FINAL REPORT
of the
TASK FORCE ON
TAX INCREMENT FINANCING

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STATE OF MAINE
117TH LEGISLATURE

Final Report
of the

TASK FORCE ON TAX INCREMENT FINANCING

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Report on Task Force on Tax Increment Financing

Task Force's Legislative Charge

The Task Force on Tax Increment Financing was created by Resolves of 1995, Chapter 51 during the First Regular Session of the 117th Legislature. The Task Force was charged "to study the State's current municipal development and tax increment financing laws" as well as "the experience of business and state and municipal governments in working with those laws" and to "make recommendations to create or change any law, rule, regulation or ordinance necessary to ensure that the State's municipal development and tax increment financing laws maximize creation and retention of quality jobs and complement the State's long-term economic development plan."

The Task Force was specifically charged to study changing the State's municipal tax increment financing laws to:

a. Provide additional policy guidelines and criteria for municipal bodies' use in designating development districts pursuant to 30-A MRSA, §§5253 and 5254;

b. Increase area and value limits on taxable property available for tax increment financing districts under 30-A MRSA, §5253;

c. Expand application of state tax increment financing districts under 30-A MRSA §5254-A to new investments that retain and create jobs; and

d. Provide mechanisms by which multiple municipalities are able to establish a single municipal development district and utilize tax increment financing and state tax increment financing laws.

The Task Force was required to hold at least one public hearing to receive public input concerning tax increment financing. The Task Force was required to submit its report with any accompanying legislation to the Second Regular Session of the 117th Legislature.

Process and Procedure

The Task Force held eight separate meetings. The first was on October 10, 1995 and the last on January 29, 1996. All meetings were held in the State House in Augusta. One of the meetings was a public hearing. It was held on November 20, 1995.

The Task Force heard from business representatives, municipal and state government officials, and members of the public, regarding their experience with the current laws and their suggestions for improving the effectiveness of the laws.

The Task Force divided its focus into two components - (1) municipal tax increment financing involving the property tax, and (2) state tax increment financing involving the income and sales tax. Task Force members worked together to draft proposed legislation to implement its recommendations.

The Task Force unanimously voted to approve this report and the accompanying proposed legislation.

Findings and Recommendations

Municipal Tax Increment Financing

The Task Force reports the following findings and makes the following recommendations with respect to the municipal tax increment financing law:

a. There is no need to include in statute additional policy guidelines and criteria for municipal bodies' use in designating development districts. The Task Force found that municipalities' governing bodies are best situated to develop and implement such guidelines and criteria. The Task Force found that numerous municipalities have developed, or are currently in the process of developing, such guidelines and criteria.

b. There is no need for additional statutory mechanisms for "multiple municipal" or "regional" tax increment financing districts. Current statutes provide for tax base sharing by multiple municipalities. This appears to provide the necessary flexibility for municipalities to jointly establish and share tax increment financing districts.

c. The equalized taxable value limits in 30-A M.R.S.A. §5253, sub-§1, ¶D are problematic in the case of a small municipality with a very large single industry. For example, due to the 5% individual tax increment financing limit, the Town of Jay recently approved 17 different tax increment financing districts for an improvement project at the International Paper mill. The Task Force determined that an exception should be made for situations like this. Accordingly, the Task Force recommends that the 5% limit should be waived for any single project involving costs in excess of $10 million, the geographic area of which consists entirely of contiguous property owned by a single taxpayer, and the assessed value of which exceeds 10% of the municipality's total assessed value.

d. Various changes should be made to the Tax Increment Financing statute in order to update and add clarity to the statute. These changes are not intended to substantively change the operation of the law. Rather, they are intended to add specificity to comport with current application and legal interpretation of the statutory language. The changes include:

    1. Amendments to 30-A MRSA §5252, sub-§8 that clarify the term "project costs";

    2. An amendment to 30-A MRSA §5253, sub-§1 ¶D that clarifies the type of indebtedness that is subject to the county cap; and

    3. An amendment to 30-A MRSA §5253, sub-§ ¶1-E that clarifies what specific aspects of the development program must be completed within 5 years of designation of the tax increment financing district.

