TAX INCREMENT, SPECIAL TAXING DISTRICT AND CROWDFUNDING INFRASTRUCTURE FINANCING OPTIONS

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DIFFERENCE BETWEEN TAX INCREMENT AND SPECIAL TAXING DISTRICT FINANCING:

- Tax increment financing: real property tax revenues attributable to the increase in assessable base of real property in a designated area over an original assessable base of such real property are captured and segregated. This represents a diversion of money that normally flows to the General Fund. No additional taxes are levied in connection with a tax increment financing.

- Special taxing district financing: special taxes are levied on property in a designated area *in addition to general ad valorem real property taxes*. Special taxes may be levied on an ad valorem or a non-ad valorem ("special tax") basis.

TAX INCREMENT FINANCING (TIF) AUTHORITY:

- Sections 12-201 to 12-213, inclusive, of the Economic Development Article of the Annotated Code of Maryland apply to all Maryland counties and municipal corporations except Baltimore City (the "General TIF Statute").

- Baltimore City Charter Article II, Section 62 (the "Baltimore TIF Statute").

- Both statutes provide for designation of a development district (General TIF Statute: must be a contiguous area; Baltimore TIF Statute: "an area or areas" with no contiguity requirement); creation of a special fund into which incremental tax revenues will be deposited; and issuance of revenue bonds, notes or other similar instruments (referred to herein as "TIF bonds").

- General TIF Statute also allows for identification of an area that has been designated as a "sustainable community" for purposes of Section 6-201 of the Housing and Community Development Article of the Annotated Code of Maryland or as a "RISE zone" (a Regional Institution Strategic Enterprise) under Section 5-1404 of the Economic Development Article.

- Major differences between General and Baltimore TIF Statutes:

  -- Baltimore TIF Statute allows the City to pledge all or a portion of the incremental tax revenues from the development district, subject to annual appropriation of such amounts; General TIF Statute does not allow partial pledge.

  -- If Baltimore City issues TIF bonds the debt service on which is not subject to annual appropriation, the City must comply with Maryland Constitutional debt creation procedures (including voter approval).

  -- Baltimore TIF Statute does not restrict expenditure of TIF bond proceeds for construction/ rehabilitation of buildings only to those to be devoted to governmental use or purpose; also allows building construction/rehabilitation if (i) "abandoned property", (ii) "distressed property" or (iii) will provide units of "affordable housing" (within the meaning of the Baltimore TIF Statute).

  -- Baltimore TIF Statute expressly permits TIF bond proceeds to finance structured and surface parking facilities that are publicly owned or privately owned but serve a public purpose.

  -- General TIF Statute allows Prince George's County or the Revenue Authority of Prince George's County <u>only</u> to apply TIF bond proceeds for convention centers, conference centers and visitors' centers; maintenance of infrastructure improvements, convention centers and visitors' centers; and marketing development district facilities and other improvements.

  - General TIF Statute provides development district and special fund are designated/created by resolution; Baltimore TIF Statute requires an ordinance.

  - General TIF Statute allows county or municipality that is not the issuer to pledge its incremental tax revenues from properties in the development district to payment of the TIF bonds.

- Under General TIF Statute, portion of taxes representing levy on the tax increment are not considered county or municipal taxes for purposes of constant yield tax limitation or State or local restriction, except for tax revenues received from residential property in Prince George's County.

TIF BOND PROCEEDS MAY BE SPENT:

- To buy, lease, condemn, or otherwise acquire property, or an interest in property in a development district, a RISE zone or a sustainable community; or needed for a right-of-way or other easement to or from the development district, RISE zone or sustainable community.

- For site removal.

- For surveys and studies.

- To relocate businesses or residents.

- To install utilities, construct parks and playgrounds, and for other needed improvements, including roads to, from, or within the development district; parking; and lighting (General TIF Statute includes parking in this category).

- To construct or rehabilitate buildings for a governmental purpose or use (Baltimore TIF Statute also lists buildings that are "abandoned property", are "distressed property" or will provide units of "affordable housing").

- For reserves or capitalized interest.

- Baltimore TIF Statute only: structured and surfacing parking facilities that are publicly owned or privately owned but serve a public purpose.

- For necessary expenses to issue TIF bonds.

- To pay principal and interest on loans, advances or indebtedness incurred by a county or municipality for purposes of the statute.

- TIF bonds issued by municipal corporations to encourage redevelopment in revitalization areas, mixed use centers, blighted areas, or developed areas and growth areas (as defined in a municipal land use plan) may be used for additional purposes, including parking structures of any type whether for public or private use.

- Additionally, TIF bond proceeds may be used in a RISE zone for expanded purposes.

