WHAT TOOLS ARE IN THE TOOL BOX TO INDUCE ECONOMIC DEVELOPMENT?

Prepared by:

KATHLEEN FIELD ORR & ASSOCIATES
53 West Jackson Blvd.
Suite 964
Chicago, Illinois 60604
kfo@kfoassoc.com
312.382.2113

I. TIF: THE MOST WIDELY USED TOOL

The most widely used economic development tool available to municipalities is the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq*. (the "*TIF Act*"), which allows a municipality to receive incremental real estate taxes generated by an increase of the assessed value of property within a designated area for the purpose of payment of redevelopment project costs. Such financial assistance has been proven to stimulate development and eliminate economic stagnation. The application of the TIF Act requires a designated area to meet the criteria of being a "blighted area", a "conservation area", or an "industrial park conservation area" as defined by the TIF Act. Once an area is determined to meet the qualifications of one of these three, it is designated as a "redevelopment project area" and the incremental real estate taxes generated from such a designated area may be used solely for the payment of redevelopment project costs as defined and limited by the TIF Act.

The TIF Act has become one of the most effective tools available to induce economic development. Given its extensive use by municipalities across the state, establishing a "TIF" has become a necessity in order to compete with other municipalities for development. The cost to establish a redevelopment project area under the TIF Act is substantial and the process takes several months as its adoption requires the preparation of an eligibility report; the preparation of a redevelopment plan for the proposed redevelopment project area; numerous notices and publications; the convening of a joint review board of the affected taxing districts; and, holding a public hearing.

In addition, for redevelopment project areas with redevelopment plans that would result in the displacement of residents from ten or more inhabited residential units or that include seventy-five (75) or more residential units, a housing impact study must also be prepared, which includes the number of single-family and multi-family residential units; number inhabited and number uninhabited; date as to the racial and ethnic composition of the inhabitants; number and location of housing units to be removed; availability and cost of replacement housing; and, relocation assistance to be provided.

Once established, the TIF Act requires annual reports itemizing all revenues, expenses and activities within the redevelopment project area, and also requires annual meetings of the joint review board.

One of the greatest misconceptions of the TIF Act is that it is a tax rebate program. The TIF Act establishes a system of reimbursement of "redevelopment project costs" as specifically itemized in Section 11-74.4-3(q). A list of those redevelopment project costs is attached hereto as *Exhibit A*.

Notwithstanding the lengthy and costly process to establish a TIF, TIF remains the most effective of the municipal economic development tools. Unfortunately, however, TIF

has also become "Public Enemy Number One" as it has been improperly used in certain instances and is often accused of capturing tax revenue to the serious detriment of other taxing districts. While the abuses are few in comparison to the benefits, communities are often forced to research other means to spur economic development.

Currently the TIF Act has generated much discussion as municipalities have sought an extension to the designation of a redevelopment project area for twelve (12) additional years as permitted by the TIF Act. The General Assembly has determined that no extension will be granted to any such request unless accompanied by letters or resolutions of support from all the taxing districts have jurisdiction over the redevelopment project area. In many instances, taxing districts having made demands to share in the incremental tax revenue from a redevelopment project area thereby limiting the benefit to extending the TIF.

As a result of these demands by the taxing districts, municipalities have begun to "re-TIF" those parcels included in a designated redevelopment project area which have not been redeveloped and still meet the criteria for designation as a "redevelopment project area" under the TIF Act. Such "re-designation" as a redevelopment project area is for a new term of twenty-three (23) years. This practice has been brought to the attention of the General Assembly and as of the date of this writing is being reviewed by a special committee of the legislature.

II. **SPECIAL SERVICE AREA** (35 ILCS 200/27-5 *et seq*.)

In any area which is contiguous and where a municipality provides special governmental services in addition to those generally provided to the municipality at large, the Special Service Area Tax Law (35 ILCS 200/27-5 *et seq*.) authorizes the levy of a special assessment to pay for the special services or to pay the debt service of any obligation issued by the municipality to provide such services.

A. *Required procedures*:

1. Not less than sixty (60) days after the adoption of an ordinance proposing a special service area a public hearing must be held. Notice of the public hearing shall be published not less than fifteen (15) days prior to the hearing in a newspaper of general circulation in the municipality and by mailing, not less than ten (10) days prior to the hearing, a notice to each owner of property lying within the proposed special service area.

2. The notice must contain the following information:

   (a) Time and place of the hearing;
   (b) Boundaries of the proposed special service area by legal description and, where possible, by street location;
   (c) Permanent tax index number of each parcel within the proposed special service area;
   (d) The nature of the proposed special services to be provided and a statement as to whether the proposed special services are for new construction or other purposes;
   (e) The proposed amount of taxes to be levied for the initial year;
   (f) Notification that all persons will be given an opportunity to be heard at the hearing and an opportunity to file objections to the amount of the tax levy if the tax is a tax upon the property; and,
   (g) The maximum rate of taxes to be extended in any year and the maximum number of years it is to be in place.

