



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Wisconsin's Tax Incremental Financing Laws

Tax incremental financing (TIF) is a tool that municipalities often use to spur economic development. The TIF process allows municipalities to pay for public improvements within a designated portion of the municipality, called a ***tax incremental district*** (TID), using the future taxes collected on the district's increased property value to repay the cost of the improvements. The rationale behind TIF is that the municipality's public improvements will encourage development, accompanied by an increase in property value that would not have otherwise occurred.

Under current law, cities, villages, towns, and certain counties have authority to use TIF. TIF law for cities and villages may be found in s. 66.1105 of the Wisconsin Statutes. This section describes how a TID may be created, how long it may exist, and what requirements must be fulfilled for a municipality to reap the tax benefits of the TID. To ensure compliance, TIF law is administered by the Department of Revenue (DOR).

TIF BASICS

Wisconsin ***cities and villages*** have been able to use TIF since 1975.¹ In 2004, TIF law was expanded so that ***towns*** could also utilize TIF.² As of October 1, 2006, the county board of a ***county in which no cities or villages are located*** may also utilize city and village TIF procedures.³ Because town TIF law is somewhat different, this Information Memorandum is limited to a discussion on city and village TIF law.

BASE VALUES

Before discussing how a TID is created, it is important to understand some of the key concepts behind TIF law. After a TID is created, DOR determines the equalized value of the taxable property within the district. This is referred to as the TID's ***base value***. The equalized value of certain city- and village-owned tax exempt property must also be included in the base value. Inclusion of this property prevents municipalities from purchasing property prior to creating a TID in order to lower the TID's base value and create more tax increments than would have been created if the property had been taxable at the time the TID was created.

VALUE INCREMENTS AND TAX INCREMENTS

If the property value increases beyond the base value, this increase is called a ***value increment***. DOR determines the value increment each year by subtracting the base value from the sum of all of the taxable property value in the TID. Tax collected on the value increment is called the ***tax increment***. The tax increment equals the value increment multiplied by the property tax levy of all jurisdictions levying taxes in the municipality. The county, municipality, school district, and technical college district, or any other tax district, do not receive the amount of revenues from their tax levy on the value increment. Instead, this money is collected and allocated to a special tax increment fund. This fund is used by the municipality to pay for public works and other improvements in the TID as a way to stimulate increases in property value.⁴

PAYMENT FOR PROJECT COSTS

Generally, a municipality may pay for project costs: (1) with tax increments; (2) with money from its general fund, that will be reimbursed when tax increments are generated; or (3) from the proceeds of notes or bonds specifically issued to finance TIF project costs. Typically, no expenditure may be made later than five years prior to the unextended termination date of the TID. [s. 66.1105 (6) (am) 1., Stats.]

CREATION OF A TID

There are numerous procedural requirements that must be satisfied before a TID may be created. These procedural requirements can be divided into three steps: (1) preparation; (2) notices and hearings; and (3) resolutions.⁵

STEP 1: PREPARATION

The first step in creating a TID is for the city or village's planning commission (hereinafter, "planning commission") to create a project plan. Section 66.1105 (4) (f), Stats., requires the following items to be included in the final plan:

- A statement of the kind, number, and location of proposed public works.
- An economic feasibility study.
- A detailed list of project costs, including financing costs.
- A description of the methods of financing and the time when the related costs or monetary obligations are to be incurred.
- A map showing the existing uses and conditions of real property in the district.
- A map showing the proposed improvements and uses in the district.
- The proposed changes in zoning ordinances, master plan, building codes, map, and city ordinances.
- A list of estimated nonproject costs.

- The proposed method for relocating any persons being displaced.
- An indication of how the TID's creation promotes the orderly development of the municipality.
- A signed attorney's opinion that the plan is complete and complies with Wisconsin's TIF law.

STEP 2: NOTICES AND HEARINGS

The planning commission is required to hold a public hearing to give the public a reasonable opportunity to express their views on: (1) the proposed creation of a TID and the proposed boundaries of the district; and (2) the proposed project plan. [s. 66.1105 (4) (a) and (e), Stats.] The planning commission may hold one public hearing on both issues or separate public hearings to address each issue.

STEP 3: RESOLUTIONS ON THE PROJECT PLAN

After the public hearing is held, the TID project plan must be reviewed and recommended by the following three decision-making bodies: (1) the planning commission; (2) the city or village legislative body; and (3) the Joint Review Board (JRB). Before the TID may be created, these bodies must adopt resolutions supporting its creation.

