

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 390

October 2013

REMINDER OF ORDER OF BUSINESS

October

- 14 Columbus Day - Legal Holiday (IC 1-1-9-1)
 - 20 Last day to report and make payment of State Income Tax withheld in September to Indiana Department of Revenue.
 - 23, 24, 25 County Auditor's Fall Conference – Indianapolis, Indiana
 - 31 Last day to file quarterly unemployment compensation report with the Indiana Department of Workforce Development.
- Last day to report and make payment of balance of Federal Income Tax withheld in the third quarter to Internal Revenue Service.

November

- 1 Last day for county auditor to certify to the division of state court administration the amount, if any, the county will be providing to supplement the judges salary during the ensuing calendar year. (IC 33-38-5-6(b))
- 2 Last date for County Board of Tax Adjustment [except Marion County and in a county containing a second class city (December 1)] to complete its duties. (IC 6-1.1-17-9(a))
- 11 Veterans' Day - Legal Holiday. (IC 1-1-9-1)
- 12 Last day for paying second installment of taxes without penalty. Start preparing for settlement of second installment tax collections. (IC 6-1.1-37-10)
- 20 Last day to report and make payment of State Income Tax withheld in October to Indiana Department of Revenue.
- 28 Thanksgiving Day - Legal Holiday. (IC 1-1-9-1)

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REMINDER OF ORDER OF BUSINESS
(Continued)

December

- 1 On or before this date, certify names and addresses of persons who have money due to them for salaries, wages or other reasons to County Treasurer, for determining if such persons owe delinquent taxes. (IC 6-1.1-22-14)
- Last date for County Board of Tax Adjustment in Marion County and in a county containing a second class city to complete its duties. (IC 6-1.1-17-9(a))
- 20 Last day to report and make payment of State Income Tax withheld in November to Indiana Department of Revenue.
- 25 MERRY CHRISTMAS!! Legal Holiday. (IC 1-1-9-1)
- 31 Review year-end duties.
- Post and close all records completely and promptly.
- The Auditor should balance with the Treasurer and verify the amount of cash in the Treasurer's office.

COMMISSIONS ON VENDING MACHINES

The following is our audit position concerning vending machine placement, use, maintenance, and commissions.

IC 36-2-7-2 states:

“Except as otherwise provided by section 6, 9, and 13 of this chapter, the compensation fixed for county officers and employees under this title is in full for all governmental services and in lieu of all:

- (1) fees;
- (2) per diems;
- (3) penalties;
- (4) costs;
- (5) interest;
- (6) forfeitures;
- (7) percentages;
- (8) commissions;
- (9) allowances;
- (10) mileage; and
- (11) other remuneration;

which shall be paid into the county general fund.”

1. There should be a clearly defined procedure adopted by the governing body of the unit concerning placement, maintenance, and commissions of vending machines on their property.

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COMMISSIONS ON VENDING MACHINES (Continued)

2. All revenues generated and costs incurred in operating vending machines located on the unit's premises should be accounted for through the unit's records.

3. If vending machines are located in restricted areas (areas other than those available to the public) and if the unit's governing body wishes for those revenues to be restricted for the use and benefit of those employees who use the machines and generate the revenues, the State Board of Accounts takes no exception to such action in an audit. This decision must be authorized by ordinance (or resolution) of the proper legislative body of the unit.

4. If vending machines are located in areas where the public makes use of the machines and generates the resulting revenues, we instruct officials to place the revenues in the unit's general fund for the benefit of the general public, the machine users. Any alternative procedure(s) would be reviewed and evaluated on a case by case basis during our audits. As stated in No. 3 any alternative procedure should be authorized by ordinance (or resolution) of the proper body.

5. In the event personnel other than the unit's personnel maintain, stock, and clean up around the vending machines, we would take no audit exception when such persons are paid for these services. In this situation, a written agreement should be entered into listing the services rendered, the amount to be paid for such services, timing of payments, and any other areas deemed necessary by the contracting parties or the governing body of the unit.

DELINQUENT PUBLIC UTILITY TAXES

Pursuant to IC 6-1.1-8-38: Taxes which are based upon an assessment which is made under this chapter are a lien upon the property assessed. This lien accrues on the assessment date of the year of assessment. In addition, the taxes are a personal debt of the public utility company in whose name the property is assessed.

If public utility company does not pay the taxes when they are due, the county treasurer shall notify the prosecuting attorney of that fact. The prosecuting attorney shall then bring an action against the company to recover the delinquent taxes or to enforce the lien upon the property, or both. In such an action, the judgment shall include a penalty equal to fifty percent (50%) of the delinquent taxes. This subsection does not apply to taxes on a railroad car company's indefinite-situs distributable property.

LIQUOR PERMITS

The State Board of Accounts is a post-audit agency and as such does not have the authority to render legal opinion. However, when necessary this department has found it necessary to develop a departmental position in regard to the audit of governmental entity. These audit positions have been developed by using references such as, the Indiana Code, Court Cases, and the Opinions of the Attorney General.

IC 7.1-3-21-15 state in part:

"The commission shall not issue, renew, or transfer a wholesaler, retailer, dealer, or other permit of any type if the applicant:

(1) is seeking a renewal and the applicant has not paid all the property taxes under IC 6- 1.1 and the innkeeper's tax under IC 6-9 that are due currently.

(2) is seeking a transfer and the applicant has not paid all the property taxes under IC 6- 1.1 and the innkeeper's tax under IC 6-9 for the assessment periods during which the transferror held the permit;"

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LIQUOR PERMITS (Continued)

Except for mobile homes, which are due in the year assessed and certain other exceptions as listed, IC 6-1.1-22-9 requires that "the property taxes assessed for a year under this article are due in two equal installments on May 10 and November 10 of the following year."

IC 6-1.1-1-2 defines assessment date as March 1 for all tangible property, except mobile homes which is January 15 for the current year. This would appear to mean that the assessment period for all tangible property (except mobile homes) would be March 1, 2012 through February 28, 2013 and would be payable in two equal installments on May 10 and November 10, 2013.

In the case of a transfer of an Alcoholic Beverage Commission permit requested in July 2013, it would appear that the applicant would need to have paid all property taxes due through November 10, 2014. We base this on the requirement that the applicant is to pay all property taxes under IC 6-1.1 for the assessment periods which the transferror held the permit. The applicant technically held the permit in July 2013, which falls in the assessment period of March 1, 2013 through February 28, 2014, with taxes due in two equal installments on May 10 and November 10, 2014. Technically it would appear that in order for the County Treasurer to certify on transfer, both the May and November 2004 would need to be paid.

