
STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: All Political Subdivisions

FROM: Wesley R. Bennett, Commissioner

DATE: June 17, 2022

RE: Legislation Affecting Economic Development Matters

The Department of Local Government Finance (“Department”) issues this memorandum to inform interested parties about changes made to laws concerning various economic development matters. The affecting legislation includes House Enrolled Act 1034-2022 (“HEA 1034”), Senate Enrolled Act 361-2022 (“SEA 361”), and House Enrolled Act 1260-2022 (“HEA 1260”), signed by Governor Eric J. Holcomb on March 8, 15, and 22, 2022, respectively. This memorandum is for informative purposes only and is not a substitute for reading the law.

I. Residential Properties and TIF Districts, HEA 1260

HEA 1260 amends several provisions in statutes concerning the following allocation areas:

- Airport Development Zones (Ind. Code § 8-22-3.5-9)
- Redevelopment Project Areas (Ind. Code § 36-7-14-39; Ind. Code § 36-7-15.1-26; Ind. Code § 36-7-14-53)
- Military Base Reuse Areas (Ind. Code § 36-7-30-25)
- Military Base Development Area (Ind. Code § 36-7-30.5-30)

This amendment provides that, for an allocation area established after June 30, 2024, “residential property” refers to (1) the assessed value of the property that is allocated to the 1% homestead land and improvement category in the county tax and billing software system and (2) the residential assessed value as defined for purposes of calculating the rate for local income tax property tax relief credit designated for residential property under Ind. Code § 6-3.6-5-6(d)(3).

Therefore, when determining the residential property that is to go into the base assessed value for an allocation area created after June 30, 2024, the auditor must use the assessed value as reported in county tax and billing software under the 1% homestead land and improvement category in addition to what is reported as residential assessed value for purposes of local income tax property tax relief credits.

Please note that while the effective date of the amendments is July 1, 2022, this will not affect any allocation areas established before July 1, 2024, including allocation areas currently in existence. The purpose of this is two-fold: (1) to give county tax and billing software vendors time to make any adjustments to their systems; and (2) to prevent any adverse effects to debt

obligations that are or will be paid for from revenue captured from allocation areas created before the tax and billing systems can be updated.

II. Infrastructure Development Zone Properties, HEA 1260

Section 28 of HEA 1260 amends Ind. Code § 6-1.1-12.5-1 to define a “provider of broadband service or advanced services” for purposes of determining eligible infrastructure under Ind. Code 6-1.1-12.5. The term “provider of broadband service or advanced serves” includes a telephone company or cable company as defined in Ind. Code § 6-1.1-8-2(15). Currently, Ind. Code § 6-1.1-8-2(15) defines a “telephone, telegraph, or cable company” which means a company which is principally engaged in the business of communicating by electrical transmission.

Section 10 of HEA 1260 amends Ind. Code § 6-1.1-8-27 affecting infrastructure development zones established under Ind. Code § 6-1.1-12.5-5, as follows:

- The county assessor may exempt designated infrastructure development broadband assets. This includes broadband infrastructure assets located in a designated infrastructure development zone of a centrally assessed telephone company or cable company. “Centrally assessed” is not defined, though it is likely referring to properties assessed by the Department and that is not locally assessed.
- A centrally assessed telephone company or car company that makes eligible infrastructure investments in a designated infrastructure development zone in facilities and technologies is exempt from property taxes if they are used:
 - in the deployment and transmission of broadband service;
 - in advanced services that increase the availability of broadband service;
 - in advanced service; or
 - under any combination of the above.
- After the Department certifies the assessed values for the property of a centrally assessed telephone company or cable company to the county assessor and county auditor, the centrally assessed telephone company or cable company shall produce and submit an annual report to the county assessor. This report must be submitted no later than July 1 of each assessment year. The report must include sufficient information necessary for the county assessor or county auditor to identify the broadband infrastructure investments that are eligible to be exempt from property taxes.
- The county auditor shall reduce the Department’s certified assessed values for each applicable state-assessed personal property record that qualifies for the exemption prior to certifying net assessed values. This includes the certified assessed values for the centrally assessed telephone company or cable company.

Section 10 of HEA 1260 is effective July 1, 2022.

III. Mini-Mill Assessments, HEA 1260

Section 2 of HEA 1002 adds Ind. Code § 6-1.1-3-23.5 as a new section affecting mini-mill equipment. This section is effective July 1, 2022.

A mini-mill is defined in this section as a person, including a subsidiary of a corporation, that produces steel in Indiana using an electric arc furnace.

Mini-mill equipment is defined as depreciable personal property (as defined in Ind. Code § 6-1.1-3-23(b)(2)), other than special tools (as defined in Ind. Code § 6-1.1-3-23(b)(8)) and permanently retired depreciable personal property (as defined in Ind. Code § 6-1.1-3-23(b)(5)) that is owned, leased, or used by a mini-mill or an entity that is at least fifty percent (50%) owned by an affiliate of a mini-mill in the production of steel.

