

# Tax Increment Financing

An economic development tool for townships



**Top:** Ashley Capital has developed 2.5 million square feet of new space for tenant companies such as TDS in Brownstown Charter Township.

**Bottom:** The Downriver Oncology Center located in Brownstown Township when roads and sewer and water systems were installed in the DDA district.

**M**ichigan townships are authorized by several statutes to encourage and promote economic development. One successful and sometimes controversial economic development tool is tax increment financing. In over two decades of use by Michigan municipalities, tax increment financing authorities have weathered constitutional challenges and property tax restructuring to remain a valuable option for townships to use as part of an economic development program.

Townships can establish three types of authorities with tax increment financing powers: downtown development authorities, local development financing authorities and brownfield redevelopment authorities. The term TIFA in this article generically refers to all authorities with tax increment financing powers. This article will explain the statutes authorizing tax increment financing, plus include frequently asked questions about the newest tax increment financing option, brownfield redevelopment authorities.

## Tax increment financing captures taxes for development

**T**ax increment financing is a method of financing public improvements, infrastructure or other activities within a designated area or district in a community. The term "tax increment" refers to the additional taxes received from private development and growth within the district as a result of the improvements. As industrial or commercial growth occurs in the district, the assessed property valuations and property taxes increase. A tax increment financing authority "captures" from the local taxing units the additional ad valorem property tax revenues attributed to the increased assessed valuations. The authority uses the captured tax revenues to pay the cost of the completed or future improvements or to pay off bonds issued to finance the improvements.

As explained in a Michigan Supreme Court opinion on tax increment financing: "Basically, once a tax increment financing plan has been approved, the property values covered by the tax increment financing plan are, in effect, frozen. Future ad valorem tax revenues that are attributable to any subsequent increase in value above the base value are turned over to the authority in order to further implement the development plan....Tax increment financing is 'premised on the theory that, without the redevelopment project, property values would not increase,' or 'that increases in land values and assessments in the project area are caused by the redevelopment authority's own construction of economic activity in the district.'" *Advisory Opinion on Constitutionality of Public Act 281 of 1986*, (430 Mich 93, 100-102, 1988).

The amount of property taxes that an authority may capture varies each year, depending on the annual change in the property value within the development district, the total tax rate and the portion of the tax increment needed to finance the development plan. Surplus funds not designated for a development project pursuant to a tax increment financing plan must revert proportionately to the respective taxing units.

An authority can issue bonds to finance improvements and pay them off with the tax increment revenues. An authority can also implement projects over time as funds are available from the tax increment revenues.

Calumet Charter Township in Houghton County (pop. 7,015) created a 30-year downtown development authority in 1996 as part of a project to renovate nearly 40 acres of abandoned or vacant commercial properties in an old mining district. The authority approved two bond issues for \$205,000 and \$65,000 to fund initial improvements in conjunction with grants from the Michigan Departments of Natural Resources and Transportation, Michigan Jobs Commission, and funds from the Houghton County Road Commission. Completed

in summer 1997, the improvements included widening a county road and installing turn lanes and tree plantings, ▶

by Catherine A. Mullhaupt  
MTA Education Specialist, and  
Patrick F. McGow, Attorney  
Miller, Canfield, Paddock and Stone, P.L.C.,  
Detroit



installing sidewalks, developing inland fishing ponds with handicapper fishing piers and walkways, and extending the sewer and storm sewer systems. Since the sewer project was completed, a 135-employee company in the district is planning to invest approximately \$1 million for an expansion and to employ an additional 18 people in 1998.

According to Calumet Charter Township Supervisor Paul Lehto, the initial assessed value of the DDA was \$994,800 in 1996. In 1998, the DDA is expected to have a current assessed value of nearly \$5,130,000, allowing the DDA to capture taxes on a value over \$4,130,000 for that year. That money will be used to repay the bond issues and to finance and match grants for additional projects.

**TIFAs are constitutional**

In the mid-1980s, several school districts sued tax increment financing authorities to challenge the constitutionality of tax increment financing. To settle the question, the Legislature passed the Local Development Financing Act, PA 281 of 1986, which included the legislative finding that, "Tax increment financing is a government financing program which contributes to economic growth..."

In passing the act, the Legislature and Governor James Blanchard requested the Michigan Supreme Court to determine whether the capture and use of revenues by a local development finance authority violated the Michigan Constitution. The Michigan Townships Association submitted an *amicus curiae* brief in support of tax increment financing. The Court issued an advisory opinion on March 22, 1988, which held that tax increment financing as authorized by PA 281 is valid under the Michigan Constitution.

