



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL
INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 W. WASHINGTON STREET · INDIANAPOLIS, IN 46204-2770

STEVE CARTER
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

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OFFICIAL OPINION 2002-6

The Honorable Luke Kenley
The Honorable Dean Young
The Honorable P. Eric Turner
Indiana General Assembly
State House
Indianapolis, IN 46204

RE: Inventory Tax Deduction – HEA 1001

Dear Senator and Representatives:

This letter responds to your request for an answer to the following questions:

- 1) Do legislative bodies that compose the Grant County Income Tax Council individually take the action by resolution or ordinance?
- 2) Can the Grant County Income Tax Council rescind an ordinance to grant assessed value deduction for inventory prior to January 1, 2003, if the Council determines that the 2002 general reassessment does not support the viability of a personal property assessed value deduction for inventory?
- 3) Can the Grant County Income Tax Council adopt an ordinance granting an assessed valuation deduction for inventory in 2002 that is conditioned on the Council imposing a County Economic Development Income Tax (CEDIT) rate in 2003?

BRIEF ANSWER

- 1) Any member of a county income tax council may present an ordinance for passage. To do so, the member must pass a resolution to propose the ordinance to the county income tax council and distribute a copy of the proposed ordinance to the auditor of the county. Any member of a county income tax council may exercise its votes by passing a resolution and transmitting the resolution to the auditor of the county.
- 2) The inventory tax deduction statute at Indiana Code section 6-1.1-12-41(f) presents language that expressly provides, “[a]n ordinance adopted under this section in a particular year applies to each subsequent assessment year ending before January 1, 2006.” It appears to state expressly that the decision to enact the inventory tax deduction may not be rescinded. Because there does not appear to be a general “rescission statute,” it appears that the more specific statute that addresses the inventory tax deduction will control. Therefore, once the inventory tax deduction is adopted, the ability to rescind is lost.
- 3) Article 1, Section 25 of the Indiana Constitution provides that “no law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution.” Because the proposed ordinance would not be effective unless another ordinance is passed, it is likely that this will be seen as a violation of the constitutional principle.

LEGAL ANALYSIS

House Enrolled Act 1001 passed in the 2002 legislative session contains a provision that deals with the inventory tax deduction. That deduction cited at Indiana Code section 6-1.1-12-41(f) provides in pertinent part:

An ordinance may be adopted in a county to provide that a deduction applies to the assessed value of inventory located in the county. The deduction is equal to one hundred percent (100%) of the assessed value of inventory located in the county for the appropriate year of assessment. An ordinance adopted under this section in a particular year applies to each subsequent assessment year ending before January 1, 2006.

- 1) Your initial question appears to ask what the appropriate procedures are for a county income tax council to vote and take action. Indiana counties have created county income tax councils. The powers and duties of such councils are established by statute. The term “acting” is comprised of the powers and duties expressly granted by law that include imposing the county option income tax, rescinding the county option income tax, increasing the homestead credit, and other duties which are put into effect by the council’s ordinance. These powers and duties may be exercised by any member of the

county income tax council provided they are enacted according to statute. The statutes provide that any member of a county tax council may exercise its votes by passing a resolution and transmitting the resolution to the auditor of the county. A resolution is necessary for a member of a county income tax council to present an ordinance for passage. See IND. CODE §§ 6-3.5-6-2 (1984)(amended 1994); 6-3.5-6-4 (1984)(amended 1994); 6-3.5-6-5 (1984)(amended 1997).

With respect to the inventory tax deduction, a clear reading of the statutes expressly provides for the passage of that deduction to be done by ordinance. “An ordinance may be adopted....” Ind. Code 6-1.1-12-41(f). Additionally, the home rule statutes, as well as county income tax council statutes expressly provide for the enactment of legislation in that same manner. See IND. CODE § 36-1-3-6(b)(1) and see IND. CODE §§ 6-3.5-6-2, 6-3.5-6-5. Most importantly however, is the express language found in the enabling statute at IND. CODE §§ 6-1.1-12-41(h)(3) that provides, “[t]o adopt an ordinance under subsection (f), a county income tax council shall use the procedures set forth in IC 6-3.5-6 concerning the imposition of the county option income tax.” Those statutes point to the proper method of enacting an ordinance to impose the county option income tax.

