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New Personal Property Tax Laws May Impact Existing and Future Tax Increment Financing Projects

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The new Michigan Business Tax (MBT) has received much fanfare since its adoption in July. Receiving less attention, however, are some significant changes made to the personal property tax system which will impact Tax Increment Finance entities.

The new MBT was signed into law by the Governor on July 12, 2007 and assigned Public Act Number 36 of 2007. Tie-barred to the MBT were House Bills 4369-4372. While the Michigan Business Tax was the thrust of the legislative package, the tie-barred legislation (signed into law as Public Acts 37-40) drastically changed the personal property tax system for industrial and commercial personal property with respect to the 6-mill State Education Tax (the SET) and the school operating millage (typically 18 mills).

Under the new law--after December 31, 2007--industrial personal property is exempted from the SET and school operating millage and commercial personal property is exempted from 12 mills of the school operation millage. Thus, after the current tax year, those SET and school operating millages will no longer be levied on industrial and commercial personal property. The legislation does not affect the levy of taxes on real property.

This creates a potential problem with respect to tax increment financing obligations which rely on tax increment revenues captured from the SET and school operating millages on industrial and commercial personal property. This potentially impacts DDA, TIFA, LDFA and Brownfield bonds and other obligations which are entitled to capture these school taxes. As an outright exemption, beginning with the summer 2008 tax levy, these taxes will no longer be paid and thus will not be available for capture.

The Legislature has acknowledged this problem and indicated an intent to address it at a later date. The Legislature even wrote into law as part of Act 40: "It is the intent of the legislature to address potential revenue shortfalls for the payment of tax increment financing obligations that may result from the exemptions provided by this amendatory act and to evaluate the impact of this exemption on tax increment financing projects in the future."

Although the Legislature has recognized the potential revenue shortfalls created by this tax exemption and has indicated an intent to address it in the future, it is not clear when, if, or how that would happen. Furthermore, it is not clear if a procedure to remedy the situation would be addressed to future transactions or would only remedy transactions approved before the effective date of the legislation.

Miller Canfield has extensive experience in all aspects of tax increment financing and would be happy to discuss how these legislative changes may affect your individual entity. For more information, contact Patrick McGow at 313.496.7684, Steven Mann at 313.496.7509, or your Miller Canfield Public Law attorney.