**Proposal A limited the ability of DDAs and LDFAs to capture taxes**

In 1993 and 1994, the property tax reform provisions implemented with Proposal A achieved in effect what the school districts' constitutional challenges could not by excluding school taxes from capture by DDAs and LDFAs.

In general, unless certain special circumstances exist, tax increment revenues for DDAs and LDFAs no longer include the revenues derived from the levy by the State Education Tax and K-12 and intermediate school districts on the captured assessed value. This has generally meant a 50-75 percent reduction in potential tax increment revenues for DDAs and LDFAs, depending on the proportion of school taxes included in the captured revenues. DDAs and LDFAs are permitted to capture state, local school district and intermediate school district taxes only to the extent necessary to pay debt service on eligible obligations, eligible advances, protected obligations that are bonds or other obligations issued before 1995 meeting certain criteria, or bonds refunding such obligations.

Clam Lake Township in Wexford County (pop. 1,739) established a DDA just as Proposal A took effect. The school taxes represented the major portion of the DDA's projected revenues, and the remaining captured revenues have not been sufficient to fund the development project. As a result, the proposed sewer and water system expansion is on hold.

In contrast, Marquette Charter Township in Marquette County (pop. 2,757) found that excluding school taxes had an insignificant effect on its DDA, which captures the majority of its revenues from non-school taxes. "Our DDA is very healthy," reported Supervisor Max Muelle.

According to Supervisor Jean Schertz, Greenland Township in Ontonagon County (pop. 1,001) created its DDA in 1994 knowing that its revenues would be limited by the loss of school taxes. "We've used the DDA as a highly visible catalyst for economic development," said Schertz. "It has functioned well as a positive force in the community." The recipient of a 1995 Wal-Mart Hometown Leadership Award, Schertz used the \$5,000 award to help prime the DDA's \$2,500 annual tax increment capture. Since its inception, the DDA's projects have helped attract a car wash and put a new roof on a vacant Michigan Department of Natural Resources field station. The township acquired the field station, which occupies a strategic location in town, and leases it to the DDA, which hopes to make it the center of a new development.

**All TIFAs and their projects must be based on a plan**

All TIFAs must prepare the following two types of plans before they can raise money or begin projects:

**1. Development plan.** An authority must prepare a development plan for each development area, as directed by the relevant enabling statute.

Prior to approving the development plan, the authority must give public notice and conduct a public hearing according to the statutory requirements of the enabling act and the Open Meetings Act. The township board may approve or reject the development plan or approve it with modifications. The plan may be amended following the same procedures used to adopt it.

The specific enabling acts identify the information that must be included in the development plan for a DDA, LDFA, or the BRA's brownfield plan.

The development plan may be prepared as part of the tax increment financing plan. In that case, the public notice, hearing and approval procedures for the tax increment financing plan are sufficient to meet the statutory requirements for adopting the development plan.

**2. Tax increment financing plan.** A TIFA must develop a tax increment financing plan before it can raise or spend funds. Prior to approving the plan, the authority must give public notice and conduct a public hearing according to the statutory requirements

**Tax Increment Financing Timeline**

Tax increment financing has been available to townships for over 20 years, but the procedures have changed during that time. In the early 1990s, Proposal A limited eligible revenues. Now land use and environmental concerns have prompted new brownfield redevelopment financing options.

- 1975** Downtown Development Authority Act adopted.
- 1980** Tax Increment Finance Authorities Act adopted.
- 1980s** Extensive litigation challenges validity of tax increment financing.
- 1986** Local Development Financing Act adopted by Legislature, with request for Michigan Supreme Court to issue advisory opinion on constitutionality of tax increment financing under Public Act 281 of 1986.  
TIFA Act sunsets so that no new TIFAs may be created under PA 281, and existing TIFAs created under the act cannot expand their boundaries.
- 1988** The Michigan Supreme Court holds that capturing and using tax increment revenues for the LDFA Act's purposes does not unconstitutionally divert tax revenues from taxing entities and does not constitute an unconstitutional lending of credit by the state or a municipality.
- 1993-94** School finance reform leads to significant changes in Michigan's property tax system and the authority of DDAs, TIFAs and LDFAs to capture state education, K-12 and intermediate school district taxes.
- 1996** Brownfield Redevelopment Financing Act adopted.

