



February 16, 1999

## SENATE BILL No. 447

DIGEST OF SB447 (Updated February 11, 1999 3:42 pm - DI 44)

**Citations Affected:** IC 6-1.1-37-10; IC 26-1-6.1-102; IC 36-2-6-14.5.

**Synopsis:** Local government fiscal matters. Changes the annual penalty date for delinquent property taxes. Allows the use of recognized express mail carriers for the payment of delinquent property taxes. Provides that a claimant for purposes of bulk sales may hold a claim for taxes due. Provides a specified date for certification of special assessments.

**Effective:** July 1, 1999.

### Lawson C

January 13, 1999, read first time and referred to Committee on Finance.  
February 15, 1999, amended, reported favorably — Do Pass.

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SB 447—LS 7399/DI 94+



February 16, 1999

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.

## SENATE BILL No. 447

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 6-1.1-37-10 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) If an installment  
3 of property taxes is not completely paid on or before the due date, a  
4 penalty equal to ten percent (10%) of the amount of delinquent taxes  
5 shall be added to the unpaid portion in the year of the initial  
6 delinquency. On ~~May 10~~ and ~~November 10~~ **the day immediately**  
7 **following the due dates in May and November** of each year  
8 following the year of the initial delinquency, an additional penalty  
9 equal to ten percent (10%) of any taxes remaining unpaid shall be  
10 added. These penalties are imposed only on the principal amount of the  
11 delinquent taxes. However, if the state board of tax commissioners  
12 determines that an emergency has occurred which precludes the  
13 mailing of the tax statement in any county at the time set forth in  
14 IC 6-1.1-22-8, the board shall establish by order a new date on which  
15 the installment of taxes in that county is due and no installment is  
16 delinquent if paid by the date so established.

17 (b) If any due date falls on a Saturday, a Sunday, a national legal

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1 holiday recognized by the federal government, or a statewide holiday,  
 2 the act that must be performed by that date is timely if performed by  
 3 the next succeeding day that is not a Saturday, a Sunday, or one (1) of  
 4 those holidays.

5 (c) A payment to the county treasurer is considered to have been  
 6 paid by the due date if the payment is:

7 (1) received on or before the due date to the county treasurer or a  
 8 collecting agent appointed by the county treasurer; ~~or~~

9 (2) deposited in the United States mail:

10 (A) properly addressed to the principal office of the county  
 11 treasurer;

12 (B) with sufficient postage; and

13 (C) certified or postmarked by the United States postal service  
 14 as mailed on or before the due date (as defined in this section);

15 **or**

16 **(3) deposited with a nationally recognized express parcel**  
 17 **carrier and is:**

18 **(A) properly addressed to the principal office of the county**  
 19 **treasurer;**

20 **(B) verified by the express parcel carrier as:**

21 **(i) paid in full for final delivery; and**

22 **(ii) received on or before the due date (as defined in this**  
 23 **section).**

24 For purposes of this subsection, "postmarked" does not mean the date  
 25 printed by a postage meter that affixes postage to the envelope or  
 26 package containing a payment.

27 SECTION 2. IC 26-1-6.1-102 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 102. (1) In this chapter,  
 29 unless the context otherwise requires:

30 (a) "Assets" means the inventory that is the subject of a bulk sale  
 31 and any tangible and intangible personal property used or held for  
 32 use primarily in, or arising from, the seller's business and sold in  
 33 connection with that inventory, but the term does not include:

34 (i) fixtures (IC 26-1-9-313(1)(a)) other than readily removable  
 35 factory and office machines;

36 (ii) the lessee's interest in a lease of real property; or

37 (iii) property to the extent it is generally exempt from creditor  
 38 process under nonbankruptcy law.

39 (b) "Auctioneer" means a person whom the seller engages to  
 40 direct, conduct, control, or be responsible for a sale by auction.