SPECIAL TAXING DISTRICT (STD) AUTHORITY:

- Sections 21-407 to 21-422, inclusive, of the Local Government Article of the Annotated Code of Maryland applies to all Maryland municipalities except for Baltimore City (the "General STD Statute").

- Baltimore City Charter Article II, Section 62A (the "Baltimore STD Statute").

- Both STD statutes provide for designation of a special taxing district, creation of a special fund into which proceeds of the special taxes will be deposited and issuance of revenue bonds, notes or other similar instruments by the applicable municipal corporation or Baltimore City (referred to herein as "STD bonds").

- Major differences between STD statutes:

    -- Baltimore STD Statute allows the City to pledge all or portion of special taxes, subject to annual appropriation of such amounts; General STD Statute does not allow partial pledge.

    -- If Baltimore City issues STD bonds the debt service on which is not subject to annual appropriation, the City must comply with Maryland Constitutional debt creation procedures (including voter approval).

    -- Special taxing district and special fund are designated/created by resolution; STD bonds are authorized by ordinance or resolution except that Baltimore STD Statute requires ordinances for all such actions.

<u>STD BOND PROCEEDS MAY BE SPENT ON</u>:

- Storm drainage systems.

- Sewers.

- Water systems.

- Roads.
- Bridges.
- Culverts.
- Tunnels.
- Sidewalks.
- Lighting.
- Parking (Baltimore STD Statute specifies transit facilities and surface parking and structured parking facilities that are publicly owned or privately owned but serve a public purpose).
- Parks and recreation facilities.
- Libraries.
- Schools.
- Other infrastructure improvements as necessary for the development and use of land in any defined geographic region in the municipality (Baltimore STD Statute also specifically lists buildings devoted to a governmental use or purpose, buildings that are "abandoned property" or "distressed property", buildings that provide units of "affordable housing", and structured parking facilities that are publicly owned or privately owned but serve a public purpose).

- Infrastructure improvements located in or supporting a "transit-oriented development" or a "State hospital redevelopment" (as defined in the General STD Statute) funded from obligations issued by the Maryland Economic Development Corporation (MEDCO).

- With respect to the types of infrastructure improvements listed above, bond proceeds may be spent on "costs" (which is broadly defined) of establishing, acquiring, designing, constructing, altering or extending activities.

- Issuance costs and administrative expenses necessary or incident in determining to proceed with infrastructure improvements.

- Funding debt service reserve funds.

- Paying capitalized interest prior to, during or for a limited period of time following construction.

STD-SPECIFIC CONSIDERATIONS:

- (1) The owners of at least 2/3's of assessed valuation of real property in the special taxing district and (2) at least 2/3's of real property owners in the district must request that the issuer create the special taxing district/issue STD bonds/impose an ad valorem or special tax (no request requirement in TIF statutes). Multiple owners of a single parcel are treated as one owner and a single owner of multiple parcels is treated as one owner.

- Before adopting any resolution or ordinance required by statute the governing body must hold public hearing after not less than 10 days published notice (no public hearing requirement in TIF statutes).

- By statute, the infrastructure improvements may be located outside the special taxing district if reasonably related to other infrastructure improvements within the special taxing district.

- Ad valorem special taxes must satisfy Maryland Constitution uniformity requirement; non-ad valorem special taxes need not be uniform—only need a reasonable basis for apportionment.

- Moneys in STD special fund can only be used for statutory purposes while STD bonds outstanding (moneys in TIF special fund may be released for other purposes if debt service coverage tests met and bond documents allow release).

- Best practice: before STD bonds are issued put in place means of notifying prospective property purchasers of potential special tax levy (require developer to notify purchasers? require sales/purchase documents include disclosure of special taxes? file notice in land records?).

DUE DILIGENCE CONSIDERATIONS:

- Does the municipality have a TIF/STD policy or guidelines in place? Should it? How much flexibility should be allowed?

- Are properties to be included in district each represented by separate tax accounts? Are metes and bounds description of district available (not necessary, but can be helpful)?

- Do you need to include roads, bridges and other rights-of-way in a TIF development district to make the area contiguous?

- Issuer or applicant should engage professionals to prepare projections of incremental tax revenues and/or special taxing methodology. If applicant engages such professionals issuer should have its financial advisor review the projections/taxing methodology.

- How does the proposed development meet growth objectives and comprehensive planning needs?

- How is the "but-for" test satisfied with respect to the infrastructure improvements to be financed?

- For a TIF bond issue, weigh increased costs of governmental services generated by development against projected increase in tax base.

- Consider whether "hybrid" TIF/special taxing district/revenue bonds can or should be issued.

- For a TIF financing, consider whether corresponding county will pledge its incremental tax revenues from ad valorem real property taxes collected in the development district.

