

Tax Increment Financing

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Agenda

Types of TIF Districts

- Project-Specific TIFs
- District-Wide TIFs

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- Pre-Application Due Diligence
- Creating TIF Districts in Maryland
- Example Requirements for TIF Districts in Other States

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- Considerations of the local government

Monitoring

- Governance of TIF Districts
- Post-Project Monitoring

What are Project-Specific TIFs and District-Wide TIFs?

Project-Specific TIFs

- Involves a single project or single piece of property.
- Funds typically used for public improvements necessary to support the project.

District-Wide TIFs

- Large area of land or entire neighborhood is targeted for redevelopment.
- Funds typically support major infrastructure projects.

Project-Specific TIFs

Pros

- Smaller scale means fewer participants and faster timeline.
- Rarely involves eminent domain or similar legal complications.
- Useful for communities wishing to commit fewer financial resources.
- Effective in providing gap financing for a particular improvement.

Cons

- Greater risk when only one landowner is involved.
- Broader long-term visioning may not be considered in plan.
- Community may perceive TIF as giving an advantage to a single developer or landowner.
- Not suitable for addressing larger-scale concerns, such as blight.

District-Wide TIFs

Pros

- Large-scale community commitment encourages businesses to commit.
- Can serve as a catalyst to transform and revitalize entire neighborhoods.
- More effective at driving economic development.

Cons

- Historical owners may feel pushed to leave area.
- More parties involved and a longer timeline.
- Community buy-in needed - efforts to educate the public on rationale behind and benefits from TIF are more critical.

Steps to Create a TIF District



Pre-Application Due Diligence Required from TIF Proponents

- Ask if the local government has TIF policies and guidelines.
- Prepare survey, list of improvements to be financed with the TIF and description of proposed development.
  - A legal description will be necessary to establish the TIF district.
  - The local government will want a list of improvements that will be financed by the TIF.
  - The local government will want a description of the proposed development to be supported by the TIF improvements.
- Perform any due diligence necessary to show “blight” and “but-for” test satisfaction.
- Illustrate how the TIF project will meet the local government’s general growth objectives and comprehensive planning needs.
- Prepare projections of incremental tax revenues.

Creating a TIF District in Maryland

Economic Development Article, § 12-201 et seq.

- Issuer can be a county or municipality.
- TIFs can be used to support industrial, commercial and residential development.
- Costs to be financed include land, site preparation, relocation of businesses and residents, infrastructure, public purpose facilities, reserves, capitalized interest and costs of issuance.
- Issuer passes a resolution designating an area as a "development district."
- District must be contiguous.
- No finding of blight is necessary.

Creating a TIF District in Texas

Chapter 311, Texas Tax Code

- A finding that development or redevelopment would not occur solely through private investment or a petition signed by the owners of at least 50% of the appraised value of the property is required.
- The area must be "unproductive, underdeveloped, or blighted."
- Not more than 10% of the property in the proposed TIF district may be used for residential purposes.
- The total appraised value for property in the proposed TIF district combined with the appraised value for properties in existing TIF districts may not exceed 15% of the appraised value of real property in the jurisdiction seeking to create the TIF district.

Examples of Requirements for TIF Districts in Other States

New York

Art. 18-C of General Municipal Law

- "Survey areas" are designated to determine feasibility.
- A feasibility study is conducted to determine if local government may designate a "project area" for redevelopment.
- Redevelopment plans must be developed after approval of preliminary plans.
- Public hearings are conducted initially and at least biennially thereafter to review redevelopment plans.

Georgia

Ch. 44 of Title 36 of the Off. Code of Ga. Ann.

- Must show that redevelopment area is not under growth or development through private enterprise or that it otherwise includes natural, historical, or cultural assets not adequately protected and that would not reasonably be anticipated to be developed or protected
- Improvement of the tax base is expected to extend outside the "tax allocation district"

New Jersey

§52:27D-459 et seq. of N.J. Ann. Statutes

- There is a designated governmental district agent who administers the development plan for the proposed "revenue allocation district" on behalf of the municipality.

