

429 CMR: EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT

429 CMR 2.00: MANUFACTURING WORKFORCE TRAINING TAX INCREMENT FINANCING (MWT-TIF)

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2.01: Scope, Purpose, and Applicability

429 CMR 2.00 establishes the standards and procedures for designation of Manufacturing Workforce Training Tax Increment Financing (MWT-TIF) Zones and for the development of Manufacturing Workforce Training Tax Increment Financing Plans, pursuant to M.G.L. c. 40, § 60A and M.G.L. c. 59, § 5. It endeavors to encourage increased commercial growth of manufacturing facilities that have been located in a city or town for not less than two years. 429 CMR 2.00 is effective June 13, 2008.

2.02: Definitions

As used in 429 CMR 2.00, unless the context clearly requires otherwise, the following terms shall mean:

Adjustment Factor - See 429 CMR 2.05(3)(b)3.

Base Valuation - See 429 CMR 2.05(3)(b)2.

Economic Assistance Coordinating Council (EACC) - the council established pursuant to M.G.L. c. 23A, § 3B.

Economic Target Area (ETA) - an area of the Commonwealth designated as such by the EACC pursuant to M.G.L. c. 23A, § 3D and 402 CMR 2.06.

Exemption Percentage - See 429 CMR 2.05(3)(b)1.

Inflation Factor - See 429 CMR 2.05(3)(b)4.

Manufacturing Facilities – corporations classified as manufacturing corporations under M.G.L. c. 58, § 2, as determined by the Commissioner of the Department of Revenue under 830 CMR 58.2.1(6) through (9).

Municipality - a city or town in the Commonwealth or, in a case in which two or more cities or towns agree to act jointly for some purpose hereunder then, collectively, all cities and towns participating in such a collaborative agreement.

Project - a manufacturing workforce training project that will be developed within a MWT-TIF Zone by a private or not-for-profit developer in furtherance of the objectives of a MWT-TIF Plan and in accordance with a MWT-TIF Agreement between the property owner and the municipality.

MWT-TIF Agreement - See 429 CMR 2.05(6).

MWT-TIF Exemption - See 429 CMR 2.05(3).

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MWT-TIF Plan - the comprehensive plan of one or more municipalities for the development of a MWT-TIF Zone. The MWT-TIF Plan shall be prepared in accordance with the requirements of M.G.L. c. 40, § 60A and 429 CMR 2.05 and must be certified as an approved plan by the EACC.

MWT-TIF Program - a program administered by the EACC which allows a municipality to use property tax incentives to encourage development in a MWT-TIF Zone.

MWT-TIF Project - any project within a MWT-TIF Zone or any public project necessary to further the objectives of the MWT-TIF Plan and for which a property owner and a municipality have entered into a MWT-TIF Agreement.

MWT-TIF Zone - See 429 CMR 2.04; a MWT-TIF Zone shall be within an area approved by the EACC and included in a MWT-TIF Plan approved by the EACC.

2.03: Overview of the Manufacturing Workforce Training Tax Increment Financing Program (MWT-TIF)

(1) Purpose of the Program. In an effort to encourage increased commercial growth of manufacturing facilities that have been located in a city or town for not less than two years, the legislature has authorized the creation of the Manufacturing Workforce Training Tax Increment Financing (MWT-TIF) Program. Upon the execution of MWT-TIF Agreements with employers in accordance with M.G.L. c. 40, § 60A, cities and towns will designate appropriate locations as MWT-TIF Zones. Local designation of MWT-TIF Zones will enable municipalities, with the assistance of property tax incentives, to encourage private manufacturing workforce development. These incentives will make available capital that will facilitate the financing of MWT-TIF Projects.

(2) The MWT-TIF Process.

(a) The municipality prepares a MWT-TIF Plan in accordance with the procedures set forth in 429 CMR 2.05. The MWT-TIF Plan must:

1. designate one or more areas of such city or town as a MWT-TIF;
2. describe in detail all training, retraining, and workforce repositioning contemplated for such MWT-TIF Zone as of the date of adoption of the MWT-TIF Plan that shall be eligible for the MWT-TIF;
3. authorize MWT-TIF Exemptions from property taxes
4. include executed agreements between such city or town and each eligible owner of a parcel of real property which is located in a MWT-TIF Zone; and
5. delegate to one board, agency, or officer of the city or town the authority to execute agreements in accordance with 429 CMR 2.03(2)(a)4.

