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### Statement of Position TIF Administrative Expenses

The Tax Increment Financing (TIF) Act identifies qualified administrative expenses that can be paid out of tax increment.<sup>1</sup> An estimate of the amount of administrative expenses to be paid with tax increment revenues must be included in the TIF plan as part of the cost of a project.<sup>2</sup> The TIF Act limits the percentage of tax increment revenues that can be spent on administrative costs.<sup>3</sup>

#### Administrative Expenses

Qualifying administrative expenses *include*, but are not limited to, the following items:

- Staff time spent negotiating, structuring, and assisting in construction of new development activity;
- Time spent by finance directors and district representatives recording and documenting tax increment expenses or filling out and filing annual TIF reports;
- Bond counsel services;
- Legal services related to the financing of bonds, the proceeds of which will be used to pay for tax increment expenses; and
- Legal services for negotiating and drafting redevelopment agreements, city housing programs and plans, redevelopment and TIF plans, and development action response plans, and the associated fees.<sup>4</sup>

Qualifying administrative expenses *do not include* the following items:<sup>5</sup>

- The purchase of land;

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<sup>1</sup> The TIF Act, Minn. Stat. §§ 469.174 to .1794, inclusive, as amended.

<sup>2</sup> Minn. Stat. § 469.175, subd. 1(a) (5); *see* the Office of the State Auditor's (OSA's) [Statement of Position on TIF Plan Requirements](#).

<sup>3</sup> Minn. Stat. § 469.176, subd. 3; *but see id.* § 469.176, subd. 3(c) (2014) (Increments used to pay county administrative expenses are not subject to this percentage limitation.); Minn. Stat. § 469.1763, subd. 2(c) (Increments used to pay administrative expenses related to housing purposes described in Minn. Stat. § 469.1763, subd. 2(d), are considered to be in-district expenses not subject to this percentage limitation.).

<sup>4</sup> Minn. Stat. § 469.174, subd. 14.

<sup>5</sup> *Id.*

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This Statement of Position is not legal advice and is subject to revision.

- Materials and services provided by contractors or others even though they are directly connected with the physical development of the real property in a project;
- Engineering and architectural services;
- Relocation benefits or services provided for persons residing in or for businesses located in the project;
- Principal or interest on bonds;
- Other obligations related to the costs of the materials and services;
- Litigation expenses, even when the litigation is somehow related to the project; and
- Attorneys' fees for services related to the purchase of property.<sup>6</sup>

### **Administrative Expense Limitations**

The TIF Act sets a percentage limitation on administrative expenses that can be paid from tax increment revenues. The percentage limitation has changed over the years, depending on the date on which certification was requested.<sup>7</sup> For districts for which certification was requested before August 1, 2001, administrative expenses for a project cannot exceed ten percent of either 1) the “total estimated tax increment expenditures authorized by the tax increment financing plan” or 2) **the “total tax increment expenditures for the project,”** whichever is less.<sup>8</sup> For districts for which certification was requested on or after August 1, 2001, administrative expenses for a project cannot exceed ten percent of either 1) the “total estimated tax increment expenditures authorized by the tax increment financing plan” or 2) **the “total tax increments . . . from the district,”** whichever is less.<sup>9</sup> The percentage limitation applies to administrative expenses paid with tax increment from any source.

*“Total estimated tax increment expenditures authorized by the tax increment plan”* means the total amount of the expenditures listed in the project costs included in the TIF plan.<sup>10</sup> An estimated total cost of the project authorized by the TIF plan may include administrative expenses and interest. Interest is a financing cost that will be paid or financed with tax increments from the district.<sup>11</sup> Total estimated tax increment expenditures authorized in the TIF plan include any adjustments made in subsequent modifications of the TIF plan.<sup>12</sup>

*“Total tax increments . . . from the district”* means the total of the tax increment revenues generated by the captured net tax capacity and actually received from the county prior to decertification.<sup>13</sup> It does not include the proceeds from the sale or lease of property

<sup>6</sup> Attorneys' fees for services related to the purchase of property may be capital expenses.

<sup>7</sup> See Attachment.

<sup>8</sup> Minn. Stat. § 469.176, subd. 3(a), *as amended by* 2014 Minn. Laws, ch. 308, art. 9, § 86 (emphasis added).

