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# STATE OF INDIANA

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DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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## Frequently Asked Questions

### Personal Property Exemption

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- 1. Is the exemption for new purchases acquired by a certain date? Or does the exemption apply to all purchases regardless of the acquisition dates as long the total acquisition cost is less than \$20,000?**

The “under \$20,000” exemption applies to old and new personal property located in the county. For instance, if Acme Widgets has a total of three pieces of equipment in the county and the total acquisition cost of that equipment is \$15,000 as of the applicable assessment date, that property would be exempt from taxation regardless of when each piece was acquired. To be clear, all three pieces of equipment would have to have been acquired by the assessment date in question.

- 2. So this exemption would not apply to every taxpayer in the county, only the taxpayers with a countywide personal property cost of less than \$20,000?**

Yes, that is correct.

- 3. Will the State issue further information or guidance for the Annual Certification that must be filed, notarized and signed under penalties for perjury by the taxpayer before May 15 of the calendar year in which the assessment date occurs or will this be the responsibility of the County Assessors?**

The Department has prepared a sample certification that taxpayers may use, which is available here: <http://in.gov/dlzf/7576.htm>. This certification template is an example only. Taxpayers do not have to use this particular template in order to satisfy state law. Taxpayers could submit the certification in another format. Doing so does not waive the exemption.

- 4. This exemption is effective July 1, 2015, which impacts personal property returns filed for the 2016 pay 2017 assessment cycle. However, the assessment date for personal property changes to January 1, 2016 for 2016 pay 2017 (although the forms are still due May 15, 2016). Would the annual certification still be due before May 15, 2016?**

Yes. The change in assessment date does not affect the statutory obligation of the taxpayer to file the certification before May 15.

- 5. Does the exemption apply per taxing district or is the aggregate total of “all locations” in the county what should be considered? In other words, if a taxpayer has a piece of equipment with an acquisition cost of \$10,000 in tax district A and a piece of equipment with an acquisition cost of \$15,000 in tax district B, is each tax district treated separately?**

You have to look at the total acquisition cost of all the taxpayer’s property in the county. In the example above, you would look at the aggregate amount of \$25,000, which exceeds the eligibility threshold. Therefore, the taxpayer would not be eligible to claim the exemption and would be required to calculate an assessment for each taxing district.

- 6. Does a taxpayer need to complete a certification for each taxing district? An example would be a water softener company (water coolers located in all of our taxing districts in the county). They currently file a Form 103 for each taxing district, as they need to. Does the \$20,000 threshold apply to a county as a whole or to each individual taxing district? What if a company has the same taxpayer name and a different DBA/federal ID number?**

It would be one certification per county as the \$20,000 threshold applies to the county as a whole. The DLGF has advised that companies with different federal ID numbers are separate entities and stand alone. Even if an entity uses two different names, counties should rely on the federal ID number for determining whether there is one or more than one entity involved. So if Acme Widgets owns Company A with a federal ID of 001 and Company B with federal ID 002, Company A and Company B could potentially each qualify for the exemption depending on the total acquisition cost of their respective personal property in the county.

- 7. What if a taxpayer completes the certification but does not submit it timely? If they file this certification late, is there a late fee?**

If a person fails to timely file the annual certification, the county auditor must impose a penalty of \$25 that must be paid by the person with the next property tax installment that is collected (see IC 6-1.1-37-7(f); this is not the same penalty imposed for an incomplete personal property return or a personal property return that is filed late).

- 8. So there are two different \$25 penalties in the context of personal property?**

There is a \$25 penalty imposed when a taxpayer files his notarized certification (“late-filing fee on the exemption”) late. This is a new penalty introduced in the 2015 legislative session. For many years there has been a \$25 penalty imposed for an incomplete or late personal property return (“late-filing fee on the assessment”). The same taxpayer could not incur both penalties for the same assessment date.

- 9. What if we get the certification timely but it is not notarized? We probably would send a letter (or call them) and they would have to complete a new form and get their signature notarized. Do we complete a defect notice (giving them 30 days to correct) so we can give them a date in writing that the corrected notarized certification is due?**

The Department would encourage the assessor to reach out to the taxpayer and let them get the certification notarized. There is no statutory procedure for a defect notice or anything analogous, but

arguably the \$25 penalty could be applied in this situation if the notarized certification is received after May 15.

