The ABCs of TIFs, DIFs, TIEs & STAs

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What is a TIF ?

- TIF is an acronym for "Tax Increment Financing".
- In Massachusetts, a TIF is actually a specific type of tax increment financing.

History of Tax Increment Financing

- Tax Increment Financing was originally developed as a tool to finance public infrastructure in urban renewal projects.
- Tax Increment Financing Districts were created within the Urban Renewal Area.
- The incremental tax revenue was earmarked to pay for the public infrastructure improvements.

A Little Massachusetts Context

- Chapter 23A was amended by Chapter 19, Section 4 of the Acts of 1993.
  - Added Sections 3A – 3F to Chapter 23A;
    - Created the EACC & the EDIP;
    - Allowed for the creation of ETAs & EOAs;
    - Allowed for Special Tax Assessments.

A Little Massachusetts Context

- Chapter 40 was amended by Chapter 19, Section 12 of the Acts of 1993.
  - Added Section 59 to Chapter 40;
    - Authorized the creation of TIF Zones;
    - Authorized TIF Agreements of not more than 20 years to be executed by legislative & executive branches of the municipality.

A Little Massachusetts Context

- Chapter 59, Section 5 was amended by Chapter 19, Section 14 of the Acts of 1993.
  - Added Clause 51st to Chapter 59, Section 5;
    - Created Real Property Tax Exemptions as set forth in TIF Agreement;
    - Created 100% Personal Property Exemption.

A Little Massachusetts Context

- Chapter 23A, Sections 3A – 3F were substantially amended by Chapter 287 of the Acts of 2014.

- Uncoupled Certified Projects from ETA & EOAs;

- Uncoupled TIFs/STAs from ETAs & EOAs

- Allowed for “Local Incentive Only” TIFs/STAs

A Little Massachusetts Context

- Chapter 23A, Sections 3A – 3F were again substantially amended by Chapter 219 of the Acts of 2016.

- Totally rewrote Chapter 23A, Sections 3A – 3F

- Greater flexibility in STA provisions

- Provided for “Clawbacks”

How Does a TIF Work ?

TIFs & STAs Today

- The 2016 Changes to Chapter 23A became effective on January 1, 2017.
  - In negotiating Post 1/1/17 TIFs & STAs don't rely on Agreements or Votes used prior to 1/1/17.
- The Assessor's Office should be part of the TIF/STA Negotiation Team from the start.
  - Chapter 40, Section 59 requires they get a copy of each TIF and list of parcels.

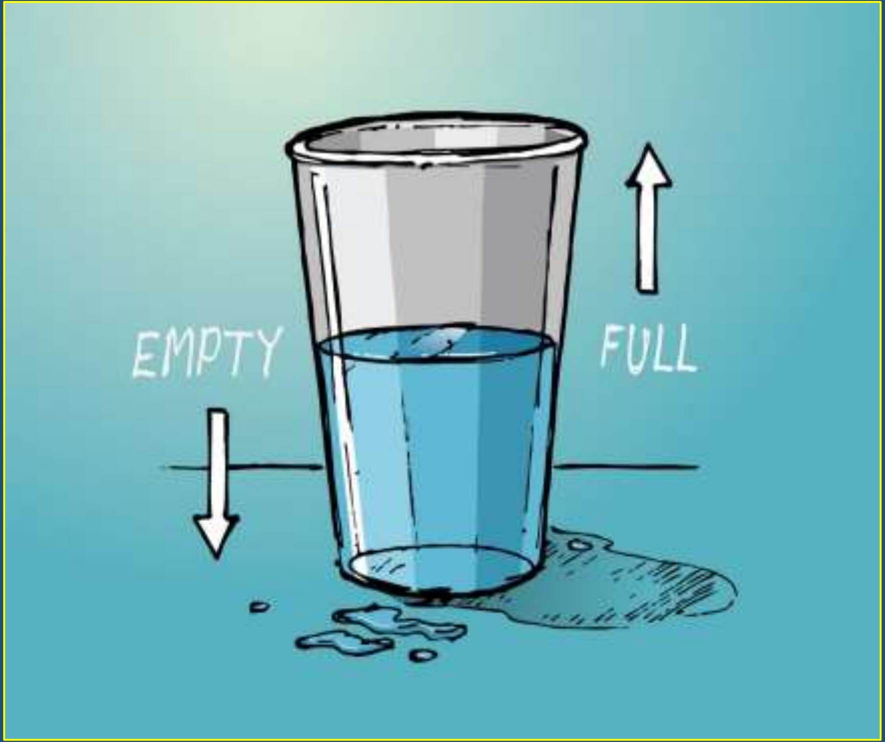
TIF & STA Annual Reports

- Companies receiving TIFs & STAs must file annual reports with EACC though the online portal:
    - the number of jobs retained and created,
    - the value of the property capital investments, and
    - other related items with respect to the property annually and on a cumulative basis.

TIF Additional Reporting

- Pursuant to Chapter 40, Section 59(viii) Companies receiving TIFs must file reports with the Town Clerk & EACC:
  - detailing the status of the construction laid out in the agreement,
  - the current value of the property, and
  - the number of jobs created to date as a result of the agreement.

Do TIFs Work ?