<sup>9</sup> Minn. Stat. § 469.176, subd. 3(b) (emphasis added).

<sup>10</sup> See Minn. Stat. § 469.175, subd. 1(a) (5) (i).

<sup>11</sup> Minn. Stat. § 469.175, subd. 1(a) (5). Although interest is a project cost to be paid with tax increment, it is a financing cost and cannot be interchanged with other line-item project costs.

<sup>12</sup> Minn. Stat. § 469.175, subd. 4.

<sup>13</sup> See Minn. Stat. § 469.174, subd. 25(1). Excess taxes are excluded.

purchased by the authority with tax increments, interest and other investment earnings generated from tax increment revenues, and the principal and interest received on loans made with tax increments.

For districts for which certification was requested before August 1, 2001, administrative expenses for a project cannot exceed ten percent of either 1) the “total estimated tax increment expenditures authorized by the tax increment financing plan” or 2) *the “total tax increment expenditures for the project,”* whichever is less.<sup>14</sup>

The authority must keep a record of the actual administrative costs incurred. It cannot simply retain ten percent of all tax increment revenues received for administrative expenses. The actual costs must be documented by the authority if they are to be paid with tax increment revenues. At a minimum, documentation for professional services, for example, should describe the service being provided and the number of hours involved.

### **Administrative Expenses in the TIF Plan**

If an authority’s administrative expenses will be paid with tax increment revenues from the district, the expenses must be included in the estimated total “cost of the project” identified in the TIF plan.<sup>15</sup> The estimate of the total “cost of the project” may not exceed the estimated tax increment to be generated by the development activity. If the tax increment actually expended exceeds the tax increment authorized by the TIF plan, the expenditures exceeding the authorized amount are ineligible tax increment costs.<sup>16</sup> The actual administrative expense limitation may not be known until the district is decertified or, for pre-August 2001 districts or later, when the project is complete.

### **County Administrative Expenses**

Tax increment revenues may be used to reimburse a county for expenses the county incurred for administrative services required by the TIF Act.<sup>17</sup> The amount of administrative payments to be made to the county is not required to be identified in the TIF plan for a district.<sup>18</sup> County administrative expenses are not included when determining the ten-percent administrative expense limitation.<sup>19</sup>

The county may require reimbursement of these expenses by February 15<sup>th</sup> after the year in which the expenses are incurred. To obtain reimbursement for administrative

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<sup>14</sup> Minn. Stat. § 469.176, subd. 3(a), *as amended by* 2014 Minn. Laws ch. 308, art. 9, § 86 (emphasis added).

<sup>15</sup> *Id.* Before the 2009 Amendments to the TIF Act, it had been common for development authorities to list in TIF plans estimated total costs of a project, the total costs often being substantially more than the amount of tax increment to be generated by the development activities proposed for the district.

<sup>16</sup> Minn. Stat. § 469.175, subd. 1(a) (5) (i), *as amended by* 2009 Minn. Laws ch. 88, art. 5, § 4.

<sup>17</sup> Minn. Stat. § 469.176, subd. 4h (a).

<sup>18</sup> *Id.*

<sup>19</sup> Minn. Stat. § 469.176, subd. 3(c) (2014).

expenses, the county auditor must submit to the development authority a record of the costs incurred by the county auditor for the administration of the authority's TIF districts.

Attachment 1

<b>Certification Request Date (CRD)</b>	<b>Administrative Expense Limitation</b>	<b>Statutory Cite</b>
Before August 1, 2001	The lesser of: <ul style="list-style-type: none"> <li>▪ 10% of the total estimated tax increment expenditures authorized by the TIF plan,</li> <li>OR</li> <li>▪ 10% of the total tax increment expenditures for the project</li> </ul>	2014 Minn. Laws ch. 308, art. 9, § 86 (to be codified at Minn. Stat. § 469.176, subd. 3(a)).
On or after August 1, 2001	The lesser of: <ul style="list-style-type: none"> <li>▪ 10% of the total estimated tax increment expenditures authorized by the TIF plan,</li> <li>OR</li> <li>▪ 10% of the total tax increments received from the county by the district</li> </ul>	2014 Minn. Laws ch. 308, art. 9, § 86 (to be codified at Minn. Stat. § 469.176, subd. 3(b)).