- What is the developer's track record, experience and financial condition?

- Is compliance with the issuer's procurement/public works provisions necessary for any aspect of the transaction?

- Who will maintain the funded infrastructure improvements? If a developer or other private party assumes maintenance responsibilities for financial consideration any arrangements must be structured within federal tax code limitations if the TIF or STD bonds are issued on a tax-exempt basis.

VARIOUS CONSIDERATIONS:

- TIF or STD bond proceeds are not loaned to developers. The obligation to pay normal ad valorem taxes from which incremental tax revenues are derived and special taxes runs with the land. If property owners fail to pay applicable taxes their properties are subject to foreclosure.

- Do TIF or STD bonds count against any statutory debt limit? It depends on how the debt limit is written.

- TIF and STD bonds DO count against calendar year $10 million calculation for bank-qualification purposes.

- For TIF bonds, consider how issuer's homestead tax credit is applied—the percentage cap can impact how quickly incremental tax revenues increase for TIF bonds when development in district is residential.

- Consider requiring a profit-sharing arrangement in which revenue-sharing is implemented after the developer/owner meets a specified revenue target.

- Factors that influence method of sale: (i) ability to obtain investment grade rating, (ii) size of issue, (iii) status of proposed development, approvals and commitments at time of bond sale, and (iv) applicability of continuing disclosure requirements.

- Who builds infrastructure improvements—issuer or developer?

- Is compliance with tax code's reimbursement regulations necessary?

- For tax-exempt bonds, financed improvements must be "owned" (for tax code purposes) by governmental entity--developer may hold title during construction period of the improvements.

- If developer builds infrastructure improvements what are the mechanics for transferring/safeguards for ensuring transfer of ownership to governmental entity?

- What bond document tests must be met to allow release of moneys to issuer from TIF special fund? (no moneys may be released unless debt service is covered for the fiscal year in question)

- Mechanics for releasing moneys from construction fund:

  -- in stages or after particular improvement completed?

  -- require lien waivers?

  -- hire separate construction consultant to sign off on draws?

- Will issuer hire administrator to ensure incremental tax revenues captured or special taxes properly calculated/levied/billed/collected?

- STD statutes allow capitalized interest only for reasonable period after improvements constructed.

- Will governing body allow chief executive (Board of Finance under Baltimore TIF/STD Statutes) to approve pricing details? (if not, can impact timing of pricing)

- Will bonds be offered to sophisticated investors or placed with the developer or a related entity or a bank? (lower issuance costs for developer/bank placement)

- Consider whether less time-consuming/less expensive to issue general obligation bonds if issuer not subject to debt capacity limitations.

- Reason to issue combined TIF/STD bonds instead of pure TIF bonds: to ensure debt service coverage from special taxes because incremental tax revenues likely insufficient during build-out.

- Combined TIF/STD bonds require compliance with "lowest common denominator" (most restrictive provision) of both statutes (e.g., TIF statutes allow 40-year maturity but General STD Statute has 30-year maturity limit; General STD Statute allows ordinances or resolutions for certain actions but TIF statutes require ordinances for certain actions).

- TIF and STD statutes provide that the issuer may pledge other revenues and assets to payment of the bonds. For revenue-producing infrastructure improvements, consider pledging improvement revenues as well (e.g., issue combined TIF/STD/revenue bonds for purposes of a parking facility). Pledging other revenues requires compliance with other applicable revenue bonding authority.

- Consider putting sunset date in district designation and bond authorizing legislation.

- Consider establishing applicant-funded escrow to pay fees and expenses of bond counsel, the issuer's financial advisor and other consultants to the issuer.

CROWDFUNDING CONSIDERATIONS:

- Generally used for smaller capital projects (e.g., parks, recreational facilities, bike lanes, public art, trash/recycling receptacles, etc.). Key is to identify projects that will capture the attention/interest of potential donators.

- Do you need to comply with procurement policy when selecting electronic platform for crowdfunding?

- Timing of launching crowdfunding.

- How long will campaign remain open?

- How is campaign structured—donations accepted only if specific funding target is reached or no matter the aggregate amount of donations received?

- What is the cost of the electronic platform?

- Does the municipality have social media presence/personnel available to spread word of campaign by other means?

- Does the municipality have personnel available to provide post-funding reports on success of campaign, use of funded improvements, etc.?

- How will municipality pay for operating/maintenance/replacement cost of funded improvements?

- If project being funded from multiple sources, including tax-exempt bonds, private business use/private payment or security tests must be considered with respect to ownership and use of funded improvements.

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Note: information regarding various statutes is general in nature and not meant to summarize or cover every aspect of each statute.