool for redevelopment.⁴ Around 1970, there were only 76 TIF authorities in California, while only six other states had implemented TIF plans. Those states were Minnesota, Nevada, Ohio, Oregon, Washington, and Wyoming. Michigan's first TIF statute was created with the enactment of Public Act 197 of 1975, which provides for downtown development authorities.

Following the withdrawal of Federal funding from the urban renewal program, among other factors, TIF use rapidly evolved from a redevelopment tool to a *development* tool.⁵ In the 1980s, many states redefined "blight" or added provisions to statutes allowing municipalities to create TIF districts for general economic development.⁶ The use of TIF increased exponentially, and municipalities were now using TIF plans to finance local development. One study confirmed this using Michigan data from the 1980s.⁷ The author of the study concluded that TIF was used more often by rapidly growing cities to fund economic development projects, a departure from the former and more reserved use of TIF for combatting blight. Every state has allowed some form of TIF since the method was first introduced.

TIFs in Michigan

Michigan statutes specifically outline how, and for what purposes, tax increment financing may be implemented. As shown in [Table 1](#), there are 10 different acts that provide for the use of tax increment financing.

³ Johnathan M. Davidson, *Tax Increment Financing as a Tool for Community Redevelopment*, 56 U. Det. J. Urb. L. 405, 1978-1979.

⁴ Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, U. of Chi. Law Review, 77:62, 2010.

⁵ Briffault, n. 4. James Krohe Jr. reiterates a similar point in his writing.

⁶ Krohe, Jr. n. 1.

⁷ John E. Anderson, *Tax Increment Financing: Municipal Adoption and Growth*, National Tax Journal, Vol. 42, no. 2, (June, 1990).



Table 1

TIF Statutes in Michigan		
Public Act	Statute or Amendment	Purpose of TIF
197 of 1975	Downtown Development Authority Act	Central business district improvement
450 of 1980 ^{a)}	Tax Increment Finance Authority Act	Economic growth and increase in property values in a municipality
281 of 1986	Local Development Financing Act	Job creation & unemployment reduction
381 of 1996	Brownfield Redevelopment Financing Act	Redevelopment of unused buildings or blighted areas
280 of 2005	Corridor Improvement Authority Act	Redevelopment of commercial corridors
94 of 2008	Water Resource Improvement Tax Increment Finance Authority Act	Water resource improvement
486 of 2008	Nonprofit Street Railway Act amendment	Promotion & financing of operations in a transit operations finance zone for a street railway system
250 of 2010	Private Investment Infrastructure Funding Act	Economic development & public infrastructure improvement
530 of 2004	Historical Neighborhood Tax Increment Finance Authority Act	Preservation of residential property values in a historic district
61 of 2007	Neighborhood Improvement Authority Act	Promotion of residential growth in a residential neighborhood
^{a)} Public Act 280 of 1986 amended the Tax Increment Finance Authority Act to prevent a municipality from creating a new authority under that Act beginning January 1, 1987.		

In addition to prescribing the general structure of capturing tax increment revenue, most of the acts listed in the table have two common provisions of note. The first is a requirement for a public hearing when a TIF plan and authority are created. Many of the acts have very specific requirements for conducting the hearing, such as providing notice between 20 and 40 days before the hearing will occur in a newspaper that is generally circulated within the municipality, in addition to mailing notice to each affected taxpayer in the proposed district.

The other provision found in almost every act listed in Table 1 allows a municipality to establish a TIF plan for the broad purpose of promoting economic growth, in addition to any specific purpose listed in the individual act. This provision is significant because it gives a municipality freedom and flexibility to determine a use for tax increment revenue as long as it falls under that purpose of "economic growth".

Tax increment financing plans are attractive to municipalities in part because they generate funds for economic development without the need to levy new taxes, provide funding for development projects, and offer the possibility of increased revenue in the future from an expanded tax base. However, apart from the public hearing and resulting developments, TIF plans may be somewhat obscure to taxpayers.

Table 2 displays the total number of TIF plans in Michigan by calendar year, and the number of plans reported to the State in each calendar year. (Because reporting and documentation issues exist, all TIF data in Table 2 should be considered approximate.) The data include only downtown development authorities, TIF authorities, local development finance authorities, and corridor improvement authorities. While the total number of plans may have increased over time, reporting



remains sporadic. Statutes authorizing TIF plans require reporting to the State, but there is often no enforcement or penalty for noncompliance.