—Patrick F. McGow

of the enabling act and the Open Meetings Act. The plan must be adopted as a resolution by a majority of the township board members and may be amended by following the same procedures used to adopt it.

The specific enabling acts identify the information that must be included in the tax increment financing plan for a DDA, LDFA or BRA. The tax increment financing plan must establish the initial assessed value for the eligible area or properties in the authority. This value is frozen, setting a baseline to measure subsequent tax increments. The initial assessed value is the most recently equalized taxable value of the eligible property. Initial assessed values established prior to May 22, 1995, used the most recently equalized state equalized value.

In each subsequent year for the duration of the tax increment financing plan, a current assessed value of the property must be determined. The current assessed value for each year is the property's taxable value for that year.

The amount by which the current assessed value exceeds the initial assessed value in any one year is the captured assessed value. For the duration of the tax increment financing plan, the local taxing jurisdictions continue to receive tax revenues based on the initial assessed value. The TIFA receives the portion of the tax levy of all taxing jurisdictions based on the captured assessed value of the taxable property included in the tax increment financing plan.

For example, a TIFA establishes a tax increment financing plan covering taxable property with a taxable value of \$5,000,000. Therefore, the plan sets the initial assessed value at \$5,000,000. Assume that the tax rate of all taxing jurisdictions subject to capture in the development area is 25 mills. In the first year, the taxes on the property will be \$125,000 (25 mills times \$5,000,000). None of those taxes will be paid to the authority. In the second year, following new property construction and the increased value of property where the public improvements have lent advantage to the property, the SEV of the development area's taxable property is \$8,000,000. The captured assessed value for that year is \$3,000,000, and the tax increment revenues paid on the captured assessed value total \$75,000. As the township treasurer collects the taxes, he or she must pay to the authority the tax increment revenues and pay to the other taxing units the tax revenues derived from their millages levied on the initial assessed value of all property in the development area.

A DDA or LDFA can enter into agreements with the taxing units and the township to share or limit the captured tax increment revenues, as part of the tax increment financing plan. The plan can be limited to revenues attributed to value added by new construction, with the tax increments attributed to inflation shared between the authority and the taxing units.

### Taxing units may opt out of a DDA or LDFA

**N**ot more than 60 days after a public hearing is held to establish a DDA or LDFA (after February 15, 1994) or expand a DDA or LDFA district's boundaries, the governing body of a taxing jurisdiction levying ad valorem property taxes that would otherwise be subject to capture may exempt its taxes from capture by adopting a resolution to that effect and filing a copy with the clerk of the municipality proposing to create the authority. The resolution takes effect when filed and remains effective until a copy of a resolution rescinding that resolution is filed with the clerk.

### Townships can establish three forms of TIFAs

**D**ifferent statutes authorize TIFAs to be established for different purposes. There are many similarities between the acts, but the specific requirements of each act must be carefully implemented to create a valid TIFA.

The following three statutes authorize townships to establish TIFAs:

1. Downtown Development Authority Act, Public Act 197 of 1975
2. Local Development Financing Act, PA 281 of 1985
3. Brownfield Redevelopment Financing Act, PA 381 of 1996

A fourth statute, the Tax Increment Financing Act, PA 450 of 1980, sunsetted on December 30, 1986. No new authorities can be established under that act.



*New homes were constructed in this Brownstown Charter Township subdivision as a result of infrastructure improvements funded by a DDA.*

CHARTER TOWNSHIP OF BROWNSTOWN

### Downtown development authorities seek to encourage business districts

**T**he Downtown Development Authority Act, PA 197 of 1975 (MCL 125.1651, et seq) authorizes cities, townships and villages to create a DDA in one or more development areas in a downtown district zoned and used principally for business. When a township board determines that it is in the public's best interest to halt property value deterioration and increase property tax valuation in its business district, the board may create and provide for an authority by ordinance.

DDAs can plan and finance a variety of downtown renovation projects, including projects to improve or install sidewalks, streets and streetscapes, parking, recreational facilities, bridges, waterways, handicapper access, utility lines and pipelines, and sewer, water and drainage systems.

The variety of projects allowed under PA 197 makes DDAs suitable for townships across Michigan. As of May 21, 1998, 56 townships had DDAs. Marquette Charter Township's DDA has worked closely with the planning commission to encourage orderly development and induce businesses to locate along the western U.S. 41 corridor through water, sewer, road and street light projects. A large Menard's hardware store and a 100-unit senior housing project are two recent additions. "I was dubious when the DDA was first established," said Supervisor Muelle. "I wasn't on the township board then, but now I see the fruits of the DDA's labors. It's been good for this area."

