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ATTORNEY GENERAL OPINION NO. 2016- 4

Nick Jordan, Secretary  
Kansas Department of Revenue  
915 SW Harrison Street  
Topeka, Kansas 66612-1588

Re: Cities and Municipalities—Buildings, Structures and Grounds—  
Development and Redevelopment of Areas in and Around Cities—  
Definitions; Base Year Assessed Valuation; Revision of Base Year  
Assessed Valuation; Taxing Subdivision and Real Property Taxes  
Defined; Assessment and Distribution of Taxes; Pledge of Proceeds of  
Bonds

Synopsis: The Tax Increment Finance Act does not require or authorize the “base  
year assessed valuation” as defined in K.S.A. 2015 Supp. 12-1770a(b) to  
be revised when a taxpayer obtains a reduction in the assessed valuation  
of such taxpayer's real property for the year in which the redevelopment  
district was established.

If the “base year assessed valuation” is not revised, a city may adopt a  
redevelopment project plan or an ordinance that specifies that the  
percentage or amount of increment pledged from the redevelopment  
district will be calculated using an adjusted base value that is higher than  
the “base year assessed valuation.” Cited herein: K.S.A. 2015 Supp. 12-  
1770; 12-1770a; 12-1771; 12-1774; 12-1775; Kan. Const. Art. 11, § 5.

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Dear Secretary Jordan:

As Secretary of the Kansas Department of Revenue, you raise two issues regarding the Tax Increment Finance Act (TIF Act):<sup>1</sup>

- I. Whether the “base year assessed valuation” as defined in K.S.A. [2015 Supp.] 12-1770a(b) may be revised when a taxpayer obtains a reduction in the assessed valuation of such taxpayer's real property for the year in which the redevelopment district was established.
- II. Whether a city may adopt a project plan that specifies that the amount or percentage of increment from the redevelopment district will be calculated using an adjusted base value (a finite agreed-upon value) that is higher than the “base year assessed valuation” as indicated on the real property assessment rolls for the property in the redevelopment district.

Some background on the TIF Act might be helpful. The TIF Act is a financing tool which allows a city<sup>2</sup> to pledge future tax revenues for up to 20 years,<sup>3</sup> in order to finance immediate municipal redevelopment projects<sup>4</sup> in a redevelopment district<sup>5</sup> to promote, stimulate and develop the general and economic welfare of the state of Kansas and its communities.<sup>6</sup> Generally speaking, the redevelopment projects may be financed through the issuance of full faith and credit tax increment bonds<sup>7</sup> or special obligation bonds in one or more series.<sup>8</sup> The TIF Act presumes the assessed property value in the redevelopment district will increase because of the redevelopment project financed by the bonds and that the positive tax increment<sup>9</sup> will be captured to repay the bonds.

The TIF Act defines “base year assessed valuation” as “the assessed valuation of all real property within the boundaries of a redevelopment district *on the date the redevelopment district was established*.”<sup>10</sup> The purpose for establishing the base year assessed valuation is to establish the tax revenue increment to be pledged by the city for the financing of the redevelopment district, as distinguished from the tax revenue

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<sup>1</sup> K.S.A. 12-1770 *et seq.*

<sup>2</sup> In Kansas, the TIF Act is limited to cities. K.S.A. 2015 Supp. 12-1770.

<sup>3</sup> K.S.A. 2015 Supp. 12-1775(b)(2).

<sup>4</sup> “‘Redevelopment project’ means the approved project to implement a project plan for the development of the established redevelopment district.” K.S.A. 2015 Supp. 12-1770a(r).

<sup>5</sup> “‘Redevelopment district’ means the specific area declared to be an eligible area in which the city may develop one or more redevelopment projects.” K.S.A. 2015 Supp. 12-1770a(p).

<sup>6</sup> K.S.A. 2015 Supp. 12-1770.

<sup>7</sup> K.S.A. 2015 Supp. 12-1774(b)(1). *See also* K.S.A. 2015 Supp. 12-1770.

<sup>8</sup> K.S.A. 2015 Supp. 12-1774(a)(1). *See also* K.S.A. 2015 Supp. 12-1770.

<sup>9</sup> “‘Tax increment’ means that amount of real property taxes collected from real property located within the redevelopment district that is in excess of the amount of real property taxes which is collected from the base year assessed valuation.” K.S.A. 2015 Supp. 12-1770a(u).