2) You next ask whether the county may rescind the ordinance once it is adopted. The enabling statute itself is silent on the manner in which a county income tax council may rescind such an ordinance. The statute also specifically states: “An ordinance adopted under this section in a particular year applies to each subsequent assessment year ending before January 1, 2006.” IND. CODE § 6-1.1-12-41(f). The statute therefore expressly contemplates that once an ordinance under this statute is adopted, it stays in place until 2006. Moreover, the law requires the department of local government finance to incorporate the deduction in the personal property return forms before March 1 of that year. Further, the law provides that the township assessor must calculate and provide the deduction if the taxpayer fails to claim it. These provisions also suggest that the Legislature intended the deduction to remain in place once adopted.

Additionally, the county option income tax statutes that expressly provide for the ability to rescind ordinances, grant this authority for certain ordinances, and provide the manner and time frames for the rescission to occur. IND. CODE §§ 6-3.5-6-2 to -12.5. No such language appears in the enabling statute for the inventory tax deduction or in the county option income tax statutes. Therefore, it is likely that the express language of the enabling statute which states that once the decision to grant such a deduction is made it applies to each assessment year ending before January 1, 2006 will control. Moreover, business enterprises drawn to invest in a county as a result of the adoption of the ordinance would likely claim that the county’s rescission upset vested reliance interests. Accordingly, this Office strongly recommends that the county not attempt to rescind the ordinance once adopted, unless the General Assembly clarifies the county’s ability to rescind the inventory deduction.

3) Your last question deals with the ability to adopt an ordinance granting the inventory tax deduction contingent upon the county income tax council imposing a

CEDIT rate in 2003. The question actually brings the Indiana Constitution at Article 1, Section 25 and its interpretation into question. Article 1, Section 25 of the Indiana Constitution provides that “no law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.” Although the home rule statutes grant local governments great discretion in managing their own affairs, see IND. CODE §§ 36-1-3-1 to -9 (1980), because the delegated powers are derived directly from the state, local governments are still required to enact laws that do not offend constitutional guidelines. See *District of Columbia v. John R. Thompson Co.*, 346 U.S.100 (U.S. 1953) and *Massey v. City of Mishawaka*, 177 Ind. App. 79 (Ind. App. 1978). When it appears that a law is not in full force and effect from the date fixed by the authority of the legislature, and there appears to be another contingency required to make the law effective outside of the language of the proposed legislation itself, the law appears to be an improper delegation of legislative authority, and a violation of the Indiana Constitution. See *Johnson et. al. v. Board of Park Comm’rs of Ft. Wayne et al.*, 174 N.E. 91 (Ind. 1930).

Although it is well settled that the legislature may designate a part or all of a local governing body to make a law effective by signature or vote, a law must in and of itself be in full force and effect by the act of the legislature first. Such vote for as to whether a local unit of government will avail itself of such law is just that a determination as to whether that body will avail themselves of the provisions of the law. It has no application to any of the processes necessary to the proposal becoming a complete law. It is complete legislation and authority in and of itself. However, attempting to enact the inventory tax deduction, contingent upon the CEDIT being passed, appears to create a law that derives its effectiveness from the passage of another law as opposed to authority from the legislative authority of the local governing body.

An ordinance that is thus made contingent upon the passage of another statute or ordinance as a condition subsequent is subject to a constitutional challenge. It is our opinion that, at the least, the language placing the condition upon the effectiveness of the ordinance is not likely to withstand such a constitutional challenge.

CONCLUSION

Based on our research, we conclude that a county income tax council takes action by ordinance. In order for a member of a county income tax council to present an ordinance for passage, they must first pass a resolution. The manner in which that is to be done is found in the county income tax council statute in Indiana Code §§ 6-3.5-6-1 to -12.5.

Without language specifying otherwise, it appears that the enabling statute provides that once the inventory tax deduction statute is passed, the ability to rescind the decision is lost. It additionally appears that the decision will be carried into each subsequent assessment until January 1, 2006.

Lastly, it appears that an ordinance granting an assessed valuation deduction for inventory 2002 conditioned upon the county tax council imposing a CEDIT rate does not meet constitutional scrutiny.

Sincerely,

Stephen Carter
Attorney General

Tracy L. Richardson
Deputy Attorney General