



SUMMARY OF ECONOMIC DEVELOPMENT TOOLS:

THIS OUTLINE CONTAINS A SUMMARY OF –

TAX INCREMENT FINANCING

(Updated through June 23, 2021)

The following materials were prepared by the public finance law firm of Gilmore & Bell, P.C.

Gilmore & Bell is one of the leading public finance law firms in the United States. The firm specializes in public finance transactions, serving as bond counsel or underwriters' counsel in a wide variety of tax-exempt and taxable financings and providing tax and arbitrage rebate services in connection with tax-exempt financings. The firm also provides advice to cities, counties and states regarding economic development incentives, administers special taxing districts and handles securities law matters. Gilmore & Bell has more than 55 attorneys and eight offices, located in St. Louis and Kansas City, Missouri, Wichita, Kansas, Omaha and Lincoln, Nebraska, Edwardsville and Champaign, Illinois, and Salt Lake City, Utah.

For more information, please visit the Gilmore & Bell website at www.gilmorebell.com, or contact one of the following attorneys:

In Kansas City (816-221-1000):

Jim Caldwell
Sid Douglas
Sarah Granath

David Martin
Megan Miller
Toni Stegeman

In St. Louis (314-436-1000):

Erick Creach
Shannon Creighton
Sean Flynn
Mark Grimm

Claire Halpern
Mark Spykerman
Jason Terry

SUMMARY OF 2021 LEGISLATIVE REVISIONS

Tax Increment Financing

- Modifies the definition of “blighted area” to remove defective or inadequate street layout, improvement subdivision or obsolete platting and constitutes a menace to public morals as blighting factors.
- A study conducted by a land use planner, urban planner, licensed architect, licensed commercial real estate appraiser, or licensed attorney detailing how the redevelopment area meets the definition of an area eligible for TIF is now required.
- TIF shall not be adopted in retail areas, as defined in the act, unless the financing is exclusively used to fund retail infrastructure projects, or unless such area is a blighted or conservation area.
- Municipalities within Cass County must now establish a 12 member TIF Commission (previously, this only applied to municipalities within St. Louis, St. Charles and Jefferson counties).
- Prohibits TIF in all greenfield areas (previously, this restriction only applied to cities and counties subject to the authority of the East-West Gateway Council of Governments – i.e., metropolitan St. Louis area).
- In the City of St. Louis, up to 10% of TIF revenues can be diverted from the special allocation fund to a strategic infrastructure for economic growth fund and used to fund public infrastructure investments in census tracts qualifying as low income communities or eligible to be designated as qualified opportunity zones.
- Beginning January 1, 2022, new projects are prohibited from being authorized in an area designed as a flood plain by FEMA unless such projects are located in (1) Jackson, Platte, Clay, or Cole counties, (2) the cities of Springfield, St. Joseph, Hannibal, or Jefferson City, (3) in a port district, provided such financing is used for port infrastructure projects, or (4) in a levee or drainage district created prior to August 28, 2021.
- Beginning January 1, 2022, no new TIF projects shall be authorized in flood plains in St. Charles County unless the redevelopment area actually abuts a river or major waterway and is substantially surrounded by contiguous properties with residential, industrial or commercial zoning classifications.
- Governing bodies operating a 911 center providing emergency dispatch services that impose a property tax for such purposes may annually set a reimbursement rate between 50% and 100% of the tax increment from such tax (previously, this provision only applied to ambulance and fire protection districts).
- Ambulance, fire protection districts and governing bodies imposing an economic activity tax for the purpose of operating a 911 center providing emergency dispatch services can annually set a reimbursement rate between 50% and 100% of the amount of their entities’ tax increment that they would have received in the absence of TIF prior to the time the assessment is determined (previously, only fire districts and ambulance districts were permitted to this reimbursement).

* * * * *

TAX INCREMENT FINANCING IN MISSOURI

I. GENERAL

Municipalities can only spend public funds for public purposes. If the costs to be funded are public improvements – such as roads, traffic signals or utilities – then the municipality has a variety of options as to how to finance those public improvements. If the costs to be funded are not public improvements – such as land acquisition costs or site development costs for property owned by persons or entities other than municipalities – then public funds can be used to finance those costs only if the governing body of the municipality finds that the site is a “blighted area” or a “conservation area,” as defined under Missouri law. Tax increment financing (“TIF”) is a method to encourage redevelopment of these areas.

