

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1608

AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-2.3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. The boundaries of the assigned service areas of electricity suppliers may not be changed except under any one (1) of the following circumstances:

(1) If a municipality which owns and operates an electric utility system and furnishes retail electric service to the public annexes area beyond the assigned service area of its municipally owned electric utility, and the ordinance providing for the annexation provides that the annexing city has developed and adopted a fiscal plan and has established a definite policy to furnish the territory to be annexed within a period of three (3) **or four (4)** years governmental and proprietary services substantially equivalent in standard and scope to the governmental and proprietary services furnished by the annexing city to other areas of the city ~~which have characteristics~~ **regardless** of topography, patterns of land utilization and population density similar to the territory to be annexed, then the municipally owned electric utility may petition the commission to change the assigned service area of the municipally owned electric utility to include the annexed area. A municipally owned electric utility shall exercise its right to petition the commission to change its assigned service area within sixty (60) days after annexation becomes final or lose its right

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under this subdivision. The commission shall rule on the petition of the municipally owned electric utility within ninety (90) days after its filing. If, upon notice and after hearing, the commission decides that it is in the public convenience and necessity for the municipally owned electric utility to render service to the annexed area, it shall order the assigned service area of the municipally owned electric utility to be changed to include the annexed area with the right to serve and immediate possession to the municipally owned electric utility. The commission order is enforceable in court pending an appeal of that order. An appellant from a court order enforcing a commission order under this subsection shall not be entitled to a stay of the court order pending appeal. In determining public convenience and necessity, the commission shall give consideration to all relevant matters, including but not limited to the following:

- (A) Preference of owners, occupiers, and consumers in the annexed area.
- (B) Ability of the municipally owned electric utility to render service after the assignment of service area.
- (C) Other utility services to be supplied in the annexed area by the municipality.
- (D) Proximity and capability of the service repair facilities of the electricity suppliers involved.
- (E) Preference of local government officials.

However, this subdivision does not apply to incorporations, consolidations, mergers, or annexations that are under IC 36-4-3-4(a)(3), IC 36-4-3-4(b), IC 36-4-3-4(h), or IC 36-4-3-4.1, or that are not contiguous under IC 36-4-3-13(b) or IC 36-4-3-13(c). If any change in an assigned service area is ordered by the commission, all of the electric utility property of another electricity supplier which is devoted to retail electric service within such additional assigned service area shall be acquired at its then reproduction cost new depreciated value; in addition, the acquiring electricity supplier shall pay severance damages limited to, if applicable, the distribution and substation facilities dedicated to and located within the annexed area or relocated by reason of the annexation, or an amount equal to two and one-half (2 1/2) times the previous year's gross electric sales from the newly assigned service area, whichever is greater. If the parties do not agree on the amount the acquiring electricity supplier is to pay, then the commission shall determine said amount and order its payment in accordance with this subsection.

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(2) Upon mutual agreement of the affected electricity suppliers and approval of the commission.

(3) In the case where a landowner owns a single tract of land which is intersected by the boundary lines of two (2) or more assigned service areas, and retail electric service can best be supplied by only one (1) electricity supplier, or in the case where a customer or customers which are housed in a single structure or which constitute a single governmental, industrial, or institutional operation, and the electricity suppliers involved are unable to agree which shall furnish the electric service, any of the electricity suppliers may submit the matter to the commission for its determination based upon public convenience and necessity. If, after notice and hearing, the commission determines that one (1) or more electricity suppliers are to supply the required retail electric service and the boundaries of an assigned service area are to be changed, the assigned service area maps of the electricity suppliers shall be changed to reflect the new boundaries.

SECTION 2. IC 36-4-3-2.2, AS ADDED BY SEA 167-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:
Sec. 2.2. (a) This section does not apply to an annexation under section 4(a)(2), 4(a)(3), 4(b), 4(h), or 4.1 of this chapter.

(b) Before a municipality may annex territory, the municipality shall provide written notice of the hearing required under section 2.1 of this chapter. The notice must be sent by certified mail at least sixty (60) days before the date of the hearing to each owner of real property, as shown on the county auditor's current tax list, whose real property is located within the territory proposed to be annexed.