(b) The municipality, by vote of its town meeting, town council or city council, with the approval of the mayor where required by law, or as otherwise required by local law, on its own behalf or in conjunction with one or more other cities or towns, and pursuant to 429 CMR 2.00, designates an area as a MWT-TIF Zone.

(c) The municipality must submit the MWT-TIF Plan to the EACC for approval.

2.04: Designation of MWT-TIF Zones

The MWT-TIF Plan shall describe in detail which areas of the city or town have been designated as MWT-TIF Zones. MWT-TIF Zones must meet the following requirements:

(1) Each MWT-TIF Zone must be wholly within an area which is an Economic Target Area as described in regulations adopted by the EACC in accordance with M.G.L. c. 23A, § 3D.

(2) In the case of a MWT-TIF Plan adopted by more than one city or town, the areas designated as MWT-TIF Zones shall be contiguous areas of such cities or towns.

2.05: MWT-TIF Plans

Each Tax Increment Financing Plan shall include the following elements:

- (1) Designation of the TIF Zone. The TIF Zone shall be designated in accordance with the requirements of 429 CMR 2.04.
- (2) Description of the Projects. The MWT-TIF Plan shall describe in detail all training, retraining, and workforce repositioning contemplated for such MWT-TIF Zone as of the date of adoption of the MWT-TIF Plan that shall be eligible for the MWT-TIF Exemption. The MWT-TIF Program is designed to promote the timely development of projects which have been thoroughly planned and to which the municipality and private parties are prepared to commit themselves. The MWT-TIF Plan and the incorporated MWT-TIF Agreements embody those commitments as representations to the EACC that the parties will proceed forthwith with the workforce development programs described in the MWT-TIF Plan in accordance with the time schedules included in the MWT-TIF Plan. The description shall include a description of the projects proposed for the MWT-TIF Zone that will receive MWT-TIF Exemptions. The MWT-TIF Plan must include documentary evidence of the level of each employer's financial commitment to any MWT-TIF Project, including without limitation business plans including time schedules for development from initial planning to project completion, projected returns on the investment, the expected increase in job opportunities, and estimated tax revenues based upon increased valuation of the parcel within the MWT-TIF Zone. The MWT-TIF Plan shall include a budget for proposed project expenditures with supporting data.
- (3) Manufacturing Workforce Training Tax Increment Exemptions from Property Taxes. The MWT-TIF Plan shall authorize the tax increment exemptions from property taxes, for each parcel located in a MWT-TIF Zone for which an agreement has been executed with the owner of the parcel in accordance with 429 CMR 2.05(6).
 - (a) Term of the Exemption. Each exemption shall be for a term no longer than the period specified in the agreement, not to exceed 20 years.
 - (b) Calculation of the Exemption. The exemption shall be calculated for each fiscal year of the specified term. The amount of the exemption shall be equal to the exemption percentage multiplied by the amount by which the property's then current valuation exceeds the product of its base valuation multiplied by the adjustment factor, where the:
 1. exemption percentage for each year of the term of the MWT-TIF Agreement is established by the municipality and stated in the MWT-TIF Plan, provided that such exemption percentage does not exceed 100%. The amount of the exemption percentage specified in the MWT-TIF Plan may vary from year to year but may, for each year, be stated as a percentage or as established by formula.
 2. the base valuation is the assessed value established for the most recent fiscal year immediately prior to the fiscal year in which the property first becomes eligible for an exemption under 429 CMR 2.05(3).
 3. the adjustment factor is equal to the product of the inflation factors for each fiscal year following the year of which the parcel first became eligible for the tax increment exemption, under 429 CMR 2.05(3); and
 4. the inflation factor for each fiscal year shall be calculated as a fraction, the numerator of which shall equal the total assessed value of all parcels of commercial and industrial real estate in the municipality that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment for the current fiscal year attributable to the commercial and industrial real estate as determined pursuant to M.G.L. c. 59, § 21C(f) (the new growth adjustment pursuant to "Proposition 2½") and the denominator of which shall equal the total assessed value for the preceding year of all parcels included in the numerator. If the fraction is less than one, then the inflation factor for that fiscal year shall be one.

