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# SENATE BILL No. 277

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-1.1.

**Synopsis:** Collection by county auditor of excess payments. Allows a county auditor to collect: (1) excess property tax credits and overpayments of property tax refunds; and (2) overpayments in tax sale proceedings.

**Effective:** July 1, 2003.

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### Broden

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January 9, 2003, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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## SENATE BILL No. 277



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

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

1 SECTION 1. IC 6-1.1-3-4, AS AMENDED BY P.L.90-2002,  
2 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2003]: Sec. 4. (a) If a question arises as to the proper place to  
4 assess personal property, the county assessor shall determine the place  
5 if the conflict involves different townships which are located within the  
6 county the assessor serves. If the conflict involves different counties,  
7 the department of local government finance shall determine the proper  
8 place of assessment.

9 (b) A determination made under this section by a county assessor or  
10 the department of local government finance is final.

11 (c) If taxes are paid to a county which is not entitled to collect them,  
12 the department of local government finance may direct the authorities  
13 of the county which wrongfully collected the taxes to refund the taxes  
14 collected and any penalties charged on the taxes.

15 **(d) IC 6-1.1-15-11.5 applies to refunds paid under this section.**

16 SECTION 2. IC 6-1.1-3-7.5, AS AMENDED BY P.L.90-2002,  
17 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2003]: Sec. 7.5. (a) A taxpayer may file an amended personal  
 2 property tax return, in conformity with the rules adopted by the  
 3 department of local government finance, not more than six (6) months  
 4 after the later of the following:

5 (1) The filing date for the original personal property tax return, if  
 6 the taxpayer is not granted an extension in which to file under  
 7 section 7 of this chapter.

8 (2) The extension date for the original personal property tax  
 9 return, if the taxpayer is granted an extension under section 7 of  
 10 this chapter.

11 (b) A tax adjustment related to an amended personal property tax  
 12 return shall be made in conformity with rules adopted under IC 4-22-2  
 13 by the department of local government finance.

14 (c) If a taxpayer wishes to correct an error made by the taxpayer on  
 15 the taxpayer's original personal property tax return, the taxpayer must  
 16 file an amended personal property tax return under this section within  
 17 the time required by subsection (a). A taxpayer may claim on an  
 18 amended personal property tax return any adjustment or exemption that  
 19 would have been allowable under any statute or rule adopted by the  
 20 department of local government finance if the adjustment or exemption  
 21 had been claimed on the original personal property tax return.

22 (d) Notwithstanding any other provision, if:

23 (1) a taxpayer files an amended personal property tax return under  
 24 this section in order to correct an error made by the taxpayer on  
 25 the taxpayer's original personal property tax return; and

26 (2) the taxpayer is entitled to a refund of personal property taxes  
 27 paid by the taxpayer under the original personal property tax  
 28 return;

29 the taxpayer is not entitled to interest on the refund.

30 (e) If a taxpayer files an amended personal property tax return for  
 31 a year before July 16 of that year, the taxpayer shall pay taxes payable  
 32 in the immediately succeeding year based on the assessed value  
 33 reported on the amended return.

34 (f) If a taxpayer files an amended personal property tax return for a  
 35 year after July 15 of that year, the taxpayer shall pay taxes payable in  
 36 the immediately succeeding year based on the assessed value reported  
 37 on the taxpayer's original personal property tax return. A taxpayer that  
 38 paid taxes under this subsection is entitled to a credit in the amount of  
 39 taxes paid by the taxpayer on the remainder of:

40 (1) the assessed value reported on the taxpayer's original personal  
 41 property tax return; minus

42 (2) the finally determined assessed value that results from the

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1 filing of the taxpayer's amended personal property tax return.  
 2 Except as provided in subsection (k), the county auditor shall apply the  
 3 credit against the taxpayer's property taxes on personal property  
 4 payable in the year that immediately succeeds the year in which the  
 5 taxes were paid.

6 (g) If the amount of the credit to which the taxpayer is entitled under  
 7 subsection (f) exceeds the amount of the taxpayer's property taxes on  
 8 personal property payable in the year that immediately succeeds the  
 9 year in which the taxes were paid, the county auditor shall apply the  
 10 amount of the excess credit against the taxpayer's property taxes on  
 11 personal property in the next succeeding year.

12 (h) Not later than December 31 of the year in which a credit is  
 13 applied under subsection (g), the county auditor shall refund to the  
 14 taxpayer the amount of any excess credit that remains after application  
 15 of the credit under subsection (g).

16 (i) The taxpayer is not required to file an application for:

- 17 (1) a credit under subsection (f) or (g); or
- 18 (2) a refund under subsection (h).