3. If, any year the estimated special service area tax levy is more than 105% of the amount extended for the preceding year, notice shall be given and a hearing held on the reason for the increase not more than thirty (30) days prior to the adoption of the ordinance to adopt the annual levy of the special service area.

B. *Objection Petition*:

If a petition is signed by at least fifty-one percent (51%) of the electors residing in the proposed special service area and by at least fifty-one percent (51%) of the owners of record of the land within the boundaries of the proposed special service area is filed within sixty (60) days following the adjournment of the public hearing objecting to the creation of the special service area, the enlargement of the area, the issuance of bonds for the provision of special services to the area, or to a proposed increase in the tax rate, the special service area shall not be created, or the area enlarged, or any bonds issued within the next TIF.

C. *Petition to Disconnect from a Special Service Area*:

A majority of the resident electors and a majority of the record owners of land in the territory sought to be disconnected from a special service area may petition the circuit court stating that the territory to be disconnected has not been either benefitted or served by any work or services then authorized by the special service area and constitutes less than 1 1/2% of the area's total equalized assessed valuation. Upon filing of the petition, the court must set a date for a public hearing and give forty-five (45) days prior notice. At the end of the hearing, the court shall decide if the territory should be disconnected.

D. *Tax Levy Extension*:

If a property tax is levied, the tax shall be extended based on the equalized assessed values of properties within the special service area or on any basis that provides a rational relationship between the amount of the tax levied and the special service benefit rendered.

Special Service Areas have been widely used to provide infrastructure to residential, commercial and industrial development through the issuance of bonds and thereafter levying an annual real estate tax equal to the annual debt service for the number of years required to retire the bonds. While this has been a useful development tool, the property owner is burdened with an additional real estate tax for a number of years. In theory, the purchase price or development cost is reduced through special service area bonds as it permits a major up-front development cost to be paid over a number of years. Given the economic climate of the past few years and the significant decline in the value of real estate, special service area taxes have limited the resale value of property. Nonetheless, the use of special service areas has continued where the long term effects have been found acceptable or the only means to finance specific necessary improvements to maintain or induce development.

III. **ENTERPRISE ZONES** (20 ILCS 655/1 *et seq*.)

An "Enterprise Zone" is an area determined to be economically disadvantaged and therefore eligible for specific benefits to encourage economic development. Prior to July, 2012, the Department of Commerce and Economic Opportunity (DCEO) was limited to the number of enterprise zones which could be designated. As of March 1, 2012, a total of 97 zones had been established in Illinois. With the passage of Public Act 097-0905 new criteria to qualify for enterprise zone benefits was put into effect and an Enterprise Zone Board was established to review and approve all enterprise zone applications. HB 4220 has been introduced authorizing DCEO to certify an additional 25 Enterprise Zones in 2018 and allows for applications to extend an Enterprise Zone within five (5) years of expiration, among other things.

A. *Qualifications for Enterprise Zone* are set forth in *Exhibit B* attached hereto, Administrative Code effective July 29, 2016. All applications for designation as an Enterprise Zone are submitted to DCEO and scored based of the number of criteria points earned.

B. *Approval by the Enterprise Zone Board*.

The new legislation established an Enterprise Zone Board consisting of five (5) members to include:

1. The Director of DCEO or his or her designee, who shall serve as chairman;
2. The Director of Revenue, or his or her designee; and,
3. Three (3) members appointed by the Governor with the advice and consent of the Senate.

The members shall serve without compensation with terms of four (4) years. A majority of the Board shall determine whether an application for an enterprise zone is approved or denied, giving preference to the extent the area meets the criteria hereinabove set forth.

C. *Term*.

An enterprise zone may be in effect for a term of fifteen (15) years and shall be subject to review by the Enterprise Zone Board after thirteen (13) years for an additional ten (10) year designation.

D. *Enterprise Zone Tax Benefits*:

1. INVESTMENT TAX CREDIT. The investment tax credit allows a .5% credit against the State income tax for investments in qualified property which is placed in service in an enterprise zone. Examples of qualified property include building, structural components of buildings, elevators, materials tank, boilers and major computer installations. Examples of non-qualifying property are land, inventories, small personal computers, trademarks and other small non-depreciable or intangible assets.

2. BUILDING MATERIALS SALE TAX EXEMPTION. A retailer who makes a qualified sale of building materials to be incorporated into real estate in an enterprise zone by remodeling, rehabilitation or new construction may deduct receipts from such sale when calculating the tax imposed.

3. EZ MANUFACTURING MACHINERY AND EQUIPMENT SALES TAX EXEMPTION. This exemption is a 6.25% State sales tax exemption on all tangible personal property which is used or consumed within an enterprise zone in the process of manufacturing or assembly of tangible personal property for wholesale or retail sale or lease. To qualify there are investment and job creation requirements.

4. UTILITY TAX EXEMPTION. The utility tax exemption allows a business enterprise that is certified by DCEO, as making an investment in a zone that creates a minimum of 200 full-time equivalent jobs in Illinois or retains a minimum of 1,000 full-time jobs in Illinois, a 5% State tax exemption on gas, electricity and the Illinois Commerce Commission .1% administrative charge and excise taxes on the act or privilege of originating or receiving telecommunications. The municipality may also exempt its taxes on gas, electricity and water.