State Tax Increment Financing

The Task Force concluded that the current state tax increment financing law has not been effective in creating new jobs. In fact, since the law's inception in 1991, only 6 state tax increment financing districts have been approved. Reasons for low utilization of the law are numerous. First, the economic benefit under the state tax increment financing law is limited to that received under the tax increment financing law. Thus, unless a significant increase in the property tax base is achieved, the potential state tax increment financing benefit may be insubstantial. Additionally, for tax increment financing districts involving non-retail businesses, the state tax increment financing is only useful if increased employment results in incremental state income taxes withheld. The state tax increment financing benefit is limited to 25% of incremental state income taxes withheld.

The Task Force considered making several changes to the state tax increment financing law to enhance its usefulness. In the end, however, the Task Force concluded that the current law needed more than just "tweaking". Therefore, the Task Force recommends that the current law should be allowed to sunset on June 30, 1996 as scheduled. The Task Force further recommends that the state tax increment financing law should be replaced by a job development incentive law that is not tied to tax increment financing districts at all. The Task Force recommends that this new law be titled the "Employment Tax Increment Financing Act".

The Task Force recommends that the new law: (a) focus on individual businesses rather than geographic sites or districts; (b) incent businesses to create and sustain net new "quality" jobs; (c) reimburse a percentage of incremental state income withholding taxes resulting from the increased employment; and (d) increase the percentage reimbursed for employers who create and sustain "quality" jobs in economically disadvantaged areas of the state.

Benefits under the proposed law would be available to non-retail for-profit businesses in Maine that add 15 or more net new "qualified employees" within any two year period commencing on or after January 1, 1996. "Qualified employees" are net new full-time employees for whom a retirement program subject to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq., and group health insurance are provided, and whose income calculated on a calendar year basis is greater than the average per capita income in the labor market area in which the employee is employed.

Benefits under the proposed law would be limited to a percentage of state income withholding taxes attributed to the net new qualified employees. For qualified employees employed in labor market areas in which the unemployment rate is greater than 125% of the state unemployment rate, the benefit would be equal to 50% of withholding taxes attributed to the qualified employees. In labor market areas with lower unemployment rates, the benefit would be equal to 30% of the withholding taxes.

A business would qualify for benefits only after it had hired 15 or more net new qualified employees. No benefits would be payable for any period of time in which the business failed to maintain employment of at least 15 net new qualified employees.

The proposed law would contain protection against benefits being awarded for jobs "created" through shifts from one state labor market to another, or jobs created through purchases of, or mergers with, other Maine businesses. The test is whether the new quality jobs are net new jobs on a state-wide basis.

Benefits under the proposed law would not be available for businesses that elect to take the Jobs and Investment Tax Credit under 36 MRSA §5215 until the full amount of allowable Jobs and Investment Tax Credit benefits have been claimed. Likewise, benefits under the proposed law are not available based on income withholding taxes attributed to employees employed within any approved state tax increment financing district.

The proposed law continues certain provisions contained in the current state tax increment financing law. Reimbursement to a qualified business is limited to 10 years. Aggregate annual retained tax increment revenue is limited to $20 million adjusted for inflation. Finally, the Commissioner of the Department of Economic and Community Development must find that the net new employment will not go forward without approval of employment tax increment financing.

Other Issues

The Task Force discussed the potential for "duplication of benefits" if new business equipment and machinery concurrently qualify under the new Business Personal Property Tax Reimbursement law and the municipal tax increment financing law. In the end, the Task Force decided against making any recommendation on this issue one way or the other.

PROPOSED IMPLEMENTING LEGISLATION

Project Cost Clarification

Sec. 1 30-A M.R.S.A. §5252, sub-§8, is amended to read.

8. **Project costs.** "Project costs" means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred ~~by the municipality~~ which are included in a development program as costs of improvements, including public works, acquisition, construction or rehabilitation of land or improvements for sale or lease to, or use by, commercial or industrial users, within a development district plus any costs incidental to those improvements, reduced by any income, special assessments or other revenues, other than tax increments, received or reasonably expected to be received by the municipality in connection with the implementation of this plan.

A. The term "project costs" does not include the costs of buildings, or portions of buildings, used predominantly for the general conduct of government. These buildings include, but are not limited to, city halls and other headquarters of government where the governing body meets regularly, courthouses, jails, police stations and other State Government and local government office buildings.