19 (j) Before August 1 of each year, the county auditor shall provide to  
 20 each taxing unit in the county an estimate of the total amount of the  
 21 credits under subsection (f) or (g) that will be applied against taxes  
 22 imposed by the taxing unit that are payable in the immediately  
 23 succeeding year.

24 (k) A county auditor may refund a credit amount to a taxpayer  
 25 before the time the credit would otherwise be applied against property  
 26 tax payments under this section.

27 **(l) IC 6-1.1-15-11.5 applies to credits applied and refunds paid**  
 28 **under this section.**

29 SECTION 3. IC 6-1.1-8-37, AS AMENDED BY P.L.90-2002,  
 30 SECTION 83, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2003]: Sec. 37. (a) If:

- 32 (1) the department of local government finance's reassessment of
- 33 distributable property is less than the department's original
- 34 assessment; or
- 35 (2) the Indiana board's reassessment of distributable property is
- 36 less than the department's original assessment;

37 the auditor of each affected county shall compute the tax refund, if any,  
 38 which is due the public utility company. The county auditor shall then  
 39 issue a warrant to the company for the amount of the refund due, and  
 40 the county treasurer shall pay the warrant, without an appropriation for  
 41 the disbursement.

42 (b) If:

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1 (1) the department of local government finance's reassessment of  
 2 distributable property is greater than the department's original  
 3 assessment; or

4 (2) the Indiana board's reassessment of distributable property is  
 5 greater than the department's original assessment;

6 the auditor of each affected county shall enter the difference as an  
 7 assessment of omitted property. The county auditor shall compute and  
 8 the county treasurer shall collect the additional tax due in the same  
 9 manner that taxes on omitted property are computed and collect.  
 10 However, the county officials may not charge penalty or interest on the  
 11 additional tax due unless the public utility company does not pay the  
 12 tax within thirty (30) days after the date notice of the additional tax due  
 13 is given to the company.

14 (c) The accounts of the various taxing units shall be credited or  
 15 charged with each unit's proportionate share of additional taxes  
 16 collected and refunds made under this section.

17 **(d) IC 6-1.1-15-11.5 applies to refunds paid under this section.**

18 SECTION 4. IC 6-1.1-12-4 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) An individual  
 20 who satisfies the requirements of section 3 of this chapter may file a  
 21 claim for a deduction, or deductions, provided by section 1 of this  
 22 chapter during the twelve (12) months before May 11 of the year  
 23 following the year in which he is discharged from military service. The  
 24 individual shall file the claim, on the forms prescribed for claiming a  
 25 deduction under section 2 of this chapter, with the auditor of the county  
 26 in which the real property is located. The claim shall specify the  
 27 particular year, or years, for which the deduction is claimed. The  
 28 individual shall attach to the claim an affidavit which states the facts  
 29 concerning the individual's absence as a member of the United States  
 30 armed forces.

31 (b) The county property tax assessment board of appeals shall  
 32 examine the individual's claim and shall determine the amount of  
 33 deduction, or deductions, he is entitled to and the year, or years, for  
 34 which deductions are due. Based on the board's determination, the  
 35 county auditor shall calculate the excess taxes paid by the individual  
 36 and shall refund the excess to the individual from funds not otherwise  
 37 appropriated. The county auditor shall issue, and the county treasurer  
 38 shall pay, a warrant for the amount, if any, to which the individual is  
 39 entitled.

40 **(c) IC 6-1.1-15-11.5 applies to refunds paid under this section.**

41 SECTION 5. IC 6-1.1-15-11.5 IS ADDED TO THE INDIANA  
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2003]: **Sec. 11.5. (a) This section applies if a**  
 2 **county auditor:**

3 **(1) after December 31, 1998;**

4 **(A) applies a credit that exceeds the correct credit amount;**  
 5 **or**

6 **(B) pays a refund that exceeds the correct refund amount;**  
 7 **due under section 11 of this chapter; and**

8 **(2) notifies:**

9 **(A) the recipient of the credit in writing of the error not**  
 10 **more than five (5) years after the property tax due date for**  
 11 **which the credit is applied; or**

12 **(B) the payee in writing of the error not more than five (5)**  
 13 **years after the date the refund is paid.**

14 **(b) Not more than thirty (30) days after the date of the notice**  
 15 **under subsection (a):**

16 **(1) the recipient of the credit shall pay to the county auditor**  
 17 **the remainder of:**

18 **(A) the amount of the credit applied on behalf of the**  
 19 **recipient; minus**

