TAX INCREMENT FINANCING: "RATIONAL BASIS" OR "REVENUE SHELL GAME"?

Local governments cannot adequately finance urban redevelopment through federal funds[1] or traditional municipal financial resources.[2] Consequently, many municipalities[3] use Tax Increment Financing (TIF)[4] to pay for the redevelopment of blighted[5] urban

1. Tax Increment Financing (TIF) began as a method to raise the local share of federal matching grants. *See* Davidson, *Tax Increment Financing as a Tool for Community Redevelopment*, 56 U. DET. J. URB. L. 405 (1979). TIF has gained in importance now that federal funds have become virtually nonexistent for urban renewal, particularly for commercial and industrial rehabilitation. Hulkonen, *Tax Increment Financing: A Total Community Approach to Economic Development*, 9 A.I.D.C. J. 50 (1974).

2. Customarily, American cities have used the following methods to pay for public works: "pay as they go" by utilizing current tax revenues; general obligation bonds; revenue bonds; special assessments; and hybrid bonds. *See* E. MCQUILLIN, 15 MUNICIPAL CORPORATIONS §§ 43.128-137 (3rd ed. 1959). Such traditional sources of financing have become seriously overextended. Factors contributing to the likelihood that many state and local governments will encounter serious financing problems within the next decade include: current deficiencies in state-local services, the demand for increased *quality* of these services, and the lack of careful planning and control of pension benefits for municipal employees. *See generally*, J. MAXWELL & J. ARONSON, FINANCING STATE AND LOCAL GOVERNMENTS 251-252 (3rd ed. 1977).

3. In Minnesota, ninety-one projects used TIF between 1969 and 1977. Davidson, *supra* note 1, at 407. Two hundred and fifty cities used TIF in California between 1951 and 1978. Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, 22 Cal. 3d 208, 239, 583 P.2d 1281, 1296, 149 Cal. Rptr. 239, 254 (1978). Only twenty-seven of these California TIF programs began before 1966. RALPH ANDERSON & ASSOCIATES, REDEVELOPMENT AND TAX INCREMENT FINANCING BY CITIES AND COUNTIES IN CALIFORNIA 3 (1976).

4. For literature on TIF, *see generally* BARTON-ASCHMAN ASSOCIATES, INC., TAX INCREMENT FINANCING OF URBAN DEVELOPMENT, (1973); COUNCIL OF STATE GOVERNMENT, TAX INCREMENT FINANCING OF COMMUNITY DEVELOPMENT, CSG RESEARCH BRIEF (1977) [hereinafter CSG RESEARCH BRIEF]; RALPH ANDERSON & ASSOCIATES, *supra* note 3; *Background of Tax Increment Financing in California*, 13 A.I.D.C. J. 55 (1978); Davidson, *supra*, note 1; Fisk, *supra*, note 1; Goldberg, *Tax Increment Financing Redevelopment Alternative for American Cities*, 2 HOUS. & DEV. REP. (BNA) 221; Hegg, *Tax Increment Financing of Urban Renewal—Development Incentive Without Federal Assistance*, 2 REAL ESTATE L. J. 575 (1973); J. Hulkonen, *Tax Increment Financing: A Total Community Approach to Economic Development*, 9 A.I.D.C. J. 49 (1974); Jefferson & Taggart, *Tax Increments Criticized*, 32 J. HOUS. 5,

areas. Under TIF, municipalities use the increased tax revenues generated by urban redevelopment (the tax increment)[6] to finance the public costs of that redevelopment.[7] To its proponents,[8] TIF pro-

(1975); Lefco, *When Governments Become Land Developers: Notes on the Public Sector Experience in the Netherlands and California*, 51 S. CAL. L. R. 165 (1978); Mitchell, *Tax Increment Financing for Redevelopment*, 34 J. HOUS. 226 (1977); Trimble, *Tax Increment Financing for Redevelopment: California Experience is Good*, 31 J. HOUS. 458 (1974); Trkla, *Tax Increment Financing*, CHICAGOLAND DEV., Nov. 1976, at 4; J. Schunoff, *A Economic Evaluation of the Use of Tax Increment Financing of Urban Renewal in Oregon*, (Sept. 1974) (Unpublished Ph.D. dissertation in University of Oregon Library).

5. The definition of a "blighted area" within the meaning of an urban renewal statute is a legislative question. For the Illinois definition of "blighted area", *see* note 15 *infra*.

6. An example of a tax increment formula is:

$$\text{Tax Increment} = \frac{\text{(Current Assessed Value)} - \text{(Original Assessed Value)}}{\text{Current Assessed Value}} \times \text{Current Taxes}$$

EXAMPLE

(A)	Original Assessed Value		$1,210,455
(B)	Current Assessed Value		$2,706,114
(C)	Current Taxes		$ 955,339
(D)	Tax Increment	=	$\frac{\$2,706,114 - \$1,210,455}{\$2,706,114} \times \$955,339$
		=	$.553 \times 955,339$
	Amount of Annual Tax Payable to Development Agency	=	$528,302

Hulkonen, *supra*, note 4, at 54. TIF is a hybrid between revenue bonds, based on the expected returns from a given project, and special purpose bonds to meet a specific public objective. Note that the property owner still pays property taxes on the current assessment but the entire "tax increment" is allocated to the city to meet redevelopment costs. Thus, TIF is distinguishable from tax abatement programs, which focus on relief for particular taxpayers or classes *See* Davidson, *supra* note 4, at 414.

7. Cities use TIF most effectively by issuing tax increment bonds in connection with the renewal project to raise funds to make immediate public improvements. In addition to directly increasing the tax increment, these improvements provide immediate incentives for private developers to invest in the area. Less effective uses of TIF bonds include direct use of tax increments without bonds or using TIF in connection with lease-revenue bonds. *See generally* CSG RESEARCH BRIEF, *supra* note 4, at 6.

8. Proponents argue that:

a) The TIF scheme lets redevelopment pay for itself. *See* note 9 *infra*.

b) The ability of redevelopment agencies to enact TIF without voter approval minimizes disfunctional delay and allows cities necessary flexibility. *See*

vides an innovative way to make redevelopment pay for itself.[9] By contrast, its opponents[10] consider TIF a "revenue shell game"[11] that

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Background of Tax Increment Financing in California, *supra* note 4, at 57. *But see* note 10 *infra*.

c) Since a typical program issues TIF bonds backed only by anticipated increased revenues, bondholders bear the risk of financing redevelopment. Lefco, *supra* note 4, at 245. *But cf.*: CSG RESEARCH BRIEF, *supra* note 4, at 3. (Many critics argue that in order to maintain a good credit rating, cities will have to pay bondholders from general revenues if tax increment proves insufficient.)

d) Since the TIF system depends upon the private bond market for its capital, the project will have to have an adequate chance of success in order to attract investors. CSG RESEARCH BRIEF, *supra* note 4, at 3.

e) Other taxing districts eventually receive tax benefits *ad infinitum* upon completion of the TIF program. Fists, *supra* note 4, at 10. *But cf.* Schunoff, *supra* note 4, at 53. (Slightly lower taxes after project completion occurred, but due to the amounts and discount rate involved, these cannot compensate for earlier tax increases).