(c) The notice required by this section must include the following:

- (1) A legal description of the real property proposed to be annexed.
- (2) The date, time, location, and subject of the hearing.
- (3) A map ~~of~~ **showing** the current municipal boundaries and a ~~map~~ **of** the proposed municipal boundaries.
- (4) Current zoning classifications for the area proposed to be annexed and any proposed zoning changes for the area proposed to be annexed.
- (5) A detailed summary of the fiscal plan described in section 13 of this chapter.
- (6) The location where the public may inspect and copy the fiscal plan.
- (7) A statement that the municipality will provide a copy of the fiscal plan **after the fiscal plan is adopted** immediately to any

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landowner in the annexed territory who requests a copy.

(8) The name and telephone number of a representative of the municipality who may be contacted for further information.

(d) If the municipality complies with this section, the notice is not invalidated if the owner does not receive the notice.

SECTION 3. IC 36-4-3-3.1, AS ADDED BY SEA 167-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:
Sec. 3.1. (a) This section does not apply to an annexation under section 4(a)(2), 4(a)(3), 4(b), 4(h), or 4.1 of this chapter.

(b) A municipality shall develop **and adopt** a written fiscal plan and establish a definite policy by resolution of the legislative body that meets the requirements set forth in section 13 of this chapter.

(c) Except as provided in subsection (d), the municipality shall establish **and adopt** the written fiscal plan before mailing the notification to landowners in the territory proposed to be annexed under section 2.2 of this chapter.

(d) In an annexation under section 5 of this chapter, the municipality shall establish **and adopt** the written fiscal plan before adopting the annexation ordinance.

SECTION 4. IC 36-4-3-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.5. (a) An annexation ordinance adopted under this chapter must contain the following information:**

(1) A description of the boundaries of the territory to be annexed, including any public highway or right-of-way.

(2) The approximate number of acres in the territory to be annexed.

(3) A description of any special terms and conditions adopted under section 8 of this chapter.

(b) An ordinance adopted under section 3 or 4 of this chapter must also contain a description of any property tax abatements adopted under section 8.5 of this chapter.

SECTION 5. IC 36-4-3-8, AS AMENDED BY SEA 167-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:
Sec. 8. (a) This section does not apply to an ordinance adopted under section 5 of this chapter.

(b) An ordinance adopted under section 3 or 4 of this chapter must include terms and conditions fairly calculated to make the annexation equitable to the property owners and residents of the municipality and the annexed territory. The terms and conditions may include:

(1) postponing the effective date of the annexation **for not more than three (3) years**; and

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(2) establishing equitable provisions for the future management and improvement of the annexed territory and for the rendering of needed services.

(c) This subsection applies to territory sought to be annexed that meets all of the following requirements:

- (1) The resident population density of the territory is at least three (3) persons per acre.
- (2) The territory is subdivided or is parceled through separate ownerships into lots or parcels such that at least sixty percent (60%) of the total number of lots and parcels are not more than one (1) acre.

This subsection does not apply to an ordinance annexing territory described in section 4(a)(2), 4(a)(3), 4(b), or 4(h) of this chapter. The ordinance must include terms and conditions impounding in a special fund all of the municipal property taxes imposed on the annexed territory after the annexation takes effect that are not used to meet the basic services described in section 13(d)(4) and 13(d)(5) of this chapter for a period of at least three (3) years. The impounded property taxes must be used to provide additional services that were not specified in the plan of annexation. The impounded property taxes in the fund shall be expended as set forth in this section, not later than five (5) years after the annexation becomes effective.

SECTION 6. IC 36-4-3-11, AS AMENDED BY SEA 167-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:
Sec. 11. (a) Whenever territory is annexed by a municipality under this chapter, the annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by:

- (1) if the annexation is by a city in a county with a population ~~or~~ **of** more than two hundred thousand (200,000) but less than three hundred thousand (300,000):
 - (A) a majority of the owners of land in the annexed territory; or
 - (B) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory; **or**
- (2) if the annexation is by a municipality ~~in a county~~ that is not described in subdivision (1):
 - (A) at least sixty-five percent (65%) of the owners of land in the annexed territory; or
 - (B) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory.