In the case of a renewal of an Alcoholic Beverage Commission permit requested in July 2013, it would appear that the applicant would need to have paid all property taxes due through May 2013. We base this on the requirement that the applicant is to pay all the property taxes under IC 6-1.1 that are due currently. The property taxes assessed for a year under this article are due in two equal installments on May 10 and November 10 of the following year. It would appear that in order for the County Treasurer to certify to the renewal that only the May 10, 2013 property taxes would need to be paid.

This would appear reasonable, since IC 6-1.1-2-4 states that "The owner of any tangible property on the assessment date of a year is liable for the taxes imposed for that year on the property." This would appear reasonable since a permit for renewal would be the same owner, who would continue to be liable for the taxes imposed on March 1, 2013 payable on 2014. On the other hand, the transfer of a permit would indicate that the owner is changing and, since the taxes would be assessed to the owner of record, the owner would be liable for the taxes imposed on March 1, 2013 and payable in 2014. It would then appear that before transferring the permit to a new owner all taxes imposed on the previous owner should be paid.

This is not to be construed as a legal opinion, but merely represents the position this department would take in its audit of counties. The audit position of the State Board of Accounts does not preclude other individuals or entities from taking exception to the actions of a unit of government.

INTEREST ON PUBLIC CONTRACTS WHEN NOT PAID TIMELY

IC 5-17-5 states in part: "...political subdivision shall pay interest at the rate of one percent (1%) per month on amounts due on written contracts for public works, personal services, good and services, equipment, and travel, whenever the ...political subdivision fails to make timely payment."

Timely payment is defined, with some exceptions, to occur if "...a date for payment is not specified in an applicable contract; a claim for payment for goods and services and that must be approved by a local legislative body or board is submitted to the body or board; and the political subdivision pays the claim within thirty-five (35) days following the first regularly scheduled meeting of the body or board that is held at least ten (10) days after the body or board receives the claim."

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INTEREST ON PUBLIC CONTRACTS WHEN NOT PAID TIMELY (Continued)

Per IC 5-17-5-2 the interest requirement does not apply to the following:

- “(1) Interagency or intergovernmental transactions.
- (2) Amounts payable to employees...of...political subdivisions as reimbursements for expenses.
- (3) Claims subject to a good faith dispute, if before the date of timely payment notice of the dispute is:
 - (A) sent by certified mail;
 - (B) personally delivered; or
 - (C) sent in accordance with procedure in the contract.
- (4) Contracts entered into before September 1, 1983.
- (5) Contracts related to highway or road construction, reconstruction, or maintenance, if:
 - (A) the Indiana department of transportation authorizes partial progress payments under IC 8-23-9-14; and
 - (B) each progress payment does not exceed five hundred dollars (\$500).
- (6) Claims, contracts, or projects that are to be paid for exclusively with federal funds.”

Per IC 5-17-5-2: “good faith dispute” means:

- “(1) a contention by the state or political subdivision that goods delivered or services rendered were:
 - (A) of less quantity or quality than ordered or specified by contract;
 - (B) faulty; or
 - (C) installed improperly; or
- (2) any other reason giving cause for the withholding of payment by the state or political subdivision until such dispute is settled.”

BIDS AND CONTRACTS – PETROLEUM PRODUCTS

Per IC 5-22-17-10:

- “(b) A purchasing agent to award a contract for petroleum products to:
 - (1) the lowest responsible and responsive offeror, or
 - (2) all responsible and responsive offerors.
- (c) The contract may allow for the escalation and de-escalation of price.”

Where a contract is awarded to all responsible and responsive offerors, IC 5-22-17-10(d) states in part: “...The purchasing agent must purchase the petroleum products from the lowest of the responsible and responsive bidders. The contract must provide that the bidder from whom petroleum products are being purchased shall provide five (5) business days written notice of any changes in price. Upon receipt of written notice, the purchasing agent shall request current price quotes in writing based upon terms and conditions of the original offer (as awarded) from all successful responsible and responsive offerors. The purchasing agent shall record the quotes in minutes or memoranda. The purchasing agent shall purchase the petroleum products from the lowest responsible and responsive offeror, taking into account the price change of the current supplier and the price quotes of the other responsible and responsive offerors.”

IC 5-22-17-10(a) defines “petroleum products” to mean, gasoline, fuel oils, lubricants, or liquid asphalt.

SEWER LIENS UNDER IC 36-9-23 – RECORDING AND CERTIFYING

The officer charged with collection of unpaid sewage fees and penalties shall enforce their payment. The officer may defer enforcing the collection of the unpaid fees and penalties assessed until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following:

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SEWER LIENS UNDER IC 36-9-23 – RECORDING AND CERTIFYING (Continued)

- (1) A list of the delinquent fees and penalties that are enforceable, which must include the following:
 - (A) The name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.
 - (B) A description of the premises, as shown by the records of the county auditor.
 - (C) The amount of the delinquent fees, together with the penalty.
- (2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars (\$5), which is in addition to the recording fee charged, shall be added to each delinquent fee that is recorded. The amount of the recording fee should also include the amount required to record as well as release the lien.

Using the lists and instruments prepared and recorded, the officer shall, not later than ten (10) days after the list or each individual instrument is recorded, certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

Except in a county containing a consolidated city, on receipt of the list, the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fee, which are due not later than the due date of the next May installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalties, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

Except in a county containing a consolidated city, after certification of liens, the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.

If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by IC 36-9-23-32(d), files a verified demand with the county auditor. (IC 36-9-23-33)

ASSESSMENTS FOR WEED CUTTING UNDER IC 36-7-10.1

IC 36-7-10.1-3 provides that the legislative body of a municipality or county may by ordinance require the owners of real property located within the municipality or the unincorporated area of the county to cut and remove weeds and other rank vegetation growing on the property. The term “weeds and other rank vegetation” does not include agricultural crops, such as hay and pasture.

An ordinance adopted must specify the following:

1. The department of the municipality or county responsible for the administration of the ordinance.
2. The definitions of weeds and rank vegetation.
3. The height at which weeds or rank vegetation becomes a violation of the ordinance, specifying the appropriate heights for various types of weeds and rank vegetation.
4. The procedure for issuing notice to the owner of real property of a violation of the ordinance.
5. The procedure under which the municipality or county, or its contractors, may enter real property to abate a violation of the ordinance if the owner fails to abate the violation.
6. The procedure for issuing a bill to the owner of real property for the costs incurred by the municipality or county in abating the violation, including administrative costs and removal costs. The cost of sending notice is an administrative cost that may be billed to the owner.
7. The procedure for appealing a notice of violation or a bill issued under the ordinance.

An ordinance adopted must provide that a notice sent to the property owner must be sent by first class mail, or an equivalent service permitted under IC 1-1-7-1. The notice must be sent to:

1. the owner of record of real property with a single owner; or
2. at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice.

