

Has the TDDA Over Captured Tax Revenues?

I believe that the Troy Downtown Development Authority (TDDA) has collected more Tax Increment Finance revenues than they legally are entitled to. The TDDA has been collecting TIF revenues from the entire TDDA district since its creation. In their first two development plans, they specified development areas that were only portions of the district. However, they collected TIF revenues from the entire district, not just from the development areas as is stated in the controlling state statute. I brought this to the TDDA members and the Troy City Council's attention in 1999. The result was that Development Plan #3, which amended development plans #1 & #2, changed the description of the development area, as described in Development plans #1 as amended by Development Plan #2, to be **coterminous with the TDDA district boundary**.

What constitutes a development area?

On the Department of Treasury Web site, the following is provided:

What is the difference between an authority district and a plan?

Answer:

First – The local unit establishes an authority (DDA, LDFA, TIFA) with a specific geographic district, and appoints an authority board.

Then – The board writes a development plan (and usually a tax increment financing plan to fund it) for a specific geographic area within the district area. There can be more than one plan area in an authority district, but plans may not overlap. (Overlap information does not apply to Brownfields and certified technology parks.) The development plan and TIF plan must be adopted by the local unit before the plans are valid. DDA mills are levied within the district boundaries. DDAs and TIFAs capture property taxes within the plan boundaries. LDFAs capture within each eligible property, or within a certified business park (formerly called a "certified industrial park"), or certified technology park.

What the Treasury department has stated is that a development plan is written for a specific geographic area within the district area. This specific geographic area within the district area is defined as the development area.

Pursuant to Michigan Compiled Law (MCL):

125.1667 Development plan; preparation; contents; improvements related to qualified facility.

Sec. 17. (1) When a board decides to finance a project in the downtown district by the use of revenue bonds as authorized in section 13 or tax increment financing as authorized in sections 14, 15, and 16, it shall prepare a development plan.

(2) The development plan shall contain all of the following:

(a) The designation of boundaries of the development area in relation to highways, streets, streams, or otherwise.

The TDDA in the first and original “Development Plan and Tax Increment Financing Plan” did specify the boundaries as:

DEVELOPMENT AREA BOUNDARIES

The development area is situated within the Downtown Development District. More specifically, the development area is centered on the right-of-way of Big Beaver Road and extending between Cunningham on the west and Civic Center drive on the east, a length of approximately 1.8 miles. The development area also includes Coolidge Highway improvements north and south of Big Beaver Road from Golfview through the Cunningham intersection. Also included within the area is an enclosed parking structure to serve the Somerset Collection (North) and the structure is located south of Cunningham Drive between Coolidge Highway and Lakeview Drive in the southwest quarter of the southwest quarter of Section 20 of the City of Troy.

There is no question that the initial Development Plan specified an area within the district and not the entire district. The second development plan stated the following (references to maps was in the plan and is not included):

Relationship between Development Plan #2 and Development Plan #1

The intent of Development Plan #2 is to amend Development Plan #1 by adding two new development areas to the development plan. The development areas in Development Plan #2 are identified in the following manner (See Map #1):

Area A – the original development established by Troy DDA and the City of Troy;

Area B – the area located on the West Side of Area A adjacent to the original development area and includes all the KMART property; and

Area C – The area located on the east side of Area A adjacent to and north of the original development area and includes all of the property known as the Troy Civic Center and old Troy High School.

Further, the existing Tax Increment Financing Plan relating to Development Plan #1 will be retained and modified to include new development consistent with state law.

DESIGNATION OF BOUNDARIES OF THE DEVELOPMENT AREA

The Development Area Boundary is located within the jurisdictional limits of the City of Troy and the TDDA. The City of Troy established the TDDA pursuant to Act 197 of Public Acts of 1975, as amended, through the adoption and publication of Ordinance 80. The boundary for the TDDA Development Area #2 is shown on Map #1 and can be generally described as the Civic Center property and old Troy High School on the east end of Big Beaver Road, the right-of-way along Big Beaver Road from the Civic Center property on the east and the KMART property on the west, the parking garage on the northside of the Somerset Collection, and the KMART property.