#### **10. Are farms included?**

Yes, businesses and farmers who meet the statutory requirements for this exemption are eligible to receive it.

#### **11. Will the DLGF address whether or not they are recommending that each Assessor's office have a notary on staff?**

The *taxpayer* is the one responsible for having its signature notarized. Any person authorized by law to notarize a document may provide the notarization. Because the taxpayer can easily obtain a notarization on its own, it is probably not necessary to have a notary public on the assessor's staff. If the Assessor's office happens to have a notary public on staff, that person could notarize the exemption application. The notary public is merely notarizing or attesting that the person is signing the document, not attesting to the contents of the document.

#### **12. How do we enforce and penalize those who file the application for the exemption, but are not really eligible? For example, will the DLGF recommend that we randomly audit them to ensure accuracy?**

There is technically no "application" for this exemption (nothing analogous to a Form 136), but the taxpayer must file the notarized certification to ensure that the assessor does not treat the taxpayer's property as taxable. As discussed above, there is a fine for an untimely certification. In the event a person commits perjury in signing the certification, the county's recourse is to confer with its prosecuting attorney. State law does not establish an audit program specific to this exemption. If an assessor believes that the taxpayer was obligated to file a personal property tax return but failed to do so, IC 6-1.1-3-15 offers the options of either examining the taxpayer's book and records in order to make a determination or, as an alternative, the assessor may estimate the value and place an assessment on the taxpayer by sending him a Form 113/PP. If a Form 113/PP is sent, the taxpayer may elect to file a personal property tax return, which would replace the estimated assessment, or he could accept or challenge this assessment through the appeals process.

#### **13. If the taxpayer doesn't file a certification and we assume they're eligible for the exemption, does that mean we bump unfiled, uncertified returns to \$20,000? How is this going to work?**

If the county receives nothing from a particular taxpayer and the county's records indicate that the taxpayer's previous returns reflected personal property with an acquisition cost of less than \$20,000, it stands to reason the taxpayer didn't file a return because it believed its property is exempt. The county may want to reach out to the taxpayer to confirm this. The taxpayer is still obligated to file the certification and an untimely certification triggers the \$25 penalty. If the county has reason to believe the taxpayer is not eligible for the exemption because its personal property has a total acquisition cost in excess of \$20,000, then the assessor has the remedies and procedures under IC 6-1.1-9 and 50 IAC 4.2 available to him or her.

**14. If a taxpayer fails to file a timely certification, is there a notification process to let the taxpayer know that a penalty was applied? The Form 113/PP is used for changes to the assessment or a deduction claimed and doesn't seem to be the appropriate form to use, so perhaps the receipt of the tax bill would be the first notification?**

State law technically does not require the county to notify a taxpayer that he has incurred the penalty for a late certification filing. Although the county could choose to notify the taxpayer if it wanted to, the penalty will appear on the taxpayer's tax statement, which will serve as the taxpayer's notice.

**15. Is the application of the late filing penalty an appealable issue before the PTABOA and the IBTR?**

The DLGF does not believe that the penalty can be appealed via the existing Form 130 or Form 133 appeals processes. A taxpayer might be able to challenge the penalty in court, however.

**16. Can you explain what the \$50 service fee is in connection with this exemption?**

House Enrolled Act 1472 introduced IC 6-1.1-3-7.3, effective July 1, 2015, so that a county fiscal body may adopt an ordinance to impose a local service fee on each person that files an annual certification with the county assessor. The county fiscal body must specify the amount of the local service fee in the ordinance. The fee may not exceed \$50. The fee imposed for an assessment date is due and payable at the same time that property taxes for that assessment date are due and payable. A county may collect a delinquent local service fee in the same manner as delinquent property taxes are collected. The revenue from a local service fee must be allocated in the same manner and proportion and at the same time as property taxes are allocated to each taxing unit in the county and may be used by a taxing unit for any lawful purpose of the taxing unit.

**17. What if a county adopts the \$50 service fee and a taxpayer's past tax history was only \$20 annually; could the taxpayer opt-out of claiming the exemption and file personal property tax returns?**

No, the exemption is automatic for those who qualify for it. Thus, a county contemplating imposing the \$50 fee may want to keep this type of situation in mind when doing so.