<sup>10</sup> K.S.A. 2015 Supp. 12-1770a(b) (emphasis added).

allocated to taxing subdivisions<sup>11</sup> levying real property taxes on property within the redevelopment district. The base year assessed valuation is known by the taxing subdivisions on the date the redevelopment district is established and prior to the time of the public hearings that are required when adopting a redevelopment project plan.<sup>12</sup>

The distribution of tax revenue is accomplished by a statutory formula utilizing the base year assessed valuation, which satisfies the constitutional requirement that the object of the tax be specified.<sup>13</sup> According to the statutory formula for distribution of tax revenue, the taxes paid at the time of the establishment of the redevelopment district continue to be distributed to the taxing subdivisions as done prior to the establishment of the redevelopment district.<sup>14</sup> The tax increment, which is based on the base year assessed valuation, is deposited into a special fund<sup>15</sup> to repay the redevelopment project costs,<sup>16</sup> including the principal and interest on the bonds.<sup>17</sup>

With this background information presented, we now will discuss your questions in turn.

### ***Revision of Base Year Assessed Valuation***

In your first question, you ask whether the base year assessed valuation may be revised when a taxpayer<sup>18</sup> obtains a reduction in the assessed valuation of such taxpayer's real property for the year in which the redevelopment district was established. We believe the answer to this question is no.

In determining whether a reduction in the base year assessed valuation is required or authorized under the TIF Act when a taxpayer successfully obtains a reduction in the assessed valuation of such taxpayer's real property, we must determine legislative intent.

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<sup>11</sup> "Taxing subdivision" means the county, city, unified school district and any other taxing subdivision levying real property taxes, the territory or jurisdiction of which includes any currently existing or subsequently created redevelopment district including a bioscience development district." K.S.A. 2015 Supp. 12-1770a(v).

<sup>12</sup> "Redevelopment project plan" means the plan adopted by a municipality for the development of a redevelopment project or projects which conforms with K.S.A. 12-1772, and amendments thereto, in a redevelopment district." K.S.A. 2015 Supp. 12-177a(s). See generally K.S.A. 2015 Supp. 12-1771(a) and Attorney General Opinion No. 2011-1 for the procedure to establish a redevelopment district.

<sup>13</sup> The distribution of taxes pursuant to statutory formula satisfies the constitutional requirement that an object of the tax be specified. See Kan. Const. Art. 11, § 5 and *State ex rel. Schneider v. City of Topeka*, 227 Kan. 115, 121 - 125 (1980).

<sup>14</sup> K.S.A. 2015 Supp. 12-1775(b)(1).

<sup>15</sup> K.S.A. 2015 Supp. 12-1775(b)(2).

<sup>16</sup> The term "redevelopment project costs" is defined in K.S.A. 2015 Supp. 12-1770a(o).

<sup>17</sup> K.S.A. 2015 Supp. 12-1774(a)(1)(A).

<sup>18</sup> The TIF Act defines "taxpayer" to mean "a person, corporation, limited liability company, S corporation, partnership, registered limited liability partnership, foundation, association, nonprofit entity, sole proprietorship, business trust, group or other entity that is subject to the Kansas income tax act, K.S.A. 79-3201 *et seq.*, and amendments thereto." K.S.A. 2015 Supp. 12-1770a(kk).

An appellate court must first attempt to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. When a statute is plain and unambiguous, an appellate court does not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it. Where there is no ambiguity, the court need not resort to statutory construction. Only if the statute's language or text is unclear or ambiguous does the court use canons of construction or legislative history or other background considerations to construe the legislature's intent.<sup>19</sup>

We will apply this same rule specifically to K.S.A. 2015 Supp. 12-1770a(b) and generally to the TIF Act. K.S.A. 2015 Supp. 12-1770a(b) defines “base year assessed valuation” to mean the assessed valuation of all real property within the boundaries of a redevelopment district *on the date the redevelopment district was established*.<sup>20</sup> The language used by the Legislature plainly intended to establish a base or a certain and actual date from which assessed valuation would be definitively set for revenue distribution. That date is “the date the redevelopment district was established.” Further, within the definition, there is no provision for a mandatory or discretionary adjustment of that base. Thus, the plain reading of the statutory definition of “base year assessed valuation” requires us to conclude that an adjustment subsequent to the date the district was established cannot be made unless the Legislature made provision for such an adjustment somewhere else in the TIF Act.

In this case, there is no language in any other provision of the TIF Act that provides for a mandatory or discretionary reduction in assessed valuation based on a successful taxpayer appeal. By contrast, the Legislature does provide for revision of the base year assessed valuation under circumstances specified in K.S.A. 2015 Supp. 12-1771(f) through (h). Under these provisions, a city is authorized to revise the base year assessed valuation when adding real property to the redevelopment district,<sup>21</sup> removing more than a de minimus amount of real property from the redevelopment district<sup>22</sup> or dividing real property in the redevelopment district into separate redevelopment districts.<sup>23</sup> In these enumerated situations, it is significant that the *city* must affirmatively seek a major change in the redevelopment project in order to invoke the authorization to revise the base year assessment. The Legislature did not provide for revision based upon a circumstance outside of the control of the city such as a subsequent change in the assessed valuation of the real property due to a successful taxpayer appeal. Thus, it is apparent that the Legislature could have enacted such an exception to the general rule but did not do so with regard to successful taxpayer appeals.