41 (c) "Bulk sale" means:

42 (i) in the case of a sale by auction or a sale or series of sales

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- 1 conducted by a liquidator on the seller's behalf, a sale or series  
 2 of sales not in the ordinary course of the seller's business of  
 3 more than half of the seller's inventory, as measured by value  
 4 on the date of the bulk-sale agreement, if on that date the  
 5 auctioneer or liquidator has notice, or after reasonable inquiry  
 6 would have had notice, that the seller will not continue to  
 7 operate the same or a similar kind of business after the sale or  
 8 series of sales; and  
 9 (ii) in all other cases, a sale not in the ordinary course of the  
 10 seller's business of more than half the seller's inventory, as  
 11 measured by value on the date of the bulk-sale agreement, if  
 12 on that date the buyer has notice, or after reasonable inquiry  
 13 would have had notice, that the seller will not continue to  
 14 operate the same or a similar kind of business after the sale.
- 15 (d) "Claim" means a right to payment from the seller, whether or  
 16 not the right is reduced to judgment, liquidated, fixed, matured,  
 17 disputed, secured, legal, or equitable. The term includes costs of  
 18 collection and attorney's fees only to the extent that the laws of  
 19 this state permit the holder of the claim to recover them in an  
 20 action against the obligor.
- 21 (e) "Claimant" means a person holding a claim incurred in the  
 22 seller's business other than:  
 23 (i) an unsecured and unmatured claim for employment  
 24 compensation and benefits, including commissions and  
 25 vacation, severance, and sick-leave pay; **and**  
 26 (ii) a claim for injury to an individual or to property, or for  
 27 breach of warranty, unless:  
 28 (A) a right of action for the claim has accrued;  
 29 (B) the claim has been asserted against the seller; and  
 30 (C) the seller knows the identity of the person asserting the  
 31 claim and the basis upon which the person has asserted it.  
 32 **and**  
 33 ~~(iii) a claim for taxes owing to a governmental unit.~~
- 34 (f) "Creditor" means a claimant or other person holding a claim.
- 35 (g) (i) "Date of the bulk sale" means:  
 36 (A) if the sale is by auction or is conducted by a liquidator  
 37 on the seller's behalf, the date on which more than ten  
 38 percent (10%) of the net proceeds is paid to or for the  
 39 benefit of the seller; and  
 40 (B) in all other cases, the later of the date on which:  
 41 (I) more than ten percent (10%) of the net contract price  
 42 is paid to or for the benefit of the seller; or

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- 1 (II) more than ten percent (10%) of the assets, as  
 2 measured by value, are transferred to the buyer.
- 3 (ii) For purposes of this subsection:
- 4 (A) delivery of a negotiable instrument (IC  
 5 26-1-3.1-104(a)(1)) to or for the benefit of the seller in  
 6 exchange for assets constitutes payment of the contract price  
 7 pro tanto;
- 8 (B) to the extent that the contract price is deposited in an  
 9 escrow, the contract price is paid to or for the benefit of the  
 10 seller when the seller acquires the unconditional right to  
 11 receive the deposit or when the deposit is delivered to the  
 12 seller or for the benefit of the seller, whichever is earlier;  
 13 and
- 14 (C) an asset is transferred when a person holding an  
 15 unsecured claim can no longer obtain through judicial  
 16 proceedings rights to the asset that are superior to those of  
 17 the buyer arising as a result of the bulk sale. A person  
 18 holding an unsecured claim can obtain those superior rights  
 19 to a tangible asset at least until the buyer has an  
 20 unconditional right, under the bulk-sale agreement, to  
 21 possess the asset, and a person holding an unsecured claim  
 22 can obtain those superior rights to an intangible asset at least  
 23 until the buyer has an unconditional right, under the  
 24 bulk-sale agreement, to use the asset.
- 25 (h) "Date of the bulk-sale agreement" means:
- 26 (i) in the case of a sale by auction or conducted by a liquidator  
 27 (subsection (c)(i)), the date on which the seller engages the  
 28 auctioneer or liquidator; and
- 29 (ii) in all other cases, the date on which a bulk-sale agreement  
 30 becomes enforceable between the buyer and the seller.
- 31 (i) "Debt" means liability on a claim.
- 32 (j) "Liquidator" means a person who is regularly engaged in the  
 33 business of disposing of assets for businesses contemplating  
 34 liquidation or dissolution.
- 35 (k) "Net contract price" means the new consideration the buyer is  
 36 obligated to pay for the assets less:
- 37 (i) the amount of any proceeds of the sale of an asset, to the  
 38 extent the proceeds are applied in partial or total satisfaction  
 39 of a debt secured by the asset; and
- 40 (ii) the amount of any debt to the extent it is secured by a  
 41 security interest or lien that is enforceable against the asset  
 42 before and after it has been sold to a buyer. If a debt is secured