B. The term "project costs" includes, but is not limited to:

(1) Capital costs, including, but not limited to:

(a) The actual costs of the construction of public works or other improvements, ~~new~~ buildings, structures and fixtures;

(b) The demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures:

(c) The acquisition of equipment; ~~and~~

(d) Site work; and ~~The clearing and grading of land;~~

(e) All fees and expenses that are eligible to be included in the capital cost of such improvements, including, but not limited to, licensing and permitting expense, planning, engineering, architectural, testing, legal, and accounting expenses;

(2) Financing costs, including, but not limited to, closing costs, issuance costs, and interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of that indebtedness because of the redemption of the obligations before maturity;

(3) Real property assembly costs; ~~meaning any deficit incurred resulting from the sale or lease as lessor by the municipality of real or personal property within a development district for consideration which is less that its cost to the municipality;~~

(4) Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering and legal advice and services;

(5) Administrative costs, including, but not limited to, reasonable charges for the time spent by municipal employees in connection with the implementation of a development program; ~~project plan~~

(6) Relocation costs, including, but not limited to, those relocation payments made following condemnation;

(7) Organization costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public about the creation of development districts and the implementation of project plans;

~~(8) Payments made, in the discretion of the local legislative body, which are found to be necessary or convenient to the creation of development districts or the implementation of project plans;~~

(8)~~(9)~~ That portion of costs reasonably related to the construction, alteration or expansion of any facilities not located within the district that are required due to improvements or activities within the district including, but not limited to, sewerage treatment plants, water treatment plants, ~~or~~ other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities on streets, or fire stations; ~~or rebuilding or expansion of which is required by the project plan for a development district, whether or not the construction, alteration, rebuilding or expansion is within the development districts;~~

(9)~~(10)~~ Training costs, including, but not limited to, those costs associated with providing skills development and training for employees of businesses within the development districts. These costs may not exceed 20% of the total project costs and must be designated as training funds in the development program; ~~within 3 years of the designation of the district; and~~

(10)~~(11)~~ ~~Improvements, meaning~~ Costs associated with developing new employment opportunities, promoting public events; advertising cultural, educational and commercial activities; providing public safety; establishing and maintaining administrative management support; assisting in mitigating any adverse impact of a district upon the municipality and its constituents; funding economic development programs or environmental improvement programs developed by the municipality and such other services or programs as are necessary or appropriate to carry out the development program provided the activities and programs described in this paragraph generating such costs are provided for in the development program and bear a reasonable relationship to the improvements or activities within the district or the impacts of the district.

5% Assessed Value Exception
For Mill Towns

Sec. 2 30-A M.R.S.A. 5253, sub§1, ¶C is amended to read:

C. The aggregate value of equalized taxable property, as defined in Title 26, sections 208 and 305, of a tax increment financing district determined as of the April 1st preceding the date the designation of the district becomes effective, plus all existing tax increment financing districts determined as of the April 1st preceding the date the designation of the development district becomes effective; provided, however, that there shall be excluded from the calculation of this limit any district involving project costs in excess of $10,000,000, the geographic area of which consists entirely of contiguous property owned by a single taxpayer and the assessed value of which exceeds 10% of the municipality's total assessed value. For the purpose of this paragraph, "contiguous property" includes a parcel or parcels of land divided by road, powerline or right-of-way.

County Cap

Sec. 3 30-A M.R.S.A. §5253, sub-§1, ¶ D is amended to read as follows:

D. The aggregate value of municipal general obligation indebtedness financed by the proceeds from tax increment financing districts within any county may not exceed $50,000,000 adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index (U.S. City Average) from January 1, 1996 to the date of calculation.

Clarification of 5-Year
Completion Deadline

Sec. 4 30-A M.R.S.A. §5253, sub-31, ¶E is amended to read:

E. The designation of captured assessed value of property within a tax increment financing district is subject to the following limitations.

(1) The Commissioner of Economic and Community Development shall adopt rules necessary to allocate or apportion the designation of captured assessed value of property within tax increment financing districts in accordance with these limitations.

