

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: School Corporation Officials

FROM: Fred Van Dorp, Budget Director

DATE: March 17, 2023

SUBJECT: School Corporation Waiver from the Implementation of Protected Taxes

This memorandum will discuss the procedures for a school corporation to request certification to waive the implementation of protected taxes for 2023. This memorandum supersedes all previous memoranda on this subject. This memorandum does not take the place of Indiana law. The Department of Local Government Finance (“Department”) and all local units of government are bound to due dates and responsibilities as outlined in the law. In the event any part of this memorandum conflicts with Indiana law, Indiana law governs.

Protected taxes are designed to ensure sufficient tax collections in a taxing unit’s debt service funds in order to meet debt service obligations. In order to “protect” the debt service funds, the circuit breaker credits attributable to the tax rate for the debt service funds are applied against a taxing unit’s “unprotected” funds, i.e., its non-debt service funds. Ind. Code § 6-1.1-20.6-9.9 allows eligible school corporations a waiver from the implementation of protected taxes under Ind. Code § 6-1.1-20.6-9.8. School corporations that are eligible for the waiver in a given year will be allowed to allocate their 1%/2%/3% circuit breaker credits proportionally across all funds that are not exempt from circuit breaker credits without regard for whether the fund is a debt service fund. This means debt service funds will be allowed to experience a loss associated with 1%/2%/3% circuit breaker credits for those school corporations that are eligible for and timely request the waiver from the implementation of protected taxes. Exempt (voter-approved referendum) funds are excluded from the application of 1%/2%/3% circuit breaker credits. Exempt funds are not excluded from the application of the Over 65 credits provided for in Ind. Code § 6-1.1-20.6-8.5.

Each waiver applies only to one applicable tax year. A school corporation that is approved in one year for a waiver must submit a new written request and calculation again each year in order to qualify. More specifically, if a school corporation received a waiver in 2022, it must submit a written request again by May 1, 2023, using 2023 circuit breaker credit and levy information to qualify for the waiver in 2023.

The Department notes that the provisions of Ind. Code § 6-1.1-20.6-9.9 to allow school corporations to implement a waiver of protected taxes expire on January 1, 2024.

House Enrolled Act 1021-2019

Section 9 of House Enrolled Act 1021-2019 (“HEA 1021”) amends Ind. Code § 6-1.1-20.6-9.9 by imposing a restriction on a school corporation taking on new debt. If a school corporation Page 1 of 3 after July 1, 2016, issues new bonds or enters into a new lease rental agreement for which the school corporation is imposing or will impose a debt service levy (except a levy to refinance or renew prior bond or lease rental obligations existing before January 1, 2017, or indebtedness approved by a local public question or referendum), and the school corporation’s total debt service levy and rate in the applicable year is greater than the school corporation’s 2016 debt service levy and rate, the school corporation is **not eligible** to allocate credits proportionately. For purposes of what counts as “new debt,” the Department does not consider as new debt, a debt issuance authorized by taxpayers in a local public question (under Ind. Code § 6-1.1-20, IC 20-46-9, or any other law), pension debt (under Ind. Code § 20-48-1-2.5), or a common school fund loan taken out after July 1, 2016. These will, however, be included as part of the debt service levy and rate if the comparison with the 2016 debt service levy and rate has to be made.

Section 9 of HEA 1021 also modifies the protected tax waiver eligibility requirements by creating two formulas. The first formula is used to determine whether the circuit breaker impact (adjusted by taking into account the school corporation’s total levy, excluding referendum levies and levies attributable to debt incurred after July 1, 2019) is at least 10% of the school corporation’s operations fund levy. The second formula, to be used by the Department, calculates the total amount of circuit breaker credits the school corporation can apply toward its debt service fund. The Department has released a memorandum that explains the changes to the protected tax waiver by HEA 1021.

Submission Procedures

The Department has determined that it is not necessary for the school corporation to complete State Form 56028 – Written Request for Waiver from Implementation of Protected Taxes under Ind. Code § 6-1.1-20.6-9.9. The Department will perform the calculations for both eligibility for the waiver and the amount of credits the school corporation is eligible to allocate (if any) to the debt service fund. The Department will provide an Excel spreadsheet whereby a school corporation can input relevant debt information and return it to the Department for certification. An eligible school corporation that would like to waive the implementation of protected taxes must submit a written request to the Department. All requests must be received by May 1.

The written request must be submitted by email to your [Budget Field Representative](#). After receiving a written request from a school corporation, the Budget Field Representative will provide the school corporation with the Excel spreadsheet described above. The school corporation must fill in the appropriate boxes relating to debt. Instructions on how to complete the spreadsheet are attached to this memo. Once completed, the school corporation will return the spreadsheet to the Budget Field Representative. The spreadsheet does not need to be returned to the Department by May 1. Once the Department finds the school corporation has provided all the necessary information, the Department shall certify whether the school corporation is eligible for the waiver from the implementation of protected taxes and the amount of circuit breaker

credits available to be allocated to the debt service fund. The Department must complete its actions by June 1 of the year for which the waiver is requested.

The Department's calculations for each school corporation are based on the information presently available to the Department. The school corporation is encouraged to review the calculations and if it believes the information is not accurate, including the accurate information in its written request. The Department will review the information and make appropriate adjustments prior to certification. This is especially the case with new debt incurred after July 1, 2019.

It is recommended, but not required, that the application be accompanied with a school board resolution or similar action authorizing submission of the application. The Department emphasizes that the resolution is not required, but recommends the resolution be adopted to inform the school board that the waiver is being requested.

A school corporation should submit this request only if it intends to proceed with the waiver. If the school corporation reviews the Excel calculation spreadsheet and decides not to continue with certification, the school corporation should inform the Budget Field Representative immediately. School corporations are highly encouraged to review their financial situation, work with their financial advisors, or confer with the Department about how the mechanics of waiving protected taxes will affect the school corporations' other funds before submitting their requests.

For those school corporations that have timely submitted a written request and that the Department has determined to be eligible for the waiver from the implementation of protected taxes, additional steps will be necessary when the school corporation receives its tax distributions in June and December. The school corporation will be responsible for reallocating its tax distribution among the appropriate funds in order to eliminate the impact of protected taxes. Further information and guidance on this process will be provided by the Department in advance of the June tax distributions.

If you have any questions about the new submission procedures, please contact your [Budget Field Representative](#).