Per IC 36-7-10.1-4 if the owner of real property fails to pay a bill issued under IC 36-7-10.1-3 within the time specified in the ordinance, the department specified in the ordinance shall certify to the county auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the municipality or county.

If the owner of real property fails to pay a bill issued under IC 36-7-10-3 within the time specified in the ordinance, the municipality or county may bring an action in an appropriate court to collect the amount of the bill, plus any additional costs incurred in the collection, including court costs and reasonable attorney's fees. If the municipality or county obtains a judgment, the municipality or county may obtain a lien in the amount of the judgment on any real or personal property of the owner. (IC 36-7-10.1-4)

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ASSESSMENTS FOR WEED CUTTING UNDER IC 36-7-10.1 (Continued)

Notwithstanding IC 36-7-10.1-4, the municipality or county may provide that the amounts collected shall be disbursed to the general fund of the department specified to enforce the ordinance. (IC 36-7-10.1-5)

LIENS ON NUISANCE PROPERTIES

If a condition violating an ordinance of a municipal corporation exists on real property, employees or contractors of a municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of a least ten (10) days but not more than sixty (60) days to bring the property into compliance. Continuous enforcement orders (as defined in IC 36-7-9-2) can be enforced and liens may be assessed without the need for additional notice. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located. The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

1. ten thousand dollars (\$10,000) for real property that:
 - A. contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or
 - B. is unimproved; or
2. twenty thousand dollars (\$20,000) for all other real property.

The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs. A bill is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

Whenever a municipal corporation determines it necessary, the officer charged with the collection of fees and penalties for the municipal corporation shall prepare:

1. a list of delinquent fees and penalties that are enforceable, including:
 - A. the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;
 - B. a description of the premises, as shown on the records of the county auditor; and
 - C. the amount of the delinquent fees and the penalty; or
2. an instrument for each lot or parcel of real property on which the fees are delinquent.

The officer shall record a copy of each list or each instrument with the county recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

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LIENS ON NUISANCE PROPERTIES (Continued)

A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before conveyance to the subsequent owner. If the property is conveyed before the lien is recorded, the municipal corporation shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not later than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be considered a bad debt loss.

The municipal corporation shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property;
- and
- (2) delinquent fees incurred by the seller; upon receipt of a written demand from the purchaser or a representative of the title insurance company or the title insurance company's agent that issued a title insurance policy to the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

The county auditor shall remove the fees, penalties, and service charges that were not recorded before a recorded conveyance to a subsequent owner upon receipt of a copy of the written demand. (IC 36-1-6-2)

BANK/CREDIT CARD PAYMENTS TO COUNTIES

A payment to a county may be made by any of the following financial instruments that the fiscal body of the county authorizes for use:

1. Cash
2. Check
3. Bank Draft
4. Money Order
5. Bank card or credit card
6. Electronic fund transfer
7. Any other financial instrument authorized by the fiscal body

If there is a charge to the county for the use of a financial instrument, the county may collect a sum equal to the amount of the charge from the person who uses the financial instrument.

If authorized by the fiscal body of the county, the county may accept payments with a bank card or credit card. However, the procedure authorized for a particular type of payment must be uniformly applied to all payments of the same type.

The county may contract with a bank card or credit card vendor for acceptance of bank cards or credit cards. The county may pay any applicable bank card or credit card service charge associated with the use of a bank card or credit card. However, if there is a vendor transaction charge or discount fee the county may collect from the person using the card an official fee that does not exceed the transaction charge or discount fee and/or a reasonable convenience fee. The convenience fee may not exceed \$3 and must be uniform regardless of bank or credit card used. (IC 36-1-8-11)

It is our position that such a fee be deposited in the general fund.

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BANK/CREDIT CARD PAYMENTS TO COUNTY COURTS

The clerk may contract with a bank or credit card vendor for acceptance of bank or credit cards in payment of bail, fines, civil penalties, court fees and costs, or fees for the preparation, duplication, or transmission of documents. However, if there is a vendor transaction charge or discount fee, whether billed to the clerk or charged directly to the clerk's account, the clerk shall collect a fee from the person using the bank or credit card.

The court clerk shall forward credit card service fees collected to the county auditor. These fees may be used without appropriation to pay transaction charges or discount fees charged by the bank or credit card vendor. (IC 33-37-6-2 and IC 33-37-6-3)

RAINY DAY FUND

IC 36-1-8-5.1 states, as follows:

- (a) "A political subdivision may establish a rainy day fund by the adoption of:
 - (1) an ordinance, in the case of county, city, or town; or
 - (2) a resolution, in the case of any other political subdivision.
- (b) An ordinance or a resolution adopted under this section must specify the following:
 - (1) The purposes of the rainy day fund.
 - (2) The sources of funding for the rainy day fund, which may include the following:
 - (A) Unused unencumbered funds under:
 - (i) section 5 of this chapter;
 - (ii) IC 6-3.5-1.1-21.1;
 - (iii) IC 6-3.5-6-17.3; or
 - (iv) IC 6-3.5-7-17.3.
 - (B) Any other funding source;
 - (i) specified in the ordinance or resolution adopted under this section; and
 - (ii) not otherwise prohibited by law.
- (c) The rainy day fund is subject to the same appropriation process as other funds that receive tax money.
- (d) In any fiscal year, a political subdivision may, at any time, do the following:
 - (1) Transfer any unused and unencumbered funds specified in subsection (b)(2)(A) from any fiscal year to the rainy day fund.
 - (2) Transfer any other unobligated cash balances from any fiscal year that are not otherwise identified in subsection (b)(2)(A) or section 5 of this chapter to the rainy day fund as long as the transfer satisfies the following requirements:
 - (A) The amount of the transfer is authorized by and identified in an ordinance or resolution.

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RAINY DAY FUND (Continued)

(B) The amount of the transfer is not more than ten percent (10%) of the political subdivision's total annual budget adopted under IC 6-1.1-17 for that fiscal year.

(C) The transfer is not made from a debt service fund.

(e) A political subdivision may use only the funding sources specified in subsection (b)(2)(A) or in the ordinance or resolution establishing the rainy day fund. The political subdivision may adopt a subsequent ordinance or resolution authorizing the use of another funding source.

(f) The department of local government finance may not reduce the actual or maximum permissible levy of a political subdivision as a result of a balance in the rainy day fund of the political subdivision.

(g) A county, city, or town may at any time, by ordinance or resolution, transfer to:

(1) its general fund; or

(2) any other appropriated funds of the county, city, or town;

money that has been deposited in the rainy day fund of the county, city, or town."