The remonstrance must be filed within ninety (90) days after the

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publication of the annexation ordinance under section 7 of this chapter, must be accompanied by a copy of that ordinance, and must state the reason why the annexation should not take place.

(b) On receipt of the remonstrance, the court shall determine whether the remonstrance has the necessary signatures. In determining the total number of landowners of the annexed territory and whether signers of the remonstrance are landowners, the names appearing on the tax duplicate for that territory constitute prima facie evidence of ownership. Only one (1) person having an interest in each single property, as evidenced by the tax duplicate, is considered a landowner for purposes of this section.

(c) If the court determines that the remonstrance is sufficient, it shall fix a time, within sixty (60) days of its determination, for a hearing on the remonstrance. Notice of the proceedings, in the form of a summons, shall be served on the annexing municipality. The municipality is the defendant in the cause and shall appear and answer.

SECTION 7. IC 36-4-3-13, AS AMENDED BY SEA 167-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:
Sec. 13. (a) Except as provided in subsections (e) and ~~(f)~~; **(g)**, at the hearing under section 12 of this chapter, the court shall order a proposed annexation to take place if the following requirements are met:

- (1) The requirements of either subsection (b) or (c).
- (2) The requirements of subsection (d).

(b) The requirements of this subsection are met if the evidence establishes the following:

- (1) That the territory sought to be annexed is contiguous to the municipality.
- (2) One (1) of the following:
 - (A) The resident population density of the territory sought to be annexed is at least three (3) persons per acre.
 - (B) Sixty percent (60%) of the territory is subdivided.
 - (C) The territory is zoned for commercial, business, or industrial uses.

(c) The requirements of this subsection are met if the evidence establishes the following:

- (1) That the territory sought to be annexed is contiguous to the municipality as required by section 1.5 of this chapter, except that at least one-fourth (1/4), instead of one-eighth (1/8), of the aggregate external boundaries of the territory sought to be annexed must coincide with the boundaries of the municipality.
- (2) That the territory sought to be annexed is needed and can be

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used by the municipality for its development in the reasonably near future.

(d) The requirements of this subsection are met if the evidence establishes that the municipality has developed **and adopted** a written fiscal plan and has established a definite policy, by resolution of the legislative body as set forth in section 3.1 of this chapter. The **resolution fiscal plan** must show the following:

(1) The cost estimates of planned services to be furnished to the territory to be annexed. The plan must present itemized estimated costs for each municipal department or agency.

(2) The method or methods of financing the planned services. The plan must explain how specific and detailed expenses will be funded and must indicate the taxes, grants, and other funding to be used.

(3) The plan for the organization and extension of services. The plan must detail the specific services that will be provided and the dates the services will begin.

(4) That planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one (1) year after the effective date of annexation and that they will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, and population density.

(5) That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater drainage facilities, will be provided to the annexed territory within three (3) years after the effective date of the annexation in the same manner as those services are provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, and population density, and in a manner consistent with federal, state, and local laws, procedures, and planning criteria. However, in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the **resolution fiscal plan** of a city must show that these services will be provided to the annexed territory within four (4) years after the effective date of the annexation and in the same manner as those services are provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, or population density.

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(e) This subsection does not apply to a city located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). At the hearing under section 12 of this chapter, the court shall do the following:

- (1) Consider evidence on the conditions listed in subdivision (2).
- (2) Order a proposed annexation not to take place if the court finds that all of the following conditions exist in the territory proposed to be annexed:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

- (i) Police and fire protection.
- (ii) Street and road maintenance.

(B) The annexation will have a significant financial impact on the residents or owners of land.

(C) The annexation is not in the best interests of the owners of land in the territory proposed to be annexed as set forth in subsection (f).

~~(C)~~ **(D)** One (1) of the following opposes the annexation:

- (i) At least sixty-five percent (65%) of the owners of land in the territory proposed to be annexed.
- (ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed.

Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed.

(f) The municipality under subsection (e)(2)(C) bears the burden of proving that the annexation is in the best interests of the owners of land in the territory proposed to be annexed. In determining this issue, the court may consider whether the municipality has extended sewer or water services to the entire territory to be annexed:

- (1) within the three (3) years preceding the date of the introduction of the annexation ordinance; or**
- (2) under a contract in lieu of annexation entered into under IC 36-4-3-21.**

The court may not consider the provision of water services as a result of an order by the Indiana utility regulatory commission to constitute the provision of water services to the territory to be annexed.