Planning Commission

The first body to review and recommend a TID is the planning commission that convened the public hearing or hearings. If the planning commission adopts a resolution recommending a final version of the project plan, the resolution must also designate the TID's boundaries and include a finding that creation of the TID promotes orderly development in the municipality. [s. 66.1105 (4) (f), Stats.]

City or Village Legislative Body

If the planning commission adopts a resolution recommending a final TID project plan, the final project plan is sent to the city or village's legislative body for review. The legislative body is the second body to review the creation of a TID and may approve the plan by passing a ***creation resolution***. However, the public hearing that allows the public to discuss the proposed project plan (described in Step 2) must take place at least 14 days before the legislative body can take any formal action.

Among the various items that must be included in the creation resolution, the resolution must include:

- A finding that the TID has not less than 50% of the real property that is one of the following: a ***blighted area***, in need of ***rehabilitation or conservation*** work, suitable for ***industrial sites*** and zoned for industrial use, or suitable for ***mixed-use development***.

- A finding that the TID complies with the **12% rule**. The 12% rule requires that the equalized value of the taxable property in the TID, plus the value increments of all existing TIDs does not exceed 12% of the total equalized value in the municipality.

[s. 66.1105 (4) (gm) 4. a. and c., Stats.]

Joint Review Board

As previously stated, taxes collected on the value increment of the TID is used to pay back project costs in the TID. The various taxing jurisdictions with authority to tax real property in the proposed TID do not receive this amount. Instead, these taxing jurisdictions are given the opportunity to approve or deny the TID. The JRB is made up of five representatives from the ***school district***,⁶ ***technical college district***, ***county***, and ***municipality*** where the TID is located, along with one ***public member*** selected by a majority of the other board members before the planning commission holds the public hearing or hearings. [s. 66.1105 (4m) (a), Stats.]

In order for the TID to be created, the JRB must approve its creation by a majority vote within 30 days of receiving the planning documents. If the local legislative body adopted a creation resolution, then before approving the TID, the JRB is required to review the public record, the planning documents, and the resolution passed by the local legislative body. [s. 66.1105 (4m) (b) 1., Stats.] The JRB may also decide to hold more public hearings in addition to the initial public hearing or hearings held by the planning commission. Further, the statutes provide a means for the JRB to request DOR to review objective facts in any of the documents sent by the local legislative body.

The local legislative body must send the following information to the JRB for its review:

- The specific items that constitute the project costs, the total dollar amount of project costs projected to be paid with tax increments, and the projected amount of tax increments to be generated over the life of the TID.
- The projected equalized value of the value increment when the project costs are paid in full and the TID is terminated.
- The reasons why the project costs may not or should not be paid by the owners of the property that will benefit from the public improvements within the TID.
- The share of the projected tax increments estimated to be paid by the owners of the taxable property in each of the taxing jurisdictions overlying the TID.
- The benefits that the owners of the taxable property in the overlying taxing jurisdictions will receive to compensate them for their share of the projected tax increments paid.

[s. 66.1105 (4) (i), Stats.]

Upon reviewing the information sent by the local legislative body, the JRB is required to base its approval or denial of the local legislative body's creation resolution on the following criteria:

- Whether the development expected in the TID would occur without the use of TIF (this is referred to as the "***but for***" ***finding***).⁷
- Whether the economic benefits of the TID, as measured by increased employment, business, and personal income and property value, are insufficient to pay for the cost of improvements in the TID.
- Whether the benefits outweigh the anticipated tax increments to be paid by property owners in the overlying taxing districts.

[s. 66.1105 (4m) (c) 1., Stats.]

DOR'S ROLE IN APPROVING TIF APPLICATIONS

One of the responsibilities given to DOR is the responsibility to determine and certify the TID's base value and tax increments. DOR is also required to approve TIF applications, monitor compliance with certain mixed-use development requirements, and create and update a manual on the TIF program.⁸

CERTIFICATION OF THE BASE VALUE

After a TID is created, the local municipal clerk submits certain application documents to DOR on or before December 31 of the year that the TID is created. [s. 66.1105 (5) (b), Stats.] DOR uses these documents to determine and certify the TID's base value. As previously mentioned, increases in the TID's property value depends upon the base value of the property located in the TID prior to any development.

In addition to reviewing the procedural requirements, DOR also evaluates whether the TID ***exceeds the 12% rule***. DOR may not certify the base value until it reviews and approves the municipality's finding that the equalized property value in the TID plus the value increment of all existing TIDs does not exceed 12% of the total equalized value of taxable property within the city. [s. 66.1105 (5) (d), Stats.]