INTEREST ON PAYMENTS FOR ROAD WORK

IC 36-1-12-17 requires that each contract for roadwork must provide for final payment within one hundred twenty (120) days after final acceptance and completion of the contract. Final payment may not be made on any amount that is in dispute, but final payment may be made on that part of a contract or those amounts that are not in dispute.

For each day after one hundred twenty (120) days, the county shall pay to the contractor interest for late payment of money due to the contractor. However, interest may not be paid for those days that the delay in payments is not directly attributable to the county. The annual percentage rate of interest on the unpaid balance is twelve percent (12%).

COST SAVING INCENTIVE PROGRAM

Counties may establish a cost saving incentive program to develop and implement cost saving measures. The program may include awards to employees who suggest cost saving measures and must be established by ordinance. (IC 36-1-13)

STATE GAMING FUND – REVENUE SHARING

The State will distribute wagering taxes to the county treasurer of each county that does not have a riverboat. IC 4-33-13-6 requires such distributions to be placed in the county's general fund or riverboat fund, or both. The distributions may be used to carry out any governmental purpose for which money is appropriated by the county's fiscal body.

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FINANCIAL ASSISTANCE TO ENTITIES

Since September 1, 1986, the State Board of Accounts, or designee, has been responsible for the examination of the records and accounts of entities receiving financial assistance from governmental sources.

Entities are defined as providers of goods, services, or other benefits that are maintained in whole or in part at public expense; or supported in whole or in part by appropriations of public funds, or by taxation. The definition does not include the State or Municipalities but does include for-profit and not-for-profit corporations, and unincorporated associations and organizations. Financial assistance is defined as payments to entities in the form of grants, subsidies, contributions, aid, etc.

As of September 1, 1986, all contracts involving financial assistance between governmental units and entities must permit the examination and require reports as prescribed by IC 5-11-1-24(f).

The examination of an entity receiving public funds will be limited to matters relevant to the use of the money if the financial assistance received is less than 50% of the disbursements of the entity. The entire entity is subject to examination if the assistance received is greater than 50%. An examination of an entity organized as a not-for-profit corporation which derives less than 50% (or at least 50% but less than \$200,000) of its disbursements from public funds may be waived by the State Examiner.

Our examinations of qualifying entities commenced with their year ending December 31, 1986 or thereafter. The majority of these audits are performed by private accountants authorized or designated by the State Board of Accounts. The entity will be charged the actual cost of the examination.

Detail information is provided in our Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources. These Guidelines can be found on our website at www.in.gov/sboa.

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QUESTIONS AND ANSWERS FROM COUNTY TREASURERS ANNUAL CONFERENCE

Question #1: Please clarify where this conference is to be paid out of? Unappropriated or Elected Official's Training Fund for the elected official.

Answer #1: IC 5-11-14-1 states in part: "...All payments shall be made from the general fund from any money not otherwise appropriated and without any previous appropriation being made therefor..." This includes mileage at the rate determined by the fiscal body; lodging for each night preceding conference attendance at the single room rate; meals purchased while attending the conference in an amount determined by the fiscal body. Any items not covered by the statute could be paid from the county elected officials training fund but only for the elected official and not deputies in attendance.

Question #2: Can you please educate or challenge county councils and auditors that they must pay for a state called meeting out of unappropriated general fund? Counties are still denying payment for office holders to stay overnight.

Answer #2: We will continue to educate county officials on the proper reimbursement of expenses of State Board of Accounts called meetings. The elected officials and deputies called to SBOA called meetings are provided an allowance for lodging for each night preceding conference attendance in an amount equal to the single room rate by IC 5-11-14-1(g)(2), unless it is a one day conference. The allowance for lodging only applies to persons who reside 50 miles or farther from the conference location when the conference is a one day conference.

Question #3: Can you garnish for active tax judgment for a county employee?

Answer #3: It is our position that collection of delinquent taxes may still be pursued through IC 6-1.1-22-14 and IC 6-1.1-22-15 for public employees, even if collection through demand and judgment has already been attempted.

Question #4: We have trustees who are delinquent in taxes but the trustee pays themselves from the monthly money they get. Is there a way to collect via deduction?

Answer #4: Technically, the township trustee should be certifying their list under IC 6-1.1-22-14(a) including their own compensation and is required to make periodic deductions to remit to the county treasurer as stated in IC 6-1.1-22-15.

Question #5: Regarding ineligible homesteads, can the auditor add a penalty to the amount and penalty if not paid within 30 days of notification? (We often have taxpayers asking)

Answer #5: When the auditor discovers an ineligible homestead or standard deduction, they notify the treasurer and calculate the additional tax and add a 10 % civil penalty in the manner described in IC 6-1.1-12-37(f). If the amount is not collected within the 30 days after notice is sent, the additional tax and civil penalty is to be added to the tax duplicate and collected as other taxes are collected. Which means that if placed on the tax statement and not paid by the tax due date, the amount would be subject to late payment penalty in the same manner as property taxes.

Question #6: Can tax payments be voided if a check is returned as an NSF or stop payment? MVP has this built in to the program.

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- Answer #6:** Void would not be the appropriate process. The prescribed process is in the Accounting and Uniform Compliance Guidelines Manual for County Treasurers page 5-5. It involves the treasurer filing a claim with the county auditor. Upon approval of the board of county commissioners, the auditor prepares a warrant for the county treasurer. The treasurer will deposit the warrant as other checks are deposited and the amount of the taxes are recharged on the duplicate by the county auditor. If this is what is meant by voiding a payment, this is the prescribed process.
- Question #7:** If a county has an ordinance for NSF checks can the treasurer add the fee (as an AA) to the parcel or does the auditor have to do it?
- Answer #7:** The county auditor would add the fee by AA to the tax duplicate usually when the taxes are recharged.
- Question #8:** The auditor is stating surplus cannot have the option on the claim form allowing them to have their surplus be applied to the following year's taxes?
- Answer #8:** I know many of you use a combined form you have had approved to give notice of surplus and make the claim for surplus tax under IC 6-1.1-26-6. Although the notice and the claim form are not required to provide this option, it is a good way to document the wishes of the taxpayer to apply the surplus tax to the next installment. We would want this type of documentation if surplus tax was to be applied to the next installment after it has been posted as surplus tax.
- Question #9:** When both a title company and a mortgage company pay a spring installment, who gets the money back?
- Answer #9:** When this happens, surplus tax is created. IC 6-1.1-26-6 states in part: "...a taxpayer may then file a verified claim for money remaining in the surplus tax fund. The county treasurer or county auditor shall require reasonable proof of payment by the taxpayer making the claim. If the claim is approved by the county auditor and the county treasurer, the county auditor shall issue a warrant to the taxpayer for the amount due the taxpayer..." There is no further guidance in statute.
- Question #10:** We have seen many adjusted bills that are sent by our auditor's office.
- a. How much time is allowed for these to be paid before they are delinquent?
 - b. Should our auditor's office put a due date on the revised bill?
 - c. Do we apply penalties using the same rules as regular bills?
- Answer #10:** The application of late payment penalties on added taxes is dependent on when the taxes are added. If current year first installment taxes are added and billed more than 15 days before the first installment due date, late payment penalties apply after the first installment due date has passed if not fully paid. If billed after 15 days before the first installment due date, payment is due by the next first installment due date. Added current year second installment taxes are due on or before the current year second installment due date if billed at least 15 days prior to the second installment due date. Late payment penalties would be applied as of the day after the second installment due date. If second installment added taxes are billed less than 15 days before the due date for second installment the added tax is classified as a prior year tax due at the first installment due date in the subsequent year.