5. JOBS TAX CREDIT. The jobs tax credit offers employers a tax credit on their Illinois income taxes for hiring individuals who are certified as economically disadvantaged or as dislocated workers. The credit is $500 per eligible employee that is hired.

6. PROPERTY TAX INCENTIVES. The tax abatement incentive provides that any taxing district may order the county clerk to abate any portion of its taxes on real property or on any particular class of property located in the zone and upon which new improvements have been constructed or improvements made.

7. FINANCIAL INSTITUTION INCOME TAX DEDUCTION. Such institutions may deduct from their taxable income an amount equal to the interest received from a loan for development in an enterprise zone.

8. DIVIDEND DEDUCTION. The Illinois Income Tax Act provides that taxpayers may deduct from their taxable income an amount equal to those dividends, which were paid to them by a corporation, which conducts substantially all of its operation in an enterprise zone.

9. CORPORATION CONTRIBUTION DEDUCTION. Corporations may make donations to designated zone organizations for projects approved by DCEO and claim an income tax deduction at double the value of the contribution.

E. The Enterprise Zone Act also authorizes DCEO to receive and approve applications for the designation of "High Impact Businesses" which generally include a business with a minimum investment of $12,000,000 to create 500 full-time jobs; a new electric generating facility; a new gasification facility; production operations of a new coal mine, expansion of closed coal mine; expansion of an existing coal mine; constructing new or upgrading transmission facilities; or construct a fertilizer facility. Designation as "high Impact Business" affords the applicant several benefits as enumerated in 5.5 (20 ILCS 655/5.5) of the Enterprise Zone Act.

IV. **BUSINESS DISTRICT DEVELOPMENT AND REDEVELOPMENT LAW** (65 ILCS 5/11-74.3-1 *et seq*.)

A. *Purpose.*

The purpose of the Business District Development and Redevelopment Law (the "*BDD Act*"), as stated in its declaration, is to assure opportunities for development or redevelopment, to encourage private investment, and to attract sound and stable business and commercial growth. The assistance made available to municipalities by the BDD Act is the authority afforded by this law to impose an additional municipal sales tax up to one percent (1%) and an additional municipal hotel tax up to one percent (1%) but only if the proposed business district is found to be "blighted". The BDD Act defines a blighted area as:

> "… an area that is a blighted area which, by reason of the predominance of defective, non-existent, or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire other causes, or any combination of those factors, retards the provision of housing accommodations or constitutes an economic or social liability, an economic underutilization of the area, or a menace to the public health, safety, morals, or welfare."

B. A proposed Business District must be a contiguous area which includes only such properties which shall be directly and substantially benefitted by the proposed business district plan.

C. *Procedures.*

1. The municipality is required to approve a written plan for the development or redevelopment of a business district, which plan must include the following:

(a) Description of the boundaries of the proposed business district with a map illustrating the boundaries;

(b) A general description and location of each proposed project and a description of the developer, user or tenant of any property within the district;

(c) The name of the business district;

(d) Anticipated sources of funds to pay business district costs;

(e) Anticipated types and terms of any obligations to be issued; and,

(f) The rate of any sales tax or hotel tax to be imposed if the business district is determined to be a blighted area.

2. The municipality must hold a public hearing after notice by publication has been given at least twice, the first publication to be not more than thirty (30) nor less than ten (10) days prior to the date of the hearing.

D. Revenue derived from the imposition of the additional sales and hotel taxes may be used to pay "Business District Costs" which shall mean and include the sum total of all costs incurred by a municipality, other governmental or non-governmental person in furtherance of the business district plan, including, without limitation, the following:

(1) costs of studies, surveys, development of plans and specifications, implementation and administration of a business district plan, personnel and professional service costs including architectural, engineering, legal, marketing, financial, planning, or other professional services, provided that no charges for professional services may be based on a percentage of tax revenues received by the municipality;

(2) property assembly costs, including but not limited to, acquisition of land and other real or personal property or rights or interests therein, and specifically including payments to developers or other nongovernmental persons as reimbursement for property assembly costs incurred by that developer or other non-governmental person;

(3) site preparation costs, including but not limited to clearance, demolition or removal of any existing buildings, structures, fixtures, utilities, and improvements and clearing and grading of land;

(4) costs of installation, repair, construction, reconstruction, extension, or relocation of public streets, public utilities, and other public site improvements within or without the business district which are essential to the preparation of the business district for use in accordance with the business district plan, and specifically including payments to developers or other nongovernmental persons as reimbursement for site preparation costs incurred by the developer or nongovernmental person;

(5) costs of renovation, rehabilitation, reconstruction, relocation, repair, or remodeling of any existing buildings, improvements, and fixtures within the business district, and specifically including payments to developers or other nongovernmental persons as reimbursement for costs incurred by those developers or nongovernmental persons;

(6) costs of installation or construction within the business district of buildings, structures, works, streets, improvements, equipment, utilities, or fixtures, and specifically including payments to developers or other nongovernmental persons as reimbursements for such costs incurred by such developer or non-governmental person;

(7) financing costs, including but not limited to all necessary and incidental expenses related to the issuance of obligations, payment of any interest on any obligations issued under this Law that accrues during the estimated period of construction of any development or redevelopment project for which those obligations are issued and for not exceeding 36 months thereafter, and any reasonable reserves related to the issuance of those obligations; and

(8) relocation costs to the extent that a municipality determines that relocation costs shall be paid or the municipality is required to make payment of relocation costs by federal or State law.