**18. So it is possible for a taxpayer to fail to file a timely certification in a county that adopted the \$50 service fee and the taxpayer would receive a tax bill for \$75 (the \$50 fee and the \$25 penalty)?**

Yes, that is correct. If a taxpayer fails to file a notarized certification and the assessor assigns a value of \$20,000 or more and issues a Form 113/PP, the taxpayer could then submit the certification and end up being billed the \$25 late fee and \$50 service fee rather than being taxed.

**19. Could you explain the exemption for new business personal property and how it differs from the exemption for business personal property with a total acquisition cost of less than \$20,000?**

As a result of Senate Enrolled Act 1-2014, starting July 1, 2015, a county may adopt an ordinance to exempt from property taxation all new business personal property located in the county. "Business personal property" means personal property that is otherwise subject to assessment and taxation under IC 6-1.1; and that is used in a trade or business or otherwise held, used, or consumed in connection with the production of income. "New personal property" means business personal property that a taxpayer places in service after the later of the date the exemption ordinance is adopted or a date specified in the exemption ordinance; and that has not previously been used in Indiana before the taxpayer acquires the business personal property. A taxpayer is not required to file an application or a personal property tax return to qualify for this exemption. More information about this exemption is available here: <http://in.gov/dlgf/7576.htm>. Whereas this exemption is a county option, the exemption for business personal property with a total acquisition cost of less than \$20,000 is not. In addition, the exemption for business personal property with a total acquisition cost of less than \$20,000 applies to personal property regardless of whether it is "old" or "new," and requires the taxpayer to file a notarized certification. The optional exemption for new business personal property does not require the taxpayer to file any documentation.

**20. What if a taxpayer does not learn of this new exemption and files timely personal property tax returns with a countywide total of less than \$20,000? Would the 113/PP give them 30 days to file the certification to prevent the \$25 penalty?**

The assessor should reduce those assessments to zero (\$ -0-) and then apply the \$25 penalty for failure to file a timely certification. A Form 113/PP should be sent to notify the taxpayer of this change in assessment. The statute calls for a penalty on certifications that are filed late. Assessors do not have the statutory authority to extend the deadline or waive the penalty. The Form 113/PP provides an opportunity for taxpayers to file an amended personal property return, but it does not provide an extension or grace period for filing the notarized certification.

**21. In 2017 if an assessor discovers that she should have placed a penalty on a taxpayer for 2016, can she go back and do it?**

The statutes do not address this particular issue, but the Department believes the assessor could potentially go back to prior years.

**22. Is the certification form available for public inspection?**

The certification would likely be considered a public record, but it is theoretically possible that a taxpayer could include information on it that would need to be redacted before the document could be released. Assessors are encouraged to confer with their attorneys and the Indiana Public Access Counselor in responding to public records requests.

**23. Can counties create a second page instructional-type sheet which would make people aware of deadlines, service fees, ask other questions, etc.?**

Counties who are interested in preparing this type of document should do so in careful consultation with the county's attorney. Counties assume all risks associated with the documents prepared locally.

**24. What about accounts that already are exempt per Form 136? Are these done any differently and if they are under \$20,000 cost, will they still have to do the certification? What happens if a church has less than \$20,000 cost so the exemption applies and the county adopts a \$50 service fee?**

If an entity has been granted an exemption through a Form 136 application, then that exemption controls and the taxpayer does not need to file a notarized certification and would therefore not be subject to the \$50 fee.

**25. How do counties handle fraud, such as where three brothers have a partnership but each report a portion of the partnerships assets in order to qualify for the exemption?**

The county could send them a Form 113/PP and let them challenge it if desired. The notarized certification is signed under penalties for perjury, too.

**26. How is the exemption applied to leased property that is eligible for the exemption?**

In the case of leased property, the Department believes that whichever party (the owner or lessee) that would ordinarily be responsible for the taxes on the property can and should file the notarized certification. Since the property is exempt, there is really no need for the 103-N or 103-O forms, which are about establishing who is responsible for the taxes, since no taxes will be imposed on the property. If the county has adopted a service fee, the fee would be charged to the filer.

However, if a county assessor believes that having taxpayers file a 103-N or 103-O is necessary or helpful in a particular situation, assessors would not be prohibited from requesting these filings. The Department will include in its notarized certification template a statement that "Taxpayers who own, hold, possess or control leased or rented personal property may need to also file the Form 103-O or 103-N in order to verify that they are the appropriate taxpayer for receiving this exemption."

