

July 2009

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Tax Increment Financing “Lite”: The Washington Legislature Tries Again

Local Revitalization Financing provides a state contribution for public infrastructure projects in “revitalization areas” designed to encourage private investment and economic development. Local jurisdictions need to be ready to take quick action this summer to apply for the state contribution by September 1, 2009 (for demonstration projects) or commencing September 1, 2009 (for other projects).

Local governments also need to be ready this summer and after to take quick action (within a 30-day notice period) to opt out of contributing their own local tax revenues to projects in a revitalization area formed within their jurisdiction.

New TIF-lite Statute Available in Washington. This past legislative session, the Washington legislature adopted and the Governor signed Chapter 270, 2009 Laws, permitting Washington municipalities to form “revitalization areas” to finance public infrastructure designed to attract private investment and economic development (the “Local Revitalization Statute”). The Local Revitalization Statute is a new, fourth option for Washington municipalities interested in using a form of tax increment financing (“TIF”) to finance public infrastructure supporting private development, in addition to the following three existing options:

- Chap. 39.89 RCW, which permits local jurisdictions to agree amongst themselves to divert local property taxes to finance public infrastructure;
- Chap. 39.102 RCW or Local Infrastructure Financing Tool (“LIFT”), which provides a state sales tax credit in connection with revenue development areas; and
- Chap. 39.100 or Hospital Benefit Zones, which likewise provides a state sales tax credit in connection with hospital benefit zones.

Traditional TIF Not Available in Washington. Traditional TIF financing taps increased property taxes generated by private development, and applies those taxes to pay bonds issued to finance the public infrastructure supporting the development. A particular TIF district will be located within various overlapping taxing districts, and the TIF mechanism captures the increased property taxes of all of the overlapping taxing districts. Traditional TIF financing has been held unconstitutional under Washington law. In *Leonard v. Spokane*, 127 Wash.2d 194, 897 P.2d 358 (1995), the court held that a 1982 TIF statute violated Article IX, Section 2, of the state constitution, which requires that “the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.” The 1982 TIF statute permitted the formation of TIF districts in which incremental property taxes, including the state property tax, could be applied to pay for public infrastructure. The court found the diversion of state property tax to be inconsistent with Article IX, Section 2. . The court rejected the city’s argument that “in the absence of the [1982 TIF statute] the tax dollars allegedly diverted would not have been generated.”

Traditional TIF financing is, therefore, not available in Washington state although TIF is constitutional in most other states.

Other TIF-Lite Options. Because the court struck only the diversion of state property taxes, the Washington legislature has since authorized “TIF-lite” districts that capture increases in *local* property taxes. Washington TIF-lite districts must, however, work within the constitutional and statutory constraints on property taxes, including Washington’s statutory 101% limitation on annual increases in property taxes. Under Chap. 84.55 RCW, local taxing districts generally can increase the total dollar amount of their regular property tax levy to an amount that does not exceed 101% of the highest levy over the past three years. The only exception to this limitation is for increased property taxes resulting from new construction or improvements, increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, and increases in the assessed value of state-assessed property. Accordingly, Washington taxing districts generally can capture only the full increase in property taxes from new construction and improvements, and must forego the full increase in property taxes resulting from appreciation in property values within the TIF-lite district.

To address this limitation, LIFT, the hospital benefit zone statute, and the Local Revitalization Statute focus on capturing *excise* taxes in addition to capped local property taxes. Increased state excise taxes are contributed in the form of a state sales tax credit. The state sales tax credit is applied through imposition of an increase in the local sales tax rate. The increased local sales tax rate is credited against the sales tax that would otherwise go to the state (resulting in no net increase in the tax rate paid by taxpayers).

Recent Amendments to LIFT (Chapter 39.102 RCW). LIFT provides a form of TIF-lite for public infrastructure projects within revenue development areas created by local government. LIFT combines increased local property and excise taxes with a state sales tax credit, available to demonstration projects identified in the statute and to local jurisdictions that successfully compete for an allocation of the state contribution. These funding sources interact and are

subject to complex limitations under the LIFT statute. The LIFT statute was amended this past legislative session, pursuant to Chapter 267, 2009 Laws, to make the mechanics of the state sales tax credit more workable.