The Missouri TIF law authorizes cities and counties to adopt a redevelopment plan that provides for the redevelopment of a designated area, and to use TIF to fund a portion of the project costs.

The theory of tax increment financing is that, by encouraging redevelopment projects, the value of real property in a redevelopment area should increase. When a TIF plan is adopted, the assessed value of real property in the redevelopment area is frozen for tax purposes at the current base level prior to construction of improvements. The owner of the property continues to pay property taxes at this base level. As the property is improved, the assessed value of real property in the redevelopment area increases above the base level. By applying the tax rate of all taxing districts having taxing power within the redevelopment area to the increase in assessed valuation of the improved property over the base level, a “tax increment” is produced. The tax increments, referred to as “payments in lieu of taxes,” are paid by the owner of the property in the same manner and at the same time as regular property taxes. The payments in lieu of taxes are transferred by the collecting agency to the treasurer of the municipality and deposited in a special allocation fund. In addition, local taxing districts transfer 50% of all incremental sales and utility tax revenues to the treasurer of the municipality for deposit into the special allocation fund. All or a portion of the moneys in the fund can then be used to pay redevelopment project costs or to retire bonds or other obligations issued to pay such costs.

The net effect of tax increment financing is to permit a developer to use a portion of property taxes that otherwise would be paid on the completed project to repay all or a portion of the development costs, thereby reducing the net annual debt service on the completed project (and thus increasing the rate of return on the project). In this manner, future tax increases are not abated, but rather are used to fund costs of the project.

II. PROCEDURES FOR ADOPTING TIF

The TIF Act

The TIF Act permits municipalities to undertake different redevelopment projects within a redevelopment area pursuant to the same redevelopment plan. If a redevelopment plan has multiple redevelopment projects, the municipality may designate different “redevelopment projects” and adopt tax increment financing at different times for each redevelopment project. This structure enables municipalities and developers to phase in projects and to derive additional benefits from the payments in lieu of taxes created by the redevelopment projects.

Before a municipality may implement tax increment financing, (1) the municipality must create a TIF commission as provided in the TIF Act, (2) a redevelopment plan, including a description of the

redevelopment area and the redevelopment projects therein, must be prepared, (3) the TIF commission must hold a public hearing and make a recommendation to the municipality pertaining to the redevelopment plan, the redevelopment projects and the designation of the redevelopment area, and (4) the municipality must adopt an ordinance approving the redevelopment plan, the redevelopment projects and the designation of the redevelopment area as discussed below. If a TIF commission makes a recommendation in opposition to a proposed redevelopment plan, redevelopment project, or designation of a redevelopment area, or amendments thereto, the governing body of the municipality may only approve such plan, project, designation or amendment upon a two-thirds majority vote. Once the ordinance is adopted, tax increment financing may be implemented for one or more redevelopment projects within a redevelopment area. Because of various notice and hearing requirements, it usually takes 120 days or longer to establish a TIF commission and adopt a TIF plan.

Role of the TIF Commission

Before adopting tax increment financing, a municipality must create a TIF commission by ordinance of its governing body. The composition of the TIF Commission depends on (1) whether a city or a county is undertaking the redevelopment project and (2) the location of the city or county undertaking the redevelopment project, as described in the following chart:

Number of members appointed by:	Entity Creating TIF Commission				
	City (outside St. Louis, St. Charles and Jefferson Counties)	City (inside St. Louis, St. Charles, Jefferson or Cass Counties) ¹	County (other than St. Louis County)	St. Louis County	St. Louis City
City(ies)	6	See footnote	0	3 ²	6
School districts	2	2	2	2	2
County	2	See footnote	6	6	0
Other taxing districts	1	1	1	1	1
Total members	11	12	9	12	9

¹ In 2008, the General Assembly enacted Section 99.820.3 of the TIF Act to allow, in St. Louis, St. Charles and Jefferson Counties only, for counties to appoint six of the twelve members of a city’s TIF Commission.

² These members are appointed by the cities that have TIF districts in the county.

The TIF commission conducts the public hearings required under the TIF Act, and makes recommendations to the governing body of the municipality concerning the adoption of redevelopment plans or redevelopment projects and the designation of redevelopment areas. Effective August 28, 2016, for TIF commissions created by cities within St. Louis, St. Charles or Jefferson Counties, and effective August 28, 2021, TIF commissions created by cities within Cass County, a recommendation of approval only occurs if a majority of the commissioners vote to approve a redevelopment plan, redevelopment project, designation of a redevelopment area, or an amendment; a tie vote is considered a recommendation in opposition. The redevelopment plans, redevelopment projects and the designation of the redevelopment area must receive final approval of the governing body of the municipality.