9. This argument assumes that major urban development activity usually creates higher property values in the developed area which, in turn, increases municipal property tax revenues. The basic tenet is that the tax increment would not occur without the redevelopment. *See* Hegg, *supra* note 4, at 580. Under TIF, both the city and other taxing districts enjoy new employment, new capital investments, increased tax base, and a general upgrading of the community. BACKGROUND OF TAX INCREMENT FINANCING IN CALIFORNIA, *supra* note 4. Therefore, this increased revenue should finance the public improvements that induced the private redevelopment activity. *See* Mitchell, *supra* note 4, at 227-228. Otherwise, the other taxing districts would be enriched at the city's expense if they could keep the tax revenues obtained through implementation of the TIF program. CSG RESEARCH BRIEF, *supra* note 4, at 4. *But see* note 12, *infra*.

10. Opponents argue that:

a) TIF potentially permits municipalities to capture tax revenues belonging to other tax districts. *See* note 12 *infra*.

b) The ability of redevelopment agencies to enact TIF without voter approval lessens citizen input into the financing process. Jefferson & Taggart, *supra* note 4, at 5. *But see* CSG RESEARCH BRIEF supra note 4, at 3 (elected officials who represent the people of the municipality must approve TIF at several stages).

c) TIF distorts the establishment of local government priorities; by bypassing the traditional financing process, a TIF program does not have to compete with other programs and priorities for funds. *Id. But see* note 8 *supra*.

d) Cities must pay a higher interest rate on TIF bonds than other types of bonds. CSG RESEARCH BRIEF, *supra* note 4, at 4.

e) Since a TIF redevelopment project depends upon its potential value in creating a tax increment, low capital input projects such as housing suffer. Jefferson & Taggart, *supra* note 4, at 5. *But see* Swick, *Tax Increments Supported*, 32 J. HOUS. 52 (1975) (other alternatives available for development of low capital input projects such as housing).

f) Freezing the tax base of redevelopment areas fails to account for increased services that other taxing districts provide to the area. Jefferson & Taggart, *supra*

potentially permits municipalities to compulsorily capture tax revenues belonging to other taxing districts.[12] In *People ex rel City of Canton v. Crouch*,[13] the Illinois Supreme Court supported TIF by holding that municipalities constitutionally may require other taxing districts to deposit their portion of the tax increment into a special municipal fund established for the purpose of paying redevelopment costs and obligations.

In *Crouch*, the plaintiff sought a writ of mandamus compelling the defendant, Mayor of Canton, to execute tax increment bonds authorized by city ordinance.[14] The mayor refused to execute the bonds on the ground that the Illinois TIF statute[15] unconstitutionally permitted

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note 4, at 5. *But cf.* Swick, *supra*, at 52. (Rundown areas require more services than redeveloped areas.)

11. Jefferson & Taggart, *supra* note 4, at 5.

12. Municipalities may enact TIF programs without the consent of other taxing districts. The statutory requirements that these taxing districts receive notice and an opportunity for a hearing are so perfunctory that the TIF program is often an accomplished fact before the taxing districts can react. RALPH ANDERSON & ASSOCIATES, *supra* note 3, at 38. Many of these tax districts contain taxpayers who are ineligible to vote in municipal elections. For example, a county taxing district usually consists of a city and surrounding suburban townships. Suburban voters have no opportunity to influence municipal expenditures for redevelopment even though a portion of their tax revenues fund such redevelopment. In California, for instance, these tax revenues would normally be distributed to taxing districts: county, 24%; city, 22%; school districts, 48%; special districts, 6%. Trimble, *supra* note 4, at 458. *See generally*, Hegg, *supra* note 4, at 475-476.

Opponents of TIF dispute the assumption that redevelopment necessarily causes the increase in the tax base. *See* Schunoff, *supra* note 4 at 51, (Most tax increments in Oregon caused by non-TIF related factors.) By gerrymandering the boundaries of redevelopment areas, municipalities can capture tax revenues that ordinarily would have gone to other taxing districts. *See generally*, Davidson, *supra* note 1, at 440. *See* RALPH ANDERSON AND ASSOCIATES, *supra*, note 3 at 39-42; BARTON-ASCHMAN ASSOCIATES, *supra* note 4, at 51-54; Regis v. City of Ballwin Park, 70 Cal. App. 3d 968, 981-82, 139 Cal. Rptr. 196, 204-05 (1977). *See also* notes 24 & 49 and accompanying text *infra*.

13. 79 Ill. 2d 356, 403 N.E.2d 242 (Ill. 1980).

14. *Id.* at 364; 403 N.E.2d at 245.

15. Real Property Tax Increment Allocation Act, Ill. Ann. Stat. ch. 24 §§ 11-74.4-1 to 4-11 (Smith-Hurd 1980-81).

The primary purpose of the Illinois statute is to eradicate and redevelop blighted or nearly-blighted economically stagnant areas. *Id.* at § 11-74.4-2. The statute defines a "blighted area" as:

> any improved or vacant area within the boundaries of a redevelopment project area located within the territorial limits of the municipality where, if improved, industrial, commercial and residential buildings or improvements, because of a combination of 5 or more of the following factors: age; dilapidation; obsoles-

the sponsoring municipality to use the tax revenues of other taxing districts.[16] The Illinois Supreme Court upheld the constitutionality of the act and affirmed the issuance of the writ.[17]

Numerous state enabling statutes[18] grant municipalities the power to use TIF.[19] Under a typical TIF statute, a municipality may enact

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cence; deterioration; illegal use of individual structures; presence of stuctures below minimum code standards; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; lack of community planning, is detrimental to the public safety, health, morals or welfare, or if vacant, the sound growth of the taxing districts is impaired by, (1) a combination of 2 or more of the following factors: obsolete platting of the vacant land; diversity of ownership of such land; tax and special assessment delinquencies on such land; deterioration of structures or site improvements in neighboring areas adjacent to the vacant land, or (2) the area immediately prior to becoming vacant qualified as a blighted improved area.

Id. at § 11-74.4-3.

The act provides that subsequent to a public hearing held pursuant to notice to affected taxpayers and other taxing districts, a municipality may adopt TIF. The statute further provides for the acquisition of property within the redevelopment area, the preparation of the property for redevelopment, and the disposition of the property for private developers. Municipalities may use tax increment bonds to finance this redevelopment activity. *Id.* at § 11-74.4-5, 4-9.

16. 79 Ill. 2d 346, 364, 403 N.E.2d 242, 245. The court acknowledged that the Illinois statute was a "novel proposition." "The unique part of tax increment allocation financing is that the Act permits tax increments attributable to an increase in real propery values to be paid from each taxing district which overlaps with the project area to the municipality." *Id.*

17. *Id.* at 363, 403 N.E.2d at 244.

