

STATE OF WISCONSIN

Environmental Remediation Tax Incremental Finance

The following is a composite of the Tax Increment Law created by the Environmental Remediation Tax Increment Law created by **1997** Act 27 and revised by **1999** Acts 9, 150; **1999** Acts 185, 59; **2003** Act 126; **2005** Acts 246, 418; **2009** Acts 28, 312. Please refer to the official Wisconsin Statutes for exact wording.

66.1106 Environmental remediation tax incremental financing.

(1) Definitions. In this section:

(a) "Chief executive officer" means the mayor or city manager of a city, the village president of a village, the town board chairperson of a town or the county executive of a county or, if the county does not have a county executive, the chairperson of the county board of supervisors.

(b) "Department" means the department of revenue.

(be) "District" means an environmental remediation tax incremental district created under this section that consists of the parcels of property described in a written proposal developed under sub.

(2) (a) that is approved by a joint review board under sub. (3).

(c) "Eligible costs" means capital costs, financing costs, and administrative and professional service costs, incurred or estimated to be incurred by a political subdivision, for the investigation, removal, containment, or monitoring of, or the restoration of soil, air, surface water, sediments, or groundwater affected by, environmental pollution, including monitoring costs, cancellation of delinquent taxes if the political subdivision demonstrates that it has not already recovered such costs by any other means, property acquisition costs, demolition costs including asbestos removal, and removing and disposing of underground storage tanks or abandoned containers, as defined in s. 292.41 (1). For any parcel of land "eligible costs" shall be reduced by any amounts received from persons responsible for the discharge, as defined in s. 292.01 (3), of a hazardous substance on the property to pay for the costs of remediating environmental pollution on the property, by any amounts received, or reasonably expected by the political subdivision to be received, from a local, state, or federal program for the remediation of contamination in the district that do not require reimbursement or repayment, and by the amount of net gain from the sale of the property by the political subdivision. "Eligible costs" associated with groundwater affected by environmental pollution include investigation and remediation costs for groundwater that is located in, and extends beyond, the property that is being remediated.

(d) "Environmental pollution" has the meaning given in s. 292.01 (4), except that "environmental pollution" does not include any damage caused by runoff from land under agricultural use.

(e) "Environmental remediation tax increment" means that amount obtained by multiplying the total city, county, school, and other local general property taxes levied on taxable property in a year by a fraction having as a numerator the environmental remediation value increment for that year in

such district and as a denominator that year's equalized value of that taxable property. In any year, an environmental remediation tax increment is "positive" if the environmental remediation value increment is positive; it is "negative" if the environmental remediation value increment is negative.

(f) "Environmental remediation tax incremental base" means the aggregate value, as equalized by the department, of taxable property that is certified under this section as of the January 1 preceding the date on which the environmental remediation tax incremental district is created, as determined under sub. (1m) (b).

(fm) "Environmental remediation tax incremental district" means a contiguous geographic area within a political subdivision defined and created by resolution of the governing body of the political subdivision consisting solely of whole units of property as are assessed for general property tax purposes, other than railroad rights-of-way, rivers, or highways. Railroad rights-of-way, rivers, or highways may be included in an environmental remediation tax incremental district only if they are continuously bounded on either side, or on both sides, by whole units of property as are assessed for general property tax purposes which are in the environmental remediation tax incremental district. "Environmental remediation tax incremental district" does not include any area identified as a wetland on a map under s. 23.32.

(g) "Environmental remediation value increment" means the equalized value of taxable property that is certified under this section minus the environmental remediation tax incremental base. In any year, the environmental remediation value increment is "positive" if the environmental remediation tax incremental base of the taxable property is less than the aggregate value of the taxable property as equalized by the department; it is "negative" if that base exceeds that aggregate value.

(h) "Hazardous substance" has the meaning given in s. 292.01 (5).

(i) "Period of certification" means a period of not more than 23 years beginning after the department certifies the environmental remediation tax incremental base under sub. (4), a period before all eligible costs have been paid, or a period before all eligible costs of a recipient district designated under sub. (2)(c) have been paid, whichever occurs first.

(j) "Political subdivision" means a city, village, town or county.

(je) "Project expenditures" means eligible costs and other costs incurred by a political subdivision to create and operate an environmental remediation tax incremental district.

(k) "Taxable property" means all real and personal taxable property located in an environmental remediation tax incremental district.

(1m) Creation of environmental remediation tax incremental districts. In order to implement the provisions of this section, the governing body of the political subdivision shall adopt a resolution which does all of the following:

(a) Describes the boundaries of an environmental remediation tax incremental district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included within the district.