Additionally, effective August 28, 2016, the TIF Act was amended to specifically state that records of the TIF commission must be retained by the governing body of the municipality that created the TIF Commission, and must be made available to the public under the Sunshine Law.

Designation of Redevelopment Area

The “redevelopment area” must contain property that may be classified as a “blighted area” or a “conservation area” (described below), or any combination thereof. The entire redevelopment area need not meet the criteria of one of these categories, but must include only “those parcels of real property and improvements thereon directly and substantially benefited by the proposed redevelopment project improvements.” Thus, a larger redevelopment area that includes property that is increasing in value can enhance the feasibility of a TIF project, provided the larger area, on the whole, is a blighted area or a conservation area and is “substantially benefited” by the redevelopment project.

Although the TIF Act provides for redevelopment projects in an “economic development area,” certain questions remain regarding the constitutionality of TIF financing in such an area that may require a court case to resolve. It is unclear whether there are any instances under which a redevelopment project may be undertaken in an economic development area. Therefore, this memorandum does not discuss TIF financing within economic development areas.

The TIF Act defines a blighted area and a conservation area as follows:

“*Blighted area*” is defined as

an area which, by reason of the predominance, unsanitary or unsafe conditions, deterioration of site improvements, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, or welfare in its present condition and use.

“*Conservation area*” is defined as

any improved area within the boundaries of a redevelopment area located within the territorial limits of a municipality in which fifty percent or more of the structures in the area have an age of thirty-five years or more. Such an area is not yet a blighted area but is detrimental to the public health, safety, morals, or welfare and may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning.

Effective August 28, 2021, all redevelopment plans and projects in a retail area (defined below) approved after January 1, 2022 must meet the dilapidation factor to be found to be a conservation area.

In 2006, the General Assembly amended Missouri’s condemnation laws, which also had an effect on tax increment financing projects. First, farmland that is declared blighted cannot be acquired by eminent domain. Second, blight must be evaluated on a parcel-by-parcel basis, if any property in the redevelopment area will be acquired through (or under the threat of) condemnation.

Effective August 28, 2021, the TIF Act prohibits new tax increment financing projects in any “greenfield area.” A “greenfield area” is defined as “any vacant, unimproved, or agricultural property that is located wholly outside the incorporated limits of a city, town, or village, or that is substantially surrounded by contiguous properties with agricultural zoning classifications or uses unless said property

was annexed into the incorporated limits of a city, town, or village ten years prior to the adoption of the ordinance approving the redevelopment plan for such greenfield area.”

Other legislation in 2007 prohibits new tax increment financing projects in “Hunting Heritage Protection Areas.” Such areas consist of all land within the 100 year flood plain of the Missouri and Mississippi rivers, as designated by FEMA, but excluding (1) areas with a population of at least 50,000 persons and designated as an “urbanized area” by the United States Secretary of Commerce, (2) any land ever used, operated or owned by an entity regulated by the Federal Energy Regulatory Commission, (3) any land used for the operation of a physical port of commerce, (4) any land within Kansas City or St. Louis City, and (5) any land located within one half mile of any interstate highway. There are also several exceptions to the general prohibition against new tax increment financing projects including (1) the ability to expand existing tax increment financing projects located within a Hunting Heritage Protection Area, subject to certain limitations, (2) redevelopment projects for the purposes of flood and drainage protection, and (3) redevelopment projects for the purposes of constructing or operating renewable fuel facilities.

Beginning January 1, 2022, the TIF Act prohibits new projects from being authorized in a flood plain as designated by FEMA unless such projects are located in the following places:

1. Jackson, Platte, Clay or Cole counties;
2. The cities of Springfield, St. Joseph, Hannibal or Jefferson City;
3. In a port district, provided such financing is utilized for port infrastructure projects; or
4. In a levee or drainage district created prior to August 28, 2021.

Further, projects in flood plains shall not be authorized in St. Charles County unless the redevelopment area “actually abuts a river or major waterway and is substantially surrounded by contiguous properties with residential, industrial or commercial zoning classifications.