18. Twenty-six states have enacted TIF statutes. *See*: ALASKA STAT. § 18.55.695 (1981); ARIZ. REV. STAT. ANN. § 36-1488.01 (Supp. 1981); CAL. HEALTH & SAFETY CODE § 33671 (Deering 1979); COLO. REV. STAT. ANN. § 31-25-801-822 (1977); CONN. GEN. STAT. § 8-134 (1981); FLA. STAT. ANN. § 163.385 (West 1972); ILL. REV. STAT. ch. 24 §§ 11-74. 4-1, 11-74. 4-11 (Smith-Hurd Supp. 1980); IND. CODE § 18-7-7-1 (1976); IOWA CODE ANN. § 403.19 (West 1976); KAN. STAT. ANN. § 17-4751 (1974); KY. REV. STAT. ANN. § 99.750 (Baldwin 1981); ME. REV. STAT. ANN. tit. 30, § 4853 (1978); MICH. COMP. LAWS ANN. § 5.3507(1) (1975); MINN. STAT. ANN. § 472A.01-.10 (1977); MONT. CODE ANN. § 7-15-42 (1981); NEV. REV. STAT. § 279.674-.680 (1978); N.M. STAT. ANN. §§ 3-46-45 (1977); N.D. CENT. CODE § 40-58-20 (1973); OHIO REV. CODE ANN. § 725.01 (Page Supp. 1980); OR. REV. STAT. § 457.440 (1979), S.D. COMP. LAWS ANN. § 11-9-1 (Supp. 1981); TENN. CODE ANN. § 13-20-205 (1980); TEX. REV. CIV. STAT. ANN. art 1069l (Vernon, 1973); UTAH CODE ANN. § 11-15-149 (1972); WASH. REV. CODE ANN. 35.81.100 (West Supp. 1981); WIS. STAT. § 66.46 (Supp. 1981).

19. The constitutionality of many TIF programs depends upon the concept that the state delegates the power to use TIF to the municipality in order to accomplish the broad state purpose of eliminating blight. *See* Metropolitan Dev. Agency v. Leech,

an ordinance designating a redevelopment project area[20] and authorizing a detailed redevelopment plan.[21] The city then issues tax increment bonds to finance public works[22] that will attract private investment in the project area.[23] Ideally,[24] this investment will raise

591 S.W.2d 427, 429 (Tenn. 1979) (claim that city was appropriating funds solely for municipal purpose rejected since upgrading of blighted urban areas is not only a municipal purpose but also a concern of the county and state as a whole.); Tribe v. Salt Lake City Corp., 540 P.2d 499, 502 (Utah, 1974) (TIF is constitutional because it meets statewide object of eradicating blight even though TIF programs appeared to have local operation.)

20. Redevelopment project areas, once relatively small, are increasing in size. While only 5% of the California projects established prior to 1972 exceeded 400 acres, 31% of those established after 1972 were greater than 400 acres. By 1976, 52% of California TIF projects exceeded 100 acres, 34% exceeded 200 acres and 19% exceeded 400 acres. RALPH ANDERSON & ASSOCIATES, *supra* note 3, at 31. As redevelopment areas increase in size, long range municipal commitment of future tax revenues becomes an important factor in TIF planning. Cities may find themselves and other taxing districts locked into an inflexible course of disturbed priorities. *See generally* CSG RESEARCH BRIEF, *supra* note 4, at 3-4.

21. The Illinois TIF statute's requirements for a redevelopment plan are representative of most states. In Illinois, each redevelopment plan must include the following: estimated redevelopment project costs; the sources of funds to pay costs; the nature and terms of obligations to be issued; the most recent equalized assessed valuation of the project area; an estimate of assessed valuation of the land after redevelopment; and the general land uses to apply in the redevelopment area. ILL. ANN. STAT. ch. 24 § 11-74. (Smith-Hurd Supp. 1980-81) For factors a municipality should consider before implementing TIF, *see generally* Hulkonen, *supra* note 4, at 52-53.

22. Redevelopment activities funded by TIF have included: property acquisition; building demolition; the installation of streets, curbs, sidewalks, underground utilities, sewage and drainage facilities; and the construction of public works. *Background of Tax Increment Financing in California*, *supra* note 4, at 65. Examples of public works include: city halls, courthouses, parking facilities, hospitals, schools, police stations, fire stations, libraries, parks, playgrounds, meeting facilities, malls, health centers, child care centers, and theatres. RALPH ANDERSON & ASSOCIATES, *supra* note 3, at 34.

23. Hulkonen, *supra* note 4, at 50. Though most of the factors that influence business investment decisions are beyond the control of local governments, municipalities can influence some factors to attract private investment. These factors are: services and facilities, competitive factors, and environment in the immediate neighborhood of business location. Services and facilities necessary to attract businesses include: transportation systems, sufficient water systems, industrial waste treatment and power. Competitive factors are those local laws and regulations that make a city relatively attractive or unattractive compared to other cities or regions competing for business and industrial development. These include: relative tax rates; laws governing business operations; land cost; availability of financing at favorable rates; and zoning and land use regulations. Immediate environmental problems the city can influence to attract business include: high land costs, small land parcels, mixed land uses, parking and security. *Id.*

the assessment value of the redevelopment area thus generating increased tax revenues (the tax increment) for all taxing districts containing the area.[25] All such taxing districts must deposit the tax increment into a special fund established to repay the obligations incurred by the municipality.[26] These taxing districts cannot influence the municipality's original decision to incur the obligations or the scope of the redevelopment activities.[27]

Courts have examined the constitutionality of the TIF scheme[28]

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24. In practice, this assumption has not always held true. Oregon and California were among the first states to adopt TIF. An Oregon study disputes the view that TIF is "self liquidating." Detailed statistical analysis revealed that most increases in tax revenue were unrelated and, in many instances, occurred prior to redevelopment activities. The primary conclusion of the study was that "*for tax increment projects in Oregon, significant costs of the tax increment project are borne by the taxpayers of overlapping jurisdictions through higher taxes*." (emphasis original). Schunhoff, *supra* note 4, at 51-52.

A staff report of the California Senate Local Government Committee reinforces the Oregon findings:

> Under existing law, a project area can be designated which contains much private activity totally unrelated to redevelopment. . . . Yet the tremendous increased assessments will accrue to the redevelopment agency, and the taxing jurisdictions will not even be able to capture a cost of living increase on the property. It is technically possible under existing redevelopment law for an agency to go through the files of the city building department and pull out all building permits granted on which construction has not begun and put the subject project into a redevelopment project area in order to get the tax increment.

STAFF OF CALIFORNIA SENATE LOCAL GOVERNMENT COMMITTEE, REPORT ON TAX INCREMENT FINANCING OF REDEVELOPMENT, 6-7 (Dec. 5, 1975) *cited in* Regus v. Ballwin Park, 70 Cal. App. 3d 968, 981, 139 Cal. Rptr. 196, 205 (1977). *Cf.* BARTON-ASCHMAN ASSOCIATES, *supra* note 4, at 51-54. (City drew boundaries for specific purpose of capturing forty-seven million dollars of tax revenue unrelated to implementation of TIF programs.)

25. *See generally* Davidson, *supra* note 1, at 415; Hulkonen, *supra* note 1, at 53; Mitchell, *supra* note 4, at 227; Trimble, *supra* note 4, at 458.