At the other end of the state, Brownstown Charter Township in Wayne County (pop. 18,811) used tax increment financing and funds from the county and Michigan Jobs Commission for its DDA as part of a coordinated program to attract businesses with tax abatements and infrastructure development. Projects including sewer line extensions, road paving and repair, street lighting, and improved road access have assisted the township attract companies from around Michigan and other states. "Over 1,400 high-paying jobs with benefits and 401(k) plans have been created from our DDA," said Supervisor W. Curt Boller. Where the township originally documented over 1,500 parcels with static or declining property values, now property values have increased by over 400 percent. Brownstown's DDA achieved its five-year tax increment revenue goal tenfold in its third year. The DDA is now building a golf course in conjunction with development of an upscale housing project.

PA 197 authorizes a DDA to capture tax increment revenues from all property in the development area to finance public facilities within the development area as described in a development plan and tax increment financing plan approved by the township board. DDAs may only capture tax increment revenues from eligible property within the downtown district. A DDA can capture industrial and commercial facilities taxes, including those subject to a tax abatement, and other specific local taxes defined in MCL 125.1651.



PA 197 authorizes a DDA to impose up to 2 mills ad valorem property tax and to issue bonds payable solely from tax increment revenues. Additionally, a municipality may issue bonds payable primarily from a DDA's tax increment revenues and pledge the municipality's full faith and credit to the bonds.

PA 197 describes the procedures for creating a DDA and establishing downtown district boundaries. The township board must adopt a resolution of intent to create a DDA and hold a public hearing on creating a DDA and establishing its boundaries. The public hearing notice must be published, posted and mailed in compliance with MCLs 125.1653 and 125.1653b and the Open Meetings Act. Not less than 60 days after the public hearing, the township board must adopt by majority vote of its members an ordinance establishing the DDA and the boundaries of the district. The ordinance must be filed with the Secretary of State promptly after its adoption and published at least once in a newspaper of general circulation.

The township must ensure that a downtown district's boundaries satisfy the following three requirements:

- 1) It must be located in the municipality's downtown, as defined by the municipality. PA 197 does not define "downtown;"
- 2) The DDA must be located in a district that is zoned and used principally for business, and
- 3) The township must demonstrate deteriorating property values by documenting actual parcel-by-parcel reduction, dilapidation or vacancy.

To raise or spend funds, the DDA must prepare a tax increment financing plan. As specified by MCL 125.1664, the plan must include: 1) a detailed explanation of the tax increment procedure, 2) the maximum amount of bonded indebtedness to be incurred, 3) the duration of the program, 4) the estimated impact of tax increment financing on the assessed values of all taxing jurisdictions in which the development area is located and 5) the portion of the captured assessed value intended to be used by the DDA.

When a DDA board decides to undertake a project funded with revenue bonds or tax increment financing, it must prepare a comprehensive development plan that details the project activities and costs, areas and populations affected by the project, and financing methods to be used. MCL 125.1667 lists the extensive information that must be included in the development plan.

DDAs may continue to create development plans and tax increment financing plans or amend existing plans following the same procedures for approving those plans. Taxing units cannot opt-out when amendments made to the tax increment plan, such as adding projects, extending the plan's duration or altering development project area boundaries, do not require amending the downtown district's boundaries.

### Local development finance authorities encourage employment and economic growth

The Local Development Financing Act, PA 281 of 1986 (MCL 125.2151, et seq), authorizes cities, villages and urban townships to establish local development finance authorities and create one or more LDFA districts. Under PA 281, a township is urban if it meets the following three criteria:

- 1. Has a population of 20,000 or more, or a population of 10,000 or more if located in a county with a population of 400,000 or more;

- 2. Adopted a master plan before February 1, 1987, and
- 3. Provides sewer, water and other public services to all or part of the township.

A local development finance district must consist of property used primarily for manufacturing, agricultural processing, high-technology related business or electrical cogeneration. LDFAs can plan and finance a variety of public facilities projects such as streets, roads, bridges, rail lines, utility lines or pipelines, and sewer, water and drainage systems for eligible property, including a certified industrial park. There are currently eight townships in Michigan that have a LDFA.

