



TAX INCREMENT FINANCING

TAX INCREMENT REINVESTMENT ZONES – CHAPTER 311

ABOUT TIFS/TIRZS

Tax increment financing (TIF) is a financing method local governments can use to pay for improvements that will draw private investment to an area. Tax increment financing isn't a new tax; instead, it redirects some of the ad valorem tax from property in a geographic area designated as a Tax Increment Reinvestment Zone (TIRZ) to pay for improvements in the zone.

When a municipality or county creates a TIRZ, it records the total taxable value of all real property within the zone. It's like a snapshot in time of what the property values are at that specific moment. That snapshot is the zone's base value.

Each year, property taxes collected in the zone on base value continue to go into the municipality's or county's general fund, as most property taxes do.

But as property in the TIRZ develops and becomes more valuable, a portion of the taxes collected on property above the base value is deposited into a tax increment fund. Revenue deposited in the tax increment fund can be only used to financing projects within the zone, including infrastructure, facade programs, landscaping, streetscaping or practically any type of public enhancement.

Tax Increment Reinvestment Zones generally last 20 to 25 years, but some last longer. The return on the investment in infrastructure isn't going to come overnight or even in one or two years. When a local government makes the commitment to create a TIRZ, it's a long one.

A TIF project jumpstarts development to get things moving a bit faster and, ultimately, to generate new tax revenue.

BENEFITS OF A TIRZ

The benefits of a TIRZ include:

- builds needed public infrastructure in areas lacking adequate development to attract businesses.
- encourages development, thereby increasing property values and long-term property tax collections.
- reduces the cost of private development by providing reimbursement for eligible public improvements.

CREATING A REINVESTMENT ZONE

A reinvestment zone can be created to promote an area's development or redevelopment if its governing body determines that such development wouldn't occur through private investment in the foreseeable future (**Tax Code, 311.003(b)**).

A county can designate by order a contiguous geographic area within its borders as a reinvestment zone. A municipality can designate by ordinance a contiguous or noncontiguous geographic area in its corporate limits as a reinvestment zone (**Tax Code, 311.003(a)**). A municipality also can designate a reinvestment zone in the city's extraterritorial jurisdiction (**Tax Code, 311.003(a)**).

To create a reinvestment zone prior to the adoption of an ordinance or order, a city or county must: (a) prepare a preliminary reinvestment zone financing plan; and (b) hold a public hearing on the creation of the zone and its suggested benefits (**Tax Code, 311.003(b)**).

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PUBLIC HEARINGS

A public hearing is required before designating a TIRZ. All interested persons are entitled to speak for or against the designation of a reinvestment zone (**Tax Code, 311.003(c)**).

A call for a public hearing shall be made no later than the seventh day before the date of the hearing. A notice must be published in a newspaper with a general circulation in the municipality or the county (**Tax Code, 311.003(c)**).

A public hearing also is required to amend a project plan. The TIF may amend its project to:

- change the boundaries of the zone;
- increase the amount of bond indebtedness the project will incur;
- increase or decrease the percentage of a tax increment to be contributed;
- increase the total estimated project costs; or
- designate additional property within the zone to be acquired (**Tax Code, 311.011(e)**).

A written public notice shall be delivered to the presiding officer of each taxing unit that includes in its boundaries the real property to be included in the proposed reinvestment zone (**Tax Code, 312.201(d-e)**).

CHANGING/MODIFYING BOUNDARIES

Subject to the limitations of Section 311.006, if applicable, a reinvestment zone's boundaries may be enlarged or reduced as approved through a county or municipality order or ordinance (**Tax Code, 311.007**).

HOW TO PROPERLY PRODUCE AN ORDINANCE/ORDER FOR A REINVESTMENT ZONE

The order or ordinance must:

- describe the boundaries of the zone (**Tax Code, 311.004(a-1)**).
- create a board of directors for the reinvestment zone and specify the number of directors on the board (**Tax Code, 311.004(a-2)**).