20 **(B) the correct credit amount; or**

21 **(2) the payee shall pay to the county auditor the remainder of:**

22 **(A) the amount of the refund paid to the payee; minus**

23 **(B) the correct refund amount.**

24 **(c) If a payee or recipient of a credit fails to pay the county**  
 25 **auditor the amount due as required under subsection (b), the**  
 26 **county auditor may maintain an action to collect that amount.**

27 **(d) The county auditor and the county auditor's employees are**  
 28 **not liable to:**

29 **(1) the county; or**

30 **(2) any taxing unit in the county;**

31 **for the excess credit or overpayment described in subsection (b).**

32 SECTION 6. IC 6-1.1-25-4.6, AS AMENDED BY P.L.139-2001,  
 33 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2003]: Sec. 4.6. (a) After the expiration of the redemption  
 35 period specified in section 4 of this chapter but not later than six (6)  
 36 months after the expiration of the period of redemption:

37 (1) the purchaser, the purchaser's assignee, or the county may; or

38 (2) in a county where the county auditor and county treasurer  
 39 have an agreement under section 4.7 of this chapter, the county  
 40 auditor shall, upon the request of the purchaser or the purchaser's  
 41 assignee;

42 file a verified petition in the same court and under the same cause

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1 number in which the judgment of sale was entered asking the court to  
 2 direct the county auditor to issue a tax deed if the real property is not  
 3 redeemed from the sale. Notice of the filing of this petition shall be  
 4 given to the same parties and in the same manner as provided in section  
 5 4.5 of this chapter, except that, if notice is given by publication, only  
 6 one (1) publication is required. The notice required by this section is  
 7 considered sufficient if the notice is sent to the address required by  
 8 section 4.5(b) of this chapter. Any person owning or having an interest  
 9 in the tract or real property may file a written objection to the petition  
 10 with the court not later than thirty (30) days after the date the petition  
 11 was filed. If a written petition is timely filed, the court shall conduct a  
 12 hearing on the objection.

13 (b) Not later than sixty-one (61) days after the petition is filed under  
 14 subsection (a), the court shall enter an order directing the county  
 15 auditor (on the production of the certificate of sale and a copy of the  
 16 order) to issue to the petitioner a tax deed if the court finds that the  
 17 following conditions exist:

- 18 (1) The time of redemption has expired.
- 19 (2) The tract or real property has not been redeemed from the sale  
 20 before the expiration of the period of redemption specified in  
 21 section 4 of this chapter.
- 22 (3) All taxes and special assessments, penalties, and costs have  
 23 been paid.
- 24 (4) The notices required by this section and section 4.5 of this  
 25 chapter have been given.
- 26 (5) The petitioner has complied with all the provisions of law  
 27 entitling the petitioner to a deed.

28 The county auditor shall execute deeds issued under this subsection in  
 29 the name of the state under the county auditor's name. If a certificate of  
 30 sale is lost before the execution of a deed, the county auditor shall issue  
 31 a replacement certificate if the county auditor is satisfied that the  
 32 original certificate existed.

33 (c) Upon application by the grantee of a valid tax deed in the same  
 34 court and under the same cause number in which the judgment of sale  
 35 was entered, the court shall enter an order to place the grantee of a  
 36 valid tax deed in possession of the real estate. The court may enter any  
 37 orders and grant any relief that is necessary or desirable to place or  
 38 maintain the grantee of a valid tax deed in possession of the real estate.

39 (d) Except as provided in subsections (e) and (f), if the court refuses  
 40 to enter an order directing the county auditor to execute and deliver the  
 41 tax deed because of the failure of the purchaser or purchaser's assignee  
 42 to fulfill the requirements of this section, the court shall order the

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1 return of the purchase price minus a penalty of twenty-five percent  
 2 (25%) of the amount of the purchase price. Penalties paid under this  
 3 subsection shall be deposited in the county general fund.

4 (e) Notwithstanding subsection (d), in all cases in which:

5 (1) either:

6 (A) the purchaser or the purchaser's assignee; or

7 (B) in a county where the county auditor and county treasurer  
 8 have an agreement under section 4.7 of this chapter, the  
 9 county auditor;

10 has made a bona fide attempt to comply with the statutory  
 11 requirements under subsection (b) for the issuance of the tax deed  
 12 but has failed to comply with these requirements; and

13 (2) the court refuses to enter an order directing the county auditor  
 14 to execute and deliver the tax deed because of the failure to  
 15 comply with these requirements;

16 the county auditor shall not execute the deed but shall refund the  
 17 purchase money plus six percent (6%) interest per annum from the  
 18 county treasury to the purchaser or the purchaser's successors or  
 19 assignees. The tract or item of real property, if it is then eligible for sale  
 20 under IC 6-1.1-24, shall be placed on the delinquent list as an initial  
 21 offering under IC 6-1.1-24-6.