The LDFA established by Gaines Charter Township in Kent County (pop. 17,256) enabled the township to assist Steelcase locate its corporate headquarters on 50 acres of vacant land in the township. The LDFA financed a water main extension. Nearby township residents have been able to hook up to the system, which would not otherwise have been available, and the township receives increased tax revenues.

PA 281 authorizes a LDFA to capture tax increment revenues from eligible property within the development district as described in a development plan and tax increment financing plan approved by the township board. A LDFA can capture industrial facilities and commercial facilities taxes, including those subject to a tax abatement, and other specific local taxes defined in MCL 125.2152.

PA 281 allows a LDFA to issue bonds payable solely from tax increment revenues and allows a municipality to pledge its full faith and credit to the bonds issued by the LDFA. PA 281 does not authorize independent taxing power for an LDFA.

LDFAs are generally used on a district-by-district basis, with a new district established for every new project. The exception to this is if the LDFA district is a certified industrial park, where the tax increments from a variety of properties may be used for the park's general infrastructure needs.

The procedures for establishing a LDFA are simpler than those for a DDA because the governing body does not need to make the same findings for a downtown district or deteriorating property values. MCL 125.2154 describes the procedures for creating a LDFA and designating the authority district or districts. The township board must adopt a resolution of intent to create a LDFA and hold a public hearing to create the LDFA and designate its district. The public hearing notice must be published, posted and mailed in compliance with MCL 125.2154 and the Open Meetings Act. Not less than 60 days after the public hearing, the township board must adopt by majority vote of its members a resolution establishing the LDFA and designating the boundaries of its district(s). The resolution must be filed with the Secretary of State promptly after adoption and published at least once in a newspaper of general circulation.

Procedures for creating a new LDFA or amending a district's boundaries permit a taxing unit to exempt its taxes from capture. To amend a LDFA district's boundaries, a township must follow the same procedures required to establish the district. Other taxing units may opt out of capture only on the newly added portion of the district when the tax increment financing plan is amended.

To raise or spend funds, a LDFA must prepare a tax increment financing plan. As specified by MCL 125.2162, the plan must identify:

- 1) the reasons the plan will result in development that could not otherwise be expected,
- 2) the projected captured assessed value for each year of the plan,
- 3) the estimated tax increment revenues for each year of the plan,
- 4) an explanation of the tax increment procedure,

**“ Tax increment financing is premised on the theory that, without the redevelopment project, property values would not increase. ”**

- 5) the maximum amount of debt to be incurred, if any,
- 6) the LDFA's and township's expenditures and plan costs to be repaid from tax increment revenues,
- 7) the duration of the development and tax increment financing plans,
- 8) an estimate of the tax increment financing's impact on the revenues of all taxing jurisdictions in which the eligible property is located,
- 9) a legal description of the eligible property to which the tax increment financing plan applies, and
- 10) an estimate of the jobs to be created from implementing the tax increment financing plan.

If a LDFA board decides to finance a project under PA 281, it must prepare a development plan that details the project activities and costs,

areas and populations affected by the project, and financing methods. MCL 125.2165 lists the extensive information that must be included in the development plan.

### Brownfield redevelopment authorities raise funds for environmental cleanups

**A** BRA is a major new tool for local governments to use to revitalize "brownfields," which are properties that have been abandoned, undeveloped or underutilized due to environmental contamination.

The Brownfield Redevelopment Financing Act, Public Act 381 of 1996 (MCL 125.2651, et seq), authorizes counties, cities, villages and ►

