

***Top Ten TIF  
Misconceptions – Creating Additional  
Project Value and Avoiding Costly  
Mistakes***

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Scott J. Ziance

Mr. Ziance is a partner in the Vorys Columbus office and a member of the tax group. He focuses his practice on the utilization of economic development incentives, tax incentives, economic development financing mechanisms, public-private partnerships and special economic development entities to assist developers, operating businesses and political subdivisions in developing and redeveloping property and creating jobs and economic growth. He also has substantial real property tax valuation litigation experience and significant experience with other aspects of state and local taxation, including oil and gas tax matters and unclaimed funds law. Mr. Ziance leads the firm's state and local tax efforts with regard to the firm's numerous oil and gas clients involved in the Utica shale play.

**Career highlights include:**

- Serving as incentives counsel to a majority of the ten largest public companies in Central Ohio
- Representing a West Coast-based Fortune 50 company as incentives counsel in nine states
- Serving as incentives counsel in connection with three of the largest five incentives packages in the history of the Ohio Department of Development
- Designing and implementing an innovative joint economic development zone-based structure to facilitate the construction, by one of the world's largest developers, of a major industrial park in Central Ohio
- Serving as special counsel to an Ohio city in helping the city win a site-selection contest for a 1,400-employee corporate headquarters facility and construct \$50M+ of public improvements to leverage the headquarters and related development
- Serving as lead counsel in connection with the establishment of dozens of tax increment financing districts
- Acting as lead counsel for dozens of tax incentives agreements (enterprise zone and community reinvestment area exemptions, Ohio job creation tax credit and others) that are triggering billions in investments and creating thousands of jobs
- Drafting or assisting in the drafting of 16 Ohio statutory amendments related to economic development incentives
- Securing millions in tax savings for clients in real property tax valuation cases and personal property tax refund claims
- Advising numerous producers, midstream companies and other Utica shale play participants with novel state and local tax issues

Mr. Ziance is a member of the Federalist Society, NAIOP Ohio, NAIOP Central Ohio Chapter, the Council of Development Finance Agencies, Heritage Ohio and the Ohio State Bar Association.

Mr. Ziance has made presentations throughout the United States on tax increment financing, new markets tax credits, Ohio economic development incentives and economic development financing, and he has testified before an Ohio Constitutional Modernization Commission committee concerning economic development provisions in the Ohio Constitution. In addition, Mr. Ziance has authored numerous columns on economic development incentives for Ohio business newspapers.

Mr. Ziance received his J.D. *cum laude* from Harvard Law School where he was a member of the *Harvard Journal of Law and Public Policy*. He received his B.A. *magna cum laude* from Bowling Green State University where he was a member of Phi Beta Kappa and Phi Kappa Phi.



Aaron S. Berke

Mr. Berke is a partner in the Vorys Akron office and a member of the corporate group. He represents issuers, underwriters and conduit borrowers on tax-exempt and taxable security offerings, and provides counsel to companies on complying with the Securities Exchange Act of 1934 and with NYSE and NASDAQ rules. Aaron also provides counsel to a wide range of public and private companies on their corporate and transactional matters, including mergers and acquisitions.

**His notable experience includes:**

- Represented a port authority in connection with the issuance of bonds and tax increment backed notes to finance the construction of airport facilities
- Represented an underwriter in connection with the issuance of tax increment backed bonds to finance the redevelopment of a public parking garage supporting approximately 260,000 square feet of office development and 290,000 square feet of retail development
- Serving as bond counsel for a \$205 million financing of a state university's construction of a stadium, student housing and other campus improvements
- Serving as bond counsel for a state university's refunding of approximately \$130 million of its bonds
- Serving as bond counsel for a hospital's refunding of approximately \$90 million of bonds

Mr. Berke is a member of the National Association of Bond Lawyers.

Mr. Berke received his J.D. from the University of Michigan Law School and his B.A. from the University of Pennsylvania, *cum laude*.

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## **Brief Description of Tax Increment Financing**

- A. Used to fund public infrastructure and sometimes site improvements.
- B. Tax exemption combined with TIF service payment obligation.
- C. Limited to the increase in the assessed value of real property.
- D. Generally up to 75% for up to 10 years without school district approval and up to 100% for up to 30 years with school district approval or with a provision in the TIF legislation that requires the school district to receive its full millage.