Beginning with the January 1, 2023, assessment date, a taxpayer may elect to calculate the true tax value of mini-mill equipment by multiplying the adjusted cost (as defined in Ind. Code § 6-1.1-3-23(b)(1)) by the applicable percentage set forth in the Pool No. 5 depreciation table under Ind. Code § 6-1.1-3-23(c) and (d). This election may be made notwithstanding the Department's rules found in 50 IAC 4.2-4-4, 50 IAC 4.2-4-6, and 50 IAC 4.2-4-7. However, a taxpayer may not make an election if the Department certifies that there are outstanding bond obligations that would be impaired as a result of the election.

The percentage factors in the Pool No. 5 depreciation table automatically reflect all adjustments for depreciation and obsolescence, including abnormal obsolescence, for mini-mill equipment. The equipment is entitled to all exemptions, credits, and deductions for which it qualifies. When a taxpayer makes an election, the 30% floor limitation under 50 IAC 4.2-4-9 does not apply to mini-mill equipment, and the value of the equipment is excluded from the calculation of the 30% floor for the taxpayer's other assessable depreciable personal property in the taxing district.

An election is made by reporting the equipment on a business personal property tax return. The election applies to all of the taxpayer's mini-mill equipment located in the state, whether owned or leased or used as an integrated part of the equipment. The election is binding on the taxpayer for the assessment date for which it is made.

The Department must prescribe the forms to make the election beginning with the January 1, 2023, assessment date. Any mini-mill equipment acquired by a taxpayer that has made an election is valued under Ind. Code § 6-1.1-3-23.

If 50% or more of the adjusted cost of a taxpayer's property that would be reported in a pool rather than Pool No. 5 is attributable to mini-mill equipment, the taxpayer may elect to calculate the true tax value of all of that property as mini-mill equipment.

IV. Priority of TIF Liens, HEA 1034

Section 1 of HEA 1034 amends Ind. Code § 36-7-25-6 to state that a lien resulting from an agreement between a redevelopment commission and a taxpayer in a TIF district:

- 1) takes priority over any existing or subsequent mortgage, other lien, or other encumbrance on the property; and
- 2) must have parity with a state property tax lien under Ind. Code § 6-1.1-22-13.

This amendment also states that a lien resulting from a taxpayer agreement will have the priority of real property taxes described in Ind. Code § 6-1.1-22-13 and may be enforced and collected in all respects as real property taxes. Section 1 of HEA 1034 is effective July 1, 2022.

V. Marketing of Land in a TIF District, HEA 1034

Section 2 of HEA 1034 amends Ind. Code § 36-7-25-7 to state that a redevelopment commission may enter into a contract to provide marketing and advertising of land located in a TIF district. However, the commission may not spend bond proceeds or more than 7.5% of the yearly allocated tax proceeds received by the commission for the contract. Section 2 of HEA 1034 is effective July 1, 2022.

VI. Innovative Development Districts, SEA 361

Section 28 of SEA 361 adds Ind. Code § 36-7-32.5 as a new chapter, effective July 1, 2022. This new chapter allows the Indiana Economic Development Corporation (“IEDC”) to establish an innovative development district (“IDD”) as an allocation area for property tax, income tax, and gross retail tax. The following is a summary of sections of Ind. Code § 36-7-32.5 that relates to property tax.

A. Definitions – Ind. Code §§ 36-7-32.5-1 through 8

1. “Base Assessed Value” - Ind. Code § 36-7-32.5-1

Defines “base assessed value” as the net assessed value of all taxable:

- (1) real property that is assessed as commercial or industrial properties; and
 - (2) personal property;
- that is located in the IDD as finally determined for the assessment date immediately preceding the effective date of the IEDC’s designation of the area as an IDD.

2. “Corporation” - Ind. Code § 36-7-32.5-2

Defines “corporation” for purposes of Ind. Code § 36-7-32.5 as the IEDC.

3. “Executive” - Ind. Code § 36-7-32.5-3

Defines “executive” as the following:

- (1) For a county except Marion County, the president of the county board of commissioners.
- (2) For Marion County, the mayor of Indianapolis.
- (3) For a city, the mayor.
- (4) For a town that does not have a mayor, the president of the town council.
- (5) For a town that has a mayor, the mayor.

B. Requirements to Establish a District – Ind. Code § 36-7-32.5-9

Indiana Code § 36-7-32.5-9 lays out the following requirements before the IEDC can establish a District:

- The IEDC may create a District within the jurisdiction of one (1) or more cities, towns, or counties.
- The IEDC must establish uniform policies and guidelines that the IEDC must follow when notifying and collaborating with an executive or executives to create a District. The IEDC must publish the policies on its website.
- Subject to Ind. Code § 36-7-32.5-12(a), after notifying and collaborating with the executive or executives, the IEDC may create a District if it determines that the District will support economic growth. Creation of the District must be done in the manner provided under the IEDC’s policies, mentioned above.

This section also states the IEDC may not create a District after June 30, 2025.

