
STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: All Political Subdivisions
FROM: Wesley R. Bennett, Commissioner
RE: Review of Excess Levy Appeals
DATE: September 14, 2018

DEMONSTRATING NEED IN EXCESS LEVY APPEALS

Introduction

This memorandum informs civil taxing units (“unit”) of the criteria the Department of Local Government Finance (“Department”) uses in determining whether a unit is eligible for an excess maximum levy appeal (“appeal”) (please note that of the appeals discussed in this memorandum, only the transportation appeal is available to school corporations). Indiana Code 6-1.1-18.5-12 allows a qualified unit to appeal to the Department for relief from its levy limitations after the unit has determined that it cannot carry out its governmental functions under those levy limitations for the ensuing calendar year. The Department must then examine the merits of the unit’s claim.

Appeals are fact-sensitive inquiries. Indiana Code 6-1.1-18.5-12(a) requires a unit to support its claim for an appeal with reasonably detailed statements of fact. In evaluating the merit of an appeal, the Department takes a “need-based” approach based on the information presented and the prescriptions of the Indiana Code. **PLEASE NOTE: The Department expects a unit submitting an appeal to thoroughly detail the appeal, the basis of the appeal (including circumstances as a result of legal or statutory processes), and the numbers used to arrive at the excess levy requested. The unit’s explanation must be clear and well-documented. The burden of proof rests with the unit. The Department will rely on the explanations and documentation provided by the unit as submitted. The Department has the power, under IC 6-1.1-18.5-12(c), to require production of additional evidence and records.**

Please note that the appeal deadline for all appeals other than a shortfall appeal is October 19. Late submissions will not be considered.

The Department may deny or modify an excess levy appeal on the basis that the unit has sufficient fund balances to allow it to carry out its governmental functions. The Department will take circuit breaker credits into consideration when estimating fund balance amounts.

If an appeal is approved, the appeal amount is incorporated into the unit's maximum levy prior to certification of budgets, property tax rates, and property tax levies for the unit for the ensuing year. A decision by the Department on the appeal is final.

General Factors Evaluated by the Department

The Department may consider the following factors in reviewing an appeal:

- (1) What is the percent increase of the rate due to the appeal?
- (2) What is the percent increase of the levy due to the appeal?
- (3) What is the appeal impact per capita?
- (4) Is the taxing unit affected by circuit breaker credits?
- (5) Will the appeal result in circuit breaker credits?
- (6) Has the unit experienced levy excess in the recent years?
- (7) What is the taxing unit's history of excess levy appeals?
- (8) Are there TIF districts located within the unit?
- (9) Does the unit have a balance in its rainy day fund? If so, how much?
- (10) Does the unit plan to transfer surpluses in the current year to its rainy day fund? If so, how much?¹
- (11) What is the unit's fund balance as a percent of its budget?
- (12) What will be the effect on the unit if the appeal is denied?
- (13) If the appeal is for a correction of an error, what is the error?
- (14) If the appeal is due to an emergency, what is the emergency?
- (15) If the appeal is due to an annexation, consolidation, or extension of services, what is the expected increase in assessed value?
- (16) What will be the impact on the income tax and excise tax distributions?
- (17) If the appeal is due to an annexation, does the amount of the appeal reflect the fiscal plan as originally submitted? Does the percent increase in maximum levy mirror the percent increase in assessed value?
- (18) Was there opposition or objection to the appeal?
- (19) What was the vote by the fiscal body approving the appeal?
- (20) Was the appeal advertised through the ensuing year's budget advertisement?
- (21) Is the appeal a permanent or temporary increase to the maximum levy?
- (22) Overall, what is the tax impact on taxpayers?

Appeals are not allowed to recover losses due to circuit breaker credits.

Types of Appeals

Indiana Code 6-1.1-18.5 permits the Department to provide relief for the following types of claims:

- (1) Annexation, consolidation (reorganization), or extension of services.

¹ Pursuant to IC 36-1-8-5.1, a transfer made to a rainy day fund cannot be made from a debt service fund or other dedicated funds.