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- (c) Total Amount of the Exemption. The employer must demonstrate a commitment to provide an investment in training of employees in an amount at least equal to the amount of the exemption sought. Such investment may be either cash or in-kind, and shall include those costs incurred as a direct consequence of undertaking the training for which the exemption is sought, but shall not include any of an employer's on-going costs of doing business if such costs are not directly related to this training, nor shall such investment consist of any investment used to satisfy the investment requirements of M.G.L. c. 29, § 2RR(f) for Workforce Training Fund grants or the investment requirements of M.G.L. c. 29, § 2WWW(f) for Workforce Competitiveness Trust Fund grants.
- (d) Effective Date Tax Increment Exemption. The property becomes eligible for the tax increment exemption on the July first following the date on which the EACC approves the MWT-TIF Plan.
- (4) Identification of the owner of each parcel of real property located in the MWT-TIF Zone. The MWT-TIF Plan shall include a list of the owners of each parcel of real property located within the MWT-TIF Zone as shown in the records of the Assessor's office of the municipality.
- (5) Delegation of Authority to Execute MWT-TIF Agreements. The MWT-TIF Plan shall refer to an ordinance or bylaw delegating to one municipal board, agency, or officer the authority to execute MWT-TIF Agreements and subsequent modifications thereto between the municipality and the owners of parcels of real property which are located in the MWT-TIF Zone.
- (6) Executed MWT-TIF Agreements. The MWT-TIF Plan shall include each executed agreement between such city or town and each eligible owner of a parcel of real property which is located in a MWT-TIF Zone. Each such agreement shall include the following:
- (a) all material representations of the parties which served as a basis for the descriptions contained in the MWT-TIF Plan in accordance with 429 CMR 2.05(2) and which served as a basis for the granting of a MWT-TIF Exemption;
 - (b) any terms considered appropriate by the city or town relative to compliance with the MWT-TIF agreement including, but not limited to, that which shall constitute a default by the property owner and the remedies that shall be instituted between the parties for any such defaults, including an early termination of the agreement, provided that any exemption allowed pursuant to an executed agreement shall be recaptured in a manner similar to that provided under M.G.L. c. 63, § 31A(e) should the property owner default;
 - (c) a provision requiring that 75% of the eligible workforce shall receive training that is designed to retain employment in such city or town;
 - (d) a provision requiring that the Project shall be evaluated by the department of workforce development, through the Commonwealth Corporation, in the same manner as other workforce and job-training programs pursuant to M.G.L. c. 23H, § 11;
 - (e) a detailed recitation of all other benefits and responsibilities inuring to and assumed by the parties to such agreement;
 - (f) a provision that such agreement shall be binding upon subsequent owners of such parcel of real property; and
 - (g) provisions certifying that the property owner has sought the advice and recommendations of the local applicable Workforce Investment Board, and information concerning the following factors:
 1. whether the Project will increase the skills of low-wage, low-skilled workers;
 2. whether the Project will create or preserve jobs at wages sufficient to support a family;
 3. whether the Project will have a positive economic impact on a region with high levels of unemployment or a high concentration of low-skilled workers;
 4. whether the employer has made a commitment to provide significant private investment in training during the duration of the Project and after the Project has been complete;
 5. whether the Project will supplement, rather than replace, private investments in training;
 6. whether the employer is a small business that lacks the capacity to provide adequate training without such assistance;

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7. whether the Project will provide residents of the commonwealth with training for jobs that could otherwise be filled only by residents of other nations; and
8. whether the application was developed with employee participation.

(7) Local Approvals. The MWT-TIF Plan shall be accompanied by evidence of local approvals of a MWT-TIF Zone and a MWT-TIF Plan, in accordance with 429 CMR 2.06.