Preparation of Redevelopment Plan

Before proceeding with a redevelopment project, the municipality must approve a redevelopment plan that designates the redevelopment area, describes the redevelopment project and sets forth a comprehensive program for redevelopment. The TIF Act requires the following information to be included in the redevelopment plan:

1. Estimated redevelopment project costs;
2. The anticipated sources of funds to pay the costs;
3. Evidence of commitments to finance the project costs;
4. The anticipated type and term of the sources of funds to pay costs;
5. The anticipated type and term of the obligations to be issued;
6. The most recent equalized assessed valuation of the property within the redevelopment area that is to be subjected to payments in lieu of taxes and economic activity taxes;
7. An estimate of the equalized assessed valuation after redevelopment; and
8. The general use of the land in the redevelopment area.

Additional information not required by statute may be included in the plan, such as the total acreage in the redevelopment area and the total payments in lieu of taxes and economic activity taxes estimated to be generated over the period the plan is in effect.

Public Hearing Regarding Redevelopment Plan

Before adopting tax increment financing, the TIF commission must hold a public hearing on the redevelopment plan and redevelopment project and the proposed redevelopment area. Notice of the hearing must be published and must be mailed to affected taxing districts and property owners. The TIF commission is required to vote on any proposed redevelopment plan, redevelopment project, or designation of a redevelopment area within 30 days after the public hearing and to make recommendations to the governing body of a municipality. A subsequent amendment to a redevelopment plan or project that changes the boundaries or nature of the initial plan or project may require the TIF commission to hold another public hearing and make additional recommendations to the governing body before the amendment can be implemented.

Adoption of Ordinances by Municipality

The redevelopment plan will become effective upon adoption of an ordinance by the municipality that approves the redevelopment plan and the redevelopment project and designates the redevelopment area. As discussed above, if the TIF Commission makes a recommendation in opposition to the redevelopment plan, the redevelopment project or the designation of the redevelopment area, the governing body of the municipality may only approve such plan, project or designation upon a two-thirds majority vote. The TIF Act does not specify in detail what information must be included in the ordinance approving the redevelopment plan. The TIF Act does state, however, that no redevelopment plan may be adopted without findings that:

- a. The redevelopment area on the whole is a blighted area, a conservation area or an economic development area, including, effective August 28, 2021, a study prepared by a land use planner, urban planner, licensed architect, licensed commercial real estate appraiser or licensed attorney, which includes a detailed description of the factors that qualify the redevelopment area.
- b. The redevelopment area 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 tax increment financing (this is sometimes referred to as the “but-for” test, as discussed above, and must be supported by an affidavit of the developer submitted with the redevelopment plan).
- c. The redevelopment plan conforms to the comprehensive plan for the development of the municipality as a whole.
- d. The estimated dates, which shall not be more than 23 years from the adoption of the ordinance approving a redevelopment project within a redevelopment area, of completion of any redevelopment project and retirement of obligations incurred to finance redevelopment project costs have been stated.
- e. A plan has been developed for relocation assistance for businesses and residences. The relocation plan must comply with the provisions of Sections 523.200 to 523.215 of the Revised Statutes of Missouri, as amended.
- f. A cost-benefit analysis has been prepared showing the economic impact of the plan on each taxing district that is at least partially within the boundaries of the redevelopment area.
- g. The redevelopment plan does not include the initial development or redevelopment of any gambling establishment.

Further, effective August 28, 2021, the TIF Act prohibits the adoption of TIF in a retail area¹ in a redevelopment area designated as an economic development area under the TIF Act unless the financing for the project is exclusively utilized to fund a retail infrastructure project². This does not apply to projects in a retail area within a redevelopment area designated as a blighted area or a conservation area.

III. CAPTURE/USE OF TIF REVENUES

Determination of TIF Revenues

After the ordinance is passed, the county assessor must determine the total equalized assessed value of all taxable real property within the redevelopment project area. Thereafter, the total equalized assessed valuation of taxable real property in the redevelopment project area in excess of the initial equalized assessed valuation is computed by the county assessor for each year that tax increment financing is in effect. The payments in lieu of taxes are made by property owners in the redevelopment area on the increase in current equalized assessed valuation of each taxable parcel of real property over and above the initial equalized assessed valuation of each such parcel, and such payments are deposited into the special allocation fund. Effective August 28, 2018, ambulance, fire protection districts and counties imposing a property tax, and effective August 28, 2021, imposing an economic activity tax for the purpose of operating a 911 center providing emergency or dispatch services can annually set a reimbursement rate between 50% and 100% of the amount of their entities' tax increment prior to the time the assessment is paid into the Special Allocation Fund. If a redevelopment plan, area or project is amended, these entities have the right to recalculate their reimbursement. If the voters in a taxing district approve a new tax levy or an increase to a taxing district's existing levy after August 28, 2014, then the additional revenues generated within an existing redevelopment project area from the voter-approved tax levy or increase will not be subject to capture without the taxing district's consent.