## TIFAs At-a-Glance

Enabling statute	Downtown Development Authority Act (MCL 125.1651, et seq)	Local Development Financing Act (MCL 125.2151, et seq)	Brownfield Redevelopment Financing Act (MCL 125.2651, et seq)
Eligible townships	Townships with eligible downtown districts	Urban townships with: <ul style="list-style-type: none"> <li>■ 20,000 or more population, or 10,000 or more population in a county with 400,000 population;</li> <li>■ master plan in effect before February 1, 1987, and</li> <li>■ own sewer, water and other public services</li> </ul>	All townships
Eligible property	Property with documented deteriorating property values within a designated downtown district zoned and used principally for businesses	Property within a development district used primarily for manufacturing, agricultural processing, high technology or electrical cogeneration	Contaminated property or "facilities" as defined by the Natural Resources and Environmental Protection Act (MCL 324.20101, et seq)
Captured revenues	Ad valorem real and personal property taxes levied within the district by certain taxing units, and specific local taxes such as industrial facilities and commercial facilities taxes	Ad valorem real and personal property taxes levied within the district by certain taxing units, and specific local taxes such as industrial facilities and commercial facilities taxes	All ad valorem real and personal property taxes levied on the eligible property by certain taxing units, including the state, K-12 and intermediate school districts, and specific local taxes such as industrial facilities and commercial facilities taxes
Exempt revenues	DDA cannot capture tax revenues levied by the State Education Tax, K-12 and intermediate school districts (with some limited exceptions)	LDFA cannot capture tax revenues levied by the State Education Tax, K-12 and intermediate school districts, and debt millage of governmental units (with some limited exceptions)	Local governmental debt millage and taxes captured by a DDA, TIFA or LDFA on date property became subject to brownfield plan
Opt-out provision	Taxing units may opt-out of capture when downtown district is established or amended	Taxing units may opt-out of capture when local development district is established or amended	No opt-out provision
Taxing authority	Up to 2 mills ad valorem property tax	Not authorized to levy taxes	Not authorized to levy taxes
Bonding authority	May issue bonds	May issue bonds	May issue bonds
Authorized uses	Downtown renovation projects, including sidewalks, streets and streetscapes, handicapper access improvements, parks, recreational facilities, waterways, utility lines or pipes, and sewer, water and drainage systems	Public facilities projects such as streets, roads, bridges, rail lines, utility lines or pipelines, and sewer, water and drainage systems for eligible property, including a certified industrial park	Baseline environmental assessment, due care and response activities as defined by NREPA
Tax credit	None	None	Qualified taxpayers receive a credit against the single business tax for investment at an eligible property



townships to create a BRA to implement brownfield plans for projects to designate and treat brownfield redevelopment zones, promote revitalizing environmentally distressed areas, issue bonds, and use tax increment financing. Since September 16, 1996, 12 townships in Michigan have established or joined with a county to establish a BRA.

According to James McLaren, Jr., supervisor of Vassar Township in Tuscola County (pop. 3,866), establishing a BRA in 1997 was a very positive move. A large property in the township included a plant identified by the MDEQ as a toxic site. The original owner was bankrupt and the subsequent owner had vacated after a partial cleanup. Interested buyers quickly disappeared when they learned about the contamination. When a company familiar with PA 381 approached the township, the township board worked with the Tuscola County Economic Development Corporation to research and establish an authority. The authority has funded a baseline assessment study of the property as the first step in a cleanup program. The company, Destiny World Class Products, has received a single business tax credit under PA 382 of 1996, and is held harmless for cleanup costs under NREPA. "We went from a piece of property that provided the township with nothing to a custom limousine production facility that employs over 60 people with good wages," said McLaren. "This business would not have come here without the authority." Other companies have recently shown an interest in the program.

Kalamazoo Charter Township in Kalamazoo County (pop. 20,976) is 90 percent developed, and many of the remaining available properties are located in brownfield areas. The township established a BRA in a proactive approach to develop vacant and underutilized properties before they are removed from the tax rolls. "We are currently developing our brownfield plan and identifying eligible properties," said Supervisor Gary Cramer. "We included the entire township in the brownfield zone because there may be properties that will qualify as a problem in the future."

Any city, village or township can establish a BRA. A county may also establish an authority, but only with the concurrence by resolution of the city, village or township where the proposed brownfield redevelopment zone would be located.

MCL 125.2654 describes procedures for creating a BRA and designating its boundaries. The township board must adopt a resolution of intent to create a brownfield authority and hold a public hearing on creating the authority and establishing its boundaries. The public hearing notice must be published, posted and mailed in compliance with MCL 125.2654 and the Open Meetings Act. Not more than 30 days after the public hearing, the township board must adopt by majority vote of its members a resolution establishing the authority and the boundaries of the brownfield zone. The resolution must be filed with the Secretary of State promptly after its adoption. A township must follow the same procedures to amend a brownfield zone's boundaries.

A BRA may capture tax increment revenues on ad valorem property taxes and specific taxes, such as industrial facilities and commercial facilities taxes, for each parcel of eligible property subject to a brownfield plan and all personal property located on that property. Tax increment revenues exclude ad valorem property taxes specifically levied for governmental debt millage and specific taxes attributable to those taxes. Tax increment revenues attributable to eligible property also exclude the amount of ad valorem property taxes or specific taxes captured by a DDA, TIFA or LDFA, if those taxes were captured by these other authorities on the date that eligible property became subject to a brownfield plan under PA 381.