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Answer #10: (Continued)

Prior year taxes added and billed between 14 days before the prior year second installment due date and 15 days before the current first installment due date are treated the same as current year first installment tax for purposes of applying late payment penalty. Prior year taxes added and billed between 14 days before the first installment due date of the current year and 15 days before the current year second installment due date are treated the same as current year second installment tax for the purposes of applying late payment penalty. Dan Bastin's presentation from the 2012 County Treasurer's Annual Conference is a good resource for assistance on this.

Question #11: What resources are available through the SBOA to help train new bookkeepers, especially when a bookkeeper departs and leaves the data / records in a potentially compromised condition?

Answer #11: Frankly, there are not enough resources for the board to provide individual assistance in this situation. It also may not be appropriate since the bookkeeper is the elected official's employee. However, the accounting manuals, quarterly County Bulletins, and presentation materials are all on our website to offer a beginning. Debbie and I welcome discussion by telephone and e-mail.

Additionally, field examiners and field supervisors in your district are available to ask questions and make recommendations when they are working in your county. We are careful to make sure we do not impair our independence from your office so that we may perform the required audits of counties. Please do not forget the very few of you use the prescribed manual accounting system any longer. Your vendors may also offer training on the system and proper procedures at a cost.

Question #12: Innkeeper's Tax. Is the amount paid by each individual entity each month confidential? Is the payment form confidential? Our tourism wants spreadsheet of each hotel's amount that they paid each month. I have been providing only total amount for month for all hotels.

Answer #12: This question and answer was published in the October 2011 County Bulletin, Question #2. It has been answered by the Public Access Counselor in the following manner.

"In 2009 an informal advisory #09-ENF-73 from the Public Assess Counselor concurred with a prior county bulletin where we stated that County Treasurers should not release anything regarding Innkeepers tax that can be identifiable to a certain taxpayer. For example, you can say the county collected \$500,000 in the year but not identify each individual tax payer and what each paid. If you only have one taxpayer you should not give the total as this would be giving out their tax information. You can find this in our January 2010 bulletin. If you have questions you should contact the Public Access Counselor at (317) 234-0906 or 1-800-228-6013."

Question #13: What all should we check when someone comes in to get an alcohol permit? What taxes need to be paid before we can issue an alcohol permit? Personal property – Business name, should the person who applies pay personal property in their name also? Real property – Does the address of where the business is located need to be paid?

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- Answer #13:** IC 7.1-3-21-15(a) states: "The commission shall not issue, renew or transfer a wholesaler, retailer, dealer, or other permit of any type if the applicant: (1) is seeking a renewal and the applicant has not paid all the property taxes under IC 6-1.1 and the innkeeper's tax under IC 6-9 that are due currently; (2) is seeking a transfer and the applicant has not paid all the property taxes under IC 6-1.1 and innkeeper's tax under IC 6-9 for the assessment periods during which the transferor held the permit; (3) is seeking a renewal or transfer and is at least thirty (30) days delinquent in remitting state gross retail taxes under IC 6-2.5 or withholding taxes required to be remitted under IC 6-3-4; or 4) is on the most recent tax warrant list supplied to the commission by the department of state revenue." Therefore, you technically are only to provide a clearance on taxes of the applicant. You are looking for the items in (1) and (2) above. This includes real property taxes, personal property taxes and innkeeper's tax. There is no requirement that the address where the business is located be reviewed or cleared if the applicant is not responsible for the payment of the listed taxes.
- Question #14:** Property tax clearance for liquor license. Should it include real property of location if the property is owned by license holder? Should it include real property of location if the property is leased or rented by the license holder?
- Answer #14:** Consideration must be given to the answer to number 13 above, which includes the statute on alcohol beverage permits. Additionally, IC 6-1.1-2-4 states that the owner of any real property on the assessment date of a year is liable for the taxes imposed for that year on the property, unless a person holding, possessing, controlling, or occupying any real property on the assessment date of a year is liable for the taxes imposed for that year on the property under a memorandum of lease or other contract with the owner that is recorded with the county recorder before January 1, 1998. If the applicant is liable under this statute for delinquent taxes and they are applying to renew a license, they would not have met the obligation under IC 7.1-3-21-15(a)(1) to receive the clearance. If the applicant is seeking a transfer and is liable under this code for unpaid real property taxes during the period in which the applicant held the permit, the applicant would not have met the requirements of IC 7.1-3-21-15(a)(2) to receive the clearance to transfer the permit.
- Question #15:** To adopt an investment policy allowing for a maturity of more than 2 years for investments, is the adoption required by action of the county council or board of finance?
- Answer #15:** IC 5-13-9-5.7(b) states that it is to be adopted by the fiscal body (which is the county council). This is just for the maturity in excess of 2 years. The regular investment policy containing designated depositories and other key information should be adopted by the board of finance at its annual meeting, which is held after the first Monday and on or before the last day of January.
- Question #16:** Per IC 5-13-9-5.7, If a treasurer makes an investment using the authority to invest 25% of their portfolio up to a maturity of 5 years and their balances decrease to a point where that investment is more than 25% of total balances would SBOA find the treasurer at fault?
- Answer #16:** IC 5-13-9-5.7(e) states: "After an investment of public funds of a political subdivision is made by the investing officer under this section, the total investments of the political subdivision outstanding under this section may not exceed twenty-five percent (25%) of the total portfolio of public funds invested by the political subdivision, including balances in transaction accounts. However, an investment that complies with this section when the investment is made remains legal even if: (1) the investment policy has expired; or

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Answer #16: (Continued)

(2) a subsequent decrease in the total portfolio of public funds invested by the political subdivision, including balances in transaction accounts, causes the percentage of investments outstanding under this section to exceed twenty-five percent (25%) of the total portfolio of public funds invested by the political subdivision.” This situation does not indicate the county treasurer is out of compliance with the statute; therefore, it is not an audit exception, as presented here.