(b) Creates the district as of January 1 of the same calendar year for a resolution adopted before October 1 or as of January 1 of the next subsequent calendar year for a resolution adopted after September 30.

(2) Use of environmental remediation tax increments.

(a) A political subdivision that develops, and whose governing body approves, a written proposal to remediate environmental pollution may use an environmental remediation tax increment to pay the eligible costs of remediating environmental pollution on contiguous parcels of property that are located in an environmental remediation tax incremental district within the political subdivision and that are not part of a tax incremental district created under s. 66.1105, as provided in this section, except that a political subdivision may use an environmental remediation tax increment to pay the cost of remediating environmental pollution of groundwater without regard to whether the property above the groundwater is owned by the political subdivision. No political subdivision may submit an application to the department under sub. (4) until the joint review board approves the political subdivision's written proposal under sub. (3).

(b) No expenditure for an eligible cost may be made by a political subdivision later than 15 years after the environmental remediation tax incremental base is certified by the department under sub. (4).

(c) Notwithstanding par. (a) or (b), or sub. (7) (d) 1. or (11) (a), if the governing body of a political subdivision determines that all eligible costs of an environmental remediation tax incremental district that it created will be paid before the date specified in sub. (11) (b), the governing body of that political subdivision may adopt a resolution requesting that the department allocate positive environmental remediation tax increments generated by that donor environmental remediation tax incremental district to pay the eligible costs of another environmental remediation tax incremental district created by that governing body. A resolution under this paragraph must be adopted before the expiration of the period of certification.

(3) Joint review board.

(a) Any political subdivision that seeks to use an environmental remediation tax increment under sub. (2) shall convene a joint review board to review the proposal. The board shall consist of one representative chosen by the school district that has power to levy taxes on the property that is remediated, one representative chosen by the technical college district that has power to levy taxes on the property, one representative chosen by the county that has power to levy taxes on the property that is remediated, one representative chosen by the city, village or town that has power to levy taxes on the property that is remediated and one public member. If more than one city, village or town, more than one school district, more than one technical college district or more than one county has the power to levy taxes on the property that is remediated, the unit in which is located property that has the greatest value shall choose that representative to the board. The public member and the board's chairperson shall be selected by a majority of the other board members at the board's first meeting. All board members shall be appointed and the first board meeting held within 14 days after the political subdivision's governing body approves the written proposal under sub. (2). Additional meetings of the board shall be held upon the call of any member. The political subdivision that seeks to act under sub. (2) shall provide administrative support for the board. By majority vote, the board may disband following approval or rejection of the proposal.

(b)

1. The board shall review the written proposal and the statement described under sub. (4) (a). As part of its deliberations the board may hold additional hearings on the proposal.
2. No written application may be submitted under sub. (4) unless the board approves the written proposal under sub. (2) by a majority vote not less than 10 days nor more than 30 days after receiving the proposal.
3. The board shall submit its decision to the political subdivision no later than 7 days after the board acts on and reviews the written proposal.

(c)

1. The board shall base its decision to approve or deny a proposal on the following criteria:
 - a. Whether the development expected in the remediated property would occur without the use of environmental remediation tax incremental financing.
 - b. Whether the economic benefits of the remediated property, as measured by increased employment, business and personal income and property value, are insufficient to compensate for the cost of the improvements.
 - c. Whether the benefits of the proposal outweigh the anticipated environmental remediation tax increments to be paid by the owners of property in the overlying taxing districts.
2. The board shall issue a written explanation describing why any proposal it rejects fails to meet one or more of the criteria specified in subd. 1.

(d) If a joint review board convened by a city or village under s. 66.1105 (4m) is in existence when a city or village seeks to act under this section, the city or village may require the joint review board convened under s. 66.1105 (4m) to exercise the functions of a joint review board that could be convened under this subsection.

(4) Certification. Upon written application to the department of revenue by the clerk of a political subdivision on or before December 31 of the same calendar year for an environmental remediation tax incremental district created before October, as determined under sub. (1m) (b), or December 31 of the subsequent calendar year for an environmental remediation tax incremental district created after September 30, the department of revenue shall certify to the clerk of the political subdivision the environmental remediation tax incremental base if all of the following apply:

(a) The political subdivision submits a statement that it has incurred some eligible costs, and includes with the statement a detailed proposed remedial action plan approved by the department of natural resources that contains cost estimates for anticipated eligible costs and a schedule for the design, implementation and construction that is needed to complete the remediation, with respect to the parcel or contiguous parcels of property and the statement details the purpose and amount of the expenditures already made and includes a dated certificate issued by the department of natural resources that certifies that the department of natural resources has approved the site investigation report that relates to the parcel or contiguous parcels in accordance with rules promulgated by the department of natural resources.