**27. On new accounts that do not file, how will we know how to assess them? We normally put (less than \$20,000 cost) on the new non-file accounts unless we know for sure for that type of business it should be higher. If we know for sure that they are a small business, do we just give them the exemption automatically and go by what we estimated on the cost?**

Yes, and impose the \$25 late filing exemption penalty.

**28. Regarding new businesses, since we do not know for sure what equipment/signs they have, do we send out a Form 113/PP to the new businesses?**

A Form 113/PP is used on any change to a personal property assessment regardless of whether it is a new or existing business. The assessor needs to decide whether this taxpayer probably qualifies for the exemption or should be assessed and then follow the appropriate course of action.

**29. How will the exemption work on State Distributable property?**

If a public utility subject to IC 6-1.1-8 owns personal property in just one county (but more than one taxing district) in Indiana and the total acquisition cost of that property is less than \$20,000, this utility should file a notarized certification with the county assessor (because technically statute requires the certification to go to the assessor) and file a copy with the Department (the Department will advise public utilities to do this). This entity would not file any returns with either the county or the Department. If the public utility owns personal property in just one county (and in only one taxing district in that county) in Indiana and the total acquisition cost of that property is less than \$20,000, this utility is most likely reporting its personal property locally rather than with the Department. Here, this public utility should file a notarized certification with the county assessor, but it would not need to file anything with the Department. If the public utility owns personal property in multiple counties and the total acquisition cost of some of that property is less than \$20,000 in one or more of those counties, the taxpayer will be responsible for backing out that exempt property from the lump sum it reports to the Department in the UD45. The utility would then file a notarized certification in the county or counties where it's claiming an exemption and include copies of the certifications with its filing to the Department.

The Department will update its notarized certification template to include a box a filer can check to indicate that it is a public utility under IC 6-1.1-8 so assessors can distinguish these filers.

**30. Will the Department be issuing a notarized certification that is an official state form? If not, why?**

One of the purposes behind this exemption was to eliminate the need for taxpayers with de minimis personal property to file forms or returns. Issuing a state form that taxpayers would be required to use to disclose their eligibility would cut against the exemption's goal of reducing regulatory burdens on taxpayers. Moreover, statute technically does not require taxpayers to use a form prescribed by the Department. A taxpayer could submit a notarized certification on a form not prepared or prescribed by the Department and still satisfy the law.

**31. In those jurisdictions where there is an elected Township Assessor, is the \$20,000 exemption certification filed with the Township or County Assessor? Who would have jurisdiction for a non-filer of a certification?**

The certification is filed with the county assessor. The county assessor has jurisdiction.

**32. What, if any, data concerning taxpayers who receive this exemption/file notarized certifications should we collect and provide to DLGF? How would we document and submit that data?**

After conversations with property tax management system vendors and county officials, the DLGF believes it is both possible and important to track as much accurate data as possible on this exemption.

When a county assessor receives a certification indicating that taxpayer is exempt under IC 6-1.1-3-7.2, the Department recommends that the assessor record in the personal property module of its property tax management system, at a minimum, the characteristics listed below. Some of the characteristics are county assessor-assigned.

The DLGF recommends recording the following characteristics if available:

- Personal Property Number
- Taxpayer Name
- Taxpayer Company
- Taxpayer Street Address
- Taxpayer City
- Taxpayer Postal Code
- Form Type

The Form Type field may be used to indicate that the taxpayer filed a certification indicating exemption under IC 6-1.1-3-7.2. When Personal Property data is submitted to the DLGF and Legislative Services Agency, the Form Type field should state “BPPE” for qualified taxpayers.

If the taxpayer provides additional information and the county’s property tax management system can accommodate this additional information, the county assessor is encouraged to record as much detail as possible about the taxpayer and/or exempt personal property. If a taxpayer does not provide the information recommended above, the county assessor should focus on collecting the minimum data that is necessary to allow the county to properly implement the automatic exemption. This may or may not include the items identified above.

Exempt taxpayer data should be rolled from the county assessor’s office to the county auditor’s office. When the data is rolled, the assessed value should be listed as \$0 for all qualified taxpayers.

The DLGF recommends that counties discuss this guidance with their property tax management system vendors to familiarize themselves with the capabilities of their particular software.