Local Revitalization Areas. Chapter 270, 2009 Laws permits formation of revitalization areas (“RAs”) to finance public infrastructure projects. Projects that can be financed through the Local Revitalization Statute include:

- Infrastructure improvements:
 - Transportation improvements including street, road, bridge, and rail construction and maintenance;
 - Utility improvements including water and sewer system construction and improvements, stormwater and drainage management systems, and electric, gas, fiber, and other utility infrastructure;
 - Parking, terminal, park-and-ride (of a transit authority) and dock facilities;
 - Sidewalks, streetlights, landscaping, and streetscaping;
 - Park facilities, recreational areas, and environmental remediation; and
- Other projects: Environmental analysis, professional management, planning and promotion within the RA, maintenance and security for common or public areas in the RA, and historic preservation activities.

The sources of funding available for Local Revitalization Areas include state, local and other sources as summarized on the attached funding chart.

- State contribution: The state sales tax credit may not exceed the amount awarded by the state either through statutory allocations to demonstration projects or through competitive allocations. The award is for an annual contribution, which may be collected for up to 25 years. The annual contribution must be matched on an annual basis with local contributions to the project

in the prior calendar year. The local contribution can include federal and private sources as well as the local tax increment. Importantly, the Local Revitalization Statute permits excess local contributions to be carried forward to meet the local match requirement for the state contribution for future years. Revenues from the state sales tax credit must be used for debt service on general obligation bonds issued to pay project costs, and cannot be applied to pay project costs on a pay-as-you-go basis.

- Local contribution: The local contribution includes 75% of increased property taxes in the RA and the percent of increased local sales taxes in the RA determined by interlocal agreement. The local contribution also can include federal sources and private sources. The local contribution can be used to pay debt service on bonds issued to finance project costs or can be used to pay project costs on a pay-as-you-go basis.

Opting Out. The Local Revitalization Statute requires local taxing districts that do not wish to contribute increased property and sales taxes within the RA to take official action to opt out. The statutory timeframe for opting out is very short. All local taxing districts must be provided at least 30 days notice of the RA. Counties, cities, towns and ports must take action by ordinance, resolution or other official action within the 30-day notice period to opt out, or these entities will be included within the RA. The statute is unclear regarding the treatment of other taxing districts: fire, library, public utility and other taxing districts that receive notice of the formation of an RA should nonetheless take official action to opt out if such districts are not interested in contributing tax revenues to the RA.

State Contribution. The Local Revitalization Statute provides for two ways of allocating the state contribution to RAs. Certain demonstration projects are identified for a statutory allocation. These demonstration projects are slated to receive the following state contribution on an annual basis:

- Whitman County, \$200,000
- University Place, \$500,000

- Tacoma, \$500,000
- Bremerton, \$330,000
- Auburn, \$250,000
- Vancouver, \$220,000
- Spokane, \$250,000

In addition, the statute provides for the competitive allocation of \$2.5 million in annual awards.

Application Process. The Local Revitalization Statute includes a tight timeline for applying for the state contribution, and requires even demonstration projects to apply. The state Department of Revenue is charged with managing the applications and allocations. **Applications are due from demonstration projects by September 1, 2009, and may be accepted from other projects commencing September 1, 2009. The competitive allocations are to be awarded on a first-come, first-served basis.** Prior to submittal of an application, applicants must complete a number of steps as set forth in the attached timeline chart, including sending notice to other taxing districts within the RA, conducting a public hearing, adopting an ordinance forming the RA, entering into interlocals with participating jurisdictions for the contribution of local sales taxes, and entering into a developer contract or letter of intent. The Department of Revenue is required to notify applicants of approval or denial of project awards within 60 days.

Summary. The Local Revitalization Statute provides a new, fourth option for jurisdictions interested in forming TIF-lite districts to capture increased taxes to pay for public infrastructure designed to encourage private investment and economic development.

Jurisdictions that do not wish to participate in an RA formed within their boundaries must take official action to opt out, on a tight timeline. Given the tight timeline, jurisdictions should begin to consider their criteria and process for making a decision in response to RA notices as soon as possible, in anticipation of receiving notices.