A BRA is authorized to capture the State Education Tax, K-12 and intermediate school district taxes, and the industrial facilities and com-

mercial facilities taxes attributable to those levies. However, a BRA cannot capture taxes levied for school operating purposes unless the eligible activities to be conducted on the eligible property are consistent with a work plan or remedial action plan approved by the MDEQ after July 24, 1996, and before January 1, 2001. Taxes levied by an intermediate school district are treated the same as taxes levied by any taxing unit other than the state and local school districts, and are subject to capture without MDEQ approval.

PA 381 does not include an opt-out provision, and taxing units cannot exempt themselves from capture by the BRA.

Brownfield redevelopment authority tax increment revenues can be used to pay for the following four activities:

■ **Baseline environmental assessment activities**—These activities are necessary to complete a baseline environmental assessment for an eligible property in the brownfield plan. The Natural Resources and Environmental Protection Act, as amended (MCL 324.101, *et seq.*), defines a BEA as an evaluation of a facility's environmental conditions at the time of purchase, occupancy or foreclosure that reasonably defines the existing conditions and circumstances at the facility so that, in the event of a subsequent contaminant release, there is a means of distinguishing the new release from existing contamination. The MDEQ has set standards for what constitutes a BEA, based on the property's anticipated use and the extent of the contamination.

■ **Due care activities**—These activities are the response activities identified in a brownfield plan that are necessary to allow the owner or operator of an eligible property in the brownfield plan to comply with the provisions of Section 20107a of NREPA.

■ **Additional response activities**—These activities are response activities proposed in a brownfield plan that are in addition to BEA activities and due care activities for an eligible property.

■ **Response activities**—These are defined in NREPA as evaluation, interim response activity, remedial action, demolition or other actions necessary to protect the public health, safety or welfare, or the environmental or natural resources.

PA 382 of 1996 amended the Single Business Tax Act to provide qualified taxpayers with a credit against the single business tax for investments they make at an eligible brownfield development property meeting certain criteria. The credit provides an incentive for redeveloping contaminated sites included in a brownfield redevelopment financing plan.

### Brownfield authorities can create a local site remediation revolving fund

**T**he opportunity to create and fund a local site remediation revolving fund is one of PA 381's novel features. A BRA may create a revolving fund that may be used solely to pay for the costs of eligible activities on any eligible property located within the zone. The authority may finance a revolving fund from tax increment revenues of eligible property where the tax increment revenues generated on that property have already paid for all eligible activities for that property. Subject to the limitation on the capture of excess school operating taxes, tax increment revenues on such properties may be captured and deposited in the revolving fund for not more than five years after the year in which the capture was sufficient to pay for all eligible activities for that property. School operating taxes that may be captured and deposited in the revolving fund are additionally capped at the amount used for eligible activities for the eligible property that generated the school operating taxes.

To use any taxes levied for school operating purposes in the revolving fund, the eligible activities must be consistent with a work plan or remedial action plan that has been approved by MDEQ after July 24, 1996. It is necessary to account separately for tax increment revenues derived from taxes levied for school operating purposes as opposed to tax increment revenues derived from local taxes. ♦



# Frequently asked questions about brownfield redevelopment authorities

The Brownfield Redevelopment Financing Act took effect September 16, 1996. Townships are finding that it may be a valuable tool for developing vacant or underutilized parcels with environmental contamination. For questions about a brownfield redevelopment authority, contact Bob Terry, Community Redevelopment Specialist, Michigan Department of Environmental Quality, at (517) 335-2109.

The following are frequently asked questions regarding brownfield redevelopment:

## **Q** What is "eligible property?"

**A.** Public Act 381 of 1996 defines eligible property as property that qualifies as a facility under the Natural Resources and Environmental Protection Act, MCL 324.20101, *et seq.* PA 381 eligible property includes adjacent or contiguous parcels, if the development of the parcels is expected to increase the captured taxable value of the facility for which eligible activities are proposed under a brownfield plan. Eligible property includes personal property located on the facility, to the extent the personal property is included in the brownfield plan.

## **Q** What is the difference between a work plan and a remedial action plan?

**A.** A work plan describes each individual action to be conducted to complete an eligible activity and the associated costs of each action as approved by the MDEQ.

A remedial action plan is similar to a work plan, except it only applies to actions that meet special requirements under NREPA. Under the NREPA, remedial action includes cleaning, removing, containing, isolating, destroying or treating a hazardous substance released or threatened to be released into the environment, and monitoring, maintaining or taking other actions to prevent, minimize or mitigate injury to the public health, safety or welfare, or to the environment.