E. *Term.*

The maximum term for the designation of a Business District is twenty-three (23) years after the date of adoption of an ordinance imposing an additional sales tax and/or hotel tax.

V. TAX ABATEMENTS

Statutory Authority: 35 ILCS 200/18-165 through 200/18-180

State law authorizes any taxing district, upon a majority vote of its governing authority, after the determination of the assessed value of the property, to order the county clerk to abate any portion of the taxes levied by such taxing districts in accordance with the following limitation.

I. COMMERCIAL AND INDUSTRIAL PROPERTY

A. Property located within the taxing district during the preceding year from another state, territory or county; or, newly created during the preceding year; or used for generator or expansion of electricity locating in a taxing district or expanding its operations; or new or reopened coal mine.
Max: 10 years or $4,000,000.

B. Development of 500 acres or 225 acres if designated as a "High Impact Business".
Max: 20 years or $12,000,000.

C. Property of which expands its facilities or the number of employees.
Max: 10 years or $4,000,000.

II. HORSE RACING

Any property used for the racing of horses which had made improvements.
Max: $5,000,000 annually and 10 years.

III. AUTO RACING

Any property designed exclusively for the racing of motor vehicles.
Max: 10 years (no amount stated)

IV. ACADEMIC OR RESEARCH INSTITUTE

Any 501(c)(3) corporation's property used exclusively for scientific research available to the public and employs more than 100 employees.
Min: 15 years Max: $5,000,000

V. **SENIOR HOUSING**

Property devoted exclusively to affordable housing for older households (55 years or older; annual income 80% or less of median income determined by HUD.
Max: $3,000,000 or 15 years

VI. **HISTORICAL SOCIETY**

Property of a historical society for assessment years 1998 through 2018.

VII. **RECREATION FACILITY**

Property used for an airport subject to a leasehold assessment sublet from a park district leasing from a municipality is used exclusively for recreational facilities or parking lots.
Max: 10 years

VIII. **CERTAIN PROPERTY**

Fifty percent (50%) of the donation in excess of $10,000 made by a taxpayer to a qualified program in an area designated by the municipality as a target area for job training, counseling, day care, recreation programs and the like.

IX. **PROPERTY IN AN ENTERPRISE ZONE**

Unless it is in a "redevelopment Project area" pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq*. (See Section I.)

X. **PROPERTY IN THE RIVER EDGE REDEVELOPMENT ZONE**

(See Section XIV.)

XI. **HOUSING, OPPORTUNITY ABATEMENT PROGRAM**

In a "Housing Opportunity Area" (a census tract where less than 10% of the residents live below the poverty level, where the owner of a "Housing Opportunity Unit" rents to a tenant participating in a housing authority voucher program. No more than 2 units or 20% of the total units within the property (whichever is greater) are "Qualified Units".

Abatement of 19% of the equalized assessed value of the property multiplied by a fraction, the numerator being number of Qualified Units and the denomination is the total number of units within the property. Applies for tax years 2004 to 2024.

XII. LEASEHOLD ABATEMENT

Any leasehold interest in property leased from the Department of Natural Resources with a restaurant and overnight lodging built with 50% private funding and open for business after January 1, 1992.

XIII. COOK COUNTY/CHICAGO HOUSING AUTHORITY

Property solely used for low-rent housing-potentially full tax abatement for a period of not less than 20 years. Requires annual inspection and certification.

XIV. RESIDENCE OF SURVIVING SPOUSE OF FALLEN POLICE OFFICER, SOLDIER OR RESCUE WORKER

Percentage of abatement to be determined by the "governing body" if:

(a) Occupied by no more than 2 families;
(b) Acquired by surviving spouse within 2 years after the death if spouse was domiciled in this state; or,
(c) Acquired no more than two (2) years after the death if spouse qualified for a former property in the same municipality; and,
(d) Surviving spouse not remarried.

XV. URBAN DECAY-HOME RULE MUNICIPALITY

Newly constructed single-family or duplex in an urban decay area.
Max: 2% of all extended taxes for a maximum of 10 years, reduced by 20% increments the last four years. Urban decay area is a "blighted" area as defined by the TIF Act.

XVI. NEIGHBORHOOD REDEVELOPMENT CORPORATION PROPERTY

Property of a neighborhood redevelopment corporation as provided to the Neighborhood Redevelopment Corporate Law.
No max; no limit on term.