Table 2

TIF Authorities in Michigan		
Calendar Year	Number of Plans	Number of Plans Reporting
2002	618	94
2003	616	104
2004	626	152
2005	625	150
2006	626	175
2007	626	143
2008	629	101
2009	631	49
2010	630	78
2011	632	88
2012	632	83
2013	634	94

Source: Michigan Department of Treasury

Although the data are not necessarily complete, they should provide some perspective on the common use of TIF plans in Michigan. To present a comparison, the City of Chicago alone had 150 TIF districts in 2014, according to audit reports for each TIF district found on the city's website.

Recent Legislation, Competing Districts, and Legality

Senate Bills 579 and 619 through 624, introduced in 2015, demonstrate a conflict that TIF plans can create between governmental units and authorities receiving taxpayer dollars.⁸ Although property taxes are used to fund local units of governments, TIF plans require a certain amount of property tax revenue to be set aside for the TIF authority and its projects. Therefore, TIF plans effectively redirect money from other local governments and local tax collecting authorities.⁹ The bills listed above respond to concerns that Michigan public libraries are losing a sizable portion of their revenue to TIF districts that are capturing dollars that the libraries otherwise would receive.

Specifically, the bills would amend various TIF statutes to exempt libraries from TIF capture and give libraries the choice to opt-in to a capture. Many TIF acts already allow the governing body of a taxing jurisdiction levying property taxes that otherwise would be subject to capture to opt-out of

⁸ A Senate Fiscal Agency analysis of the bills can be found at the following site: <http://legislature.mi.gov/documents/2015-2016/billanalysis/Senate/pdf/2015-SFA-0579-A.pdf>

⁹ In 2011, California enacted legislation to prohibit TIF authorities, or "redevelopment agencies", from engaging in new business and to provide for their dissolution. The bill was introduced because the agencies had, over time, captured a large amount of money that certain public institutions otherwise would have received. The California Supreme Court upheld the bill (*Cal. Redevelopment Assoc. v. Matosantos*, 53 Cal. 4th 231, 2011). Currently, a city in California has limited TIF authority under Enhanced Infrastructure Financing Districts legislation that was enacted in 2014.



new tax captures.¹⁰ Libraries, however, remain subject to captures under the few statutes that do not have opt-out provisions. Although the bills would remedy the situation for libraries, they would not affect any other governmental units or tax collecting authorities still subject to statutes that do not contain opt-out provisions.

The legality of tax increment financing has been questioned because it can take funding away from local governments and tax collecting authorities that receive a share of taxpayer dollars. The Michigan Supreme Court issued an Advisory Opinion in 1988 when TIF planning was challenged based on the diversion of school tax funds toward a nonschool purpose, allegedly in violation of Article IX, Section 6 of the Michigan Constitution (430 Mich 93). The Court found that TIF plans only capture tax revenue attributable to increased value that is assumed to result from the TIF plan itself, therefore not diverting from school districts or other tax collecting units revenue they would receive absent the existence of a TIF plan. Even though the Advisory Opinion remarked on the constitutionality of a single local development finance authority, the analysis could be helpful in establishing the constitutionality, or potential constitutional limitations, of other TIF plans.¹¹

Conclusion

Tax increment financing is an important economic development tool that has been used by many municipalities throughout the country for decades. Michigan municipalities are no exception, as data show the common use of TIF plans for local development and economic growth. The recently proposed legislation described above, however, signals that there is remaining controversy on the topic. In addition to the issue that prompted the legislation -- the diversion of tax revenue that local units otherwise would receive, the use of tax increment financing is criticized when property values decline and a TIF authority might not have the anticipated revenue to make bond payments. Furthermore, any future deliberation on property tax reform would likely affect established TIF authorities, requiring additional consideration in the determination of those new tax policies. It would not be surprising to see more discussion of tax increment financing well into the future.

¹⁰ Usually the governing body must opt-out of the capture within 60 days following the conclusion of the public hearing. Some acts specify tax collecting authorities that may not opt-out. For example, a "certified energy park" may not opt-out of tax capture from an authority created under the Local Development Financing Act.

¹¹ Laura M. Bassett, *Tax Increment Financing as a Tool for Redevelopment: Attracting Private Investment to Serve a Public Purpose*, *The Urban Lawyer*, 41.4, Fall 2009.