26. In most states, when the bonds are fully repaid from tax increments, the taxing districts once again receive tax revenues based on the full assessed value of the redevelopment area. *See* Davidson, *supra* note 1, at 407.

27. *See* note 12 *supra*.

28. Courts examining TIF include: People ex rel City of Canton v. Crouch, 79 Ill. 2d 356, 403 N.E.2d 242 (1980) (Illinois TIF statute is constitutional); City of Minneapolis v. Wurtelle, 291 N.W. 2d 386 (Minn. 1980) (Minneapolis TIF program met procedural requirements); City of Sparks v. Best, 605 P.2d 638 (Nev. 1980) (Nevada TIF statute is constitutional); State of Kansas ex rel Schneider v. City of Topeka, 227 Kan. 115, 605 P.2d 556 (1980) (Kansas TIF statute is constitutional); Sigma Tau Gamma v. City of Menomonie, 288 N.W.2d 85, 93 Wis. 2d 392 (1980) (Wisconsin TIF statute is constitutional); Metropolitan Dev. Agency v. Leech, 591 S.W. 2d 427 (Tenn. 1979) (Tennessee TIF statute is constitutional); Redevelopment Agency of

under three different approaches. The majority of courts ignore potential problems of TIF abuse[29] and uphold the constitutionality of such statutes.[30] By contrast, the Kentucky approach, recognizing potential abuse, views TIF as unconstitutional.[31] California adopts a compromise position, accepting TIF as constitutional but limiting abuse by scrutinizing the implementation of TIF programs.[32]

Under the majority approach, courts exhibit a great deference to the findings of state legislatures[33] and municipal governments.[34]

City of San Bernadino v. County of San Bernadino, 21 Cal. 3d 255, 578 P.2d 133, 145 Cal. Rptr. 886 (1978) (City may reduce base roll for properties acquired by redevelopment agency itself); R.E. Short Company v. City of Minneapolis, 269 N.W.2d 331 (Minn. 1978) (Minnesota TIF statute is constitutional); Regus v. City of Ballwin Park, 70 Cal. App. 3d 968, 139 Cal. Rptr. 196 (1977) (blight determination of TIF project overturned); Sweetwater Valley Civic Association v. National City, 18 Cal. 3d 270, 555 P.2d 1099, 133 Cal. Rptr. 859 (1976) (blight determination of TIF project overturned); Dilley v. City of Des Moines, 247 N.W.2d 187 (Iowa 1978) (implementation of TIF program upheld); Miller v. Covington Dev. Authority, 539 S.W.2d 1 (Ky. 1976) (Kentucky TIF statute is unconstitutional); Richards v. City of Muscatine, 237 N.W.2d 48 (Iowa 1975) (Iowa TIF statute is constitutional); Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1974) (Utah TIF statute is constitutional); Redevelopment Agency v. Cooper, 267 Cal. App. 2d 70, 72 Cal. Rptr. 557 (1968) (amended TIF area assessed as if part of original plan); Redevelopment Agency v. Malaki, 216 Cal. App. 2d 480, 31 Cal. Rptr. 92 (1963) (reduction of the base assessment roll when taxable properties are converted to public use is permissible); Bunker Hill Redevelopment Project v. Goldman, 61 Cal. 2d 21, 389 P.2d 538, 37 Cal. Rptr. 74 (1964) (local determination that TIF project area was blighted was presumptively valid).

29. *See* notes 11-14 *supra*.

30. *See* notes 33-50 and accompanying text *infra*.

31. *See* notes 51-56 and accompanying text *infra*.

32. *See* notes 57-73 and accompanying text *infra*.

33. *See* Sigma Tau Gamma v. City of Menomonie, 93 Wis. 2d 392, 414, 288 N.W.2d 85, 95 (1980) (legislature's definition of blight entitled to deference and respect); Metropolitan Dev. Agency v. Leech, 591 S.W.2d 427, 429 (Tenn. 1979) (Legislature may use discretion to require expenditure of local funds for appropriate purposes); Dilley v. City of Des Moines, 247 N.W.2d 187, 192 (Iowa 1978) (court does not ordinarily examine the motives of those who exercise legislative power unless it is "manifestly arbitrary, capricious or unreasonable").

34. *See* City of Sparks v. Best, 605 P.2d 638, 639 (Nev. 1980) (Once it has been determined that the designation of a particular project area is valid, the court should not consider the taking or leaving of sound buildings within its periphery); R.E. Short Company v. City of Minneapolis, 269 N.W.2d 331, 341 (Minn. 1978) (trial court erred in scrutiny of city's decisions by substituting its opinion for that of city); Dilley v. City of Des Moines, 247 N.W.2d 187, 190 (Iowa 1978) (not for judicial branch of government to pass upon the wisdom of a local law enacted by a municipal council). *Cf.* Berman v. Parker, 348 U.S. 35 (1954) (not for the courts to oversee the choice of the boundary lines nor to sit in review on the size of a particular project area.) *But see* notes 57-73 and accompanying text *infra*.

These courts uphold TIF programs if they are "rationally related" to the broad public purpose of urban renewal.[35] Refusing to examine the wisdom of the scheme, courts adopting the majority view will only overturn "arbitrary and capricious" TIF statutes.[36] Such a test enables virtually any TIF program to withstand due process,[37] equal protection,[38] or uniformity of taxation[39] challenges.[40]

35. *See* City of Sparks v. Best, 605 P.2d 638, 639 (Nev. 1980) (Nevada TIF statute constitutional because it is rationally related to the legitimate state purpose of the elimination of blighted areas); Sigma Tau Gamma v. City of Menomonie, 93 Wis. 2d 392, 408-09, 288 N.W.2d 85, 92-93 (1980) (Wisconsin TIF statute constitutional because it is used to accomplish state purpose of eliminating blight); Richards v. City of Muscatine, 237 N.W.2d 48, 58 (Iowa 1975) (Iowa TIF statute constitutional because it rationally relates to valid public purpose of urban renewal.)

36. *See* Dilley v. City of Des Moines, 247 N.W.2d 187, 190 (Iowa 1978) (not for the judicial branch of government to pass upon the wisdom of a local law enacted by a municipal council); R. E. Short Company v. City of Minneapolis, 269 N.W.2d 331 (Minn. 1978) (even though testimony could very well support finding that development plan was unwise, the trial court erred in scrutinizing municipal decision); Richard v. City of Muscatine, 237 N.W.2d 48, 58 (Iowa 1975) (even though individuals might differ over wisdom of TIF, the court must limit itself to whether it lacks a rational basis).

37. *See* City of Sparks v. Best, 605 P.2d 638, 639 (Nev. 1980) (substantive due process not violated by inclusion of economically and aesthetically viable property); Metropolitan Dev. Agency v. Leech, 591 S.W.2d 427, 430 (Tenn. 1979) (TIF does not constitute taking of property without consent or adequate compensation); Richards v. City of Muscatine, 237 N.W.2d 48, 61 (Iowa 1975) (TIF statute does not deprive taxpayers of substantive economic benefits without corresponding compensation); *but cf.* Card v. Community Dev. Agency, 61 Cal. App. 3d 570, 131 Cal. Rptr. 153 (1976) (amendment of TIF redevelopment plan void on substantive due process grounds). *See generally* Davidson, *supra* note 1, at 434-436.