(2) The acquisition, construction and installment of all real and personal property improvements, buildings, structures, fixtures and equipment within the district contemplated by the development program must be completed within 5 years of the designation of the tax increment financing district by the Commissioner of Economic and Community Development.

Sec. 5 30-A M.R.S.A. §5254-A, sub§7 is amended by adding at the end the following:

This sub-section does not apply to any proposed state tax increment financing district for which a completed application has been submitted to the Commissioner of Economic and Community Development on or before June 30, 1996.

Sec. 6 36 M.R.S.A. Chapter 916 is enacted as follows:

Chapter 916
Employment Tax Increment Financing

§6751. Legislative findings; declaration of public purpose

The Legislature finds that encouragement of the creation of net new quality jobs in this State is in the public interest and promotes the general welfare of the people of the State. The Legislature further finds that the program set forth in this chapter will encourage the creation of net new quality jobs in this State, improve and broaden the tax base, and improve the general economy of the State. It is declared that the actions required to assist the implementation of these development programs are a public purpose and that the execution and financing of these programs are a public purpose.

§6752. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affiliated business. "Affiliated business" means 2 businesses exhibiting either of the following relationships:

A. One business owns 50% or more of the stock of the other business or owns a controlling interest in the other; or

B. Fifty percent or more of the stock or a controlling interest is directly or indirectly owned or acquired by a common owner or owners following approval by the Commissioner, whether by acquisition of substantially all the assets, 50% or more of the stock or through a merger, consolidation or reorganization.

2. Affiliated group. "Affiliated group" means a qualified business and its corresponding affiliated businesses.

3. Applicant. "Applicant" means a qualified business that has submitted an application to the Commissioner for approval of an employment tax increment financing development program.

4. Base level of employment. "Base level of employment" means the greater of either a business's total employment as of the December 31 immediately preceding the approval of the employment tax increment financing development program or its average employment during the base period.

5. Base period. "Base period" means the 3 calendar years prior to the year in which an applicant's employment tax increment financing development program is approved by the Commissioner.

6. Commissioner. "Commissioner" means the Commissioner of the Department of Economic and Community Development.

7. Gross employment tax increment. "Gross Employment Tax Increment" means that level of employment, payroll and State income withholding taxes attributed to qualified employees employed by a qualified business that is greater than the base level for the qualified business.

8. Employment tax increment. "Employment Tax Increment" means that level of employment, payroll and State income withholding taxes attributed to qualified employees employed- by a qualified business above the base level for the qualified business, adjusted pursuant to §6757 for shifts in employment by affiliated businesses.

9. Employment tax increment financing development program. "Employment tax increment financing development program" means a statement describing:

A. An applicant's employment growth and capital investment plans over the 5 year period beginning on the date an application is submitted to the Commissioner; and

B. A description of how funds reimbursed under the Employment Tax Increment Financing Program are necessary to the achievement of those plans.

10. Labor market unemployment rate. "Labor market unemployment rate" means the unemployment rate as published by the Maine Department of Labor for the labor market or markets in which qualified jobs are located, and in which reimbursement is claimed under this chapter, for the calendar year in which reimbursement is claimed.

11. Qualified business. "Qualified business" means any non-retail, for-profit business in Maine which adds 15 or more new qualified employees above its base level of employment in Maine within any two year period commencing on or after January 1, 1996. Those businesses engaged in retail operations wherein less than 50% of total annual revenues from Maine-based operations are derived from sales taxable in the state of Maine, and that otherwise meet the definition, are considered to be non-retail businesses. "Retail operations" means sales of consumer goods for household use to consumers who personally visit the location to purchase the goods. A public utility as defined by Title 35-A, section 102, may not be a qualified business.

12. Qualified employees. "Qualified employees" means net new full-time employees hired in Maine by a qualified business and for whom a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq., and group health insurance are provided, and whose income calculated on a calendar year basis is greater than the average annual per capita income in the labor market area in which the qualified employee is employed, and whose State income withholding taxes are subject to reimbursement to the qualified business under this chapter. Qualified employees must be Maine residents.

13. State unemployment rate. "State unemployment rate" means the unemployment rate as published by the Maine Department of Labor for the state as a whole, for the calendar year for which reimbursement is claimed.

