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New town incremental financing laws changes

Wisconsin's Town Tax Incremental Financing Law has changed effective April 4, 2014.¹ Some of the key changes are highlighted in this article.

Introduction of large-town TIDs

The largest change to Wisconsin law in the Act is the allowance of towns, which meet certain criteria to create a tax incremental district ("TID") under Wisconsin Statute § 66.1105 (a "Large-Town TID"), the Wisconsin statute governing TIDs created by cities and villages.²

Town requirements

For a town to create a Large-Town TID, the town must have a population of more than 3,500 people, the equalized value of all of the taxable property in the town must be at least \$500 million dollars,³ and the boundaries of the proposed TID must be within territory that is specified in the sewer service area provisions of an area-wide water quality management plan, with sewer service currently extended to the proposed TID or to be extended prior to any use or operation of any improvements to the real property in the proposed TID.⁴

Governance

Depending on the type of TID the town creates, the town and the town board will be limited to the rights, actions, and duties associated with that certain type of TID, such as a Large-Town TID.⁵

Annexation of large-town TID property

If any portion of a Large-Town TID is annexed by a city or village, any assets or liabilities associated with such Large-Town TID shall be the responsibility of the annexing municipality.⁶ The tax incremental base of any annexed portion of a Large-Town TID must be re-determined by the Wisconsin Department of Revenue.⁷

Project plan approval

Prior to approving a project plan for a Large-Town TID, the town board must ensure that the project plan includes at least one of the following:⁸

- (i) At least 51 percent of the value of public infrastructure improvements for the Large-Town TID must be financed by a private entity before being repaid for those costs through cash grants from the town, which repayment will be governed in a development agreement between the town and the private entity;
- (ii) All project costs must be paid within 90 percent of the proposed Large-Town TID's remaining life; and
- (iii) Expenditures may be made only within the first half of the proposed Large-Town TID's remaining life, unless approved by a unanimous vote by the joint review board and otherwise in compliance with other requirements specified by statute.⁹

Environmental remediation tax incremental districts and allocation of positive tax increments generated by TID

Wis. Stat. § 66.1105(6)(f)1 has been amended to allow the planning commission to amend a project plan for a particular TID in order to reallocate positive tax increments generated by the TID to an environmental remediation TID, in addition to other TIDs previously allowed under Wisconsin law.

Previously, positive tax increments generated by an environmental remediation TID could be allocated to another environmental remediation TID once the governing body of such political subdivision determined that all of the eligible costs for the donor TID would be repaid within 23 years of such donor TIDs creation. After the enactment of the Act, the positive tax increments generated by an environmental remediation TID that meets the foregoing repayment requirement can be allocated to pay for project costs for any other eligible recipient TIDs within the same political subdivision, in addition to other environmental remediation TIDs.¹⁰

Creation of TID in recently annexed town territory

The Act provides for a new method for a city or village to create a TID in territory recently annexed from a town.¹¹ Within 90 days of the annexation, the city or village must hold a public hearing where interested parties are allowed to express their views.¹² If the city takes this route, the TID must: (i) terminate upon the earlier of seven years after the TID’s creation or when the city or village pays off all of the project costs from the TID through the tax increment; (ii) not share any of the positive tax increment generated from such TID; and (iii) not make any expenditures

after October 1, 2016.¹³ Additionally, a TID created using this new, alternative method shall not, until 2016, be subject to the requirement that the equalized value of taxable property in the TID plus the value increment of all existing TIDs in the city or village not exceed 12 percent of the total equalized value of the taxable property in the city or village.¹⁴

Biogas, synthetic gas, solar and the wind energy systems exclusion from general property tax exemption

Generally speaking, biogas or synthetic gas energy systems, solar energy systems, and wind energy systems have been exempt from general property taxes. However, due to the modification to TID law,¹⁵ biogas or synthetic gas energy systems in existence on January 1, 2014, and located within a TID in effect on January 1, 2014, shall not be exempt from general property taxes.

For more information on tax incremental financing districts and the recent changes to laws related, please contact Danny Tang at 608.284.2639 or dtang@gklaw.com or Carol Muratore at 414.287.9655 or cmuratore@gklaw.com.

¹ 2013 Wisconsin Act 193
² Wis. Stat. § 60.23(32)(b)2
³ Wis. Stat. §§ 60.23(32)(b)1.c and 60.23(32)(b)2
⁴ Wis. Stat. § 60.23(32)(b)2
⁵ Wis. Stat. §§ 60.23(32)(b)2 and 60.23(32)(b)3
⁶ Wis. Stat. § 60.23(32)(c)
⁷ Wis. Stat. § 60.23(32)(cm)
⁸ Wis. Stat. § 60.23(32)(f)
⁹ Wis. Stat. § 66.1105
¹⁰ Wis. Stat. § 66.1106(2)(c)
¹¹ Wis. Stat. § 66.1105(19)(a)
¹² Id.
¹³ Wis. Stat. § 66.1105(19)(b)
¹⁴ Wis. Stat. § 66.1105(19)(b)3
¹⁵ Wis. Stat. § 70.111(18)

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