38. *See* Metropolitan Dev. and Housing Agency v. Leech, 591 S.W.2d 427, 430 (Tenn. 1979) (TIF does not violate equal protection clause just because owners of the redevelopment property pay proportionately less taxes for general county and municipal services); Richards v. City of Muscatine, 237 N.W.2d 48, 58 (Iowa 1975) (TIF classification that allows developer to pay a proportionately smaller amount to general funds of local taxing districts than owners of other taxing districts pay has rational basis); Tribe v. Salt Lake City Corp., 540 P.2d 499, 504 (Utah 1975) (benefits to private individuals incidental to public purpose of eliminating blight). *See generally* Davidson, *supra* note 1, at 431-434.

39. *See* State ex rel Schneider v. City of Topeka, 605 P.2d 556, 561-62 (Kan. 1980) (TIF not violation of uniform taxation clause because affects only the distribution of tax revenues already collected); Sigma Tau Gamma v. City of Menomonie, 93 Wis. 2d 392, 409-414, 288 N.W.2d 85, 93-95 (1980) (TIF not violation of uniform taxation because no taxpayer or group of taxpayers is singled out for preferential treatment either in form of exemption or tax credit); Metropolitan Dev. Agency v. Leech, 591 S.W.2d 427, 430 (Tenn. 1979) (TIF not violation of uniform taxation clauses because it is mandated appropriation not a transfer of taxing power). *See generally* Davidson, *supra* note 1, at 431-434.

Two Iowa decisions, *Richard v. City of Muscatine*[41] and *Dilley v. City of Des Moines*,[42] illustrate the majority approach. In *Richards*,[43] the Iowa Supreme Court recognized that nonresident taxpayers paid a greater proportionate share of the general cost of government than did resident taxpayers.[44] This discrepancy withstood constitutional objections[45] since the tax scheme was rationally related to the legitimate government interest of letting urban renewal pay for itself.[46] One year later, *Dilley*[47] upheld the constitutionality of using TIF to finance redevelopment of an area in Des Moines, Iowa.[48] A city offi-

40. Litigants have challenged TIF on other grounds, including improper delegation of legislative power, improper lending of municipal credit and improper excesses over constitutional debt limitation. *See generally* Davidson, *supra* note 1, at 436-439.

41. 237 N.W.2d 48 (Iowa 1972).

42. 347 N.W.2d 187 (Iowa 1978).

43. 237 N.W.2d 48. Like most cases reviewing the constitutionality of TIF, *Muscantine* examined, and rejected, a wide variety of constitutional challenges. The Iowa Supreme Court ruled that: the absence of a public notice and opportunity for a hearing before implementation of TIF did not violate procedural due process. *Id.* at 56; TIF did not constitute an improper delegation of legislative power. *Id.*; TIF did not violate substantive due process. *Id.* at 57-59; TIF did not entail constitutional discrimination. *Id.* at 59-62; TIF did not constitute lending of the state's credit. *Id.* at 62; The Iowa Supreme Court did rule that tax increment bonds constituted a debt and thus were subject to the state constitutional debt limitation. *Id.* at 62-66.

44. *Id.* at 57-58.

45. The plaintiff argued that by reducing the amount of property which would otherwise be taxable to meet the general expenses of the other taxing districts, the Iowa TIF statute effectively increased the taxes of property owners in those districts. This, plaintiff contended, was a deprivation of property without due process of law. *Id.*

46. *Id.* The court conceded that the TIF statute may deprive taxpayers and affected taxing districts of property, but nevertheless ruled that the statute did not violate due process. The Court found:

> Urban renewal itself serves a valid public purpose and relates to the general welfare [citation omitted]. The tax increment plan appears to be a feasible method of financing such projects. It is more advantageous to the city than ordinary general obligation bonds, since the plan places the direct burden on the urban renewal property. We cannot say that the tax division scheme in [Iowa TIF statute] is without rational basis.

Id.

47. 247 N.W.2d 187 (Iowa 1978).

48. In July 1973, the Des Moines City Council adopted a resolution designating a 67 block area, including the heart of the business district, as a blighted area in need of rehabilitation. The city council passed an ordinance authorizing TIF but it did not receive voter approval in a referendum required by Iowa law. The city then used other funds to pay for some of the redevelopment. Taxpayers brought action to stop current redevelopment activities and for a declaratory judgment preventing the use of

cial publicly acknowledged that the city drew the boundaries of the redevelopment area to capture tax revenues of other taxing districts that would have resulted *without any redevelopment activity*.[49] Nevertheless, the Iowa Supreme Court found that the city had not acted in an arbitrary, capricious, or unreasonable manner. Therefore, the court refused to examine city council members' motives in designating boundaries of the redevelopment area.[50]

TIF in any future redevelopment of the area. The Iowa Supreme Court, ignoring an argument that the issue was moot, examined the constitutionality of the Des Moines TIF program. *Id.* at 189.

49. Lewis V. Pond, the Des Moines Director of Community Development, participated in the planning of the tax increment proposal in Des Moines. BARTON-ASCHMAN ASSOCIATES INC., *supra* note 4, at 6. On September 25, 1973, Mr. Pond participated in a Conference on Tax Increment Financing of Urban Development Programs held in Chicago, Illinois. The conference was sponsored by Barton-Aschman Associates, Inc. and co-sponsored by the Department of Development and Planning of the City of Chicago, Illinois and the Department of Development of Rockford, Illinois. *Id.* at title page.

Mr. Pond stated that the city did not draw the boundaries of the redevelopment area to only encompass areas of severe blight for two reasons. First, the city wanted to capture tax revenue that would have occurred without any redevelopment activity. Second, the city drew the boundaries in hopes of obtaining voter approval on the required voter referendum. BARTON-ASCHMAN ASSOCIATES, INC., *supra* note 4, at 51.

Forty-seven million dollars in captured tax revenue *would have occurred without any redevelopment activity*. The proposed redevelopment area included two new towers, *already being built* in the major retail core of Des Moines, that would generate forty million dollars in tax revenues. An additional seven million dollars of tax revenue would be captured because of the Iowa tax structure and the timing of the referendum. In addition to capturing forty-seven million dollars of tax revenue that would have occurred even without redevelopment, the city hoped to capture nine million from the construction of a new hotel and another seven or eight million from other improvements. *Id.*

The City of Des Moines had a problem convincing the Des Moines School Board that the proposed project was as much to their benefit as to the city's because:

> . . . the fact was clear that $47 million of [the tax revenues] would be on the tax rolls anyway. We are using money that would go to other taxing bodies if the valuation decline did not offset it and the studies did indicate that there would be a peaking of the valuation with the downtown area within a few years followed by a decline.

Id. at 54.