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<sup>19</sup> *State v. Keel*, 302 Kan. 560, 572 (2015) (internal citations omitted).

<sup>20</sup> Emphasis added.

<sup>21</sup> K.S.A. 2015 Supp. 12-1771(f).

<sup>22</sup> K.S.A. 2015 Supp. 12-1771(g).

<sup>23</sup> K.S.A. 2015 Supp. 12-1771(h).

We will not read into the statute a mandate or authorization to revise the base year assessed valuation due to a successful taxpayer appeal when the language is clearly absent. Based on the current language of the statute, we conclude that the TIF Act does not mandate or authorize the base year assessed valuation to be revised when a taxpayer obtains a reduction in the assessed valuation of such taxpayer's real property for the year in which the redevelopment district was established.

### ***Adjusted Base Value***

In your second question, you ask whether a city may adopt a redevelopment project plan that establishes a figure, described by you as an “adjusted base value”, that is higher than the base year assessed valuation as the minimum value to be used to calculate tax revenue distribution. Put simply, is the city allowed to pledge less than the maximum amount of tax increment permitted by the TIF Act? Again, we look to the language of the TIF Act to determine the answer to your question.

K.S.A. 2015 Supp. 12-1775(d) provides:

A city may adopt a project plan in which only a specified percentage or amount of the tax increment realized from taxpayers in the redevelopment district are pledged to the redevelopment project. The county treasurer shall allocate the specified percentage or amount of the tax increment to the treasurer of the city for deposit in the special fund of the city to finance the redevelopment project costs if the city has other available revenues and pledges the revenues to the redevelopment project in lieu of the tax increment. Any portion of such tax increment not allocated to the city for the redevelopment project shall be allocated and paid in the same manner as other ad valorem taxes.

The language of the statute is plain and unambiguous. Cities may adopt a redevelopment project plan or an ordinance for the redevelopment district<sup>24</sup> wherein less than the maximum amount of tax increment permitted by the TIF Act is pledged to the redevelopment project.<sup>25</sup> By not specifying the manner in which this amount is determined, the Legislature left it to the city to determine the calculus in arriving at the specified percentage or amount that will be paid from the tax increment revenue, as long as the manner is in accordance with the TIF Act.

In your question, you did not provide a definition of an “adjusted base value.” If by “adjusted base value” you mean that the base year assessed valuation is revised by an arbitrary amount, we would conclude that this action is not authorized. The TIF Act does not specifically provide for revision of the base year assessed valuation except as provided for in K.S.A. 2015 Supp. 12-1771(f) through (h). Thus, for the same reasons we stated in your first question, we conclude, unless authorized by K.S.A. 2015 Supp.

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<sup>24</sup> K.S.A. 2015 Supp. 12-1771(b).

<sup>25</sup> K.S.A. 2015 Supp. 12-1775(d).

12-1771(f) through (h), a revision to the base year assessed valuation would not be authorized specifically by K.S.A. 2015 Supp. 12-1770a(b) and the TIF Act generally.

However, if by “adjusted base value” you mean an amount above the base year assessed valuation that does not revise the base year assessed valuation but uses it as the starting point to calculate an amount less than the maximum amount of tax increment revenue permitted by the TIF Act, then we would conclude this action is authorized by K.S.A. 2015 Supp. 12-1775(d). An “adjusted base value” defined in this way has the effect of decreasing the amount of tax increment pledged to pay the bonds. The difference between the base year assessed valuation and such “adjusted base value” is captured and distributed in the same manner as other ad valorem taxes.<sup>26</sup> Consequently, the distribution to the taxing subdivisions within the redevelopment district is higher than it would have been had the entire tax increment revenue been distributed to pay the bond. Therefore, we conclude that a city is permitted to adopt a redevelopment project plan or ordinance that contains an “adjusted base value” that is higher than the base year assessed valuation, providing the base year assessed valuation is not revised.

Our conclusion does not extend to allowing a city to set an “adjusted base value” that is lower than the base year assessed valuation. Such action would decrease the distribution of collected tax revenues to the taxing subdivisions in contradiction of the TIF Act and would be void.

Sincerely,

/s/Derek Schmidt

Derek Schmidt  
Attorney General

/s/ Athena E. Andaya

Athena E. Andaya  
Deputy Attorney General

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<sup>26</sup> K.S.A. 2015 Supp. 12-1775(d).