22 (f) Notwithstanding subsections (d) and (e), the court shall not order  
 23 the return of the purchase price if:

24 (1) the purchaser has failed to provide notice or has provided  
 25 insufficient notice as required by section 4.5 of this chapter; and

26 (2) the sale is otherwise valid.

27 (g) A tax deed executed under this section vests in the grantee an  
 28 estate in fee simple absolute, free and clear of all liens and  
 29 encumbrances created or suffered before or after the tax sale except  
 30 those liens granted priority under federal law, and the lien of the state  
 31 or a political subdivision for taxes and special assessments that accrue  
 32 subsequent to the sale. However, the estate is subject to all easements,  
 33 covenants, declarations, and other deed restrictions and laws governing  
 34 land use, including all zoning restrictions and liens and encumbrances  
 35 created or suffered by the purchaser at the tax sale. The deed is prima  
 36 facie evidence of:

37 (1) the regularity of the sale of the real property described in the  
 38 deed;

39 (2) the regularity of all proper proceedings; and

40 (3) valid title in fee simple in the grantee of the deed.

41 (h) A tax deed issued under this section is incontestable except by  
 42 appeal from the order of the court directing the county auditor to issue

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1 the tax deed filed not later than sixty (60) days after the date of the  
2 court's order.

3 **(i) IC 6-1.1-15-11.5 applies to refunds paid under this section.**

4 SECTION 7. IC 6-1.1-25-10, AS AMENDED BY P.L.139-2001,  
5 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2003]: Sec. 10. (a) If, before the court issues an order  
7 directing the county auditor to issue a tax deed to a tract or item of real  
8 property sold under IC 6-1.1-24, it is found by the county auditor and  
9 the county treasurer that the sale was invalid, the county auditor shall  
10 refund the purchase money and all taxes and special assessments on the  
11 property paid by the purchaser or the purchaser's assigns after the tax  
12 sale plus six percent (6%) interest per annum and, subject to any  
13 limitation under section 2.5 of this chapter, any costs paid by the  
14 purchaser or the purchaser's assigns under section 2 of this chapter  
15 from the county treasury to the purchaser, or the purchaser's successors  
16 or assigns. The tract or item of real property, if it is then eligible for  
17 sale under IC 6-1.1-24, shall be placed on the delinquent list as an  
18 initial offering under IC 6-1.1-24-6.

19 (b) A political subdivision shall reimburse the county for interest  
20 paid by the county under subsection (a) if:

- 21 (1) the invalidity of the sale under IC 6-1.1-24 resulted from the  
22 failure of the political subdivision to give adequate notice of a lien  
23 to property owners; and  
24 (2) the existence of the lien resulted in the sale of the property  
25 under IC 6-1.1-24.

26 **(c) IC 6-1.1-15-11.5 applies to refunds paid under this section.**

27 SECTION 8. IC 6-1.1-25-11, AS AMENDED BY P.L.139-2001,  
28 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
29 JULY 1, 2003]: Sec. 11. (a) Subsequent to the issuance of the order  
30 directing the county auditor to issue a tax deed to real property sold  
31 under IC 6-1.1-24, a county auditor shall refund the purchase money  
32 plus six percent (6%) interest per annum from the county treasury to  
33 the purchaser, or the purchaser's successors or assigns, if it is found by  
34 the court that entered the order for the tax deed that:

- 35 (1) the real property described in the deed was not subject to the  
36 taxes for which it was sold;  
37 (2) the delinquent taxes or special assessments for which the real  
38 property was sold were properly paid before the sale; or  
39 (3) the legal description of the real property in the tax deed is void  
40 for uncertainty.

41 (b) The grantee of an invalid tax deed, including the county, to  
42 whom a refund is made under this section shall execute, acknowledge,

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1 and deliver to the owner a deed conveying whatever interest the  
2 purchaser may have acquired by the tax sale deed. If a county is  
3 required to execute a deed under this section, the deed shall be signed  
4 by the county board of commissioners and acknowledged by the clerk  
5 of the circuit court.

6 (c) A refund may not be made under this section while an action  
7 initiated under either section 14 or 16 of this chapter is pending.

8 **(d) IC 6-1.1-15-11.5 applies to refunds paid under this section.**

9 SECTION 9. IC 6-1.1-26-7 IS ADDED TO THE INDIANA CODE  
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
11 1, 2003]: **Sec. 7. IC 6-1.1-15-11.5 applies to refunds paid under this**  
12 **chapter.**

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