50. 247 N.W.2d at 192. The Iowa Supreme Court rejected plaintiff's attack on the council members' motives and plaintiff's allegations that an eighteen block tract was included in the area for the purpose of securing a valuable area for the increment. *Id.* First, the court cited the well-settled rule that the court does not ordinarily examine the motives of those exercising legislative power in a manner which is not "manifestly arbitrary, capricious, or unreasonable." *Id.* Then, the court found that there was evidence that the *entire area* was blighted. This evidence included a study that found

In *Miller v. Covington Development Authority*,[51] the Kentucky Supreme Court ignored the majority approach followed in *Richards* and *Dilley*. The Kentucky legislature had enacted two companion statutes, the Local Development Authority Act (LDAA)[52] and the Tax Increment Act.[53] *Miller* declared both statutes unconstitutional. The Kentucky court held the LDAA unconstitutional on the ground that the power to designate development boundaries was too important to delegate to local officials.[54] In reaching its decision, the court noted the inherent potential for local officials to abuse TIF by arbitrarily defining the boundaries of redevelopment projects.[55] The

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that 67% of buildings in the *entire area* had minor deficiencies, major deficiencies or were substandard. *Id.* at 191-92. Additional evidence included testimony that public utilities, sewers, traffic control and parking were inadequate. *Id.* at 192. The court concluded that the plaintiff had failed to prove that the city's action in designating the 67 block area as blighted was arbitrary, capricious or unreasonable. *Id.*

The reasoning of the *Dilley* court erects a virtually insurmountable barrier to challenges that a city improperly included a tract within an urban renewal area for the purpose of capturing tax revenues rather than redevelopment. First, so long as there is any evidence that the *entire area* is blighted, the court will not look at *particular tracts* or buildings. *Id.* at 191. *Accord*, Berman v. Parker, 348 U.S. 26, at 35 (1954); Sigma Tau Gamma v. City of Menomonie, 93 Wis. 2d 392, 288 N.W. 2d 85 (Wis. 1980); City of Sparks v. Best, 605 P.2d 638, 639 (Nev. 1980). Second, the courts will not sit in review of the particular size of the project nor oversee the choice of boundary line. Dilley v. City of Des Moines, 247 N.W.2d at 192. *See, e.g.*, Berman v. Parker, 348 U.S. at 35 (1954). Third, municipal determinations of blight are presumptively valid. *See* note 34 *supra*. *But see* notes 57-73 and accompanying text *infra*. Fourth, courts will not examine motives of municipal officials until they act in a manner which is "manifestly arbitrary, capricious or unreasonable." Dilley v. City of Des Moines, 247 N.W.2d at 192 (Iowa 1976).

51. 539 S.W.2d 1 (Ky. 1976).

52. KY. REV. STAT. ANN. §§ 99.610-680 (Baldwin 1981). Essentially, this statute grants municipalities the same powers that other state TIF statutes grant municipalities, with the exception of the power to use tax increment financing. The Act creates an independent agency consisting of the mayor as *ex officio* member and seven commissioners appointed by the mayor, with the approval of the governing body of the municipality. *Id.* at § 99.625. The commission has the power to establish a redevelopment plan and fix the project boundaries. *Id.* at § 99.630.

53. KY. REV. STAT. ANN. §§ 99.750-770 (Baldwin 1981). This act grants municipalities the right to use tax increment financing to pay for urban redevelopment.

54. 539 S.W.2d 1, 3-5.

55. *Id.* at 3. The Kentucky court stated:

> The real thrust of the Act is toward economic development. What then is to characterize an area as "economically significant"? Indeed, is there any real estate, or any area within a city that is *not* "economically significant"? And if there are certain areas of a city that can be classified as depressed and dying, and for that reason subjected to radical cosmetic surgery, what is to prevent the elected representative of that city either from determining its boundaries themselves or

court also found that the Tax Increment Act violated a provision of the Kentucky constitution that prohibited the expenditure of school funds for non-school purposes.[56]

Utilizing a compromise approach, California courts view TIF as constitutional,[57] but seek to prevent abuse by scrutinizing the implementation of TIF programs.[58] In California,[59] as in most states,[60] local determinations of blight are presumptively valid. Nevertheless, two California cases, *Sweetwater-Valley Civic Association v. National City*[61] and *Regus v. City of Ballwin*,[62] have allowed TIF opponents to rebut this presumption.[63] *Sweetwater* rejected a municipal finding that labeled a golf course blighted.[64] The California Supreme Court declared that municipal determination of blight must satisfy two requirements.[65] First, the proposed redevelopment area must possess

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from proscribing some tangible formulae or criteria by which it is to be done, and is there any practical reason why that responsibility should be shifted to another layer of officialdom that is not directly responsible to the electorate?

Id. at 4.

56. *Id.* at 5.

57. *See e.g.*, In re Redevelopment Plan for Bunker Hill, 61 Cal. 2d 21, 389 P.2d 538, 37 Cal. Rptr. 74 (1964).

58. *See* notes 59-73 and accompanying text *infra*.

59. *See* 61 Cal. 2d 21, 37-39, 389 P.2d 538, 549-50, 37 Cal. Rptr. 74, 85-86.

60. *See* note 34 *supra*.

61. 18 Cal. 3d 270, 555 P.2d 1099, 133 Cal. Rptr. 858 (1976).

62. 70 Cal. App. 3d 968, 139 Cal. Rptr. 196 (1977).

63. In addition to *Sweetwater* and *Regus*, other courts have begun to place the burden of proving blight on the municipality. *See* Prudential Bldg. & Loan Assoc. v. Urban Renewal & Community Dev. Agency, 464 S.W.2d 629 (Ky. 1971) (presumptive invalidity of an amendment to blighted area); Yonkers Community Dev. Agency v. Morris, 37 N.Y.2d 478, 335 N.E.2d 327, 373 N.Y.S.2d 112, *app. dismissed*, 423 U.S. 1010 (1975) (court must do more than "rubber stamp" the determination); Apostle v. City of Seattle, 70 Wash. 2d 59, 422 P.2d 289 (1966) (burden on city to show findings that area is in fact blighted).

64. The city had declared a 130 acre tract that contained a 103 acre golf course "blighted" and planned to build a shopping center on the site. Though part of the golf course was subject to flooding, most of it was in constant use. Sweetwater Valley Civic Ass'n v. National City, 18 Cal. 3d 270, 273-74, 555 P.2d 1099, 1100-01, 133 Cal. Rptr. 859, 860-61 (1976).

65. 18 Cal. 3d at 277, 555 P.2d at 1103, 133 Cal. Rptr. at 863. *Sweetwater* stated that:

To allow redevelopment under CLR, the proposed area must be blighted. A finding of blight requires (1) that the area suffer 'either social or economic liabilities, or both, requiring redevelopment in the interest of health, safety and general welfare' and (2) the existence of one of the characteristics of blight.

at least one characteristic of blight.[66] Second, the municipality must show that the area suffers "either social or economic liabilities or both, requiring redevelopment in the interest of health, safety and general welfare."[67] The court rejected the TIF plan because the golf course did not present a liability to the community.[68]

Regus v. City of Ballwin Park[69] applied this two-part test to invalidate a proposed issuance of TIF bonds. *Regus* overturned a local TIF plan[70] because the municipality failed to find that the proposed project possessed any specified characteristic of blight.[71] In reaching its decision, the *Regus* court noted that the unrestricted use of redevelopment power would have a strong impact upon taxpayers and

Id. at 273, 555 P.2d 1099, 1102, 133 Cal. Rptr. 859, 863 (1976). *See* CAL. HEALTH & SAFETY CODE §§ 33030-32 (Deering 1981).