(b) The political subdivision submits a statement that all taxing jurisdictions with the authority to levy general property taxes on the parcel or contiguous parcels of property have been notified that the political subdivision intends to recover the costs of remediating environmental pollution on the property and have been provided a statement of the estimated costs to be recovered.

(c) The political subdivision submits a statement, signed by its chief executive officer, that the political subdivision has attempted to recover the cost of remediating environmental pollution on the property from the person who caused the environmental pollution.

(d) The political subdivision completes and submits all forms required by the department that relate to the determination of the environmental remediation tax incremental base.

(5) Designation on assessment and tax rolls. The assessor of a taxation district shall identify on the assessment roll returned and examined under s. 70.45 those parcels of property that have been certified under sub. (4) during the period of certification. The clerk of a taxation district shall make a similar notation on the tax roll under s. 70.65.

(6) Notice to taxing jurisdictions. During the period of certification, the department shall annually give notice to the designated finance officer of all taxing jurisdictions having the power to levy general taxes on property that is certified under sub. (4) of the equalized value of that property and the environmental remediation tax incremental base of that property. The notice shall explain that the environmental remediation tax increment shall be paid to the political subdivision as provided under sub. (8) from the taxes collected.

(7) Environmental remediation tax increments authorized.

(a) Subject to pars. (am), (b), (c), (d), and (e), the department shall annually authorize the positive environmental remediation tax increment with respect to a parcel or contiguous parcels of property during the period of certification to the political subdivision that incurred the costs to remediate environmental pollution on the property, except that an authorization granted under this paragraph does not apply after the department receives the notice described under sub. (10) (b).

(am) With regard to each district for which the department of revenue authorizes the allocation of a tax increment under par. (a), the department shall charge the political subdivision that created the district an annual administrative fee of \$150 that the political subdivision shall pay to the department no later than May 15. If the political subdivision does not pay the fee that is required under this paragraph, by May 15, the department may not authorize the allocation of a tax increment under par. (a) for that political subdivision.

(b) The department may authorize a positive environmental remediation tax increment under par. (a) only if the political subdivision submits to the department all information required by the department on or before the 2nd Monday in June of the year to which the authorization relates.

(c) If the department receives the notice described under sub. (10) (b) during the period from January 1 to May 15, the effective date of the notice is the date on which the notice is received. If the department receives the notice described under sub. (10) (b) during the period from May 16 to December 31, the effective date of the notice is the first January 1 after the date on which the notice is received.

(d)

1. The department may not authorize a positive environmental remediation tax increment under par. (a) to pay otherwise eligible costs that are incurred by the political subdivision after the department of natural resources certifies to the department of revenue that environmental pollution on the parcel or contiguous parcels of property has been remediated unless the costs are associated with activities, as determined by the department of natural resources, that are necessary to close the site described in the site investigation report.

(e) Notwithstanding par. (d), if the governing body of a political subdivision adopts a resolution described in sub. (2) (c), it shall provide a copy of the resolution to the department. The department shall authorize a positive environmental remediation tax increment generated by a donor district, as described in sub. (2) (c), to the political subdivision that incurred eligible costs to remediate environmental pollution in another district within that political subdivision, as described in sub. (2) (c), until the earlier of the following occurs:

1. The political subdivision has received aggregate environmental remediation tax increments with respect to the recipient district in an amount equal to the aggregate of all of the eligible costs for that district.

2. The donor district terminates under sub. (11) (b).

2. The department of natural resources shall certify to the department of revenue the completion of the remediation of environmental pollution at the site described in the site investigation report.

(8) Settlement for environmental remediation tax increments. Every officer charged by law to collect and settle general property taxes shall, on the settlement dates provided by law, pay to the treasurer of a political subdivision from all general property taxes collected by the officer the proportion of the environmental remediation tax increment due the political subdivision that the general property taxes collected bears to the total general property taxes levied, exclusive of levies for state trust fund loans, state taxes and state special charges.