XVII. **ANNEXATION AGREEMENT**

Newly annexed property the subject of an annexation agreement. Any portion – term 20 years as max term of an annexation agreement.

XVIII. **VACANT FACILITIES**

Property occupied by a new business after being vacant for not less than 24 continuous months.
Max: 2 years or $4,000,000

XIX. **BUSINESS CORRIDOR**

Property covered by an Intergovernmental Agreement between 2 adjoining municipalities covering property qualifying as a business corridor along the common border of a municipality not likely to be developed without the creation of a business corridor.
Max: 10 years

XX **TAKE NOTE**:

Statutory Authority: (35 ILCS 200/18-183)

Cancellation and repayment of tax benefits. Beginning with tax year 1996, if any taxing district enters into an agreement that explicitly sets forth the terms and length of a contract and thereby grants a tax abatement or other tax benefit under Section 18-165 through 18-180 of this Code, under the Economic Development Area Tax Increment Allocation Act, the County Economic Development Project Area Tax Increment Allocation Act of 1991, the Tax Increment Allocation Redevelopment Act, the Industrial Jobs Recovery Law, the Economic Development Project Area Tax Increment Allocation Act of 1995, or under any other statutory or constitutional authority implemented under the Property Tax Code to a private individual or entity for the purpose of originating, locating, maintaining, rehabilitating, or expanding a business facility within the taxing district and the individual or entity relocates the entire facility from the taxing district in violation of the terms and length of the contract explicitly set forth in the agreement, the abatement or other tax benefit for the remainder of the term is cancelled and the amount of the abatements or other tax benefits granted before cancellation shall be repaid to the taxing district within 30 days. This Section may be waived by the mutual agreement of the individual or entity and the taxing district."

VI. **ECONOMIC INCENTIVE AGREEMENTS** (65 ILCS 5/8-11-20)

A. *Synopsis of the Statute*

The Illinois Municipal Code authorizes municipalities to enter into economic incentive agreements whereby the municipality agrees to share or abate a portion of its retailers' occupation taxes over a finite period of time. Before entering into such an agreement, the municipality must make the following findings:

(a) If the property to be developed is vacant it must have remained vacant for at least one year; or, the building on the property was demolished within the last year and would have qualified under (b) below.

(b) If the property is developed, the buildings have remained unoccupied or underutilized for at least one year; or, the buildings no longer comply with current codes.

(c) The proposed development must create or retain jobs.

(d) The proposed development shall further the development of adjacent areas.

(e) The proposed development would not be possible without the economic incentive agreement.

(f) The developer meets high standards of creditworthiness and financial strength as demonstrated by:

i. Corporate debenture ratings of BBB or higher by S&P; or Baa or higher by Moody's; or
ii. A letter from a financial institution with assets of $10,000,000 or more attesting to the developer's financial strength; or,
iii. Evidence of equity of not less than 10% of the project costs.

(g) The development shall strengthen the commercial sector of the municipality.

(h) The development shall enhance the tax base of the municipality.

(i) The economic incentive agreement is in the best interest of the municipality.

The statute does not limit the incentive by amount or duration of time.

B. *Applications of 65 ILCS 5/8-11-20, Abusive*?

Given the authority by both home rule and non-home rule municipalities to enter into economic incentive agreements to rebate "sales" taxes ("*retailers' occupation taxes*"), businesses began to search for jurisdictions with a lower sales tax rate. These generally were the non-home rule municipalities as the home rule municipalities have the authority to increase sales taxes while non-home rule municipalities are required to go to referendum prior to any increase. The result has been that non-home rule sales taxes are generally one percent (1%) less than that imposed by home rule municipalities.

In 2003, Hartney Fuel Oil Company ("*Hartney*") a relailer of fuel oil with its primary business operation in the Village of Forest View, Cook County, Illinois, established a sales office in the Village of Mark, Putnam County, Illinois, Hartney entered into a non-exclusive lease of 200 square feet and the services of a clerk for $1,000 per month from Putnam County Painting. All fuel orders were accepted at the "sales office" in the Village of Mark, thereby avoiding the retail occupation taxes of Cook County, the Village of Forest View and the Regional Transportation Authority. The Village of Mark, a non-home rule municipality entered into an Agreement with Hartney to rebate a portion of its retailers' occupation tax pursuant to Section 8-11-20 of the Illinois Municipal Code. The Department of Revenue and the taxing districts brought suit alleging that the situs of the sales was not in the Village of Mark but Forest View. The issue was finally settled by the Supreme Court of the State of Illinois which determined that the situs for imposition of retailers' occupation taxes is properly determined by a fact-intensive investigation of a composite of the activities in the actual business of selling rather than by a bright-line test as to where purchase orders are accepted. *Hartney Fuel Oil Co. v. Hammer*, 998 N.E.2d 1227 (2013) IL 115130, 376 Ill. Dec. 294.

