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 Pooling**

The Tax Increment Financing Act (TIF Act) permits the use of a strategy generally known as "pooling" or "out-district" spending, which are not defined terms in the TIF Act. Pooling occurs when tax increments are spent for qualified activities in the project area that are:

- Outside the geographic boundaries of the TIF district, or
- Inside the TIF district but are for activities defined as out-district activities because they occur after an initial five-year period.[1]

Minnesota law distinguishes between "districts" and "project areas."[2] A project area is created pursuant to underlying development statutes; it is often a larger area than a TIF district and is the area in which tax increments may be spent.[3] The TIF "district" is the geographic area in which development activity generates tax increment. The TIF Act requires most of a district's tax increment to be spent on activities within the TIF district.

A project area may include one or more districts within its boundaries. The term "pooling" arose from the idea of districts pooling together to fund activity in the project area. The term has stuck in common usage even while it has come to describe any "out-district" expenditures, irrespective of whether funds from other districts are used.

### General Pooling Authority

The authority to pool and the limit on the percentage of tax increment that can be pooled has varied over time, and still does vary, depending on the type of TIF district generating the tax increment, and on when a TIF district was established (as determined by the Certification Request Date (CRD)).

---

[1] *See* Minn. Stat. § 469.1763 (Restrictions on Pooling; Five-Year Limit). More information regarding timing restrictions can be found in a Statement of Position entitled: TIF Five-Year Rule and Six-Year Rule.
[2] 1982 Minn. Laws, ch. 523, art. 38, §§ 3 and 6.
[3] The TIF Act defines the term "project" by referencing and incorporating the underlying development statutes. Minn. Stat. § 469.174, subd. 8.

Reviewed: October 2018 2013-3001
Revised: October 2018

As the table below shows, a redevelopment district with a CRD after June 30, 1995, may pool up to 25 percent of revenue derived from tax increment paid by properties in the district. Other types of districts with CRDs after June 30, 1995, are limited to 20 percent.[4] All tax increment districts with a CRD on or before June 30, 1995, but after May 1, 1990, may spend up to 25 percent of revenue derived from tax increment paid by properties in the district.[5]

| CRD date | Pooling Limit (% of increment) |
|---|---|
| After July 1, 1982[6] to Apr. 30, 1990 | No limits imposed |
| After Apr. 30, 1990 to June 30, 1995 | 25% for all types of districts |
| After June 30, 1995 | 25% for redevelopment districts<br>20% for other types of districts |

It is important to understand what expenditures are considered to be made outside the district based on timing rather than location, and therefore to understand the Five-Year Rule.[7] In addition, an authority's administrative expenses are considered to be spent outside the district, which reduces the amount of tax increment available for financing other qualified costs located outside the district. A county's administrative expenses, however, are not subject to the percentage limits and are not required to be identified in the TIF plan.[8]

## Additional Pooling Authority for Specific Purposes

In addition to general pooling authority, the TIF Act authorizes pooling for certain specific purposes or to address certain problems.

### A. Pooling Permitted for Deficits

The 1997 to 2001 property tax reforms reduced the amount of tax increments generated thereafter.[9] In turn, the smaller stream of tax increment left authorities with insufficient increment when it came time to pay debt service or contract obligations. The Legislature

[4] Minn. Stat. § 469.1763, subd. 2.
[5] *Id.*
[6] Districts with certification request dates on or before July 1, 1982, have all decertified. Pooling authority for these districts was subject to specific limitations previously codified under Minn. Stat. § 469.1764. *See also* 2014 Minn. Laws, ch. 308, art. 9, § 94.
[7] Please refer to the Statement of Position entitled: TIF Five-Year Rule and Six-Year Rule.
[8] Minn. Stat. § 469.176, subd. 4h (a).
[9] *See* 1997 Minn. Laws, ch. 231, art. 1; 1998 Minn. Laws, ch. 389, art. 2; 1999 Minn. Laws, ch. 243; and 2001 Minn. Laws 1st Spec. Session, ch. 5.

authorized development authorities and municipalities to pool tax increments from other districts if necessary to eliminate a qualifying deficit, notwithstanding the various restrictions on the use of increment.[10]

- This extra authority to pool increment is limited to a defined "deficit" amount, which is determined after identifying what could be pooled under the regular pooling authority. The deficit is not simply the amount of the outstanding debt obligations.[11]

- Only a TIF district with a request for certification date earlier than August 1, 2001, can receive pooled increments to make payments on pre-existing obligations.[12]

- Pooling may be used only to make payments on debt service or contract obligations that fit the statutory definition of pre-existing obligations and can be applied only to bonds or binding contracts that were entered into before August 1, 2001.[13]