(9) Separate accounting required. An environmental remediation tax increment received with respect to a parcel or contiguous parcels of land that is subject to this section shall be deposited in a separate fund by the treasurer of the political subdivision. No money may be paid out of the fund except to pay eligible costs for a parcel or contiguous parcels of land or to reimburse the political subdivision for such costs. If an environmental remediation tax increment that has been collected with respect to a parcel of land remains in the fund after the period of certification has expired, it shall be paid to the treasurers of the taxing jurisdictions in which the parcel is located in proportion to the relative share of those taxing jurisdictions in the most recent levy of general property taxes on the parcel.

(10) Reporting requirements; notice of district termination. A political subdivision that uses an environmental remediation tax increment to pay eligible costs of remediating environmental pollution under this section shall do all of the following:

(a) Prepare and make available to the public updated annual reports describing the status of all projects to remediate environmental pollution funded under this section, including revenues and

expenditures. A copy of the report shall be sent to all taxing jurisdictions with authority to levy general property taxes on the parcel or contiguous parcels of property by May 1 annually.

(b) Notify the department within 10 days after the period of certification for a parcel or contiguous parcels of property has expired.

(c) With regard to an environmental remediation tax incremental district, not later than 12 months after the last expenditure is made or not later than 12 months after an expenditure may be made under sub. (2) (b), whichever comes first, prepare and make available to the public a report that is similar to the report required under par. (a), except that the report required under this paragraph shall also include an independent certified audit of the project to determine if all financial transactions were made in a legal manner and to determine if the environmental remediation tax incremental district complied with this section. A copy of the report shall be sent out to all taxing jurisdictions which received the reports under par. (a).

(d) Not later than 180 days after an environmental remediation tax incremental district terminates under sub. (11), provide the department with all of the following on a form that is prescribed by the department:

1. A final accounting of project expenditures that are made for the environmental remediation tax incremental district.
2. The final amount of eligible costs that have been paid for the environmental remediation tax incremental district.
3. The total amount of environmental remediation tax increments that have been paid to the political subdivision.

(e) If a political subdivision does not send to the department of revenue the form specified in par. (d) within the time limit specified in par. (d), the department may not certify the environmental remediation tax incremental base of a district under sub. (4) until the form is sent to the department.

(11) Termination of environmental remediation tax incremental districts. An environmental remediation tax incremental district terminates when the earliest of the following occurs:

(a) Except as provided in sub. (2) (c), the political subdivision has received aggregate environmental remediation tax increments with respect to the district in an amount equal to the aggregate of all eligible costs.

(b) Twenty-three years after the department certifies the environmental remediation tax incremental base of a parcel or contiguous parcels of property under sub. (4).

(c) The political subdivision's legislative body, by resolution, dissolves the district. Upon dissolving the district, the political subdivision becomes liable for all unpaid eligible costs actually incurred which are not paid from the separate fund under sub. (9).

(12)

(a) Notice of district termination. A political subdivision that creates an environmental remediation tax incremental district under this section shall give the department written notice within 10 days of the termination of the environmental remediation tax incremental district under sub. (11).

(b) If the department receives a notice under par. (a) during the period from January 1 to May 15, the effective date of the notice is the date the notice is received. If the notice is received during the period from May 16 to December 31, the effective date of the notice is the first January 1 after the department receives the notice.

(13) Payment of eligible costs for annexed territory, redetermination of tax incremental base; fees.

(a) If a city or village annexes territory from a town and if the town is using an environmental remediation tax increment to remediate environmental pollution on all or part of the territory that is annexed, the city or village shall pay to the town that portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, shall negotiate an agreement on the amount that must be paid under this subsection. The department shall redetermine the environmental remediation tax incremental base of any parcel of real property for which the environmental remediation tax incremental base was determined under sub. (4) if part of that parcel is annexed under this subsection.

(b) The department may impose a fee of \$1,000 on a political subdivision to determine or redetermine the environmental remediation tax incremental base of an environmental remediation tax incremental district under this subsection or sub. (4).

(14) Subtracting territory from a district.

(a) If the department has certified before January 2, 2001, the environmental remediation tax incremental base of a district that is created by a town, the town may modify the district's boundaries, not more than once during the period of certification, by subtracting territory from the district, if all of the following apply:

1. Before October 2, 2006, the town adopts an amendment to the proposal adopted under sub. (2) (a), which modifies the district's boundaries. The amendment shall specify the parcel that is to be subtracted from the district.
2. The parcels in the district, after subtracting the parcel described in subd. 1., remain contiguous.
3. A joint review board, following the procedures in sub. (3), approves the amendment.

(b) If a town subtracts territory from a district by acting under par. (a) and submits a written application to the department under sub. (4), the department shall redetermine the environmental remediation tax incremental base of the district as of January 1, 2006.