2.06: MWT-TIF Plan Certification

- (1) The municipality or municipalities shall submit the MWT-TIF Plan to the EACC for approval.
- (2) Nine copies of the MWT-TIF Plan shall be submitted to the EACC. On the front cover of each copy the municipality shall clearly identify: the name of the municipality or municipalities submitting the plan; the location of the MWT-TIF Zone; the date of the plan; and the title "Manufacturing Workforce Training Tax Increment Financing Plan."
- (3) The MWT-TIF Plan may be certified by the EACC as an approved MWT-TIF Plan if the EACC finds, based upon the information submitted and such additional investigation as the EACC may make, that:
 - (a) the plan is consistent with the requirements of 429 CMR 2.05;
 - (b) there is a high likelihood that the MWT-TIF Plan will result in actual economic benefits to the community; and
 - (c) the MWT-TIF Plan supports the public purpose of encouraging increased industrial and commercial activity in the Commonwealth.
- (4) A MWT-TIF Plan may be amended subject to the approval of the EACC, as required by changing circumstances.

2.07: Local Approval and Implementation of MWT-TIF Plans

- (1) A municipality, acting on its own behalf or in conjunction with one or more cities or towns, may adopt a MWT-TIF Plan by vote of its town meeting, town council, or city council, with the approval of the mayor where required by law, or as otherwise required by local law.
- (2) A municipality may proceed with the implementation of its MWT-TIF Plan only after:
 - (a) each city and town proposing the MWT-TIF Plan formally adopts the MWT-TIF Plan; and
 - (b) the MWT-TIF Plan is approved by the EACC.
- (3) The board, agency, or officer of the municipality authorized to execute MWT-TIF Agreements shall forward to the board of assessors a copy of each MWT-TIF Agreement, together with a list of the parcels.
- (4) An executed and approved MWT-TIF shall be recorded in the registry of deeds or the registry district of the land court for the county wherein such land lies.

2.08: MWT-TIF Plan Revocation

- (1) A municipality may at any time revoke its designation of any MWT-TIF Zone and, as a consequence of such revocation, shall immediately cease the execution of any additional MWT-TIF Agreements(s) pursuant to 429 CMR 2.05(6).
- (2) Such revocation shall not affect existing MWT-TIF Agreements relative to MWT-TIF Exemptions pursuant to 429 CMR 2.05 which were executed prior to the revocation.

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(3) If the municipality shall recommend, and the EACC shall find, that one or more parties to the MWT-TIF Plan and the MWT-TIF Agreements incorporated in the MWT-TIF Plan have deviated from the MWT-TIF Plan without the approval of an amendment to the MWT-TIF Plan, pursuant to 429 CMR 2.06(4), so substantially as to constitute a material misrepresentation to the EACC and so as to jeopardize the realization of significant economic benefits that provided part of the basis for the EACC's original approval of the MWT-TIF Plan, then the EACC may revoke its approval of all or the relevant portions of the MWT-TIF Plan. The effect of such revocation shall be the elimination of the MWT-TIF Exemption for the property or properties designated in the revocation. To initiate the revocation process, the municipality must formally adopt its recommendation of revocation in the same manner as that in which the MWT-TIF Plan was adopted, prior to submitting it to the EACC.

2.09: Records and Documents

(1) The municipality shall maintain accurate records and accounts of all MWT-TIF Zone activities, including without limitation records of receipts and expenditures for project activities within the MWT-TIF Zone.

(2) The municipality shall permit the Director of Economic Assistance, appointed pursuant to M.G.L. c. 23A, § 3C, and staff or auditors reporting to said Director, to examine all records and accounts of the MWT-TIF Zone, as requested.

(3) The board, agency, or officer of a municipality authorized to execute agreements in accordance with 429 CMR 2.05(5) and 2.07 shall annually submit a report to the Director of Economic Assistance including:

- (a) a detailed status report on all projects planned, implemented, or completed, in connection with the MWT-TIF Plan; and
- (b) property tax revenues from parcels within the MWT-TIF Zone for the most recent fiscal year.

2.10: Project Completion

When a MWT-TIF Project within the MWT-TIF Zone is complete, the property owner shall request that the EACC issue a Certificate of Compliance.

When all projects within the MWT-TIF Zone are complete and all aspects of the MWT-TIF Plan are complete, the municipality shall submit to the Director of Economic Assistance such completion documents as may be prescribed by the EACC.

REGULATORY AUTHORITY

429 CMR 2.00: M.G.L. c. 40, § 60A.