"Blight"

- More than half of TIF statutes and policy guidelines require a finding of "blight."
- Potential factors supporting a finding of blight:
  - Dilapidation
  - Obsolescence in use
  - Deterioration
  - Failure to meet Code
  - Inadequate Utilities
  - Environmental Remediation
  - Deleterious Land Use
  - Unsanitary or Unsafe Conditions
- "Blight" is usually broadly construed, but due to perceived abuse, expect increased scrutiny of issuer's findings from the public and project opponents.

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“But For” Test

- Ensures TIF financing is necessary for project success.
- Used to determine minimum amount of TIF financing necessary to make project feasible.
- Sample but for test:
  - The redevelopment area on the whole…has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of the redevelopment plan and the provision of public infrastructure improvements through TIF financing.

Public Policy Considerations in Creating TIF Districts

- Net increase in tax revenue for the local government.
- Parcels within TIF district should receive economic benefit of project.
- Set TIF allowances and limits to encourage or discourage different types of TIF projects.
- TIF for “green” projects – e.g. mass transit projects.
- “Blighted” parcels that would not be revitalized “but for” TIF financing.
- Consider any possible negative impact on rating of general obligation bonds.

Public Governance of TIF Districts

- Governed by a board of directors appointed by the creating entity and any other participating taxing units.
- In some cases administered by a local government corporation.
- Negotiate an agreement between the creating entity, the TIF board of directors, and the local government corporation detailing powers and duties of the local government corporation.
- In some cases, improvements are managed in same manner as other public improvements outside the TIF district.
- Where no governing body separate from the issuer, consider hiring experienced third party administrator.



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TIF Districts that Involve Multiple Taxing Authorities

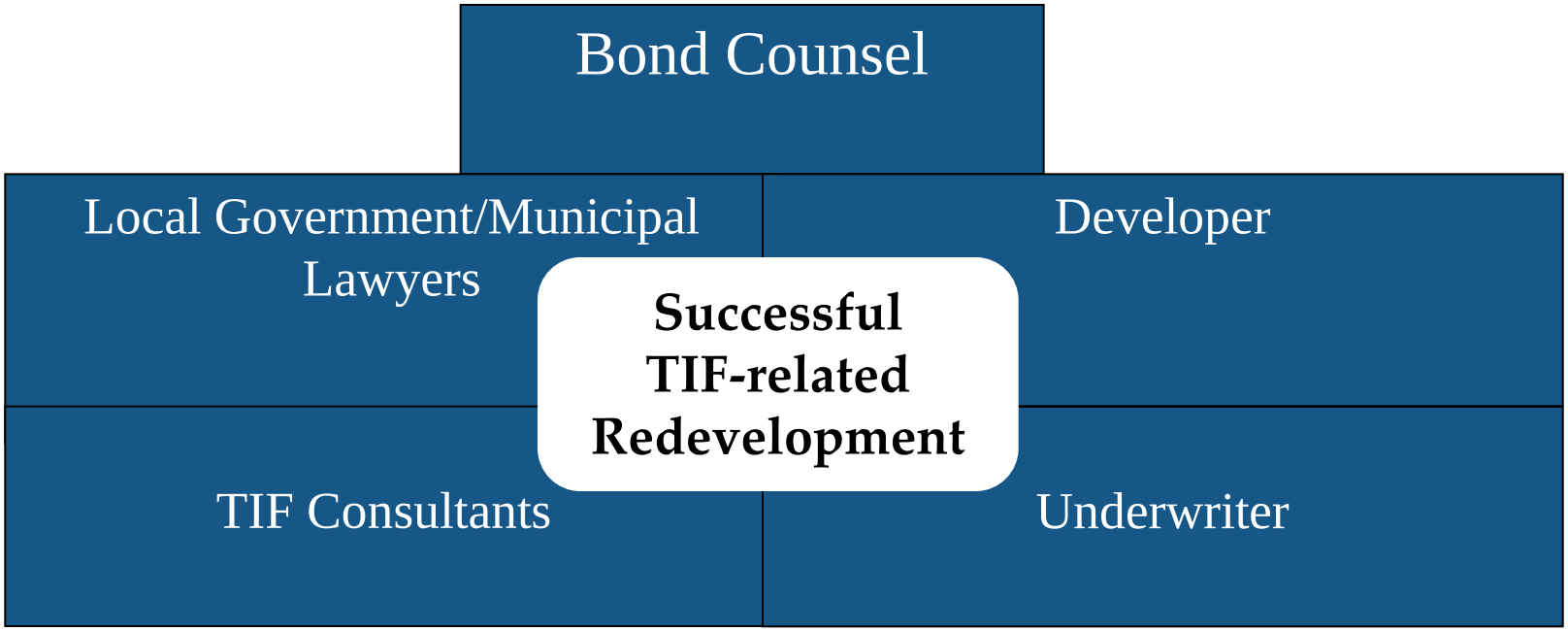
- TIF district financings often involve participation from taxing units other than the local government creating the TIF district. For example, TIF district financings can include:
  - Counties or municipalities
  - School district participation
  - Other taxing unit participation
- In situations where multiple taxing authorities are involved, negotiation of interlocal contribution agreements may be necessary detailing each government's level of participation and contribution.