C. *New Legislation as a Result of Hartney*

Section 8-11-21 of the Illinois Municipal Code (65 ILCS 5/8-11-21), effective January 1, 2013, provides as follows:

> (1) On and after June 1, 2004, no agreements to share or rebate any portion of retailers' occupation taxes generated by the sale of tangible property if the taxes, absent the agreement, would have been paid to another local government and the retailers maintains a location within the other unit of local government from which the tangible property is delivered to purchasers.
>
> (2) Actions for a violation of this statute may be brought in circuit court by a unit of local government and if such unit of local government prevails, it is entitled to damages in the amount of taxes denied, statutory interest, attorney's fees and an amount equal to fifty percent (50%) of the tax.

(3) The statute is a denial and limitation of home rule powers.

(4) All agreements for sales tax rebates must be reported to the Department of Revenue.

D. *User Tax*

In 2011, an action against the *City of Kankakee, Village of Channahon, MTS Consulting, et al.* was brought by the City of Chicago and the Village of Skokie alleging that the Defendants entered into sales tax rebate agreements with various retailers and received the sales taxes, when, in fact, the sales occurred outside of Illinois. Since the sales actually occurred outside of Illinois, the retailers would have been liable for the lower use tax, a tax imposed on the sale of tangible personal property by out-of-state retailers where the item is used within Illinois. The use tax is set at 6.25% of the sales price, of which 1.25% is deposited into a common fund which then distributes 20% to Chicago; 10% to the Regional Transportation "Authority; .06% to Madison County Mass Transit District; $3.15 to the Build Illinois Fund; and, the remaining to more than 200 municipalities based upon proportionate share of population.

The Plaintiffs argued that as a result of the improper rebate agreements they were deprived of their share of the use tax revenues. While the circuit court dismissed the complaint with prejudice on the basis that only the Illinois Department of Revenue has exclusive jurisdiction and authority to enforce tax collection and to distribute taxes. The Appellate Court, however, agreed with the Plaintiffs that Section 8-11-21 of the Municipal Code sought to address the harm caused to a municipality from mis-sourced sales tax revenue and, therefore, Plaintiff had standing and remanded the case[1]

[1] The City of Chicago and *Village of Skokie* v. *City of Kankakee*; *Village of Channahon MTS Consulting, LLC, et al*., 2017 Ill.App. (1st) 153531 September 29, 2017.

VII. **EXPENSES FOR ECONOMIC DEVELOPMENT.**

Another provision of the Illinois Municipal Code has greatly expanded the authority of non-home rule municipalities by authorizing the appropriations and use of municipal funds for economic development purposes. An amendment to the Illinois Municipal Code, effective July 11, 2011, provides as follows:

> Section 8-1-2.5. Expenses for Economic Development. The corporate authorities may appropriate and expend funds for economic development purposes, including, without limitation, the making of grants to any other governmental entity or commercial enterprise that are deemed necessary or desirable for the promotion of economic development within the municipality.

VIII. COMMERCIAL RENEWAL AND REDEVELOPMENT AREAS

This legislation originated in 1967 which predated home rule and expanded the powers of municipalities to acquire property and undertake such actions as deemed necessary to implement a plan for redevelopment.

The legislation further authorized the issuance of bonds without submitting any proposition to the electorate by referendum payable from the commercial revenue received from the development. The bonds, if issued, would not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The law did not provide for any revenue source which limited its usefulness.

1. *Statutory Authority*:
   Section 11-74.2-1, *et seq*.
   65 ILCS 5/11-74.2-1, *et seq*.

2. *Qualifications:*
   Redevelopment area which is a blighted area or a conservation area of not less than two acres:

   (i) Blighted improved – requires a combination of five (5) or more of the following factors:
   dilapidation;
   obsolescence;
   deterioration;
   illegal use of structure;
   structures below code standard;
   excessive vacancies;
   overcrowding;
   lack of ventilation, light or sanitary facilities;
   inadequate utilities;
   excessive land coverage;
   deleterious use or layout;
   depreciation or lack of maintenance;
   lack of community planning.

   (ii) *Blighted, vacant*: requires two (2) or more of the following factors:
   obsolete platting;

diversity of ownership;
tax and special assessment delinquencies deterioration of improvements in neighboring areas;
immediately prior to being vacant was a blighted improved area.

(iii) *Conservation area*: requires 50% or more of the structures to be 35 years or more with three (3) of the following factors:

dilapidation;
obsolescence;
deterioration;
illegal use of structures;
structures below code standard;
abandonment;
excessive vacancies;
overcrowding of structures;
lack of ventilation, light or sanitary facilities;
inadequate utilities;
excessive land coverage;
deleterious use or layout;
depreciation of maintenance;
lack of community planning.

3. *Procedures*:

(i) Municipality undertakes a study using evidence gathered by public or private organizations, hearings, investigations;

(ii) Municipality creates a Citizen Committee of not less than nine (9) persons consisting of local merchants, owners of commercial real estate, advertising media, residential property associations, human relation commissions , labor organizations and civic groups;

(iii) Municipality formulates a proposed commercial redevelopment plan for the area which must be approved by 2/3rds of the members of the Citizen Committee; and,

(iv) Municipality holds a public hearing on the plan and thereafter publishes as the plan for the municipality.