- (2) Three-year growth factor exceeding 2% of the statewide average.
- (3) Correction of advertising errors, mathematical errors, or errors in data.
- (4) Shortfall due to erroneous assessed valuation.
- (5) Emergency.

Annexation, Consolidation/Reorganization, or Extension of Services

Indiana Code 6-1.1-18.5-13(a)(1) allows a unit to seek an increase in its maximum levy to pay additional costs for providing services to newly annexed or consolidated/reorganized areas or for extending governmental services to additional geographic areas. In other words, this appeal is intended to assist units in accommodating growth in land area or consolidation/reorganization of governments. This appeal may qualify as a permanent adjustment to the maximum levy.

The Department evaluates the merits of an annexation, consolidation/reorganization, or extension of services appeal based on the nature of the services being provided. Specifically, the Department looks at both the costs associated with providing the services to the area and the timeframe by which those services are extended into the new area.

In evaluating the costs the unit alleges it will incur due to the annexation, consolidation/reorganization, or extension of services, the Department places significant weight on the fiscal plan and documentation concerning the annexation, consolidation/reorganization, or extension of services. Implicit in the statutory provision that the Department determine whether a maximum levy increase is “reasonably necessary due to increased costs of the civil taxing unit resulting from annexation, consolidation, or other extensions of governmental services” is the notion that an increase in a unit’s maximum levy should rationally mirror the expenses incurred through the annexation, consolidation/reorganization, or extension of services, and that the expenses are sensible and credible. To justify an increase in its maximum levy, an appealing unit must demonstrate that the area it is annexing or into which it is extending services will actually be receiving new benefits and services it was not previously receiving.

The Department notes that an annexing unit is entitled to either an automatic increase in its maximum levy of up to 15% pursuant to IC 6-1.1-18.5-3(a) or an appeal awarded by the Department, but not both. If a unit increases its assessed value through annexation by more than 15%, the unit potentially qualifies for an increase in its maximum levy through an appeal that is greater than would be the automatic adjustment of up to only 15% provided by IC 6-1.1-18.5-3(a).

A unit seeking an annexation, consolidation/reorganization, or extension of services appeal must submit the following information to the Department for review:

- (1) The time frame of annexations, extensions, or consolidations/reorganizations to be considered.
- (2) Any levy increases already granted for each budget year within the time frame of annexation, extension, or consolidation/reorganization.
- (3) The types of services that will be needed and/or increased due to annexation, extension, or consolidation/reorganization.

- (4) The increased expenses due to annexation, extension, or consolidation/reorganization for each year.
- (5) Either of the following, as applicable:
 - a. The fiscal plan and/or reorganization plan for the annexation, extension or consolidation/reorganization.
 - b. The interlocal agreement and authorizing ordinance/resolution for an extension.
- (6) The appeal amount requested, determined by the following:
 - a. The total amount of the appeal, supported by evidence of increased expenses, less the levy increases already granted in the years of annexation, extension, or consolidation/reorganization; divided by
 - b. The total number of years of annexation, extension, or consolidation/reorganization.
- (7) Whether the total amount requested matches the amount in the fiscal plan for each annexation, extension, or consolidation/reorganization.
- (8) Whether the unit transferred funds to its rainy day fund during any year of the annexation, extension, or consolidation/reorganization and:
 - a. if it did, the amount and the fund from which the transfer was made; or
 - b. if it did not, whether the unit plans to transfer funds to its rainy day fund in the near future. If the unit plans to transfer funds, what is the anticipated amount?
- (9) The legal basis for the annexation, extension, or consolidation/reorganization (e.g., Government Modernization Act, annexation under IC 36-4-3, extension of park services by referendum under IC 36-10-3).

Three-Year Growth

Indiana Code 6-1.1-18.5-13(a)(2) permits a unit to seek an appeal if its average assessed value growth over the last three years exceeds the statewide average assessed value growth by at least 2%. The amount, if any, of an appeal for which a unit may be eligible is determined by the following formula:

Step 1: Determine the unit's certified assessed valuation for the last four years.

Step 2: Calculate the assessed value growth for each of the last three years, including an adjustment for the assessed value deduction under the inventory deduction in 2006 Pay 2007 and the amount deducted under the homestead supplemental deduction in 2008 Pay 2009.