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- 1 by an asset and other property of the seller, the amount of the  
 2 debt secured by a security interest or lien that is enforceable  
 3 against the asset is determined by multiplying the debt by a  
 4 fraction, the numerator of which is the value of the new  
 5 consideration for the asset on the date of the bulk sale and the  
 6 denominator of which is the value of all property securing the  
 7 debt on the date of the bulk sale.
- 8 (l) "Net proceeds" means the new consideration received for  
 9 assets sold at a sale by auction or a sale conducted by a liquidator  
 10 on the seller's behalf less:  
 11 (i) commissions and reasonable expenses of the sale;  
 12 (ii) the amount of any proceeds of the sale of an asset, to the  
 13 extent the proceeds are applied in partial or total satisfaction  
 14 of a debt secured by the asset; and  
 15 (iii) the amount of any debt to the extent it is secured by a  
 16 security interest or lien that is enforceable against the asset  
 17 before and after it has been sold to a buyer. If a debt is secured  
 18 by an asset and other property of the seller, the amount of the  
 19 debt secured by a security interest or lien that is enforceable  
 20 against the asset is determined by multiplying the debt by a  
 21 fraction, the numerator of which is the value of the new  
 22 consideration for the asset on the date of the bulk sale and the  
 23 denominator of which is the value of all property securing the  
 24 debt on the date of the bulk sale.
- 25 (m) A sale is "in the ordinary course of the seller's business" if the  
 26 sale comports with usual or customary practices in the kind of  
 27 business in which the seller is engaged or with the seller's own  
 28 usual or customary practices.
- 29 (n) "United States" includes its territories and possessions and the  
 30 Commonwealth of Puerto Rico.
- 31 (o) "Value" means fair market value.
- 32 (p) "Verified" means signed and sworn to or affirmed.
- 33 (2) The following definitions apply to this chapter:  
 34 (a) "Buyer." IC 26-1-2-103(1)(a).  
 35 (b) "Equipment." IC 26-1-9-109(2).  
 36 (c) "Inventory." IC 26-1-9-109(4).  
 37 (d) "Sale." IC 26-1-2-106(1).  
 38 (e) "Seller." IC 26-1-2-103(1)(d).
- 39 (3) In addition, IC 26-1-1 contains general definitions and principles  
 40 of construction and interpretation applicable throughout this chapter.
- 41 SECTION 3. IC 36-2-6-14.5 IS ADDED TO THE INDIANA CODE  
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1       **1, 1999]: Sec. 14.5. Notwithstanding any other provision of law, a**  
2       **special assessment required to be certified to the county auditor**  
3       **and added to the tax duplicate by law shall be certified within each**  
4       **county on or before a uniform date or dates established by the**  
5       **legislative body of that county. If the legislative body of a county**  
6       **does not establish a date for the certification required by this**  
7       **section, a special assessment required to be certified to the county**  
8       **auditor and added to the tax duplicate by law shall be certified on**  
9       **or before March 1.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Finance, to which was referred Senate Bill No. 447, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 8, strike "or".

Page 2, line 14, delete "." and insert "; **or**".

and when so amended that said bill do pass.

(Reference is to SB 447 as introduced.)

BORST, Chairperson

Committee Vote: Yeas 12, Nays 0.

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