<u>"Half Empty"</u>

- Corporate Subsidy.
- Impact of rest of tax base.
- "They would have invested anyway."

<u>"Half Full"</u>

- No decrease in tax revenue.
- Encourages development.
- Job creation.
- Creates "New Growth.

Things to Keep In Mind - TIFs

- Be very clear about the Base Valuation
  - The Base Valuation should be the assessed valuation of the property in the fiscal year when the TIF Agreement is executed.
  - The Base Valuation will be adjusted annually pursuant to Chapter 59, Section 21C(f).

Things to Keep In Mind - TIFs

- Try to be as specific as possible about the 1st year of the exemption.
  - Companies will want to insure that there is some flexibility to account for delays in construction.
  - The 1st year of the exemption should be the 1st fiscal year after the Certificate of Occupancy or Completion has issued.

Things to Keep In Mind - TIFs

- Be as clear as possible about how personal property will be treated.
  - Is the company a manufacturer? If so see Chapter 59, Section 5, Clause 16th.
  - If not, then pursuant to Chapter 40, Section 59 & Chapter 49, Section 5, Clause 51st the percentage exemption must be set forth in the TIF Agreement.
  - Expressly state if no exemption.

Things to Keep In Mind - TIFs

- TIFs are assignable to successive owners pursuant to Chapter 40, Section 59.
  - Successor must be of a like kind business and must abide by the provisions of the TIF.
  - If not, the TIF can be terminated voluntarily by the company selling the business or request to decertify can be filed by the municipality.

Things to Keep In Mind - TIFs

- Expressly provide for a process of default notification and cure.
    - Municipality should provide written notice of the event of default;
    - Company should have reasonable period to cure the default;
    - Landlord should also have right and opportunity to cure the default.

Things to Keep In Mind - TIFs

- TIF Agreements should provide for "clawback" of benefits upon default or decertification.
  - Recapture value of tax not paid due to TIF exemption through a special assessment;
  - State that assessment, payment, and collection of the special assessment treated as an Omitted Assessment under Chapter 59, Section 75, notwithstanding time frame set forth in Section 75.

Municipal Approval

- TIF & STA Agreements must be:
  - Approved by Town Meeting, or Town Council/City Council & Mayor (c.40, § 59).
- EDIP Applications for approval of TIF & STA Agreements must be:
  - Endorsed by Board of Selectmen, or City Council with Approval of Mayor (c.23, § 3A(b) & 3C(a)).

Let’s Talk About STAs

- Applies to total assessed value, not just incremental increase in value, of the property.
- No personal property tax exemption.
- Formal Determination that investment will contribute to economic revitalization, or will increase or retain jobs, is reasonably necessary for investment, and is reasonably proportionate.

Let’s Talk About STAs

- Term must be at least 5 years and no more than 20 years.

- Must minimally comply with:
  - Year One: not less than 50% exemption;
  - Year Two: not less than 25% exemption;
  - Year Three: not less than 25% exemption;
  - Year Four: not less than 5% exemption;
  - Year Five: not less than 5% exemption

What is a DIF ?

- DIF is an acronym for "District Improvement Financing".
- Pursuant to Chapter 40Q, a municipality may designate development districts provided that the total area of all development districts shall not exceed 25 per cent of the total area of the municipality.

How does a DIF work?

- In a DIF, the Assessor certifies the original assessed value of all the properties in the district.
- Each subsequent year, the Assessor certifies the portion of new growth attributable to the investments in the district.
- The associated tax revenue from the new growth is earmarked to fund public debt in the district.

How does a DIF work?

- Annually, after payment of the debt service, the excess tax revenue is turned over to the General Fund.
- The municipality can issue revenue or general obligation bonds to fund the improvements in the district.
- This is really how TIFs work in other States.

Let's Talk About TIEs

- Pursuant to Chapter 40V areas within a Gateway Municipality may designated as "Housing Development Zones" .
- Within the HD Zone, housing development projects with at least 80% market rate units can be designated as a "Certified Housing Project".

Let's Talk About TIEs

- Pursuant to Chapter 59, Section 5M, Certified Housing Projects can qualify for a real estate tax exemption.
  - Exemption must be at least 10% but no more than 100% of the incremental value of the fully developed market rate units.
  - This Tax Increment Exemption, or TIE must be approved by DHCD.

Let’s Talk About TIEs

Residential

Commercial

Let's Talk About TIEs

- The Base Value for the Exemption is the assessed value of the parcel of the property as of the fiscal year in which a HD Tax Increment Exemption Agreement is executed .
    - minus the assessed value attributable to any portion of the property that was assessed as other than residential in the applicable fiscal year and remains non-residential after completion of new construction or Substantial Rehabilitation.

Example of a TIE

Residential Portion – Pre Development

Building	$ 850,000	
Land	$ 250,000	
TOTAL		$ 1,100,000

Commercial Portion – Pre Development

Building	$ 2,150,000	
Land	$ 750,000	
TOTAL		$ 2,900,000

Example of a TIE

Value of Residential Improvement:

$ 8,500,000

TIE Exemption – Year 1:

80%

Value of Improvement After Exemption:

$ 1,700,000

Year 1 Residential Portion of Tax:

Base Value:	$ 1,100,000
Improvement	$ 1,700,000
Total	$ 2,800,000

Thank You!

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