4. *Once qualified, the corporate authorities were granted the following powers*:

> Acquisition, condemnation, demolition, renovation of buildings, lease property with rent to pay bonds, sell property subject to a mortgage at a price determined by the municipality, make public improvements and construct infrastructure, mortgage or convey property, borrow money, issue revenue bonds, convey property acquired to any taxing district at any price, sell property at such price as the municipality determines as its "use value" which may be less than its acquisition cost; issue bonds payable solely from the proceeds and revenues of the commercial redevelopment plan or the commercial project. If property is to be acquired by condemnation, such power may only be exercised when at least 85% of the land covered by the commercial redevelopment plan has been previously acquired by the corporate authorities or private organizations.

IX. NEIGHBORHOOD REDEVELOPMENT CORPORATE LAW

Statutory Authority:
315 ILCS 20/1 *et seq.*

One of the most interesting laws is the Neighborhood Redevelopment Corporation Law, 315 ILCS 20/1 *et seq*. the purpose of which is to assist urban areas of Illinois suffering from "degenerate conditions" characteristic and causative of Slum and Blight Areas. The intent of the law is to remove these conditions by private initiative through Neighborhood Redevelopment Corporations.

The law requires a municipality to establish a Redevelopment Commission to supervise the activities of a Neighborhood Redevelopment Corporation. The Commission is composed of not less than three (3) nor more than five (5) members who shall receive a salary paid by the municipality. The detailed powers and duties required of the Redevelopment Commission are extensive. All development is done by the Neighborhood Development Corporation through private investment derived from the sale of shares of stock in the Corporation. The law, however, does provide for a property tax abatement on all real property acquired pursuant to the law for a period not in excess of ten (10) years after the Neighborhood Development Corporation becomes the owner. In certain instances, property taxes are assessed on the value of the land exclusive of improvements so long as owned by the Neighborhood Development Corporation.

The law is extraordinarily cumbersome and requires private resources to acquire property with the benefit of substantial reduction in real estate tax assessments for so long as owned by the Neighborhood Development Corporation. The portions of the law dates back to 1941; however, it has been continually amended through 2009, although any information on its application has not been found.

X. ECONOMIC DEVELOPMENT FOR A GROWING ECONOMY TAX CREDIT ACT

Statutory Authority:
35 ILCS 10/5-1 *et seq*.

A. This Act provides for Tax Credit Awards to any taxpayer proposing a project located or planned to be located in Illinois with an intent to make a specified level of investment and intends to hire or retain a specified number of full-time employees at a designated location in Illinois. In order to qualify for the Tax Credits, a taxpayer's project must:

1. If the business has more than 100 employees, involves an investment of at least $2,500,000 in capital improvements; if the taxpayer has 100 or fewer employees, then no capital investment is required; and,

2. If the taxpayer has not more 100 employees, employ a number of new employees, employ a number of new employees equal to the lesser of (i) 10% of the number of full-time employees employed by the taxpayer world wide of (ii) 50 new employees; and, if the taxpayer has 100 or fewer employees, employ a number of new employees equal to the lesser of (i) 5% of the number of full-time employees worldwide or (ii) 50 new employees.

B. The application for Tax Credits shall be reviewed by a Business Investment Committee formed by the Illinois Economic Development Board with the following members:

1. Director of Commerce and Economic Opportunity, or his or her designee;

2. Director of the Governor's Office of Management and Budget, or his or her designee;

3. The Director of Revenue or his or her designee;

4. The Director of Employment Security, or his or her designee; and,

5. An elected official of the affected locality, such as the chair of the county board or the mayor.

C. The determination of the amount of Tax Credit shall be based upon the following factors:

1. The number and location of jobs created and retained in relation to the economy of the county where the projected investment is to occur.

2. The potential impact on the economy of Illinois.

3. The magnitude of the cost differential between Illinois and the competing state.

4. The incremental payroll attributable to the project.

5. The Capital investment attributable to the project.

6. The amount of the average wage and benefits paid by the Applicant in relation to the wage and benefits of the rest of the project.

7. The costs to Illinois and the affected political subdivisions with respect to the project.

8. The financial assistance that is otherwise provided by Illinois and the affected political subdivisions.

The amount of the Tax Credit shall be as agreed between the Department of Commerce and Economic Opportunity and the taxpayer ("*Applicant*") as provided on Section 5-5 of the Act may not exceed the lesser of:

> "…the sum of (i) 50% of the Incremental Income Tax attributable to New Employees at the Applicant's project and (ii) 10% of the training costs of New Employees; or (2) 100% of the Incremental Income Tax attributable to New Employees at the Applicant's project. However, if the project is located in an underserved area, then the amount of the Credit may not exceed

> the lesser of: (1) the sum of (i) 75% of the Incremental Income Tax attributable to New Employees at the Applicant's project and (ii) 10% of the training costs to New Employees; or (2) 100% of the Incremental Income Tax attributable to New Employees at the Applicant's project. If an Applicant agrees to hire the required number of New Employees, then the maximum amount of the Credit for that Applicant may be increased by an amount not to exceed 25% of the Incremental Income Tax attributable to retained employees at the Applicant's project; provided that, in order to receive the increase for retained employees, the Applicant must provide the additional evidence required under the Act."

