Introduction

David L. Callies and W. Andrew Gowder, Jr.

Tax increment financing (TIF) is a method of financing the redevelopment of underperforming property by isolating the value added to the property from a proposed redevelopment (the increment) and taxing that increment only to pay for the redevelopment project. It is particularly attractive to the municipalities in which the improvements are made (and developers with projects nearby) because the base value and tax pertaining to the property continues to accrue to the relevant taxing bodies as before, and only the incremental tax revenue is temporarily diverted from those taxing bodies for as long as it takes to pay (or help pay) for the redevelopment. In theory, the diverted stream is "free money" used to pay for the redevelopment and then returned to its rightful place as part of a now-enhanced stream of revenue to the governmental bodies that levy such taxes on the property in the first place. Usually, that stream of incremental revenue supports the principal and interest of tax revenue bonds, the income from the sales of which is used at one time for the redevelopment project. Such bonds may or may not be tax-exempt, and may or may not be additionally (besides the aforesaid incremental revenue stream) backed by additional sources, such as the full faith and credit of the government agency or entity—like a municipal corporation—in whose jurisdiction the redevelopment will fall. The process—and some of its pitfalls together with the issues its use raises—is set out in more detail in Chapter 1 by H. Lawrence Hoyt in his comprehensive analysis and summary of TIF in Colorado.

Virtually every state authorizes tax increment financing in some form, almost exclusively for redevelopment projects. The tax increment is usually—but not always—diverted from the ad valorem real property tax. However, the use of TIF raises a number of issues that this book attempts to address by means of case studies drawn from among the states. For a quick summary of the legislation and some of the issues raised in the 49 states that authorize TIF, see the excellent 2007 report by the Council of Development Finance Agencies and the International Council of Shopping Centers, Tax Increment Finance Best Practices Reference Guide, and the tables and charts therein.

This book begins with an overview in the first chapter of tax increment financing fundamentals that are generally uniform across the jurisdictions. The following chapters then survey the experience of different states with tax increment financing, generally in connection with urban redevelopment projects. The states were chosen not so much to represent distinct differences in treatment of TIF across the U.S., but rather to demonstrate a sampling across different geographic regions, among small and large states, urban and rural. The chapter authors describing the experiences in the states report in particular on the income stream tapped for the tax increment; the form of long-term project financing, usually in the form of bonds; the need for urban redevelopment as part of the TIF package; the presence or need for a plan; and the presence or need for public participation. To conclude this examination of the state of the law,the final chapter is an updated version of an article that first appeared in the law review for the ABA Section of State and Local Government Law, *The Urban Lawyer*. The article examines how state courts have construed TIF bonds in light of constitutional limits on borrowing, a subject that is important but not easily treated in sufficient depth in the state chapters we included. This chapter summarizes a broader, fundamental issue that is common to all jurisdictions and may give a glimpse of innovations to the statutes in the future.

Here are some emerging trends from the eight state chapters that form the bulk of the book:

TIF Tax Increment Stream

By far the most common tax increment stream is that from the ad valorem real property tax. This is probably due in part to the use of TIF primarily by local rather than state government, where the ad valorem property tax is among the largest sources of tax revenue as well as the source most likely to increase from redevelopment as a result of the presumptive increase in the value of the subject property, following the redevelopment work. In order to avoid a potential shortfall in needed revenue during the increment period, some states specifically provide for the deduction of TIF administrative costs from the availability of the TIF revenue stream (California). Some states provide for the use of other tax revenue streams as well, such as the sales tax (Colorado, Kentucky, Louisiana), payroll and business license tax (Kentucky), and hotel occupancy tax (Louisiana). Some states specifically provide for other local government districts to pledge tax revenues (Louisiana, South Carolina, Texas) while others specifically prohibit any but municipalities to so pledge (New York). A few states specifically permit state government to also pledge incremental tax revenue (Kentucky, Louisiana).

Bonds

All states permit the issuance of bonds as the principal method of financing a project through tax increment financing. The majority of states restrict such bond financing to a form of revenue bond (from the project) only (e.g., New York), though a few permit the issuing government to further back such bonds with its full faith and credit, often by another series of GO bonds (Texas, Illinois).

Redevelopment and Blight

Most jurisdictions require some sort of redevelopment, renewal, or redevelopment district in connection with TIF financing. South Carolina, for example, requires such by both state constitution and statute. Most of these jurisdictions also require some finding of blight, however defined. Some, on the other hand, like Texas, appear to permit TIF to be used for transit stops, new towns, and historic preservation as well. Louisiana has a history of TIF use in the aid of new retail development as economic development.

A Plan

Every jurisdiction requires some sort of government-approved plan. Those jurisdictions that also require redevelopment or renewal require a redevelopment plan. Texas, on the other hand, requires a "project plan" and a reinvestment district or zone financial plan as well.

Public Participation/Hearings

All jurisdictions require public hearings and participation, usually on the plan, particularly if it is a redevelopment plan. Illinois in particular requires detailed notices and public opportunity to review and comment. Colorado specifically requires hearings on a redevelopment plan, blight determination, and TIF plan.

Project Type

TIF projects have been undertaken of every stripe, type, and size, from virtual new communities (Illinois) to a single retail establishment (Kentucky and Louisiana). The quintessential TIF project, however, is a public infrastructure project in aid of redevelopment that encourages private investment in new or restored buildings or city blocks by offering to publicly finance roads, water and sewer, streetscaping, public art or amenities, or public housing that would otherwise be the cost of the private developer. Several such examples of these projects appear throughout the chapters of this book.

New Wrinkles/Oddities

The chapters that follow also provide glimpses of the wrinkles and oddities of this public financing tool as it is drafted and implemented across the states. Texas uses overlay districts in order to pledge additional revenue streams to enhance the marketability of TIF bonds. New York has never used its TIF authority. Kentucky levies a two percent job assessment fee on gross wages of new employees in a redevelopment district or project.

What is revealed by all of the following chapters, viewed as a whole, however, are the common threads of this innovative and popular public financing method as they appear in most jurisdictions and also the variety of ways in which the states have tinkered with the details of this tool in adopting and implementing it in their various jurisdictions. Surely, there have been abuses of this financing tool, as with many others, and there are also serious public policy issues to be weighed when scarce public resources are allocated in one way versus another. The stream diverted to pay for TIF bonds, even if temporary, is cut off from other recipients, like school districts, that would otherwise receive those funds and that have their own resource scarcity issues, as well. These policy questions, as well as the fundamentals of TIF practice and case studies showing TIF projects on the ground, are all to be found in the pages that follow. The authors hope that the reader will gain from reading the volume as a whole, and from referring back to its chapters to guide them in their individual practices and circumstances.