~~(f)~~ **(g)** This subsection applies only to cities located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). However, ~~This~~ this

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subsection does not apply if on April 1, 1993, the entire boundary of the territory that is proposed to be annexed was contiguous to territory that was within the boundaries of one (1) or more municipalities. At the hearing under section 12 of this chapter, the court shall do the following:

- (1) Consider evidence on the conditions listed in subdivision (2).
- (2) Order a proposed annexation not to take place if the court finds that all of the following conditions exist in the territory proposed to be annexed:
 - (A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:
 - (i) Police and fire protection.
 - (ii) Street and road maintenance.
 - (B) The annexation will have a significant financial impact on the residents or owners of land.
 - (C) One (1) of the following opposes the annexation:
 - (i) A majority of the owners of land in the territory proposed to be annexed.
 - (ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed.

Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed.

~~(g)~~ **(h)** The federal census data established by IC 1-1-4-5(17) shall be used as evidence of resident population density for purposes of subsection (b)(2)(A), but this evidence may be rebutted by other evidence of population density.

SECTION 8. IC 36-4-3-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) Within one (1) year after the expiration of:

- (1) the one (1) year period for implementation of planned services of a noncapital nature under section 13(d)(4) of this chapter;
- (2) the three (3) year period for the implementation of planned services of a capital improvement nature under section 13(d)(5) of this chapter; or
- (3) the four (4) year period for the implementation of planned services of a capital improvement nature under section 13(d)(5) of this chapter by a city for annexed territory in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000);

any person who pays taxes on property located within the annexed territory may file a complaint alleging injury resulting from the failure

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of the municipality to implement the plan. The complaint must name the municipality as defendant and shall be filed with the circuit or superior court of the county in which the annexed territory is located.

(b) The court shall hear the case within sixty (60) days without a jury. In order to be granted relief, the plaintiff must establish one (1) of the following:

(1) That the municipality has without justification failed to implement the plan required by section 13 of this chapter within the specific time limit for implementation after annexation.

(2) That the municipality has not provided police protection, fire protection, sanitary sewers, and water for human consumption within the specific time limit for implementation, unless one (1) of these services is being provided by a separate taxing district or by a privately owned public utility.

(3) That the annexed territory is not receiving governmental and proprietary services substantially equivalent in standard and scope to the services provided by the municipality to other areas of the municipality, ~~that have regardless of~~ topography, patterns of land use, and population density similar to the annexed territory. ~~However, in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000); the plaintiff must establish that the annexed territory is not receiving governmental and proprietary services substantially equivalent in standard and scope to the services provided by the city regardless of similar topography, patterns of land use, or population density.~~

(c) The court may:

(1) grant an injunction prohibiting the collection of taxes levied by the municipality on the plaintiff's property located in the annexed territory;

(2) award damages to the plaintiff not to exceed one and one-fourth (1 1/4) times the taxes collected by the municipality for the plaintiff's property located in the annexed territory;

(3) order the annexed territory or any part of it to be disannexed from the municipality;

(4) order the municipality to submit a revised fiscal plan for providing the services to the annexed territory within time limits set up by the court; or

(5) grant any other appropriate relief.

(d) A change of venue from the county is not permitted for an action brought under this section.

(e) If the court finds for the plaintiff, the defendant shall pay all

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court costs and reasonable attorney's fees as approved by the court.

(f) The provisions of this chapter that apply to territory disannexed by other procedures apply to territory disannexed under this section.

SECTION 9. IC 36-4-3-19, AS AMENDED BY SEA 167-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:
 Sec. 19. (a) If disannexation is ordered under this chapter by the works board of a municipality and no appeal is taken, the clerk of the municipality shall, without compensation and not later than ten (10) days after the order is made, make and certify a complete transcript of the disannexation proceedings to the auditor of each county in which the disannexed lots or lands lie ~~and~~ and to the office of the secretary of state. The county auditor shall list those lots or lands appropriately for taxation. The proceedings of the works board shall not be certified to the county auditor or to the office of the secretary of state if an appeal to the circuit court has been taken.