Question #17: What does “terminated” mean exactly on the Chapter 11 and 13 notices? Discharged? Dismissed? Terminated is not clear.

Answer #17: Discharge is the legal elimination of debt through a bankruptcy case. It is no longer legally enforceable against the debtor, though any lien which secures the debt may survive the bankruptcy case. Dismissal is the termination of the case without either the entry of a discharge or a denial of discharge. The debtor and creditors have the same rights as they had prior to the case after a dismissal. Terminated is not defined as a term in 11 USC, Section 101, which contains the definitions for bankruptcy under Chapter 11. Therefore, we recommend you contact the bankruptcy trustee or your bankruptcy attorney with any questions about the meaning of terminated in the context of a case in which the county is claimant.

Question #18: We have some judgments that our collection agency has notified us that the individuals are deceased. Do these judgments stay in our system or can they be removed?

Answer #18: IC 6-1.1-23-12 allows a court to set aside a personal property judgment for specific reasons, one of which is the person against whom the judgment was entered is deceased, as evidenced by a certificate of death. You can find all of the reasons to set aside a judgment for personal property in the County Treasurer’s Manual, page 8-6.

Question #19: What sewer liens must be included in amounts to be paid at the time of sheriff’s sale?

Answer #19: Recorded sewer liens

Question #20: Can a treasurer choose not to have a “tax sale”. Can they choose to have them every other year? We have only three people and are very short handed and out county council has a hiring freeze on and our bookkeeper quit and we are struggling to keep above water.

Answer #20: IC 6-1.1-24-1 provides that certification of the list occurs when there will be a tax sale. It used to provide that there “shall” be a tax sale each year. However, there is an obligation to try to collect taxes so you should have reasonable timing for the tax sale or exception can be made.

Question #21: Is it still an option for treasurers and auditors to decide if they would allow a payment plan for property up for tax sale? Or, by law do we have to make payment plans for Tax Sale RE (when requested) if so, do we market this info?

Answer #21: Per IC 6-1.1-24-1.2 a treasurer may accept partial payments. It is not required

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- Question #22:** If a person is foreclosed on his property, and the mortgage company does not deed to themselves, what is the procedure for notifying the tax sale owner? There is no lender associated with the property for taxes. Does the owner have any right to the property?
- Answer #22:** Property rights are a legal matter. The county utilizes the person listed as liable on the duplicate and that address until properly notified otherwise.
- Question #23:** If the treasurer has a tax sale and 10 properties do not sale, the commissioners do not take title to the property and the next year comes along with still more delinquent taxes. Is the treasurers supposed to "re-sale" these items? What if they don't sell twice? Do we have to certify the list our software makes? These items will always be on this list. Our county has offered these properties multiple times with no sales and our lawyers make a "search fee of \$150" on each one so it benefits them to keep offering them?
- Answer #23:** The county doesn't have to take title but when the county has the certificate of sale and meets requirements, under IC 6-1.1-24-1 the property would be included.
- Question #24:** Is there any state code that requires that the Treasurer's office receive a copy of the title in the owner's name before we complete the transfer title moving permit to the purchaser?
- Answer #24:** No...the title is provided to the treasurer by the recorder after purchase is recorded.
- Question #25:** Local BMV accepts photo copies (dates and sealed) and expired mobile home transfer permits which may have new taxes due and unpaid. Why is this allowed?
- Answer #25:** IC 6-1.1-7-11 requires that a person who is providing the service of moving a mobile home may not do so if the permit is date more than one month before the date of the purposed move. There is not a time restriction on the permit when used for transferring title.
- Question #26:** Does a mobile home that is on state property have to be titled out of state if the owner lives out of state?
- Answer #26:** This is a BMV question. Owing taxes and titling are separate issues. A nonresident may be assessed taxes on personal property held in Indiana. But titling follow a person's residency.
- Question #27:** Mobile Home Park owner applied to the BMV for title on an abandoned mobile home. The state told the owner to place notice in local paper to notify anyone with an interest in the mobile home. I did not see this notice and state issued a title and now we have delinquent taxes. How did the state transfer the title without a clearance from the county?
- Answer #27:** There are specific titling requirements under IC 9-22-1.5 for abandoned mobile homes. The state did not transfer title. A title is issued once notices as required are provided, which includes sending notice to persons known to claim interest as shown on the records of BMV.
- Question #28:** Our county assessor changes names on mobile home parcels based on information from the mobile home court's sheets received by assessor annually. The assessor state law allows her to do this without doing a title transfer.
- Answer #28:** This is an issue that DLGF will have to address with the new system.

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- Question #29:** If a mobile home title has been retired due to it being applied as real estate. Then they decide to build a house on the property and want to move the mobile home, what do we issue to them to move it since we don't have a title?
- Answer #29:** Statute does not address specifically, it depends on if it will meet the definition of mobile home. If so then they would need a permit and need to contact BMV about titling.
- Question #30:** If a mobile home park has been officially closed and all of the people have moved all directions. What do we do with the delinquent taxes on these mobile homes?
- Answer #30:** All you can do is follow the process under IC 6-1.1-23 which could include selling the mobile homes.
- Question #31:** If a mobile home park has gone through foreclosure and the park has changed ownership and by law (contract agreement) we are ordered to give titles, what do we do?
- Answer #31:** Transferring title is under BMV you would have to go to the court to let them know you do not have ability to issue or transfer titles. If they are ordering you to issue a permit so BMV will transfer...then issue the permit and document that per court order.
- Question #32:** IC 6-1.1-24-1(a)(i) What is used to determine "excess twenty five dollars (\$25)" One tax software includes prior year tax, prior year penalty, last year 1st installment tax, last year installment penalty, prior year SPA fixed fee 1, 2, 3, last year 1st SPA fixed fee 1.2.3. Should anything else be included?
- Answer #32:** In case of real property other than real property described in subdivision (2), any property taxes or special assessments certified to the county auditor for collection by the county treasurer from the prior year's spring installment or before are delinquent as determined under IC 6-1.1-37-10 and the delinquent property tax or special assessments due exceed twenty-five dollars (\$25).
- Question #33:** Is a camper that is set up with under pinning considered a mobile home? Should it be assessed? Owes taxes?
- Answer #33:** This is something that your assessor should know or if not sure your assessor should be talking to DLGF. The definition may be found under IC 6-1.1-7-1 which states:
 "(b) For purposes of this chapter, "mobile home" means a dwelling which:
 (1) is factory assembled;
 (2) is transportable;
 (3) is intended for year around occupancy;
 (4) exceeds thirty-five (35) feet in length; and
 (5) is designed either for transportation on its own chassis or placement on a temporary foundation."
- Question #34:** For covered persons under IC 36-1-8.5, preventing general public from gaining access to home addresses via website, does this include spouses?
- Answer #34:** The statute refers only to an individual who meets the definition of being covered.
- Question #35:** I have heard that a treasurer should not be submitting a C of E or entering a C of E is this correct?

