Reinventing Communities by Putting the "Opportunity" into Opportunity Zones

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FILLING THE GAP
LOUISIANA ECONOMIC DEVELOPMENT DISTRICTS
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Special Taxing Districts Generally
Purpose of Special Taxing Districts

- Special Taxing Districts are **special forms of local government** created in order to provide:
  
  - specific services or provide funding for development within **a well-defined geographical area**; and
  
  - a structure for financing and maintaining **special purpose projects**, services and/or infrastructure desired to be provided by **municipalities and/or Parishes**.
Examples of Special Taxing Districts

There are many examples of Special Taxing Districts including:

- School District
- Fire Districts
- Sewer Districts
- Hospital Districts
- Library Districts
- Drainage Districts
- Transit Districts
- Mosquito Control District
- Levee Districts
- Port Authority District
- Economic Development Districts
  - Community Development Districts
  - Arts and Entertainment Districts
  - Ambulance Districts
  - Safety and Security Districts
  - Geothermal Heating District (Oregon)
  - Resort District (Wyoming)
  - Professional Baseball Park District (Wisconsin)
  - Daytona Beach Racetrack Facility District (Florida)

Although the activities of each of these Special Districts could be funded from a governmental body’s general fund, it is generally better to isolate these initiatives and fund them through a self-funding mechanism.
Economic Development Districts Generally
EDDs provide a mechanism for supporting new construction, expansion or renovation projects within a defined district by:

- Capturing a component of increases in revenues derived from existing taxes that may be collected within the EDD in the future over the BASE YEAR (year before creation of the EDD) -

  and / or

- Collecting new taxes levied and collected within the EDD in the future to pay the present costs of improvements, but without the direct obligation of the Governing Authority.

Importantly, the Governing Authority will always receive the amount of tax receipts that it received in the full year before the creation of the EDD.
TAXING AUTHORITY PLEDGING INCREMENT OF EXISTING TAX
The Economic Development District Act was passed by the Louisiana Legislature in 2002 and is codified under **La. R.S. 33:9038.31 et. seq**

Louisiana law allows local government subdivisions (Municipalities and Parishes) and other tax recipient entities to use certain amounts of their incremental tax receipts attributable to new development within the boundaries of a designated EDD in excess of tax receipts received from within the district over a base year’s collection (Tax Increment).

The increment can apply to both:

- **undedicated** property taxes (ad valorem) and sales tax or

- **dedicated** property taxes (ad valorum) and sales tax that has been dedicated by the voters for the *specific purpose* for which the incremental taxes will be utilized. (e.g. Bass Pro and Cabela’s)
Legislative Authority for a Municipality or Parish and an EDD to use Increments of Existing Taxes for Tax Increment Financing

• **Property Tax Increments**
  - R.S. 33:9032;
  - Authorized use of ad valorem taxes for tax increment financing.
  - The law was never used, however, because much of the property tax revenues in Louisiana are already dedicated to other purposes;

• **Sales Tax Increments**
  - R.S. 33:9033;
  - Authorized use of sales tax for tax increment financing;
  - R.S. 33:9038.4 allows the use of state sales tax for economic development projects;

• **Hotel Occupancy Tax Increments**
  - R.S. 33:9038.52 and R.S. 33:9038.53;
  - Authorizes use of hotel occupancy tax increments;

• **These can be combined.**
LEVYING A NEW TAX
• **R.S. 33: 9038.39** authorizes an EDD (a political subdivision) to levy a new tax up to
  
  – 2% sales tax,
  
  – 2% hotel occupancy tax and/or
  
  – 5 mills of ad valorem tax

  $1 million FMV = $100,000 of Assessed Value (10%)

  5 mills = .005% (5/1000)

  **New EDD Property Tax:** $500

If qualified electors reside in the EDD, unless 100% of the voters join in the proposal for the EDD, a special election will be called. A favorable vote of a majority of the electors voting in the election is necessary to approve the proposed tax.

If there are no qualified electors residing in the district, an election is not required.

*Importantly, the new tax can be levied against existing businesses in the EDD because a business is not a voter.*
• The EDD is a **political subdivision** authorized by the Constitution and the Legislature.

• The creation of the EDD has to be **approved by the City or Parish** as the appropriate Governing Authority.

• It is subject to **open meeting laws** and **public records laws**.

• Its financial affairs are subject to **inspection by the State Auditor**.

• The EDD and its Board are subject to the **Louisiana Code of Ethics**.

• *It is no different than a School District, Levee District, Fire District or other similar Special Taxing District, except its focus is economic development and redevelopment.*
Examples of Permitted Expenditures Authorized by the EDD

- Property acquisition
- Demolition, clearing and grading
- Affordable housing (Walmart)
- Buildings
- Streets
- Design and construction of parks and open areas
- Drainage infrastructure
- Sewer
- Utilities

- Sidewalks and pedestrian ways
- Riverfront and Riverwalk
- Parking facilities, including parking structures
- Public buildings
- Community centers
- Plazas, landscaping, fountains, benches and similar amenities
- Professional services
- Financing costs (bonds)
- EDD costs
Subject to the complete approval of the EDD Board, tax increment funds can be used as follows:

- To **reimburse the City or Parish** for its eligible costs that were previously expended;
- To **reimburse one or more Developers** for its eligible costs that were previously expended;
- To pay **contractors** for eligible costs on a “**pay as you go**” basis; or
- To pay **debt service on bonds** issued by the EDD (not the Governing Authority) to pay for project costs.
Examples of Terms and Payment Priorities of EDD

- Duration in Years without limitation as to amount of EDD funding (20 year term);
- Duration in Years with a limitation on the total amount of EDD funding (Earlier of the payment of $10,000,000 or 20 years);
- Specific amount of EDD funding without a term ($10,000,000 (although I always put a term such as 40 years);
- Duration or amount for priority payment to one party and then another allocation to the other party (City receives 100% of EDD proceeds as a priority distribution until it recovers $3,000,000 for road improvements and the proceeds paid to Developer);
Establishing Minimum Criteria for EDD

- Louisiana and many other governmental bodies have established minimum criteria for the creation of an EDD, which may include:
  - Areas of economic development that the governmental body wishes to encourage;
  - Number of temporary jobs retained or created;
  - Number of permanent jobs retained or created;
  - Total annual payroll after maturity;
  - Minimum overall size of the project;
  - Minimum private financial investment by the applicant;
  - Preference given for applicants who provide infrastructure within the governmental body.

Steve J. Theriot, the Louisiana Legislative Auditor, issued a report on May 14, 2008 entitled “Tax Increment Financing Performance Audit”.