§6753. Short title

This chapter shall be known and may be cited as the "Maine Employment Tax Increment Financing Program."

§6754. Reimbursement allowed

1. Generally. Subject to the provisions of subsection 2, a qualified business is entitled to reimbursement of State income withholding taxes attributed to those qualified employees after July 1, 1996 in the following amounts:

1. For qualified employees employed by a qualified business in Maine labor market areas in which the labor market unemployment rate is at or below 125% of the state unemployment rate, the reimbursement shall be equal to 30% of withholding taxes attributed to those qualified employees.

2. For qualified employees employed by qualified business in Maine labor market areas in which the labor market unemployment rate is greater than 125% of the average state unemployment rate, the reimbursement shall be equal to 50% of withholding taxes attributed to those qualified employees.

2. Limitations. Reimbursement to a qualified business under this chapter is subject to the following limitations:

1. No business previously qualified and approved by the Commissioner may receive reimbursement under this chapter for any period of time in which it failed to maintain the minimum requirements for initial approval as a qualified business.

2. Reimbursement to a qualified business approved pursuant to this chapter expires 10 years after the date the employment tax increment financing development program was approved.

3. A business electing to take the Jobs and Investment Tax Credit under Chapter 822, Section 5215, may not claim reimbursement under this chapter until the full amount of allowable Jobs and Investment Tax Credit benefits have been claimed.

4. A business may not claim reimbursement under this chapter for income withholding taxes attributed to employees employed within any state tax increment financing district approved under Title 30-A, Chapter 207.

5. Employee payroll withholding amounts are limited to the standard amount withheld and may not include any excess withholding.

6. At no time may the aggregate annual retained employment tax increment revenues for all employment tax increment financing programs exceed $20 million adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index (U.S. City Average) from January 1, 1996 to the date of calculation.

3. Multiple labor market areas. The Commissioner may by rule establish procedures for equitably apportioning reimbursement to a qualified business employing qualified employees in multiple labor market areas in the State.

§6755. Procedures for application

A qualified business which applies to the Commissioner for approval of its employment tax increment financing program must submit, in a form acceptable to the Commissioner, the following information:

1. Employment, payroll and State withholding data necessary to calculate the base level.

2. The number of qualified employees that the applicant has added or will be added in Maine that qualify the business for reimbursement under this chapter, including additional associated payroll and withholding data necessary to calculate the gross employment tax increment and establish the appropriate reimbursement percentage.

3. Certification that a retirement program subject to ERISA and group health insurance have been made available to all of the applicant's qualified employees.

4. A listing of all of the applicant's employment locations within the state of Maine, and the number of employees at each location.

5. A listing of all affiliated business and affiliated groups, data regarding current employment, payroll and State income withholding taxes for each affiliated business in the state of Maine.

Upon receipt of the information required by this section, the Commissioner shall review the information in a timely fashion. If the Commissioner determines that the criteria provided by section 6756 are satisfied, a certificate of approval shall be issued to the applicant.

§6756. Criteria for approval

Prior to issuing a certificate of approval for an employment tax increment financing program, the Commissioner must find that:

1. The economic development described in the program will not go forward without the approval of Employment Tax Increment Financing;

2. The program will make a contribution to the economic well being of the state; and

3. The economic development described in the program will not result in a substantial detriment to existing businesses in the State. In order to make this determination the Commissioner shall consider, pursuant to Title 5, Chapter 375, Subchapter II, those factors the Commissioner determines necessary to measure and evaluate the effect of the proposed program on existing businesses, including whether any adverse economic effect of the proposed program on existing businesses is outweighed by the contribution described in subsection 2.

The State Economist shall review applications for employment tax increment financing and provide an advisory opinion to assist the Commissioner in making findings under this section.