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Answer #35: The treasurer should not be entering a C of E as this would be an internal control weakness. The treasurer may provide the information required for the C of E, including filling out the needed information as long as the control of the C of E is in the hands of the auditor.

Question #36: In situations where a tax comes in past due date our system automatically puts on the penalty. Then we receive the taxes and there is sufficient evidence that it was sent timely. Is the screen print sufficient to provide the auditor so that the auditor can do a C of E to remove a penalty?

Answer #36: Yes

Question #37: What if the title of a mobile home is in the name of a deceased person, and the person wants to get a clearance permit affidavit form to transfer title and move home because they are selling it. The person is not a personal representative.

Answer #37: You could provide a clearance form and then it is between the individual and the BMV.

Question #38: If a mobile home is taxed as real property and the mortgage company forecloses on the mobile home only and the mortgage company is going to move and transfer the mobile home only, how do you recommend that we handle this?

Answer #38: The statute does not address specifically. If meets the definition of mobile home, the mortgage company will need to get the title from BMV.

Question #39: If the owner of a mobile home wants to sell their home and they do not have a title (they have lost it) do we issue a clearance form for the owner to apply for a new title first and then you have them bring the new title in and then issue a transfer title form?

Answer #39: Yes.

Question #40: What if a person purchased a mobile home ten years ago and never had the title transferred and now they are selling the mobile home, how do we complete the form in regards to the owners name?

Answer #40: They have to provide proof of ownership, which is a legal matter for the court to decide.

QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE

Question #1: If IC 5-11-10-5-2 forbids a check over two years old from being cashed. Why would our Auditor insist that we issue a stop payment with the bank? This would greatly increase our bank fees.

Answer #1: It is statutorily voided but that does not prevent a bank from cashing it. It then becomes a legal issue...pursuing a bank for cashing a voided check. It might have been determined that it is more cost effective to pay stop payment fees. Again, you should work with your bank.

Question #2: On a check that has been voided and reissued and the check ends up still being outstanding after 2 years would you list the original check date and check number of the reissued date and check number?

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- Answer #2:** You should have notation about both, the first so that you will know when the five years has passed and may be sent to unclaimed property, the second one to show that you have worked this item before sending on to unclaimed.
- Question #3:** Can I purchase a \$90.00 office chair from office supplies (200 series) or must this purchase be made from a 400 series appropriation?
- Answer #3:** Whether a chair will be considered a supply or a capital asset is up to the policies in your county. You should work with your county auditor.
- Question #4:** What is the difference between cashier's check, money orders, and certified check? Can we refund cash to customer if original payment was made by any of these payment types?
- Answer #4:** Cashier check is guaranteed by the bank and drawn on the banks own funds, certified check is a personal check written by the customer and drawn on the customer's account which the bank certifies the signature is genuine and the customer has sufficient funds to cover check, money order is a payment order and the funds are prepaid for the amount shown not recognized as guaranteed funds. There are counterfeit money and cashier's checks and the certification is only good at the time certified. Any refunds should wait until these have cleared the bank and should be by check.
- Question #5:** When posting a cash bond can Clerk accept, credit card, certified check, money order in lieu of cash?
- Answer #5:** IC 33-37-6 allows for credit cards. IC 34-49-1-2(b) allows that the officer with whom the bond is required to be filed may accept a deposit of cash or a property certified check or draft for the full amount of the bond instead of a bond. This is not mandatory.
- Question #6:** What should the Clerk do if the QCSR guidelines tells us to file a case with one case type and collect filing fees and a Judge tells us to file it with another case type without filing fees?
- Answer #6:** You should follow your courts order, and they take on the responsibility. However, I would point out what the guidelines call for.
- Question #7:** How long can an employee stay on FMLA? Is FMLA renewable indefinitely? Do I have to terminate an employee who has used all their FMLA time?
- Answer #7:** You need to work with your HR department and if you don't have one, you need to then work with your county attorney. The guidelines surrounding FMLA are complicated and need an expert to provide guidance.
- Question #8:** Cash payment of \$10,000 plus more – A recent IRS audit revealed that our office was turning in more paperwork than required. Does SBOA have written instruction on the type cases the Clerk is required to report cash payments of \$10,000-and over? FYI: IRS fines for both over reporting and not reporting at all.
- Answer #8:** We do not have such instructions, this is an IRS matter. Raelane Hoff is the IRS agent for local government. She may be contacted at Raelane.Hoff@irs.gov .
- Question #9:** The hardship license fee is not listed. Marion County has \$109.00 fee on website, others say \$108.00 (no pro bono) and same as civil filing fees.

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Answer #9: The costs to be charged may be found under the April 2012 County bulletin page 12 and 13 as provided by State Court Administration. Here is guidance on the difference between petition for restricted license because of hardship under IC 9-24-15 and petitions for judicial review of habitual violator suspensions under IC 9-30-10. State Court position is that petition under IC 9-24-15 should be charged regular civil costs.

Question #10: How should the Clerk handle shortages in tills, after audit is conducted and error is not found?

Answer #10: Whenever a shortage is found you must contact State Board of Accounts per IC 5-11-1-27. We have responsibility to address internal control issues and report on them to law enforcement and you. However, you should be taking immediate action. You should have a policy in place that details how that overages and shortages are dealt with in your tills. Dollar thresholds where variance is considered minimal and something to be monitored. How that a minimal shortage will be made whole (person required to make up a end of week, month?) When you will report to law enforcement.

Question #11: If when the green card is returned by the post office and it is not either signed and/or not dated, or it has a defendant's rubber stamp by the defendants employer service in care of their employer. Whose responsibility is it to determine if this is good service? The judge presiding over the case, or the Clerk?

Answer #11: The judge. It becomes a legal matter.

Question #12: Is the late fee retroactive to infractions written to the defendant before July 1, 2013 or only on tickets written after July 1, 2013?

Answer #12: IC 33-37-5-22(f) states specifically: "...the defendant shall pay a late payment fee of twenty-five dollars (\$25) if the defendant:

(1) is found to have committed a violation constituting a Class D infraction or Class C infraction under IC 5-16-9-5 or IC 5-16-9-8 for unlawfully parking in a space reserved for a person with a physical disability;

(2) is required to pay a fine or civil judgment;

(3) is not determined by the court imposing the fine or civil judgment to be indigent

(4) fails to pay the fine or civil judgment in full before the later of:

(A) the end of the business day on which the court imposes the fine or civil judgment; or

(B) the end of the period specified in a payment schedule set for the payment of fines and civil judgments under rules adopted for the operation of the court.

