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Tax Allocation District Financing Revitalized by Georgia Voters

On November 4, 2008, Georgia voters narrowly approved “Amendment 2,” an amendment to the state constitution to “authorize community redevelopment and authorize counties, municipalities and local school boards of education to use tax funds for redevelopment purposes and programs.” Although the constitutional amendment itself is self-executing, use of school taxes for redevelopment purposes requires further action by the Georgia General Assembly, which is expected in the 2009 legislative session.

Most states utilize some form of tax increment financing (“TIF”) for community redevelopment. Georgia’s version of tax increment financing is generally referred to as “TAD” financing, reflecting the statutory designation of Tax Allocation Districts to implement tax increment financing. TAD financing was first used in Georgia after 1995 and became an increasingly utilized financing mechanism after the Georgia Legislature amended the Redevelopment Powers Law in 2003. TAD momentum in the state slowed in February, 2008, when the Supreme Court of Georgia issued a decision substantially restricting the use of school taxes for TAD financing. Since school taxes usually represent the lion’s share of the local property taxes, the exclusion of school taxes from the tax increment greatly limited the effectiveness of TAD financing for community redevelopment. Passage of Amendment 2 should bring TAD financing back to the forefront of community redevelopment in Georgia.

Background

Tax increment financing generally refers to a mechanism whereby a county or city will devote the increased tax revenue generated by a proposed redevelopment—i.e., the “tax increment” that will be generated by the redevelopment—to infrastructure improvements in the tax allocation district. A county or city establishes a redevelopment plan for a specific geographic area and then allocates a future tax increment from that specific geographic area (tax allocation district) for repayment of development expenses when the allocated incremental tax revenues are received; more frequently, the county or city will issue bonds and obtain immediate funding, repaying the bonds through the realized future tax increment.

Under Georgia’s Redevelopment Powers Law, TAD financing can be used for a broad range of hard and soft development costs that may be incurred by either public or private entities involved in the redevelopment of the district, as long as the costs are approved costs pursuant to the adopted redevelopment plan. Funds can be applied to transit and telecommunication infrastructure upgrades, green space preservation, and the renovation of historic structures, as well as to the development of public or private housing, the rehabilitation of existing buildings, financing and capital costs, professional services costs, and the costs incurred as a result of real estate assemblage in the district. The scope of the redevelopment plan that can be implemented in a particular tax allocation district is directly proportional to the sum of the tax increment that can be set aside for the redevelopment costs.

Proponents of TADs argue that TADs are an extremely effective mechanism for “priming the pump” of redevelopment for underdeveloped, substandard, or lower-valued urban areas. Private developers benefit from TAD funds that cover financing “gaps” and create development opportunities that would not otherwise be financially viable. Counties and municipalities benefit by virtue of, among other things, infrastructure upgrades, revitalized town centers, increased tax revenues in the tax allocation districts beyond the tax increments allocated for the TAD, increased tax revenues from property surrounding the

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1

TAD due to the “halo” effect of rising property values resulting from the redevelopment efforts, and increased job growth in the community.

School Tax Funds and the *Woodham* Case

The exercise of “redevelopment powers” by a Georgia city or county is subject to referendum approval by the voters in that locality. Once the exercise of redevelopment powers has been approved by the local electorate, the city or county is then authorized to create tax allocation districts and to borrow against the anticipated tax increment without additional voter approval. Creation of a tax allocation district requires that the local government define the boundaries for specified “redevelopment areas” and, after one or more public hearings, adopt a comprehensive “redevelopment plan” for each of the identified redevelopment areas. If a TAD is established within a redevelopment area, the city or county must propose, as part of the redevelopment plan, any TAD bonds that it may issue. After the adoption of a redevelopment plan, a city or county will frequently delegate its remaining redevelopment powers to a development authority that will negotiate and coordinate comprehensive development agreements, often with private developers, to bring the redevelopment plan to fruition.

The Redevelopment Powers Law permits a school district to participate in a TAD by consenting to the inclusion of school taxes as part of a city or county redevelopment plan. Because most property taxes in Georgia are allocated to school boards, school board participation in a redevelopment plan can significantly increase the effectiveness of TAD financing to effect the redevelopment plan. In reliance on this part of the Redevelopment Powers Law in the past, many school boards in Georgia consented to the use of school tax funds to effectuate redevelopment plans.

After many significant redevelopment plans had been adopted, TAD momentum in Georgia was curtailed in early 2008 by the Georgia supreme court’s decision in *Woodham v. City of Atlanta*. In that case, the Atlanta Independent School System had approved the inclusion of school taxes in a TAD implemented for the redevelopment of the Atlanta Beltline, a 22-mile assemblage around the urban center of Atlanta. The Georgia supreme court upheld a challenge to the validation of the TAD bonds to be issued for the Beltline on the basis that the use of school tax funds for the Beltway project was in violation of the Educational Purpose Clause of the Georgia Constitution, because the redevelopment plan did not have sufficient “nexus to the actual operation of public schools in the city of Atlanta.” This holding effectively barred school boards from approving the inclusion of school taxes for TAD financing in circumstances other than those where the redevelopment plan had a direct nexus with the actual operation of public schools.

In response to *Woodham*, the Georgia General Assembly voted to put Amendment 2 on the November ballot. Although the statewide voter approval of Amendment 2 should lead to the return of TAD financing as a viable tool for community redevelopment, the use of school taxes to fund TADs will require further government action. Legislative implementation of Amendment 2 will be required, although that is not expected to be a significant hurdle given the passage of Amendment 2. The board of education in each affected school district must also affirmatively consent to the inclusion of school tax funds in a TAD.

At the end of the day, the effectiveness of TAD financing will depend on much more than Georgia’s voters and the decisions of state and local government—it will depend on the existence of a viable market for TAD bonds. After *Woodham*, the Atlanta Beltline regrouped and went to market with a less ambitious plan involving TAD bonds not backed by school taxes. Due to the global financial crisis, however, there was very little market for these municipal bonds. According to published reports, the Beltline TAD bonds were placed with SunTrust and Wachovia in a private placement for a much smaller amount than originally sought.

Note: Substantial background and historical information in this Legal Alert was gathered from a study prepared by the Bleakly Advisory Group for the Livable Communities Coalition entitled "Survey and Analysis of Tax Allocation Districts in Georgia—A Look at the First Eight Years," dated October 4, 2007. The study can be found at www.georgiatad.org.



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