The term of the Tax Credit shall not exceed ten (10) taxable years and under certain circumstances may be qualified for a term not to exceed fifteen (15) taxable years.

XI. ECONOMIC DEVELOPMENT AREA TAX INCREMENT ALLOCATION ACT

This law, passed by the General Assembly in 2012, was targeting a specific project by creating a special tax increment financing incentive as an incentive. It is believed this tool was created solely for the purpose of retaining Sears corporate headquarters. Unfortunately, the best efforts of the State have not succeeded.

1. *Statutory Authority*:
   20 ILCS 620/1 *et seq*.

2. *Qualifications:*

   (i) contiguous improved or vacant real estate not less than 320 acres suitable for commercial or industrial uses;
   (ii) approved by DECEO;
   (iii) must create or retain 4,250 full-time jobs; and,
   (iv) private investment of $100,000,000.

3. *Procedures*:

   (i) public hearing to be held by the corporate authorities on the economic development plan;
   (ii) notice by publication and property owners within the proposed district; and,
   (iii) approval required by DECEO.

4. *Incentives*:

   Real estate taxes paid in 2012 and distributed in 2013 (the "base amount") and all prior years shall be pursuant to the allocation formula in any economic development plan. Real estate taxes paid in 2014 and thereafter distribution above the base amount shall be $350,000 first to the municipality for administrative costs, next $5,000,000 to the municipality and thereafter 55% to the developer and 45% to the taxing districts.

5. *Term:*

   Fifteen (15) year extension authorized in 2012.

XII. INNOVATIVE DEVELOPMENT AND ECONOMY ACT (*STAR Bonds*)

1. *Statutory Authority*:

   50 ILCS 470/1 *et seq*.

2. *Qualifications: Eligible Area:*
   - (i) not less than 250 acres nor more than 500 acres of contiguous vacant or improved real property;
   - (ii) within one mile of two highways;
   - (iii) within one mile of a major entertainment venue or sports stadium with an investment of at least $20,000,000;
   - (iv) includes land that was previously surface or strip mined; and,
   - (v) must be found to be blighted under the "TIF" Act or the Business District Act or certain findings must be made by the governing body as stated in the Act.

3. *Procedures*:

   - (i) political subdivision adopts a resolution describing general boundaries of the proposed STAR Bond district; describing the plan; requiring a map and description of the district to be available for inspection; identifies the master developer; requires the governing body to make certain findings; announces the date, time and place for a public hearing.
   - (ii) governing body (after the public hearing) makes specific findings of eligibility, appoints the master developer and establishes the STAR Bond district, contingent upon the approval of Director of the Department of Revenue in consultation with the Director of Department of Commerce and Economic Opportunity.
   - (iii) governing body enters into a master development agreement which must include specific commitments on the part of the master developer as set forth in the law.
   - (iv) proposed STAR Bond district then submitted to the Director of Revenue for review and approval if plan requires the Developer to undertake:
     - (a) capital investment of $10,000,000;
     - (b) projects $100,000,000 gross sales revenue;
     - (c) proposes 500 new jobs;
     - (d) includes specific entertainment user and destination user; and,

(e) meets any other requirements of the Director of Revenue.

(v) a feasibility study must be prepared addressing specific criteria shall be prepared by a consultant selected by the Director of Revenue;

(vi) public hearing is then held on the project plan after approval of the plan by the Director of Revenue.

(vii) starting on the 5th anniversary, the Director reviews the project to determine if the foregoing requirements have been met or penalties shall be imposed;

4. *Incentives*:

(i) incremental local sales taxes and incremental state sales taxes (less 3%) pledged to pay STAR Bonds with other revenue as directed by the governing body including its pledge of its full faith and credit;

(ii) limitation of use of incremental sales taxes (state and local) to 50% of total development costs;

(iii) corporate authorities may also impose an additional sales tax in .25% increments not to exceed 1% with same limitations as a Business District tax.

(iv) 15% of incremental real estate taxes are used for schools with the district through a School Improvement and Operations Trust Fund.

XIII. **RIVER EDGE REDEVELOPMENT ZONE ACT**.

Statutory Authority:
65 ILCS 115/10-1 *et seq*.

This economic development tool applies to municipalities adjacent to or surrounding river areas. The Act authorizes the Department of Commerce and Economic Opportunity ("DCEO") to identify and initiate three (3) pilot River Edge Redevelopment Zones to stimulate the re-use of environmentally challenged properties. In the years 2006 and 2007, DECO was to certify pilot programs in East St. Louis, Rockford and Aurora. In calendar year 2009, the Department was to certify the City of Elgin and thereafter DCEO was prohibited from designating any additional zones but was authorized to expand existing zones.

DCEO is required to publicize existing tax incentives and economic development programs within each zone and offer assistance through abatement and alternative revenue sources to the municipalities for development. The term of a River Edge Redevelopment Zone is a maximum of thirty (30) years.