(b) In all proceedings begun in or appealed to the circuit court, if vacation or disannexation is ordered, the clerk of the court shall immediately after the judgment of the court, or after a decision on appeal to the supreme court or court of appeals if the judgment on appeal is not reversed, certify the judgment of the circuit court, as affirmed or modified, to:

- (1) the auditor of each county in which the lands or lots affected lie, on receipt of one dollar (\$1) for the making and certifying of the transcript from the petitioners for the disannexation;
- (2) the office of the secretary of state; ~~and~~
- (3) the circuit court clerk ~~and~~ **of each county in which the lands or lots affected are located;**
- (4) **the county election board of each county in which the lands or lots affected are located; and**
- (5) if a board of registration exists, the board of each county in which the lands or lots affected are located.

(c) The county auditor shall forward a list of lots or lands disannexed under this section to the following:

- (1) The county highway department **of each county in which the lands or lots affected are located.**
- (2) The county surveyor **of each county in which the lands or lots affected are located.**
- (3) Each plan commission, if any, that lost or gained jurisdiction over the disannexed territory.
- (4) The township trustee of each township that lost or gained jurisdiction over the disannexed territory.
- (5) **The sheriff of each county in which the lands or lots**

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affected are located.

~~(5)~~ (6) The office of the secretary of state.

The county auditor may require the clerk of the municipality to furnish an adequate number of copies of the list of disannexed lots or lands or may charge the clerk a fee for photoreproduction of the list.

(d) A disannexation described by this section takes effect upon the clerk of the municipality filing the order with:

- (1) the county auditor of each county in which the annexed territory is located; and
- (2) the circuit court clerk, or if a board of registration exists, the board of each county in which the annexed territory is located.

(e) The clerk of the municipality shall notify the office of the secretary of state of the date a disannexation is effective under this chapter.

(f) A disannexation order under this chapter may not take effect during the year preceding a year in which a federal decennial census is conducted. A disannexation order that would otherwise take effect during the year preceding a year in which a federal decennial census is conducted takes effect January 2 of the year in which a federal decennial census is conducted.

SECTION 10. IC 36-4-3-22, AS AMENDED BY SEA 167-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Sec. 22. (a) The clerk of the municipality shall do the following:

(1) File each annexation ordinance against which a remonstrance, or an appeal has not been filed during the period permitted under this chapter or the certified copy of a judgment ordering an annexation to take place with:

- (A) the county auditor of each county in which the annexed territory is located;
- (B) the circuit court clerk **of each county in which the annexed territory is located; or**
- (C) if a board of registration exists, the **registration** board of each county in which the annexed territory is located; and
- ~~(C)~~ ~~the state certifying official designated under IC 3-6-4.2-11;~~ **and (D) the office of the secretary of state; and**

(2) Record each annexation ordinance adopted under this chapter in the office of the county recorder of each county in which the annexed territory is located.

(b) The copy must be filed and recorded no later than ninety (90) days after:

- (1) the expiration of the period permitted for a remonstrance or appeal; or

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(2) the delivery of a certified order under section 15 of this chapter.

(c) Failure to record the annexation ordinance as provided in subsection (a)(2) does not invalidate the ordinance.

(d) The county auditor shall forward a copy of any annexation ordinance filed under this section to the following:

(1) The county highway department **of each county in which the lots or lands affected are located.**

(2) The county surveyor **of each county in which the lots or lands affected are located.**

(3) Each plan commission, if any, that lost or gained jurisdiction over the annexed territory.

(4) The sheriff of each county in which the lots or lands affected are located.

~~(4)~~ **(5)** The township trustee of each township that lost or gained jurisdiction over the annexed territory.

~~(5)~~ **(6)** The office of the secretary of state.

(e) The county auditor may require the clerk of the municipality to furnish an adequate number of copies of the annexation ordinance or may charge the clerk a fee for photoreproduction of the ordinance. The county auditor shall notify the office of the secretary of state of the date that the annexation ordinance is effective under this chapter.

(f) The county auditor shall, upon determining that an annexation ordinance has become effective under this chapter, indicate the annexation upon the property taxation records maintained in the office of the auditor.

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