Step 3: Calculate the average assessed value growth by taking the sum of the results of Step 2 and dividing by three.

Step 4: Calculate the statewide assessed value growth for each of the last three years, including an adjustment for the assessed value deduction under the inventory deduction in 2006 Pay 2007 and the amount deducted under the homestead supplemental deduction in 2008 Pay 2009.

Step 5: Calculate the statewide average assessed value growth by taking the sum of the results of Step 4 and dividing by three.

Step 6: Divide the Step 3 amount by the Step 5 amount.

For a unit to qualify for the appeal, the Step 6 amount must be equal to or greater than 1.02. The maximum amount by which an appealing unit's maximum levy may be increased is equal to the amount by which Step 3 exceeds the assessed value growth quotient ("AVGQ") as calculated according to IC 6-1.1-18.5-2. (The AVGQ is 1.034 for 2019.) This appeal may qualify as a permanent adjustment to the unit's maximum levy.

Correction of Advertising Errors, Mathematical Errors, or Errors in Data

Through a correction of error appeal pursuant to IC 6-1.1-18.5-14, the Department may order a correction of any advertising error, mathematical error, or error in data made at the local level for any calendar year if the Department finds that the error affects the determination of the unit's maximum levy, tax rates, or tax levies. The unit must state what type of error occurred and the amount of the error that should be considered by the Department. The unit should provide documentation showing that a specific error actually occurred. Requests for consideration of errors that *may* occur will not be considered.

Most critically, because this appeal contemplates errors involving advertising or mathematical calculations (i.e., objective and mechanical or typographical errors), the Department will not consider appeals seeking to correct a unit's past *policy* decisions. In other words, if in a year a unit voluntarily reduces its maximum levy but subsequently regrets this decision, this is not an error as contemplated by IC 6-1.1-18.5-14 and thus would not qualify for a correction of error appeal. The Department will vigorously enforce this policy.

A requested correction should not be related to refunds or errors made and/or corrected due to assessment appeals. These types of "errors" are calculated via the shortfall appeal.

Shortfall Due to Erroneous Assessed Valuation

Under IC 6-1.1-18.5-16, a unit may seek an appeal due to a shortfall of property taxes resulting from erroneous assessed value or refunds for successful assessment appeals. This appeal is available only when the shortfall affects funds that fall within the maximum levy. This is a temporary appeal, meaning that an approved increase in maximum levy is effective for one year only.

The unit must do the following as part of its appeal to the Department:

- (1) State which budget year(s) experienced a shortfall.
- (2) Describe in detail what caused the error(s) in assessed value and the dollar amount associated with the error(s).
- (3) List the unit's district numbers, per the auditor's reports, and calculate the sum of the following:

- a. Total District Net Amount from the 127-CER Report.
 - b. Total District Net Amount from the 17-TC Report.
 - c. Total District Net Errors and Refunds Issued.
- (4) Subtract the actual distribution and the circuit breaker from the certified levy of each fund (excluding debt and cumulative funds).
- (5) If the unit received a levy excess within the past three years, state the taxing year(s) and amount(s).
- (6) Whether the unit transferred funds to its rainy day fund during the budget year, the immediately preceding budget year, or the year of the shortfall, and:
- a. if it did, provide the amount and the fund from which the transfer was made; or
 - b. if it did not, whether the unit plans to transfer funds to the rainy day fund in the near future. If the unit plans to transfer funds, what is the anticipated amount?

The unit must state with specificity the cause of the shortfall and provide the following:

- a. County Form 127-CER (Register of Certificates of Error) for the year(s) in which the shortfall occurred for each taxing district of which the unit is a taxing entity;
- b. County Form 17-TC (Certificate of County Auditor of Tax Refund Claims) for each taxing district of which the unit is a taxing entity. Refunds must clearly indicate the assessment year for which the refund is claimed; and
- c. County Form 22 (County Auditor's Certificate of Tax Distribution) for each year the unit is claiming a property tax shortfall.