- provide that the zone takes immediate effect upon passage of the order or ordinance (**Tax Code, 311.003(a-3)**).
- provide a date upon which the zone is to be terminated (**Tax Code, 311.003(a-4)**).
- designate the name of the zone as "Reinvestment Zone Number One, City of..." or "Reinvestment Zone Number One, County of..." (**Tax Code, 311.003(a-5)**). Successively created zones are to be numbered consecutively in the order of their creation (**Tax Code, 311.003(a-5)**).
- establish a tax increment fund for the zone.
- state that improvements in the zone will significantly enhance the value of all taxable real property in the zone and generally benefit the city or county, and that the area meets the criteria for a reinvestment zone (**Tax Code, 311.003(a-7)**).

ZONE CRITERIA

To be designated as a TIRZ, an area must: (**Tax Code, 311.005**):

- 1) substantially impair sound growth, impede the establishment of housing or constitute an economic or social liability and a menace to the public health, safety, morals or welfare in its present condition and use because of (**Tax Code, 311.005**):
 - a) a substantial number of substandard, slum, deteriorated or deteriorating structures;
 - b) the predominance of defective or inadequate sidewalks or street layout;
 - c) faulty lot layout in relation to size, adequacy, accessibility or usefulness;
 - d) unsanitary or unsafe conditions;
 - e) the deterioration of site or other improvements;
 - f) a tax or special assessment delinquency exceeding the fair value of the land;
 - g) defective or unusual conditions of title;
 - h) conditions that endanger life or property by fire or other cause; or

- i) structures, other than single family residential structures, of which less than 10 percent of the square footage has been used for commercial, industrial or residential purposes during the last 12 years, if a municipality has a population 100,000 or more;
- 2) be predominantly open or undeveloped and, because of obsolete platting, deterioration of structures or site improvements or other factors, substantially impair or arrest the sound growth of the municipality or county;
- 3) be in a federally assisted new community located in the municipality or county or an area immediately adjacent to a federally assisted new community; or
- 4) be an area in which at least 50 percent of the appraised property owners have petitioned for designation as a reinvestment zone.

BOARD DIRECTORS

A TIRZ must have a board of directors (**Tax Code, 311.009**). The board must comprise no more than 15 members who are appointed by all the taxing units participating in the TIF project (**Tax Code, 311.009(a)**). A taxing unit may waive its right to appoint a director (**Tax Code, 311.009(a)**).

- Each taxing unit other than the city or county that designated the zone may appoint one member to the board, if they have agreed to pay all or a portion of the tax increment produced by the unit into the tax increment fund for the zone (**Tax Code, 311.009(a)**).
- The municipality or county creating the reinvestment zone may appoint no more than 10 directors to the board. If other participating taxing units appoint a combined total of fewer than five directors to the board, however, the designating municipality or county may appoint more than 10 directors (**Tax Code, 311.009(a)**).
- Board members serve for terms of two years unless longer terms are provided under Article XI, Section 11 of the Texas Constitution (**Tax Code, 311.0091(d)**). The governing body of a city or county may determine whether to stagger the terms of the board members (**Tax Code, 311.009(c)**).

A vacant board position is filled for the unexpired term by appointment by the governing body of the taxing unit that made the original appointment. The position is filled for the unexpired term by the appointing governing body (**Tax Code, 311.009(d)**).

A person appointed to serve on the board of directors must:

- be at least 18 years of age;
- be a resident of the county in which the zone is located or a county adjacent to that county;
- own real property in the zone, whether or not the individual resides in the county in which the zone is located or a county adjacent to that county; or
- own real property in the zone or be an employee or agent of a person that owns real property (**Tax Code, 311.009(e)**).

The governing body that created the zone shall appoint one member of the board to serve as chairman of the zone for a term of one year, beginning on January 1 of the following year. The board may elect one of its members to serve as vice-chairman, to preside in the absence of the chairman or if the office of chairman is vacant. The board may elect other officers as it considers appropriate (**Tax Code, 311.009(f)**).