- A municipality can transfer tax increments from a district without regard to whether the transfer or expenditure was authorized by the TIF plan for the district and notwithstanding the various restrictions in the TIF Act on the use of tax increment.[14]

- A municipality can transfer tax increments generated from a district of one development authority, such as a Housing and Redevelopment Authority (HRA), to cover the shortfall of a pre-existing obligation in a district of another development authority, such as an Economic Development Authority (EDA) or the municipality itself, as long as the municipality had established each of the districts and the development authorities.[15]

- The regular pooling limit for the district that makes use of the pooling-for-deficits authority must be calculated after deducting the increments transferred for this purpose. Therefore, regular pooling will be limited to a percentage of only the remaining increment and not a percentage of total increment. [16]

---

[10] *See* Minn. Stat. § 469.1763, subd. 6.
[11] Minn. Stat. § 469.1763, subd. 6(b). The deficit should be determined for the calendar year in which the pooling expenditures or transfer will be made and should be recalculated if pooling occurs over multiple years.
[12] *See* Minn. Stat. § 469.1763, subd. 6(a).
[13] *See* Minn. Stat. § 469.1763, subd. 6(b) and (c).
[14] *See* Minn. Stat. § 469.1763, subd. 6(b) and (e).
[15] *See* Minn. Stat. § 469.1763, subd. 6(d).
[16] *See* Minn. Stat. § 469.1763, subd. 6(e)(1).

### B. Pooling Permitted for Housing Districts

Tax increment spent for a housing project is treated as having been spent within the TIF district.[17] Percentage limitations imposed by the Legislature on pooling are not applicable as long as the tax increment is spent for low- and moderate-income housing.

A "housing district" consists of a project, or a portion of a project, intended for occupancy by persons or families of low- and moderate-income. Income limitations for owner-occupied housing and residential rental property must be satisfied, and the square footage that can be used for nonresidential uses is limited to no more than twenty percent.[18]

### C. Pooling Permitted for Non-Housing Districts for Housing Purposes

An authority may elect, in the tax increment plan, to increase the pooling limit by ten percentage points for redevelopment districts, renewal and renovation districts, soils condition districts, and economic development districts if the extra pooling is used for a qualified low-income building.[19] This extra pooling is authorized notwithstanding the limitations imposed by the Legislature for these types of districts.[20] These expenditures of tax increment for housing purposes do not have to be made within the project area.[21]

Under this authority, tax increment can be used only to acquire and prepare the site of the housing; acquire, construct, or rehabilitate the housing; or make public improvements directly related to the housing.

If all the expenses outside the district are for housing purposes only, administrative expenses are considered to be expenditures in the district.[22]

---

[17] Minn. Stat. § 469.1763, subd. 2(b); Minn. Stat. § 469.174, subd. 11 (defining "housing district" and "housing project").

[18] Minn. Stat. § 469.1761, subd. 1. Low- and moderate-income is defined in federal, state, or municipal law.

[19] Minn. Stat. § 469.1763, subd. 2 (d). Low-income buildings must meet the definition of the term in section 42 of the Internal Revenue Code (IRC) and expenditures must not exceed the qualified basis of the housing as defined in section 42(c) of the IRC. In addition, this extra pooling was previously authorized for certain market-rate housing. The market value of the housing could not exceed the lessor of: 150 percent of the average-value, single-family home in the municipality; $200,000 if located in the metropolitan area; or $125,000 if located in Greater Minnesota. The increment for this market-rate housing had to be used to pay certain costs for a foreclosed family dwelling unit that was vacant for at least six months. This market-rate housing authority expired December 31, 2016, although expenditures may continue beyond December 31, 2016, if used to pay bonds or binding contracts that would meet the Five-Year Rule if December 31, 2016, were the last date of the Five-Year period.

[20] Minn. Stat. § 469.1763, subd. 2(d). For specific limitations for these types of districts on the use of tax increment, *see* Minn. Stat. § 469.176, subds. 4b, 4c, and 4j.

[21] Minn. Stat. § 469.1763, subd. 2 (d).

[22] Minn. Stat. § 469.1763, subd. 2 (c).

**Tax Increment Not Subject to Pooling Restrictions**

Only the revenues "derived from tax increments paid by the properties in the [TIF] district" are subject to pooling restrictions. Proceeds from the sale or lease of property purchased with tax increments, principal and interest received on loans or advances made with tax increments, interest or other investment earnings on or from tax increments, or repayments to an authority are not subject to pooling restrictions, even though they are all are defined in the TIF Act as tax increment.[23]

[23] Tax increment revenues as defined in Minn. Stat. § 469.174, subd. 25(2), (3), and (4) are expressly excluded from "revenues derived from tax increment paid by properties in the district." *See* Minn. Stat. § 469.1763, subd. 1(d).