However, the court may suspend a late payment fee under this section if the court finds that the defendant has demonstrated good cause for failure to make timely payment of the fee."

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Answer #12:

Therefore, it does not appear the fee is based on when the ticket for the infraction was written. Instead, it seems to be more dependent upon if this law is in place when the defendant meets all of the criteria listed to require payment of the late payment fee.

Question #13: Protection order fee of \$133 if so ordered breakdown

70%

30%

Next fees to be paid first?

Answer #13:

The Protective Order Deskbook on State Court Administration's website indicates in Chapter 2 that there are no fees for a PO case unless costs and fees are ordered against the respondent by the court. Once ordered, the costs and fees applicable to the PO case type should be collected and distributed in accordance with the handout materials discussed earlier in this conference unless otherwise directed by the order. However, we do not see where the appropriate costs and fees would be \$133.

Question #14:

Why does the entire copy fee charged by the clerk when copying a court record or certifying a copy of same go to the county general fund when the assessor & recorder both get to keep a portion of their copy fee and it remains in their budget?

Answer #14:

IC 33-37-5-1 covers both the certification of documents and copies of documents and makes them both "document fees." IC 33-37-7-12(c)(1) requires the deposit of these fees into the county general fund. County recorders must deposit their fees into the recorders record perpetuation fund per IC 36-2-7-10 but it does not become part of their budget since the recorders record perpetuation fund is not budgeted. County assessors have a different statute as well.

Question #15:

Statute requires anything that is recorded with the county recorder to be notarized & translated. Why not documents brought to the clerk?

Answer #15:

With some exceptions documents must be acknowledged before they may be recorded. An acknowledgement may be done by a notary public or other officials authorized to acknowledge documents by Indiana Code. Clerks have different duties and different statutory requirements to follow.

Question #16:

Where can I get information on the new expungement of records law?

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Answer #16: Jeff Wiese, from State Court Administration was planning on coming to conference and delivering materials related to this new legislation. He indicated yesterday that the legislation is very complicated and so State Court Administration is still working on written guidance for you. They will be sending you information as soon as it is complete. They are aware that you will need to implement changes as of July 1.

Question #17: HEA 1482, if a petition is filed as a civil action, what is the case type?

Answer #17: At this time we cannot be more specific than that it is under the civil actions. This information will be included in the guidance that State Court Administration will be providing.

Question #18: Is there anything protecting our email correspondence from unauthorized viewing / screening? Recently our IT Department purchased software that allows him to read our emails before they show up in our in boxes. It is also my understanding that he is archiving them for permanent retention.

Answer #18: The county is responsible for policies related to unauthorized screening and access; however, it sounds as though the IT Department may be authorized by a governing body to view and screen emails to make certain users of county computer systems are acting within the user agreements. County officials and employees should not expect emails to be other than public records. That does not mean that some information received and communicated through emails might not be a public record that is confidential or subject to limited disclosure. We need you to be involved in your county's policies and development of the procedures that will ensure protection of records that are not subject to public access. For example the absentee ballot records from military overseas voters, juvenile records and discussions, etc.

Question #19: When offices request to destroy records, they don't check the retention schedule. Instead they list all items on the Request for Permission to Destroy or Transfer and expect us to sort through all the items. Is there anything that we can do to make them take some of the responsibility themselves?

Answer #19: It is always difficult to make someone do anything. We don't know of any statutory guidance in this area. However, county officials can adopt policies and procedures for efficient operations within the government. It may be that if you send it back when it is wrong, they will start following the policies the county record commission has set out.

Question #20: Does the SBOA have written instructions for handling cash (counting back change, etc.)?

Answer #20: We have always recommended separate cash drawers for each employee that is taking in money. Other internal controls are up to the Official to implement and maintain. Because the controls need to be what fits best for your office. Past presentations on internal controls made some suggestions for your consideration. Additionally, the field examiners that have worked in your office may have suggestions for improvements.

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QUESTIONS AND ANSWERS FROM COUNTY CLERKS ANNUAL CONFERENCE (Continued)

Question #21: How does the Clerk recoup the money from counterfeit bills? Is there a state policy or form for reporting counterfeit bills?

Answer #21: Usually the bank notifies you that you had counterfeit money in your deposit and just takes the bills. The bank reports the crime and may ask you for information to help determine the party that passed the counterfeit bills. Therefore, there is not a state form or policy for reporting since this is a federal crime. However, it does leave your bank account short and that shortage in trust or support must be made up. Counties may be covered by insurance for these types of losses when they occur other counties may have to use their own resources to absorb the loss. This means you will eventually request appropriation of county council to cover this loss and submit a claim to the county auditor and county commissioners for the amount of the loss that needs to be deposited back into your bank account to make it whole again. Support for the claim would be the information from the bank stating they confiscated bills from your deposit for being counterfeit or a report from law enforcement.

Question #22: What are the actual fees we can charge for copies made in the clerk's office?

Answer #22: IC 33-37-5-1 states the clerk shall collect a fee of \$1 per page for a copy of any record unless the legislative body of the county has adopted an ordinance authorizing the clerk to charge less. This statute does not apply to copies through the use of enhanced access (which is covered by fees set under IC 5-14-3-8), an electronic device or fax transmissions.

I believe some counties charge for non-court records under their county ordinance adopted for all offices under IC 5-14-3-8. We do not take exception to this and due to past questions regarding these fees we did add them to the Distribution of Costs and Fees handout that we prepare each year.

Question #23: Under HEA 1393 IC 33-37-1-5(b), a county is considered to be operating under the statewide system "once the conversion to the system is complete." Our county attorney has determined the clerk can retain part of the automated recordkeeping fee because our conversion to Odyssey is not complete. How do we direct the fee to the clerk's record perpetuation fund?

Answer #23: This statute will be effective July 1, 2013. At the time the law becomes effective, you will simply deposit the \$2 of each fee collected on the report of collection to the auditor to the clerks record perpetuation fund on the same line as the document storage fees, which also are deposited into the clerks record perpetuation fund.

Question #24: Is there a change in certification of a marriage license request? The State contacted the office to "fax" a copy to them so they could certify for the request...?

Answer #24: I am not aware of any change in the process for certification of marriage records. If you get this type of contact for information from a state agency, I would recommend you communicate with them directly to determine any authority for their request; change in the process; or breakdown in the certification process currently in place.