§6757. Calculation of employment tax increment

The State Tax Assessor shall calculate the employment tax increment for a particular program by removing from the gross employment tax increment the revenues attributed to business activity shifted from affiliated businesses to the applicant. This adjustment is calculated by comparing the current year's income withholding tax revenues for the applicant business that is a member of an affiliated group with revenues for the group as a whole. If the growth in income withholding tax revenue for the entire group exceeds the growth of income withholding tax revenue generated by the applicant, the gross employment tax increment does not have to be adjusted to remove business activity shifted from affiliated businesses. If the growth in income withholding tax revenue for the affiliated group is less than the growth in income withholding tax revenue for the applicant, the difference is presumed to have been shifted from affiliated businesses to the applicant and the gross employment tax increment for the applicant business is reduced by the difference. The Assessor shall adjust the calculation by subtracting from the gross employment tax increment a figure obtained by multiplying the previous years total amount of income taxes withheld by a qualified business by the percentage change in withholding taxes for all business within the State as a whole, provided that no adjustment shall be made if the percentage change is zero or less.

§6758. Procedure for reimbursement

1. On or before April 15th of each year, each qualified business approved by the Commissioner pursuant to this chapter shall report the number of employees, the state income taxes withheld for the immediately preceding calendar year and any further information the State Tax Assessor may reasonably require.

2. On or before June 30th of each year, the Assessor shall determine the employment tax increment of each qualified business for the preceding calendar year. A qualified business may receive up to 50% of the employment tax increment generated by that business as determined by the Assessor, subject to the further limitations in section 6753, subsection 2, and that amount is referred to as retained employment tax increment revenues.

3. On or before June 30th of each year, the Commissioner of Administrative and Financial Services shall deposit an amount equal to the total retained employment tax increment revenues for the preceding calendar year for approved employment tax increment financing programs in the state employment tax increment contingent account established, maintained, and administered by the Commissioner of Administrative and Financial Services. On or before July 31st of each year, the Commissioner of Administrative and Financial Services shall pay to each qualified approved business an amount equal to the retained employment tax increment revenues for the preceding calendar year.

§6759. Program administration

The Commissioner shall administer the Employment Tax increment Financing program. The Commissioner and the State Tax Assessor may adopt rules pursuant to the Maine Administrative Procedures Act for implementation of the program, including but not limited to, rules for determining and certifying eligibility. The Commissioner may also by rule establish fees, including fees payable to the State Tax Assessor and the State Planning Office for obligations under this part. Any fees collected pursuant to this chapter shall be deposited into a special revenue account administered by the assessor and such fees may be used only to defray the actual costs of administering the Employment Tax Increment Financing Program.

§6760. Confidentiality

The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any record obtained or developed by the Commissioner or the State Tax Assessor for designation or approval of an employment tax increment financing program. After receipt by the Commissioner or the State Tax Assessor of the application or proposal, a record pertaining to the application or proposal is not considered confidential unless it meets the requirements of paragraphs B to F;

B. Any record obtained or developed by the Commissioner or the State Tax Assessor that meets one of the following:

(1) A person, which may include a qualified business, to whom the record belongs or pertains has requested that the record be designated confidential; or

(2) The Commissioner has determined that information in the record gives the owner or a user of that information an opportunity to obtain business or competitive advantage over another person who does not have access to the information or that access to the information by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains;

C. Any record, including any financial statement or tax return, obtained or developed by the Commissioner or the State Tax Assessor, the disclosure of which would constitute an invasion of personal privacy, as determined by the governmental entity in possession of that record or information;

D. Any record, including any financial statement or tax return, obtained or developed by the Commissioner or the State Tax Assessor in connection with any monitoring or servicing activity by the Commissioner or the State Tax Assessor the pertains to an employment tax increment program;

E. Any record, including any financial statement or tax return, obtained or developed by the Commissioner or the State Tax Assessor that contains an assessment by a person who is not employed by the State of the creditworthiness or financial condition of any person or project; and

F. Any financial statement if a person to whom the statement belongs or pertains has requested that the record be designated confidential.

§6761. Audit process

Nothing in this chapter may be construed to limit the authority of the State Tax Assessor to conduct an audit of a qualified business. When it is determined by the assessor upon audit that a qualified business has received a distribution larger than that to which it is entitled under this section, the overpayment must be applied against subsequent distributions, unless it is determined that the overpayment is the result of fraud on the part of the qualified business, in which case the assessor may disqualify the business from receiving any future distributions. When there is no subsequent distribution, the qualified business to which overpayments were made is liable for the amount of the overpayments and may be assessed pursuant to the provisions of Part 1.