Under ***2009 Wisconsin Act 312***, a municipality was given the opportunity to amend its project plan so that the TID is in compliance if the TID exceeds the 12% rule. If DOR determines that the TID exceeds the 12% rule, the city or village may either rescind its approval of the project plan or remove parcels of land so that the TID complies with the 12% limit. If the municipality decides to remove parcels of land, then it must resubmit the creation application to DOR within 30 days of receiving the noncompliance notice. [s. 66.1105 (12), Stats.]

*While TIDs are technically created before the application documents are filed, the municipality may not receive the tax increments until DOR certifies various items. For example, if the municipality starts work before DOR certifies the base value of the TID, and DOR finds a problem which prohibits certification of the base, the municipality may not be able to receive tax increments resulting from an increase in the district's base value.*⁹

DOR CERTIFICATION OF TAX INCREMENTS

In order to receive any tax increments from an increase in the base value, each year the municipal clerk must submit a ***Tax Increment Certification Report*** to DOR by May 15. The statutes also require that the tax assessor submit a final report before the second Monday in June. DOR uses these reports to verify and certify the value of that year's tax increment to be allocated to the municipality for repaying the costs of development.¹⁰

In the certification report submitted to DOR, the municipal clerk must include: (1) a request that DOR certify tax increments; (2) a list of any project plan amendments; and (3) an annual report. For the year that the TID terminates, the clerk must also submit to DOR a certified public accountant audit. There are at least three instances where a municipality must have a CPA conduct an audit of the TID.¹¹ Each overlying taxing jurisdiction is required to be given a copy of every audit, but DOR is only required to receive the audit conducted when the TID terminates. Additionally, each overlying taxing jurisdiction is required to be given a copy of the annual report before May 1.¹² [s. 66.1105 (6m) (c), Stats.]

SUBSTANTIAL COMPLIANCE

Not all municipal errors prevent DOR from determining the base value of a TID. DOR has the discretion to determine if the municipality has substantially complied with TIF requirements. DOR may decide there is substantial compliance if certain actions undertaken by the municipality in creating or attempting to create a TID do not affect "substantial justice." [s. 66.1105 (15), Stats.] These actions are generally procedural in nature, including procedures undertaken by the planning commission, the JRB, and the clerk's creation application documents. DOR determines substantial compliance on a case-by-case basis.¹³

TID AMENDMENTS

A TID may be amended for four reasons: (1) to modify the project plan; (2) to add or subtract property; (3) to extend the maximum life span; and (4) to donate tax increments to another TID.¹⁴

The amendment process is very similar to the process for creating a TID. For example, the planning commission must hold a public hearing. Also, the planning commission, the local legislative body, and the JRB all must adopt resolutions approving the amendment. However, there are statutory limits on the number of amendments. The limits on amendments depend on the type of amendment. For example, there is no limit as to the number of amendments to the project plan. However, the maximum number of territory amendments that may be adopted during the TID's lifespan is four. [s. 66.1105 (4) (h) 2., Stats.] Also, only certain types of TIDs may amend their maximum life span (maximum life spans are discussed in the following section).¹⁵

TID TERMINATION

TERMINATION DATE

The general rule is that a TID shall terminate at the earliest of the following events: (1) all of the TID's project costs are repaid using the tax increments; (2) the local legislative body dissolves the TID by resolution; or (3) the TID reaches its statutory maximum life span. [s. 66.1105 (7), Stats.] The statutory maximum life span depends upon when the TID was created and the type of TID. As previously stated, TIDs may be amended to extend the maximum life span. The following chart lists the statutory maximum life spans for each type of TID and the maximum extension of the TID's life span that may be allowed if it is unable to pay off its project costs before the end of maximum life span.

Maximum Life Span of Tax Incremental Districts

Type of Tax Incremental District	Maximum Life Span	Maximum Extension of Life Span
Districts Created Before October 1, 1995 <ul style="list-style-type: none"> • Any District 	27 years	None
Districts Created between October 1, 1995 and September 30, 2004 <ul style="list-style-type: none"> • Blighted Districts, and Rehabilitation or Conservation Districts • Industrial Districts 	27 years 23 years	4 years None
Districts Created on or after October 1, 2004 <ul style="list-style-type: none"> • Blighted Districts, and Rehabilitation or Conservation Districts • Industrial Districts, Mixed-Use Districts 	27 years 20 years	3 years 3 years

[Section 66.1105 (7), Stats.]