Post-Project Monitoring

- Some local government issuers, including Allegheny County, Pennsylvania, have developed their own systems for post-project monitoring.
- A local government may want to establish a post-project monitoring plan to show:
  - TIF Districts are being developed as planned
  - Local government objectives are being met as expected; and
  - The tax base is growing in a manner to support any debt incurred to finance TIF improvements.
- In the case where TIF project has not been completed as planned, it can be used to study why projects have lagged, failed or otherwise have been unsuccessful and to learn how to identify issues for future TIF projects.

Key for Success:

All parties working together with a common redevelopment goal in mind.



Miscellaneous Considerations

- For TIF district, weigh increased costs of governmental services generated by development against projected increase in tax base.
- When developer requests TIF financing, consider whether “hybrid” TIF/special taxing district/revenue bonds can or should be issued.
- For hybrid bonds, keep in mind necessity of complying with “lowest common denominators” in applicable statutes, including maturity limitations, length of capitalized interest period, whether particular authorizations must made by ordinance or resolution, and whether financed improvements are allowed under all applicable statutes.
- Obligations to pay (i) property taxes from which incremental tax revenues are derived and (ii) special taxes and assessments are not a personal obligation of the developer; the obligation runs with the land. Failure to pay subjects property to tax sale. Developers and issuers sometimes erroneously assume bond proceeds are not loaned to the developer.

Miscellaneous Considerations cont'd.

- Factors influencing method of sale: ability to obtain investment grade rating, size of issue, status of proposed development approvals/commitments at the time of bond sale, and applicability of continuing disclosure requirements.
- Developer's track record, experience and financial condition.
- Do bonds count against statutory debt limit?
- TIF and hybrid TIF bonds count against annual calendar year calculation for bank-qualified bonds.
- Who builds infrastructure improvements—issuer or developer?
- Is compliance with issuer's procurement/public works provisions necessary for the TIF-financed improvements or engagement of professionals?

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Miscellaneous Considerations cont'd.

- Who will maintain the funded infrastructure improvements? If developer or another private party assumes maintenance responsibilities any arrangements must be structured within federal tax code limitations if the TIF or hybrid TIF bonds are issued on a tax-exempt basis.
- If developer building TIF-financed improvements, what are the mechanics for transferring/safeguards for ensuring transfer of ownership to a governmental entity?
- Mechanics for releasing bond proceeds from project fund:
  - In stages or after a particular improvement is completed?
  - Lien waivers?
  - Hire separate construction consultant to approve disbursements?

Miscellaneous Considerations cont'd.

- Sunset dates in legislation creating TIF district and authorizing bond issuance.
- Will compliance with the tax code's reimbursement regulations be necessary?
- Consider requiring developer that requests TIF financing establish a funded escrow to pay the fees and expenses of bond counsel, the issuer's financial advisor and any other consultants to the issuer.

Questions or Comments?

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