State and Local Tax Alert: Lame Duck Economic Development Incentive Legislative Activity – DRD Update, TIF Opt-Out, CRA Remodeling Exemption Changes, and ORC Section 5709.87 Covenant Not to Sue Exemption Revisions

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CLIENT ALERT | 1.5.2017

During a very active session on December 8, 2016, the Ohio General Assembly approved a number of bills containing various economic development incentive updates, including Substitute Senate Bill 235 (SB 235), Substitute Senate Bill 257 (SB 257), and Substitute House Bill 463 (HB 463). Governor Kasich signed SB 235 on December 27, 2016 and it will become effective on March 28, 2017. He signed SB 257 and HB 463 on January 4, 2017 and they will become effective on April 5, 2017. This Alert outlines four prominent economic development incentive updates contained in these bills.

Downtown Redevelopment District Update

In addition to creating a new property tax exemption for commercial or industrial property under development (see our earlier *State and Local Tax Alert* on this subject here), SB 235 includes a significant modification to this year's Downtown Redevelopment District (DRD) statute. We previously reported on DRDs in our April 25th *State and Local Tax Alert* available here.

SB 235 revises a key portion of the statute which formerly excluded all parcels from a DRD which were "previously or currently" exempted from taxation pursuant to a DRD, an Ohio Revised Code (ORC) Section 5709.40 tax increment financing (TIF) exemption, or an ORC Section 5709.41 TIF exemption. Now that exclusion only applies to parcels exempted from taxation pursuant to one of the aforementioned incentive tools at the moment the DRD legislation is enacted.

If desired, communities may take affirmative steps to remove parcels from existing TIF exemptions in order to place them in a DRD instead.

TIF Opt-Out

SB 257 provides a mechanism by which certain property owners may exclude their property from a proposed incentive district TIF being enacted pursuant to ORC Sections 5709.40, 5709.73, or 5709.78. In order for the property to qualify for this exclusion, a portion of the parcel of property must be located outside of the incentive district overlay (a square or rectangular area of 300 acres or less delineated by the legislative authority on a map of the proposed incentive district).

To effectuate the exclusion, no later than 45 days after receiving notice of the proposed creation of the incentive district, the property owner must submit a written response to the address contained in the notice identifying the property and indicating their intent to be excluded from the proposed incentive district TIF. In addition, property owners in a proposed ORC Section 5709.73 incentive district TIF must include a statement indicating their intent to seek a tax exemption for the property pursuant to ORC Section 5709.78 within the next five years. Similarly, property owners in a proposed ORC Section 5709.78 incentive district TIF must include a statement indicating their intent to seek a tax exemption for the property pursuant to ORC Section 5709.73 within the next five years. Property owners in a proposed ORC Section 5709.40 incentive district TIF do not need to include such a statement in their written response.

Community Reinvestment Area Remodeling Exemption Changes

HB 463 provides clarification to the community reinvestment area (CRA) exemption that may be granted pursuant to ORC Section 3735.67 to property that will be remodeled. It is now explicit that a CRA exemption applies to "the increased assessed valuation of an existing structure after remodeling began." Previously, the exemption applied "to the amount by which the remodeling increased the assessed value of the structure," which some county auditors interpreted in a manner to restrict the value of the exemption. The CRA exemption is now more consistent with other Ohio property tax incentives, such as enterprise zone exemptions and TIF exemptions.

In addition, HB 463 extends the maximum exemption period permitted for property in a CRA that will be remodeled. Qualifying remodeled property may now be exempted for up to 15 years. Previously, the maximum exemption was 10 or 12 years, depending on how the property was classified.

ORC Section 5709.87 Covenant Not to Sue Exemption Revision

HB 463 also revised ORC Section 5709.87, which concerns a property tax exemption granted for environmental remediation pursuant to a covenant not to sue issued for property under ORC Section 3746.12. The exemption now clearly applies to the increase in assessed value of land and improvements, buildings, fixtures, and structures that were situated on the land on the tax year in which the remedial activities began. As such, the "base year" for purposes of the exemption is the tax year in which the remedial activities began.

Previously, the Department of Taxation took the position that the "base year" was the tax year before the exemption order was issued, rather than the tax year in which the remedial activities began. This sometimes led to significant, negative unintended consequences for projects that necessitated multi-year remediation efforts.

Vorys encourages you to review this Alert and contact your Vorys attorney or advisor with questions about how these updates may impact your business or community. Please feel free to contact the following Vorys attorneys: Scott J. Ziance, (614) 464-8287, sjziance@vorys.com; Chris J. Clements, (614) 464-5427, cjclements@vorys.com.