

Transformational Brownfield Projects Eligible for Substantial Tax Incentives Under Recently Enacted Legislation

June 9, 2017

Brownfield redevelopment authorities and developers and owners of transformational brownfield redevelopment projects are eligible for substantial tax incentives under legislation signed by Governor Snyder on June 8, 2017.

The five-bill package amends the Brownfield Redevelopment Act, General Sales Tax Act, Income Tax Act of 1967, the Use Tax Act and the Michigan Renaissance Zone Act to provide for the creation of "Transformational Brownfield Plans" allowing for the capture of income taxes and exemption from the sales tax and use tax for certain tangible personal property affixed to real property included in a Transformational Brownfield Plan. The new laws provide for the capture of and distribution to a Brownfield Redevelopment Authority ("BRA") or the owners or developers of certain eligible property included in a Transformational Brownfield Plan of (i) up to 50 percent of the state income tax revenues derived from the wages earned by individuals employed on the construction, renovation or improvement of the eligible property (excluding employees of the owner or developer) (the "Construction Period Tax Capture Revenues") and (ii) up to 50 percent annually for 20 years of the state income tax revenues derived from the wages earned by individuals who are either domiciled (the "Income Tax Capture Revenues") or employed within the eligible property upon completion of the project (the "Withholding Tax Capture Revenues," together with the Construction Period Tax Capture Revenues and the Income Tax Capture Revenues, the "Captured Tax Revenues"). The Captured Tax Revenues are in excess of tax increment revenues which may be captured from certain ad valorem property taxes.

A Transformational Brownfield Plan may consist of a single development on eligible property or a series of developments on eligible property that are part of a related program of investment, and must (i) have a transformational impact on local economic development and community revitalization based on the extent of the brownfield redevelopment and growth in population, commercial activity, and employment resulting from the plan, (ii) be for a mixed-use development consisting of some combination of retail, office, residential or hotel uses, and (iii) be expected to result in capital investment ranging from \$15 million up to \$500 million depending on the population of the municipality. A Transformational Brownfield Plan must be approved by the local BRA, the local governing body of the municipality and the Michigan Strategic Fund.

The amount of the Captured Tax Revenues for each Transformational Brownfield Plan shall be limited to the amount necessary for the project to be economically viable and the owner or developer of eligible property shall be required to report certain information related to the Captured Tax Revenues to the State Treasurer. The State Treasurer is required to deposit the Captured Tax Revenues into the state brownfield redevelopment fund for distribution to a BRA or to the owner or developer of eligible property to which the revenues are attributable in accordance with the terms of a development or reimbursement agreement.

The Captured Tax Revenues and tax increment revenues could be used to finance the usual array of eligible activities that were in the prior version of the law, plus any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefit eligible property.

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The Michigan Strategic Fund may not approve more than five Transformational Brownfield Plans per year or commit total Withholding Tax Capture Revenues and Income Tax Capture Revenues in excess of \$40 million annually for all Transformational Brownfield Plans, with an aggregate limit of \$800 million over a 20-year period. The Michigan Strategic Fund may not commit total Construction Period Tax Capture Revenues and sales and use tax exemptions in excess of \$200 million.

If you have any questions about Transformational Brownfield Plans, please contact your Miller Canfield attorney or any of the people listed on this e-alert.

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