66. *See* note 65 *supra*. *Sweetwater* noted that necessary characteristics of blight may include "a growing or total lack of proper utilization of areas resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety and welfare. CAL. HEALTH & SAFETY CODE §§ 33031-33034 (1973) *quoted in* 18 Cal. 3d at 274 n.3, 555 P.2d at 1101 n.3, 133 Cal. Rptr. at 861 n.3. Though the golf course was making a profit, the city found that the property could be more efficiently utilized as a shopping center site. *Id.*

67. *Id.* at 277, 555 P.2d 1099, 1103, 133 Cal. Rptr. 859, 863. The court ruled that it is not sufficient to merely show that the area is not being put to its optimum use or that the area is more valuable for other uses. "By requiring a showing of 'liabilities' plus a specified characteristic of blight, the Legislature made clear its intent that a determination of blight be made—not on the basis of potential alternative use of the proposed area—but on the basis of the area's existing use." *Id.*

68. *Id.* at 279, 555 P.2d 1099, 1104, 133 Cal. Rptr. 858, 864 (1972). Since the golf course was marginally profitable and because of its open space nature, the court found that the course did not present a social or economic liability upon the city.

69. 70 Cal. App. 3d 968; 139 Cal. Rptr. 196 (1977).

70. The City of Ballwin drew its redevelopment plan to include two separate noncontiguous sites along the San Bernadino Freeway. One twenty-nine acre plot contained 51% vacant lots and most of the rest was older, fairly well maintained housing stock. The other plot, fifty-three acres, was the site of a new lumber facility and the future site of a United Parcel Service distribution facility. The assessed valuation of the lumber facility and UPS center, anticipated to produce tax revenues of $125,000 annually, would not reach the tax rolls before the assessment freeze. *Id.* at 972-75, 139 Cal. Rptr. 196, 198-99 (1977).

71. *Id.* at 979, 139 Cal. Rptr. 196, 207 (1977). The city's stated reasons for selection of the project area were the following: improper utilization of area; irregular parcelization; low tax revenues; difficulty in assembling land; and difficulty in promoting desirable development. *Id.* These reasons, without a finding of blight, were insufficient justification to use TIF. *Id.* at 982, 139 Cal. Rptr. at 204-05.

government entities.[72] California has not extended this judicial willingness to review blight designation to other stages of the TIF process.[73]

In *People ex rel City of Canton v. Crouch*,[74] Illinois followed the majority trend[75] by holding that a municipality utilizing TIF may require other taxing districts to turn their portion of the tax increment over to the municipality.[76] The Illinois legislature found that taxing districts would not obtain the benefits of an increased tax base without the use of TIF.[77] Based upon this legislative finding, the Illinois

72. *Id.* at 211. The court noted two reasons for requiring a finding of blight before a city could exercise its TIF powers:

> Under the law, blight must be found before redevelopment can be authorized; because, first, without evidence of blight there is no solid justification for compelling taxpayers in one section of the community, for example those in the county, the School District, and in Ballwin Park outside the Project area, to subsidize the cost of development of another section of the community by carrying a disproportionate share of the cost of local government. Second, unrestricted use of redevelopment powers fosters speculative competition between municipalities in their attempts to attract private enterprise, speculation which they can finance in part with other people's money. . . .
>
> In essence, tax revenues are used as subsidies to attract new business. The immediate gainers are the subsidized businesses. The immediate losers are the taxpayers and government entities outside the project area, who are required to pay the normal running expenses of government operation without the assistance of new tax revenues from the project area.

Id. (footnotes omitted).

73. *See* Redevelopment Agency of City of San Bernadino v. County of San Bernadino, 21 Cal. 3d 255, 578 P.2d 133, 145 Cal. Rptr. 886 (1978) (City may reduce base roll for properties acquired by redevelopment agency itself); Redevelopment Agency v. Cooper, 267 Cal. App. 2d 70, 72 Cal. Rptr. 557 (1968) (amended TIF area assessed as if part of original plan); Redevelopment Agency v. Malaki, 216 Cal. App. 2d 480, 31 Cal. Rptr. 92 (1963) (reduction of the base assessment roll when taxable properties are converted to public use is permissible.)

74. 79 Ill. 2d 356, 403 N.E.2d 242 (1980).

75. *See* notes 33-50 and accompanying text *supra*.

76. Ill. 2d 356, 369-71, 403 N.E.2d 242, 248-49. The mayor contended that the Illinois TIF statute violated constitutional guarantees of due process, equal protection and uniformity of taxation. He also challenged TIF as an unconstitutional delegation of legislative authority, impairment of contracts, and separation of powers grounds. *Id.* at 369, 403 N.E.2d at 248. These contentions are based on the underlying argument that the Illinois TIF statute is unconstitutional "because it permits tax revenues levied and collected within one taxing district to be paid over to another taxing district for its use." *Id.* at 369, 403 N.E.2d at 248.

77. The Illinois TIF statute stated:

> It is found and declared that the use of incremental revenues derived from tax rates of various taxing districts in redevelopment project areas for the payment of redevelopment project costs is of benefit to said taxing districts for the reasons

Supreme Court ruled that TIF did not violate constitutional guarantees of due process,[78] equal protection,[79] or uniformity of taxation.[80] The court found that TIF classifications were neither arbitrary nor capricious since the special tax allocation fund consisted only of revenues raised by the implementation of TIF.[81]

In upholding TIF, the Illinois Supreme Court specifically rejected the *Miller* approach.[82] *Crouch* stated that the Kentucky court had invalidated TIF because it violated a state constitutional provision that prohibited the use of school taxes for non-school purposes.[83]

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that *taxing districts located in redevelopment project areas would not derive the benefits of an increased assessment base without the benefits of tax increment financing*, all surplus tax revenues are turned over to the taxing districts in redevelopment project areas and all said districts benefit from the removal of blighted conditions and the eradication of conditions requires conservation measures.

ILL. ANN. STAT. ch. 24 §§ 11-74.4-2 (Smith-Hurd Supp. 1980-81) (emphasis added).

78. The court found that the Illinois legislature determined that those tax revenues that are directly attributable to the increase in property values caused by the redevelopment activities should be paid to the municipalities from "the taxing districts which are favorably affected by the project." 79 Ill. 3d at 369, 403 N.E.2d at 249. The court then cited the General Assembly finding that "were it not for the redevelopment project, the taxing districts would not receive such revenue." *Id.* Finally, the court concluded that "it was reasonable for the increments to be used to retire the debt incurred by the redevelopment plan." *Id.* The plaintiff failed to prove that TIF was arbitrary or unreasonable, so the court rejected the due process challenge to the act. *Id. See* note 37 *supra*.

79. *Id.* The court used the same reasoning to reject the equal protection challenges to TIF. *See* note 78 *supra*. *See also* note 38 *supra*.