Failure to provide the necessary documents may result in denial of the appeal. Please note that this appeal is calculated for the amount of a unit's portion of errors and refunds and does not include delinquent payments or circuit breaker shortfalls. These amounts will not be included in the calculation of actual shortfall experienced. Again, debt funds and cumulative funds do not qualify for this appeal.

PLEASE NOTE: A difference in assessed valuation between the certified net assessed value and the county abstract does not mean that an error necessarily occurred. A unit alleging a shortfall because of a difference in assessed valuation between the certified net assessed value and the county abstract must demonstrate to the Department that the difference was due to an actual error, not simply the auditor's statutorily-permissible withholding of assessed valuation under IC 6-1.1-17-0.5. Also, the Department will not grant a shortfall appeal in an amount greater than the unit's portion of errors and refunds, even if the unit's actual shortfall is greater than its portion of errors and refunds. Finally, although a shortfall appeal is statutorily not due until December 30, the Department requests that this appeal be submitted as soon as possible to facilitate timely budget review and certification.

Emergency

Pursuant to IC 6-1.1-18.5-13(a)(3), a unit may seek an increase in its maximum levy if it cannot carry out its governmental functions for an ensuing year due to a natural disaster, accident, or other unanticipated emergency. A unit must describe the underlying emergency giving rise to the

appeal. The Department does not consider a generally poor local or national economy to be an unforeseen emergency. This is a temporary appeal.

A unit submitting an emergency appeal must document the following:

- Description of emergency.
- Demonstrated increased services.
- Demonstrated financial need.
- Detailed, reasonable administrative overhead for the current year.

The Department may consider other factors it deems relevant when evaluating emergency appeals.

Pervasive unemployment or poverty resulting from a generally weak local or national economy will not be treated as an emergency. A unit will have to point to a specific occurrence, such as a tornado, flood, or the sudden closure of the unit's sole or primary private employer to qualify for an emergency appeal.

School Transportation Appeal

NOTE: The legislature in 2017 passed two acts affecting transportation appeals. House Enrolled Act 1450-2017 ("HEA 1450") amended IC 20-46-4-10 affecting the current process for the transportation fund, while House Enrolled Act 1009-2017 ("HEA 1009") added a new statute found at IC 20-46-8-3 to provide for this process for the transportation levy component of the operations fund ("transportation levy"). Both statutes are effective until January 1, 2019. While HEA 1450 and HEA 1009 have different criteria for obtaining a levy increase, the Department does not believe that there is an apparent conflict between the two statutes. While a school corporation can conceivably apply for an appeal under IC 20-46-4-10 until the end of 2018, such an appeal would affect only the school corporation's transportation fund, which by virtue of HEA 1009 is eliminated effective January 1, 2019 and thus the appeal would be moot.

Although a school transportation fund-related appeal is not a traditional maximum levy appeal governed by IC 6-1.1-18.5, it is addressed in this memorandum because it does involve an increase to a school's transportation levy. Please review the Department memorandum entitled, "School Transportation Excess Levy Appeal" for more information about this appeal.

A school corporation may appeal to the Department to increase its operations levy for transportation costs under IC 20-46-8-3. To be granted an increase, the school corporation must establish that the increase is necessary because of a transportation operating cost increase of at least 10% over the preceding year as a result of at least one of the following:

- (1) A fuel expense increase.
- (2) A significant increase in the number of students enrolled in the school corporation that need transportation or a significant increase in the mileage traveled by the school corporation's buses compared with the previous year.

- (3) A significant increase in the number of students enrolled in special education who need transportation or a significant increase in the mileage traveled by the school corporation's buses due to students enrolled in special education as compared with the previous year.
- (4) Increased transportation operating costs due to compliance with a court-ordered desegregation plan.
- (5) The closure of a school building within the school corporation that results in a significant increase in the distances that students must be transported to attend another school building.

In addition, before the Department may grant an operations maximum levy increase for transportation costs, the school corporation must establish that it will be unable to provide transportation services without an increase. The Department may grant an increase that is less than the increase requested by the school corporation. This is a permanent appeal.

CONTACT INFORMATION

Questions may be directed to your Budget Division field representative. Budget Field Representative contact info may be found at https://www.in.gov/dlgf/files/Field_Rep_Map_-_Budget.pdf.