POWERS OF THE BOARD

State law grants the board authority to:

- make recommendations to the governing body of the municipality that created the zone concerning its administration of Chapter 311 in the zone;
- exercise the powers of management and operation of the zone or implementation of the project plan for the zone (**Tax Code, 311.010**);
- restrict the use or uses of property in the zone as per Local Government, Chapter 211; and
- enter into a contract with a local government entity or political subdivision to manage the reinvestment zone or implement the project plan and financing plan in coordination with the local government governing body (**Tax Code, 311.010**).

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The governing body does *not* have the authority to direct the board of directors to:

- issue bonds;
- impose taxes or fees;
- exercise the power of eminent domain; or
- give final approval to the project plan (**Tax Code, 311.010**).

PROJECT & FINANCING PLANS

The board of directors shall prepare and adopt a project plan and submit it to the governing body for approval. The governing body of the city or county must approve the plan by ordinance or order. The plan must include:

- a description and map showing existing uses and conditions of real property in the zone and proposed uses of that property;
- proposed changes of zoning ordinances, the master plan of the municipality, other municipal ordinances and subdivision rules and regulations, if any, of the county, if applicable;
- a list of estimated non-project costs; and
- a method of relocating persons to be displaced, if any, as a result of implementing the plan.

The board of directors shall prepare and adopt a financing plan and submit it to the governing body. The governing body of the city or county must approve the plan by ordinance or order. The plan must include (**Tax Code, 311.011**):

- a detailed list describing the estimated project costs of the zone, including administrative expenses;
- a statement listing the proposed kind, number and location of all public works or public improvements to be financed by the zone;
- an economic feasibility study and a finding that the plan is economically feasible;
- the estimated amount of bonded indebtedness to be incurred;
- the estimated time for related costs or monetary obligations to be incurred;

- a description of the methods of financing all estimated project costs and the expected sources of revenue to finance or pay the project costs, including the percentage of tax increment to be derived from the property taxes of each taxing unit anticipated to contribute tax increment to the zone;
- a current total appraised value of taxable real property in the zone;
- estimated captured appraised value of the zone during each year of its existence; and
- the duration of the zone.

The list below provides some examples of what projects can be done in a TIRZ using tax increment funds and is not meant to be all-inclusive (**Tax Code, 311.008(4B)**):

- erect new street signs;
- make landscaping improvements along public areas;
- acquire land;
- construct a park;
- create a livable and/or walkable community that can include new benches, new trash receptacles and enhanced sidewalks;
- develop rail and transportation projects;
- ameliorate buildings other than single-family residences that have been abandoned or vacant for at least 12 years, most likely in a downtown area;
- catalyze mixed-use development;
- enhance downtown as a retail and entertainment destination; and
- encourage future residential development.

A local government governing body may amend the project plan but the plan must be consistent with Chapter 311. The amendment takes effect on approval of the governing body and the approval must be by ordinance or by order. The plan amendment may: (a) change the boundaries of the zone by increasing or reducing its size; (b) increase the amount of bond indebtedness to be incurred; (c) increase or decrease the percentage of a tax increment to be contributed; (d) increase the total estimated project costs; or (e) designate additional property within the zone to be acquired.

Amendments to the project plan may be adopted only after a public hearing **(Tax Code, 311.011(e))**.

ABATEMENT AGREEMENTS

Any taxing unit except a school district may enter into an agreement with the owner of real property in a reinvestment zone **(Tax Code, 311.0125)**. A tax abatement agreement can become effective only with the approval of the reinvestment zone board of directors and the governing body of each taxing unit that participates in the TIF project **(Tax Code, 311.0125(a))**.

COLLECTION & DEPOSIT OF TAX INCREMENT

The tax increment fund is an account created by the TIRZ board of directors for the deposit of all tax increment revenue. Sales tax revenue earmarked by the city for the TIF fund will be deposited directly into the fund by the Comptroller **(Tax Code, 311.0123(c))**.