80. *Id.* The court, relying on the same reasoning it used to reject due process and equal protection challenges to TIF, also found TIF did not violate the uniformity of taxation clause. The court stated that "[t]hose taxpayers who will directly benefit from redevelopment will pay taxes to the municipality while those further removed physically from the redevelopment area will have fewer, if any, tax revenues paid over to the municipality." *Id.* The plaintiff failed to prove that TIF was arbitrary or unreasonable so the court rejected the uniformity of taxation challenge to the act. *See* note 78 *supra*. *See also* note 39 *supra*.

Two justices dissented from the majority's holding. 79 Ill. 2d at 278-82, 403 N.E.2d at 253-54. Calling TIF a "compulsory diversion of taxes," *id.*, the dissent stated "[t]here is no rational basis why an increase in revenue of a taxing district, regardless of the cause for it, should be commandeered and given to another taxing district." *Id.* Such a diversion, according to the dissent, violates the uniformity of taxation clause of the Illinois Constitution. *Id.*

81. *Id.* at 271, 403 N.E.2d at 249.

82. *See* notes 51-56 *supra*.

83. 79 Ill. 2d 356, 367-68, 403 N.E.2d 242, 246-47. *Crouch* said that the *Miller* decision was based on a Kentucky Constitutional provision stating that "tax revenues levied for the purpose of education shall be appropriated to the common schools, and

The *Crouch* court, however, never acknowledged the *Miller* ruling that Kentucky's TIF program was an unconstitutional delegation of legislative power.[84] The Illinois court resolved the delegation issue by emphasizing the adequacy of standards limiting municipal discretion.[85]

While *Crouch* did not examine the question of improper determination of blight, the court's rationale indicates an unwillingness to limit TIF abuse by adopting the California approach.[86] Both the Illinois statute[87] and *Crouch*[88] hinge upon the legislative finding that the incremental tax revenues are always attributable to the implementation of TIF. This absolute finding prevents judicial scrutiny of specific instances where non-TIF factors generate the tax revenues.[89]

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to no other purpose." *Id.* The Illinois court, noting that its constitution provided no such limitation, distinguished *Miller* on that basis. *Id.*

84. *See* notes 54-55 *supra*. The Illinois TIF statute was equivalent to both of Kentucky's companion statutes, not just the statute providing for the use of TIF. By focusing solely on the narrow Kentucky holding that the financing aspect of TIF was unconstitutional, the Illinois court indicates an unwillingness to accept the broader Kentucky holding that granting municipal officials not directly responsible to the electorate the power to designate and plan the redevelopment area is an unconstitutional delegation of power. The Kentucky statute may be facially distinguishable from the Illinois TIF statute in that Kentucky delegated the power to designate TIF boundaries to *appointed* officials not directly responsible to the electorate. Nevertheless, while the Illinois officials may be directly responsible to a portion of the taxpayers affected, they are not even indirectly accountable to those taxpayers residing outside the municipality.

85. 79 Ill. 2d 356, 373, 403 N.E.2d 242, 250. The court found that the Illinois TIF statute was not an unconstitutional delegation of power since it "sufficiently identifies the harm to be prevented (urban blight) and the general means available to the municipality (and the commission it may establish) to prevent the harm." *Id.*

86. The Illinois Supreme Court's reliance on the legislative finding that the tax increment is *always* attributable to the implmentation of TIF suggests that it will not follow the California approach. Both California cases invalidating TIF recognize that the tax increment is *not always* attributable to the implementation of TIF. California acknowledges that municipalities abuse TIF by deliberately drawing boundaries of redevelopment projects for the purpose of capturing tax revenues caused by non-TIF factors. Based on the perceived need to stem this abuse, California has started to scrutinize the initial stage of the TIF process, the designation of blighted areas. Unless the Illinois courts modify their reliance on the legislative finding, they cannot even acknowledge TIF abuse, let alone prevent it.

87. ILL. ANN. STAT. ch. 24 § 11-74.4-2 (Smith-Hurd Supp. 1980-81).

88. 79 Ill. 2d 356, 370, 403 N.E.2d 242, 249.

89. *See* note 86 *supra*. An argument could be made that Illinois is willing to judicially scrutinize specific instances where non-TIF factors caused increased tax revenues. The legislature found that "taxing districts located in redevelopment areas *would not* derive benefits of an increased tax base without the benefits of tax incre-

When coupled with the relatively lenient Illinois standard for blight determination,[90] this finding grants municipalities virtually unfettered discretion to use—or abuse —TIF.

The *Crouch* decision represents the current trend of judicial deference toward legislative and municipal findings. By refusing to limit TIF abuse through judicial review, the courts have consigned the burden of preventing TIF abuse to the state legislatures.[91] If legislatures fail to limit municipal discretion in the use of redevelopment power, than TIF truly will become a "revenue shell game."

Thomas J. Burnside

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ment financing." ILL. ANN. STAT. ch. 24 § 11-74.4-2. (Smith-Hurd Supp. 1980-81) (emphasis added). However, in upholding TIF, the court stated:

> Within each taxing district, *only* those revenues which can *reasonably be found* to have been raised by the implementation of the redevelopment plan can be deposited in the special tax allocation fund. Thus, *only* those taxing districts, and within each taxing district only that part of it which *has enjoyed* an increase in revenue *as a result of redevelopment will be required to turn over revenue to the municipality.*

79 Ill. 2d 356, 371, 403 N.E.2d 242, 249. (emphasis added).

This dictum in *Crouch* seems to soften the absolute legislative finding. Thus the Illinois Supreme Court may overturn a local TIF program whose captive tax revenues are not "a result of redevelopment."

The Illinois TIF statute also may permit judicial review of local TIF programs. It states: "No redevelopment plan shall be adopted by a municipality without findings that (i) the redevelopment project on the whole has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of the redevelopment plan." ILL. ANN. STAT. ch. 24 § 11-74.4-3(f) (Smith-Hurd Supp. 1980-81). If Illinois permitted judicial review of the implementation of TIF programs at the local level, it would represent a realistic attempt to reconcile the need for creative solutions to the urban blight problem with the danger of unjust diversion of tax revenues.

90. *See e.g.*, City of Chicago v. R. Zwick Co., 27 Ill. 2d 128, 135, 188 N.E.2d 489, 493, *app. dismissed*, Gonzula v. Chicago, 373 U.S. 542 (1963) (judicial notice must be taken that a slum as designated by city is detrimental to public health and welfare).

91. Some state legislatures have begun to limit TIF. *See e.g.*, CAL. HEALTH & SAFETY CODE § 33320.2 (West Supp. 1981) (all non-contiguous portions of a project area must be either blighted or "necessary for effective redevelopment"), WIS. STAT. ANN. § 66.46(4)(c)(4)(a) (West Supp. 1980-81) (25% of TIF district must be in need of some form of reconditioning); WIS. STAT. ANN. § 66.46(4)(c)(4)(6) (West Supp. 1980-81) (city must find that substantially all real property in the district will be enhanced by the proposed improvements); MINN. STAT. ANN. § 472A (West Supp. 1981) (imposed several substantive controls over a municipality's designation of TIF projects). *See generally*, Davidson, *supra* note 1, at 439-442.