

Publications

Temporary Access to TIF Funds for Municipalities and Townships

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On June 24th, the Ohio Senate concurred in the Ohio House amendments and passed Amended Senate Bill 4 (S.B. 4), which will now be sent to Governor DeWine for his signature. Among other things, S.B. 4 authorizes municipalities to temporarily divert unencumbered payments in lieu of taxes (PILOTs) to fund any public safety or road and bridge maintenance cost not eligible to be paid with funds received via the federal Coronavirus Aid, Relief and Economic Security Act (CARES Act).

The ability to utilize unencumbered PILOTs for projects unrelated to the tax increment financing (TIF) itself presents an unusual short-term opportunity for municipalities and townships facing financial challenges during this pandemic.

Timing

Once the legislation becomes effective, any municipality or township that is still in fiscal year 2020, and all municipalities and townships throughout fiscal year 2021, can benefit from this temporary law.

Amount

If the municipality or township is still in fiscal year 2020 when the legislation becomes effective, then it can appropriate and expend up to twenty-five percent (25%) of the unencumbered money in the municipal public improvement, urban redevelopment or township TIF fund, as applicable, as of that effective date, plus up to twenty-five percent (25%) of any amount deposited to that TIF fund during the remainder of that fiscal year. For fiscal year 2021, the municipality or township can also appropriate and expend up to twenty-five percent (25%) of the unencumbered TIF funds available as of the first day of that fiscal year, plus up to twenty-five percent (25%) of any amount deposited to that fund during that fiscal year.

Use of Funds

The 25% portion of unencumbered TIF funds can be used solely to pay current public safety expenses or road and bridge maintenance expenses of the subdivision that are not eligible to be paid or reimbursed with funds received by the subdivision pursuant to the CARES Act, 42 U.S.C. 601. This contrasts with the restrictions in sections 5709.43 and 5709.75 of the Ohio Revised Code, which generally do not allow for such broad use of TIF PILOTs.

Repayment Obligations

The subdivision appropriating and expending TIF PILOTs must reimburse the fund from which the appropriation or expenditure was made if the subdivision receives federal funds that may be used to pay for or reimburse those expenses, but only if and to the extent those funds are available. No reimbursement is required if such federal funds are not received before the expiration of the TIF exemption.

Open Questions

There remain gray areas subject to interpretation. First, “unencumbered” is not defined in the statute, so we believe the intent is that the available funds cannot be subject to a TIF agreement restricting use of the funds (*i.e.* the funds are encumbered at the time of the agreement and not available instead of being encumbered only when an expense is submitted). Second, there may be school district compensation agreements that effectively encumber the funds with contractual obligations. For instance, if a school district receives an increased percentage after a certain payment of project expenses is made, that contractual obligation likely has the effect of encumbering those funds, since diverting the funds could violate the contract.

This temporary legislation provides an opportunity for municipalities and townships facing challenging financial times by providing another fund that can be temporarily used. Vorys encourages you to contact your Vorys attorney with any questions you may have. For questions, please contact: Scott J. Ziance, 614.464.8287, sjziance@vorys.com; Sean Byrne, 614.464.8247, spbyrne@vorys.com; Aaron S. Berke, 330.208.1017, asberke@vorys.com; Christopher J. Knezevic, 614.464.5627, cjknezevic@vorys.com; or Jonathan K. Stock, 614.464.5647, jkstock@vorys.com.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.