EXCEPTION: DISTRESSED AND SEVERELY DISTRESSED TIDS

In some cases, a TID may be under such economic distress that it needs more time to pay off project costs than allowed by the initial termination date or extension period. In recognition of this fact, **2009 Wisconsin Act 310** created two new types of TIDs, ***distressed TIDs*** and ***severely distressed TIDs***. A municipality may designate a TID that is at least seven years old as either distressed or severely distressed when the local legislative body, in addition to other procedural requirements, adopts a finding that the project costs exceed the amount of revenues from all sources that the city expects the district to generate during the life of the TID.¹⁶ [s. 66.1105 (4e) (a) 1. and 4., Stats.]

A second finding is required for a municipality to designate a district as a severely distressed TID. A severely distressed TID also requires a finding that the amount of the value increment generated in any year has declined at least 25% from the district's highest value increment over the course of the district's lifespan. [s. 66.1105 (4e) (am), Stats.]

There are some additional limitations under 2009 Wisconsin Act 310 as to which TIDs may be declared a distressed or severely distressed TID. For example, a local legislative body only has until October 1, 2011, to declare a TID distressed or severely distressed. Another limitation is that no TID may be declared distressed or severely distressed if the local legislative body approves a project amendment after October 1, 2009, except for the amendment that declares the TID distressed or severely distressed.

If a district is designated as a distressed TID, then it is able to collect positive tax increments for up to 10 years after it would otherwise have been required to **terminate**. If a district is designated as a severely distressed TID, then it is able to collect positive tax increments for up to 40 years after the district was **originally created**. [s. 66.1105 (4e) (d) 2., Stats.]

EXCEPTION: DONOR TIDS

As previously stated, if a TID pays off the entire amount of project costs before the maximum life span is over, it must terminate. An exception to this rule is that a municipality may amend the project plan and designate this TID as a donor TID. This allows the positive tax increments of the donor TID to be used to pay off the project costs of another TID located in the municipality. The act of designating a TID as a donor TID is called an **allocation amendment**.¹⁷

The statutes list numerous requirements that must be satisfied before a municipality may designate a TID as a donor. What requirements apply depend on when the prospective donor TID was originally created. One set of requirements applies to TIDs created before October 1, 1995. Another set of requirements apply to TIDs created after September 30, 1995 (or September 30, 1996 for first class cities).¹⁸

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Melissa Schmidt, Staff Attorney, on June 7, 2010.

¹ City and village TIF law can be found in s. 66.1105, Stats.

² Town TIF law can be found in s. 60.85, Stats.

³ Currently, Florence and Menominee Counties are the only two counties that may utilize TIF.

⁴ For further information on how tax increments work and are calculated, see Wisconsin DOR, *Wisconsin Tax Incremental Finance Manual*, ch. 1.2, found at: <http://www.dor.state.wi.us/pubs/slf/tif/cvmanual.html>.

⁵ *Wisconsin Manual*, ch. 2.1.

⁶ If the TID is served by a union high school district, then there will be two school members with half of a vote each: (a) a representative of the primary school district serving the largest area; and (b) a representative of the union high school district.

⁷ For more information, see *Wisconsin Manual*, ch. 5.1.

⁸ *Wisconsin Manual*, ch. 4.1, p. 1.

⁹ For further information, see *Wisconsin Manual*, ch. 4.

¹⁰ *Wisconsin Manual*, ch. 4.1, p. 3.

¹¹ There are at least three instances where an audit of the TID is required: (a) when 30% of the project costs have been spent; (b) the last project expenditure has been made; and (c) the TID terminates. [s. 66.1105 (6m) (b), Stats.]

¹² For more information see *Wisconsin Manual*, ch. 2.3.

¹³ For more information on how to receive a DOR finding of substantial compliance, see *Wisconsin Manual*, ch. 4.3.

¹⁴ *Wisconsin Manual*, ch. 2.2, p. 1.

¹⁵ For more information on TID amendments, please see *Wisconsin Manual*, ch. 2.2.

¹⁶ For more information, see Wisconsin Legislative Council, Act Memo: 2009 Wisconsin Act 310, found at: <http://www.legis.state.wi.us/lc>.

¹⁷ Wisconsin DOR, *TIF Allocation Amendment Fact Sheet*, found at: <http://www.revenue.wi.gov/faqs/slf/tif/alofacsht.pdf>.

¹⁸ For a detailed list of the different requirements for these two sets, see *TIF Allocation Amendment Fact Sheet*, found at: <http://www.revenue.wi.gov/faqs/slf/tif/alofacsht.pdf>.

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