In addition, 50% of the increase in total revenues of incremental sales and utility taxes (referred to as "economic activity taxes") are captured and deposited into the special allocation fund. Under the TIF Act, economic activity taxes do not include taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees, special assessments, personal property taxes, and, effective August 28, 2016, sheltered workshop taxes. The TIF Act and certain sales tax statutes further exclude some local sales taxes from capture and deposit into the special allocation fund, including, without limitation, certain sales taxes imposed to fund a children's services fund, emergency communication systems, public transportation, parks and trails, and stadium improvements in Jackson County.

Other statutes may place limits on the ability to capture a local sales tax. For example, any economic development sales tax imposed pursuant to Section 67.1305 of the Revised Statutes of Missouri is not captured by tax increment financing unless recommended by the economic activity tax board and approved by the governing body imposing the tax. Additionally, if the voters in a taxing district approve a new sales tax after August 28, 2014 (including increases to existing sales taxes, but not including renewals

¹ A proposed redevelopment building area for which more than 50% of the usable building square footage in the area is projected to be used by retail businesses, which shall be businesses that primarily sell or offer to sell goods to a buyer primarily for the buyer's personal, family or household use and not primarily for business, commercial or agricultural use.

² Includes highways, roads, streets, bridges, sewers, traffic control systems and devices, water distribution and supply systems, curbing, sidewalks, storm water and drainage systems or any other similar public improvements, but shall not include private structures.

of expiring sales taxes), then the revenues generated within an existing redevelopment project area from the new sales tax will not be subject to capture without the consent of the taxing district.

Further, effective August 28, 2016, for any plans, projects, designations, or amendments approved by a governing body of a city in St. Louis, St. Charles or Jefferson Counties over a recommendation in opposition by the TIF commission, the payments in lieu of taxes and economic activity taxes captured by the TIF will be limited to paying only redevelopment costs for the demolition of buildings and for the clearing and grading of land.

Effective August 28, 2021, for redevelopment projects approved after December 31, 2021, St. Louis City may provide for the deposit of up to 10% of TIF Revenues generated by that redevelopment project into a Strategic Infrastructure for Economic Growth Fund.

Issuance of Bonds or Other Obligations

Either the municipality or the TIF commission may issue bonds or other obligations under the TIF Act which are payable from moneys in the special allocation fund or other funds specifically pledged. The TIF Act provides that voter approval of TIF bonds is not required. The bonds or other obligations must mature within 23 years, may bear any interest rate and may be sold at public or private sale as determined by the municipality or TIF commission. The bonds or other obligations are not a general obligation of the municipality and, accordingly, do not count toward the municipality’s constitutional debt limitation.

Reporting/Hearing Requirements

The TIF Act has always included certain annual reporting requirements; those requirements were amended in 2016 to clarify the obligations and the penalties for non-compliance. Effective August 28, 2016, the governing body of each municipality must submit to the Missouri Department of Revenue (“Department of Revenue”) an annual report concerning the status of each redevelopment plan and project no later than November 15th of each year. If a municipality fails to provide an annual report, the Department of Revenue must send a notice of the failure to the municipality, specifying required corrections. If the municipality fails to comply with the notice within sixty days, it is prohibited from adopting any new TIF plans for five years from the date of the failure notice provided by the Department of Revenue.

The municipality must also publish in a newspaper of general circulation in the county a statement showing the payments in lieu of taxes received and expended in that year, the status of the redevelopment plan and projects, the amount of outstanding bonded indebtedness and any additional information the municipality deems necessary.

Every five years, the governing body of the municipality must hold a public hearing to determine if the redevelopment project is making satisfactory progress under the proposed time schedule contained in the redevelopment plan. Notice of the public hearing must be given in a newspaper of general circulation in the redevelopment area once each week for four weeks immediately prior to the hearing.

* * * * *