Each participating taxing unit shall pay into the TIF fund for the zone. They must pay a portion of the property tax collected on the value of the property in the zone minus the value of the property in the zone the year it was designated **(Tax Code, 311.013)**.

A taxing unit shall make a payment not later than the 90th day after the later of: (a) the delinquency date for the unit's property taxes; or (b) the date upon which the municipality or county that created the zone submits to the taxing unit an invoice specifying the tax increment produced by the taxing unit and the amount the taxing unit is required to pay into the tax increment fund for the zone. A delinquent payment incurs a penalty of 5 percent of the amount delinquent and accrues interest at an annual rate of 10 percent **(Tax Code, 311.013(b) and (c))**.

TAX INCREMENT FUND

A tax increment fund is established by the zone's board of directors to receive all revenue contributed to it by the

participating taxing units. The revenues in the fund are used to pay for improvement projects in the community.

Money from the fund may be used only to satisfy the claims of tax increment bondholders or notes issued for the zone, to pay project costs, to make payments pursuant to an agreement or to repay other obligations incurred in the zone **(Tax Code, 311.014(b))**.

With the approval of any bondholders, money in the TIF fund may be temporarily invested as other funds a municipality or county invests **(Tax Code, (311.014(c))**. All revenues from the sale of tax increment bonds or notes, the sale of any property acquired as a part of the financing plan and any other revenues generated by the tax increment zone shall be deposited in the zone's tax increment fund **(Tax Code, 311.014(a))**.

Money in a TIF fund may be transferred to an adjacent zone's TIF fund if:

- the taxing units that participate in the zone from which the money is to be transferred participate in the adjacent zone and vice versa;
- each participating taxing unit has agreed to deposit the same portion of its tax increment in the TIF fund for each zone;
- each participating taxing unit has agreed to the transfer; and
- the holders of any TIF bonds or notes issued for the zone from which the money is to be transferred have agreed to the transfer **(Tax Code, 311.014)**.

TERMINATION OF THE ZONE

A TIRZ is terminated:

- on the date the local government that created the zone sets as termination date by order or ordinance; or
- when all project costs, tax increment bonds and interest on those bonds and obligations have been paid in full **(Tax Code, 311.017)**.

After all project costs, bonds, notes and obligations have been paid, any money remaining in the TIF fund shall be

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returned to the participating taxing units in proportion to each unit's respective share of the total amount of tax increments derived from real property in the zone that was deposited in the fund during its existence (**Tax Code, 311.014(d)**).

ANNUAL REPORT

A local government that creates a TIF zone must send an annual report about the zone to each participating taxing unit and to the Comptroller. The report must include:

- the amount and source of revenue in the tax increment fund established for the zone;
- the amount and purpose of expenditures from the fund;
- the amount of principal and interest due on outstanding bonded indebtedness;
- the tax increment base and current captured appraised value retained by the zone; and
- the captured appraised value shared by the municipality or county and other taxing units;
- the total amount of tax increments received; and

- any additional information necessary to demonstrate compliance with the tax increment financing plan (**Tax Code, 311.016(b)**).

The local government also must submit to the Comptroller information about each tax increment reinvestment zone it creates. The information must include:

- a general description of the zone;
- the size of the zone;
- the types of property located in the zone;
- the duration of the zone; and
- a copy of each project plan or financing plan that is adopted or amended.

Local governments submitting an annual report to the Comptroller must include **Form 50-806**. Local governments submitting information about a newly created zone must include **Form 50-807**. Both of these forms can be found at <https://comptroller.texas.gov/economy/local/ch311/reporting.php>.

NEED HELP?

For additional information, contact the Data Analysis and Transparency Division at econ.dev@cpa.texas.gov or call **800-531-5441**, ext. **3-4679** or **512-463-4679**.