The first two development plans recognize and define the development areas as subsets of the district.

What TIF Revenues can be collected?

Michigan Compiled Law states:

125.1651 Definitions.

Sec. 1. As used in this act:

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(z) "Tax increment revenues" means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the captured assessed value of real and personal property in the development area, subject to the following requirements:

It was this definition that initially prompted me to question the revenues being captured and transmitted to the TDDA. I questioned the City Council and prepared a letter documenting my concerns. I received a copy of a letter dated January 19, 2000 addressed to the Board of Directors of the TDDA from John J. Martin, III the City Attorney for Troy concerning the City of Troy DDA Financing issues. It stated:

As you may recall, a question was raised during Public Comments by Victor Lenivov about the proper amount of tax increment revenue that could be transmitted to the TDDA for financing of the prior development plans.

After reviewing this matter with bond counsel, it is our opinion that the proper amount of tax increment revenue that is to be transmitted to the TDDA for the original TDDA Development Plan and the TIF Plan and for the TDDA Plan No. 2 and the TIF Plan No. 2 is the amount in one year by which the current assessed value of all real and personal property within the Downtown Development District exceeds the sum of \$429,278,530, or the initial assessed value of the TDDA District based upon the 1993 state equalized valuations on real and personal property on all non-exempt parcels within the TDDA District.

It was their legal opinion that the tax increment revenues were to be based on the initial assessed value of the non-exempt parcels within the TDDA DISTRICT, not just the development area. This contradicts what is posted on the Dept. of Treasury web site.

Can a DDA or TIFA plan spend revenue outside of its development area?

Answer: According to state law, the plan may spend revenue only for projects described in the development plan and/or tax increment financing plan, and the projects must be allowable under the law. The revenue must be spent for the benefit of the development area. **Revenue of one plan may not be used to pay an obligation or expense of another plan.** The State Tax Commission's policy is that revenue must also be spent on improvements or properties located in the plan's development area. The State Tax Commission will enforce this policy on a prospective basis as of April 14, 1998, but not retroactively. **After April 14, 1998, a plan may not start any new projects outside of that plan's development area.** The State Tax Commission may waive this requirement for certain infrastructure improvements made in the development plan that must extend outside the development area's boundaries. Note: LDFA's are not included here because section 12(2) of the Local Development Financing Act (P.A. 281) has specific provisions regarding restrictions on the use of tax increment revenue.

April 14, 1998 is the date that a plan may not start any new projects outside of that plan's development area. The TDDA Development Plan No. 2 was not approved by the TDDA or the Troy City Council until after this date. Did the State Tax Commission waive this requirement for the TDDA Development Plan No. 2?

I had been raising my concerns about the proper tax increment revenues to be collected when the TDDA was considering Development Plan No.3. The letter dated January 19, 2000 was written after Development Plan No. 3 was approved by the TDDA. In the TDDA Development Plan No. 3, a major change was made in describing the development area. This plan stated the following:

DESIGNATION OF BOUNDARIES OF THE DEVELOPMENT AREA AND NEW PROJECTS

The Development Area Boundary is located within the jurisdictional limits of the City of Troy and coterminous with the TDDA. The City of Troy established the TDDA pursuant to Act 197 of Public Acts of 1975, as amended, through the adoption and publication of Ordinance 80. The boundary for the TDDA and Development Area is shown on Map #1. The projects that have been added to the Development Plan of the TDDA under this Development Plan #3 can be generally described as the right of way along Rochester Road from I-75 to Urbancrest, and the right of way along Big Beaver Road from east of Civic Center Drive to east of Rochester Road.

The development areas previously described in Development Plans No. 1 and No. 2 have disappeared and the NEW DEVELOPMENT AREA is the entire District. That having occurred retroactively now makes collecting all tax increment revenues for the entire district since its inception legal. To me that is committing **FRAUD**.