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## **The Toolbox**

- A. At least seven different types of TIF in Ohio.
- B. Key is choosing the right type or types to maximize value.
- C. One size does not fit all.
- D. Types of TIF in Ohio (not including the intermittent sales tax TIF).
  - 1. Municipal incentive district TIF – typically the only option for single-family projects in non-blighted portions of municipalities.
  - 2. County/township incentive district TIF – the only option for residential projects in unincorporated areas.
  - 3. Traditional municipal TIF – typically the best option for non-residential projects when the only use of the TIF service payments will be for public infrastructure improvements.
  - 4. County/township traditional TIF – typically the best option for non-residential projects when the only use of the TIF service payments will be for public infrastructure improvements.

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## **The Toolbox (cont'd)**

5. Municipal urban redevelopment TIF (R.C. Section 5709.41) – service payments can be used for costs other than public improvement costs, including private improvement costs; can be used by municipalities engaged in urban redevelopment; requires that the municipality be in the chain of title.
6. Urban renewal debt retirement TIF (R.C. Chapter 725) – service payments are used to service the debt on bonds or loans, the proceeds of which must fund an urban renewal project, which can include private components as well as public components; TIF exemption can be up to 75% and up to 30 years or longer, even without school district approval; only available in blighted areas of impacted cities.
7. Community urban redevelopment corporation TIF (R.C. Chapter 1728) – service payments can be used somewhat flexibly; TIF exemption can be a partial true exemption and can be up to 75% for up to 20 years, even without school district approval; only available in blighted areas of impacted cities

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## **Misconception No. 1: Residential improvements can no longer be exempted under TIF statutes.**

- A. Restricted in recent years, but most political subdivisions can still TIF both existing and future residential improvements.
- B. More flexibility when area is within a blighted area of an impacted city.

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## **Misconception No. 2: TIF requires the consent of property owners.**

- A. Consent not required for most types of TIF.
- B. Notice and hearing requirements, however, for incentive district TIFs when political subdivision intends to file the TIF exemption application.



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**Misconception No. 3: TIF must be accompanied by an issuance of public debt.**

- A. Not required under most TIF statutes.
- B. Debt issuance is required, however, under the urban renewal debt retirement TIF.

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## **Misconception No. 4: TIF service payments can be used only for public infrastructure improvements.**

- A. Private improvements can be funded with certain types of TIF, generally when a municipality is engaged in urban redevelopment.
- B. Incentive district TIFs can be used for private housing renovations when there is at least one commercial project in the TIF district.
- C. Definition of “public infrastructure improvements” is broad. For example, the definition includes land acquisition.

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**Misconception No. 5: Public infrastructure improvements constructed with TIF funds must be adjacent to or contained within the TIF area.**

- A. No precise geographic requirements.
- B. Example: Sewer pump station several miles away from a TIF area.

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## **Misconception No. 6: All taxing units with jurisdiction over an area must consent to the TIF.**

- A. Simply a misconception, but ...
- B. For incentive districts, the General Assembly required either sharing of TIF funds or approval of the county commissioners or township trustees for TIF exemptions that are greater than 75% or more than 10 years, and ...
- C. To maximize value, board of education approval is needed.

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**Misconception No. 7: Taxing units necessarily lose revenues as a result of TIF ordinances and resolutions.**

- A. Continue to receive tax revenues from base value.
- B. Taxing units also benefit from resulting economic development.

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**Misconception No. 8: TIFs can only be established by cities and only in blighted areas.**

- A. Simply more choices available for blighted areas of cities.
- B. Some less urbanized political subdivisions use TIFs as one facet of “pay as you grow” strategies toward development.

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## **Misconception No. 9: TIFs prevent the utilization of other tax incentives.**

- A. Regularly layered with other types of property tax incentives, such as CRA exemptions, and combined with tax credits, grants, etc.
- B. Understand the exemption priority rules.

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## **Misconception No. 10: School districts cannot benefit from TIF.**

- A. TIFs often can be structured to benefit local school districts.
- B. Thorough understanding of the interaction of TIF and school funding needed, including understanding of the following:
  - 1. Type of TIF (sometimes)
  - 2. Current and future school district “guarantee” situation
  - 3. Components of the school district’s effective millage