## **Q** Can a BRA enter into sharing agreements with other taxing units?

**A.** No. PA 381 states that a brownfield plan shall not allow a taxing unit to exclude a portion of the captured taxable value under a sharing agreement or exempt itself from capture. The only way a taxing unit's taxes are exempt from capture by an authority is if the taxes are excluded from the definition of tax increment revenues, such as voted debt millage or tax increment revenues already captured by a DDA, TIFA or LDFA.

## **Q** How does capturing tax increment revenues work if the eligible property is in an existing DDA, TIFA or LDFA?

**A.** A BRA cannot capture tax increment revenues if those taxes were captured by a DDA, TIFA or LDFA on the date that eligible property became subject to a brownfield plan. Thus, the other tax increment authorities get to collect their entitled tax increment revenues before the BRA can collect any tax increment revenues. This may complicate calculating the distribution of tax increment revenues, but does not necessarily mean there is no value in having eligible property located in an existing DDA, TIFA or LDFA. It is possible that the existing authority is not authorized to capture all of the tax increment revenues attributable to the eligible property, such as school operating taxes. In that situation, the existing authority may capture all of the local taxes and the BRA may capture the excess taxes levied for school operating purposes. In certain situations, this excess will be minimal.

## **Q** If a municipality has an existing DDA, TIFA or LDFA that has sharing agreements or other arrangements with other taxing units, does that affect the capture of tax increment revenues by a BRA?

**A.** Possibly. There is a proportionality provision in PA 381 that may limit the ability of an authority to capture and use tax increment revenues for school operating purposes. A municipality that has a BRA and a DDA, TIFA or LDFA with sharing agreements needs to calculate what percentage of all local taxes are captured and used by all of the authorities in the municipality. Municipalities with agreements that provide for sharing a large percentage of tax increment revenues with other taxing units may be limited as to the percentage that may be captured from taxes levied for school operating purposes.

## **Q** How long can a BRA capture tax increment revenues on a parcel of eligible property?

**A.** Generally, an authority can only capture tax increment revenues until the year in which the amount of the captured tax increment revenues for a parcel of eligible property is equal to the sum of the cost of eligible activities attributable to such eligible property and the reasonable cost of preparing a work or remedial action plan for the property, including the costs for MDEQ plan review. However, an authority may capture tax increment revenues for a longer period if the authority establishes a local site remediation revolving fund to use the tax increment revenues for other eligible property.

## **Q** What key dates should a township consider in approving a brownfield plan?

**A.** The first taxes subject to capture by a BRA were the taxes due on December 1, 1996. As a practical matter, however, no tax increment revenues could be captured until the July 1, 1997, tax roll, since that was the first year a difference was reflected between a parcel's initial assessed valuation and its current assessed valuation for that roll.

The key date for determining the property values used to calculate tax increment revenues is the fourth Monday of May, which is the day that the equalization of the tax roll from the previous December 31 is completed. The other key day is January 1, 2001. To capture taxes levied for school operating purposes on an eligible property, the work or remedial action plan must be approved by the MDEQ before January 1, 2001.

## **Q** What types of activities require MDEQ approval?

**A.** All work or remedial action plans that use tax increment revenues from taxes levied for school operating purposes require MDEQ approval. If the work or remedial action plan is for baseline environmental assessment activities and/or due care activities only, MDEQ has, with limited exceptions, 60 days from the time the plan is submitted to approve the plan or indicate what individual activities need to be added or deleted.

MDEQ cannot require an authority that is submitting a work or remedial action plan to undertake additional response activities. The MDEQ may reject the portion of an authority's work or remedial action plan that includes additional response activities.

## **Q** Is there a single business tax credit available for individuals and businesses who invest in and develop eligible properties?

**A.** Yes. The biggest incentive for individuals and businesses to develop and invest in eligible property is that the person may qualify for a credit on the Michigan single business tax in the amount of 10% of the cost of an eligible investment that they make on the eligible property. The qualified taxpayer is eligible for a 10% credit on his or her Michigan single business tax for tax years beginning after December 31, 1996, through January 1, 2001, as long as the maximum total credits for the qualified taxpayer for all tax years claimed does not exceed \$1,000,000. The credit may not exceed the tax liability and must be taken within 10 years. ❖

by Patrick F. McGow