Tax Increment Financing – Recent Developments in Maryland Law

By John R. Orrick, Jr. , Partner, Linowes and Blocher LLP

The credit market meltdown that occurred at the end of 2008 continues to adversely impact the municipal bond markets. Yet, there have been a couple recent amendments in Maryland law that auger a positive environment for the use of tax increment financing as economic conditions improve. This article summarizes certain recent legal developments in tax increment financing that are applicable to municipalities using this tool in the State of Maryland.

Basics of Tax Increment Financing

Tax increment financing ("TIF") has been authorized to fund public infrastructure for development and redevelopment projects in Maryland for more than 20 years. TIF financing allows all or a portion of the increase in the real property taxes attributable to the real properties located within a defined geographic area benefiting from the construction of infrastructure to be diverted into a special fund. This special fund can be used to pay debt service on municipal bonds issued by the municipality for funding the construction of the infrastructure. While the improvements that generate the increase in tax revenues must be privately financed, the cost of the roads, utilities, water and sewer systems and other public infrastructure can be financed through municipal bonds. These bonds are not an obligation of the project and are paid from revenues that the project would otherwise bear in the form of real property taxes on the increased property values. Accordingly, municipalities generally utilize TIF financing as a means to attract projects that, without the assistance provided through the financing, would not be economically feasible.

TIF financings are beneficial to the municipality for several reasons. First, the bonds issued for TIF financings are special revenue bonds that are not backed by the full faith and credit of the municipality and, accordingly, do not directly impact the municipality's credit rating. Second, the new developments assisted through this financing will likely generate additional jobs and other economic activity, which in turn will generate additional revenues for the municipality through other forms of local taxation. Furthermore, depending upon the structure utilized, TIFs may also generate additional real property tax revenues for the municipality. Depending on the boundaries of the TIF district, increased economic activity within the district may also attract other businesses to locate in close proximity to, but not within, the TIF district. This will also generate additional tax revenues to the municipality. Finally, when the municipal bonds are retired, the municipality will receive the benefit of the full amount of the real property tax revenues attributable to all of the improvements located within the TIF district.

Developments in TIF Financing

In the past couple of years, the Maryland General Assembly has enacted several pieces of legislation enhancing the attractiveness of TIF financing for municipalities. Maryland's TIF statute is codified as Sections 12-201 – 213 of the Economic Development Article of the *Maryland Annotated Code.*

One piece of legislation, adopted in 2009, expanded the types of local taxes that can be pledged to support a TIF district beyond real property taxes (such as hotel taxes, amusement taxes and income taxes). The law made several other enhancements for infrastructure that benefits a "transit-oriented development," which is defined by the *Maryland Annotated Code*, Transportation Article, Section 7-101(m) as a compact, mixed-use development located within a one-half mile radius of a transit station. A transit-oriented development is jointly designated by the Secretary of Transportation and the local government and is aimed at increasing transit use, walking and biking and, accordingly, reduced emphasis on automobile traffic. A transit station includes a bus or other local circulator stop, light rail, subway or other rail platform for the boarding of passengers.

In addition to authorizing the use of local taxes in addition to real property taxes, this legislation authorized the financing of improvements through bonds issued by the Maryland Economic Development Corporation (MEDCO), a nonprofit corporation formed by the state for the purpose of assisting with the expansion and retention of Maryland business. This amendment allows the municipality to transfer the risk, as well as some of the cost, of issuing municipal bonds to MEDCO. Particularly in the case of municipalities that have not had experience in issuing municipal debt, this is an important benefit as MEDCO has extensive experience in issuing municipal bonds for various projects throughout the state under its economic development purview. This legislation also expressly authorized MEDCO or other state agencies to own the transit-oriented infrastructure improvement financed through TIF bonds – an important benefit for jurisdictions that do not want to own or maintain the public infrastructure. The legislation further authorized the use of TIF financing for the operation and maintenance, in addition to the acquisition or construction, of infrastructure improvements benefiting a transit-oriented development.

A second piece of 2009 legislation expanded the list of public infrastructure that can be financed through municipal TIF bonds beyond the basic list of infrastructure, which is generally authorized to include such items as private parking, storm water management and storm drainage facilities, noise walls and retaining walls, trails and pedestrian and vehicular bridges. Finally, in 2010 the General Assembly enacted legislation to extend the use of TIF financing to support infrastructure improvements in connection with certain hospital redevelopment projects.

Although the Maryland TIF statute has been expanded in the past several years, it is still more restrictive than the laws in some other jurisdictions. For example, the District of Columbia allows the use of TIF financing for the cost of privately owned developments. In Baltimore City, there is authority to utilize TIF financing to assist in the renovation of abandoned buildings or the creation of affordable housing. This authority is not available generally to other municipalities throughout the State. Still, as the conditions in the credit markets and the general economy improve, there should be increased reliance on TIF financing by municipalities throughout Maryland for economic development and redevelopment projects. ■

John R. Orrick, Jr. is a partner in the Bethesda law firm of Linowes and Blocher LLP. He represents developers and other business owners in connection with the formation of TIF and special taxing districts, in addition to other financing vehicles.