Jurisdictions that are interested in forming or participating in an RA also need to be ready for quick action this summer. The timeline for applying for a state contribution is tight, and

requires that a number of steps be taken before applications are accepted beginning September 1, 2009.

If you have any questions regarding the Local Revitalization Statute and projects that may be financed with this new TIF-lite mechanism, please contact any of our Washington public finance attorneys.

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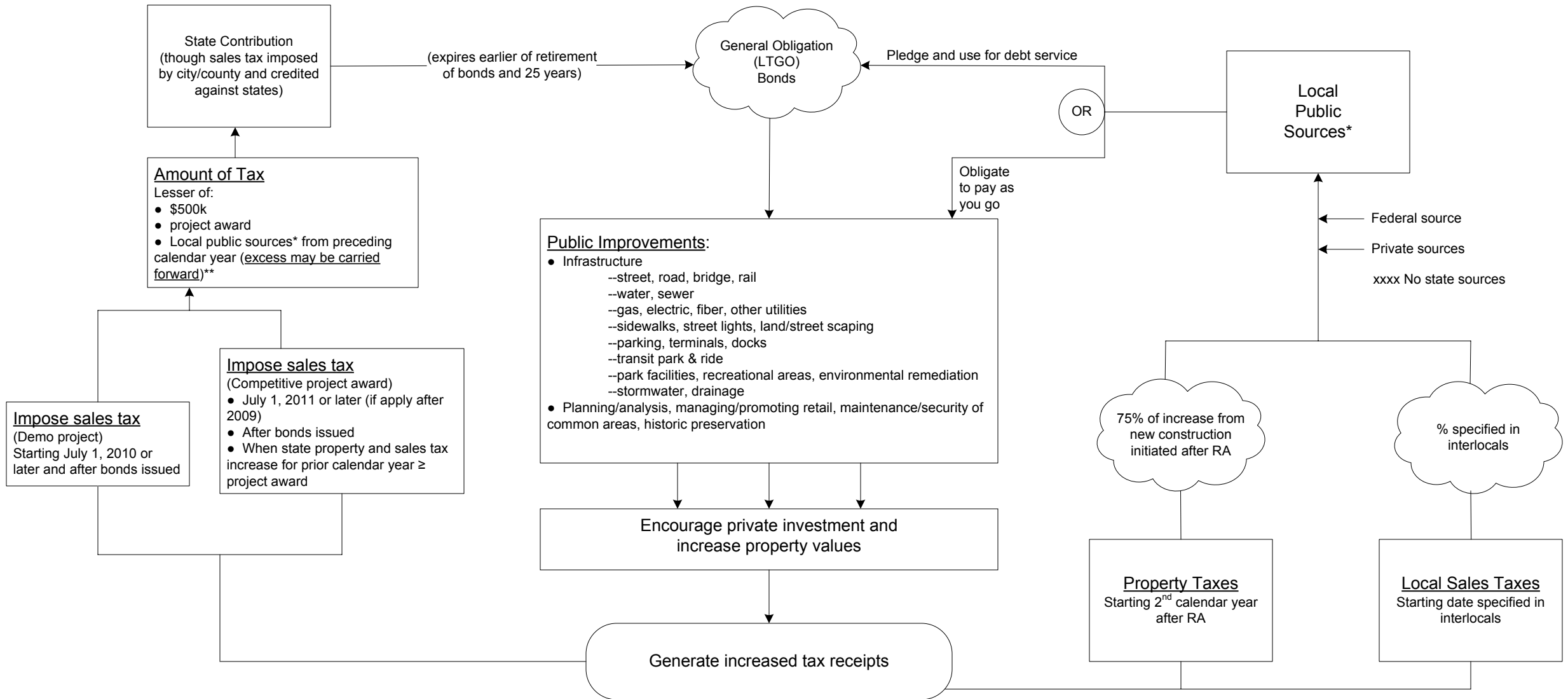
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Funding Public Improvements in Revitalization Area (Under SSB 5045, Passed Legislature 4/20/09)



** But see Section 601(10)(a)

Forming a Revitalization Area ("RA") (Under SSB 5045, passed Legislature 4/20/09)