C. Restrictions to Establish a District – Ind. Code § 36-7-32.5-10

Indiana Code § 36-7-32.5-10 places the following additional restrictions on creating a District:

- A District cannot be created if the business or businesses that are expected to locate within the District:
 - Currently operate in Indiana in a location outside the District; and
 - Intend to substantially reduce or cease operations at the other location in order to relocate to the District.
- A District cannot be created in a preexisting allocation area established under
 - Ind. Code § 5-1-17.5 (Motorsports Investment Districts);
 - Ind. Code § 6-1.1-39 (Economic Development Districts);
 - Ind. Code § 8-22-3.5 (Airport Development Zones);
 - Ind. Code § 36-7-13 (Community Revitalization Enhancement District);
 - Ind. Code § 36-7-14 (Tax Increment Financing Districts);
 - Ind. Code § 36-7-15.1 (Tax Increment Financing Districts in Marion County);
 - Ind. Code § 36-7-30 (Federal Military Base Reuse Areas);
 - Ind. Code § 36-7-30.5 (Multicounty Federal Military Base Reuse Areas);
 - Ind. Code § 36-7-31 (Professional Sports Development Areas in Marion County);
 - Ind. Code § 36-7-31.3 (Professional Sports Development Areas);
 - Ind. Code § 36-7-31.5 (Additional Professional Sports Development Areas in Marion County);

- Ind. Code § 36-7-32 (Certified Technology Parks);
 - Ind. Code § 36-7.5-4.5 (Northwest Indiana Regional Development Authority); or
 - Any other provision that authorizes the creation of an allocation area.
- A development within the District is subject to any zoning ordinance or other zoning law that otherwise applies to the territory within the District.

D. Duration of a District - Ind. Code § 36-7-32.5-11

Indiana Code § 36-7-32.5-11 limits the lifespan of a District to not more than thirty (30) years, except it can be extended after budget committee review.

E. Agreement with Local Governments with Project Over \$2 Billion & Prohibition on Eminent Domain - Ind. Code § 36-7-32.5-12

Indiana Code § 36-7-32.5-12 includes the following requirements if the total costs and benefits of a proposed investment is expected to be less than two billion dollars (\$2,000,000,000):

- The Corporation enters into an agreement with each unit executive which has the terms and conditions governing the district. The agreement must include several provisions outlined in Ind. Code § 36-7-32.5-12(b), including the following:
 - (1) A description of the area, including a list of parcels to be included within the district.
 - (2) Covenants and restrictions, if any, upon all or a part of the properties in the District and terms of enforcement of any covenants or restrictions.
 - (3) The due diligence and financial commitments of any party to the agreement and of any owner or developer of property within the District.
 - (4) The financial projections of the District.
 - (5) The proposed use of the (1) net gross retail and income tax incremental amounts (as defined in Ind. Code § 36-7-32.5-8); and (2) incremental property tax amount that will be captured within the district.
 - (6) The aggregate percentage of annual incremental property tax revenue that will be transferred to any city, town, county, or school corporation. The amount transferred cannot be less than twelve percent (12%) of the annual amount of incremental property tax revenue that is deposited in the innovation development district fund.
 - (7) The duration of the district. Per Ind. Code § 36-7-32.5-11, the duration cannot exceed thirty (30) years, except as approved by the budget committee.
 - (8) The terms of enforcement of the agreement.
 - (9) The public facilities to be developed for the district and estimated costs of those facilities.

- An executive may discuss the terms of this agreement and hold an executive session under Ind. Code § 5-14-1.5-6.1 with the unit’s legislative body.
- The IEDC must, within fifteen (15) days of entering into an agreement, submit a written report on the agreement to the budget committee.
- Neither a unit executive nor the IEDC may exercise eminent domain within a District.

F. Designation of an Allocation Area in a District – Ind. Code § 36-7-32.5-13

Indiana Code § 36-7-32.5-13 states that if a District is created, each executive of the unit or units where the District is located shall designate an allocation area for the purpose of allocating property taxes. Each executive must provide notice of the designation to the county auditor and to each taxing unit in the geographic area where the district is located. The notice must state the general boundaries of the district and include a list of all parcels to be included within the district.

G. Allocation of Property Taxes in an Allocation Area – Ind. Code § 36-7-32.5-14

Indiana Code § 36-7-32.5-14 states that the allocation area must cover the entire boundary of the District. It also provides for how the property taxes collected from commercial and industrial properties are to be allocated:

- The assessed value of all taxable real and personal property in the District is the lesser of the assessed value as valued without regard to this section or the base assessed value. This is for purposes of property tax limitations, property tax replacements, and formulation of the budget, tax rate, and tax levy of each unit where the property is located.
- The property taxes generated from the lesser of the base assessed value or the assessed value as of the assessment date are allocated and paid to the taxing units that reside in the District.
- The property taxes attributable to a referendum held by a taxing unit and conducted after April 30, 2010, are allocated and paid to the taxing unit.
- The property taxes generated from the assessed value in excess of the base assessed value and not attributable to a local referendum are allocated and paid into the local innovation development district fund (“IDD fund”) established by Ind. Code § 36-7-32.5-19. The distribution is to be made during the June and December settlements under Ind. Code § 6-1.1-27.
- Each assessor shall reassess the taxable real and personal property within or added to the District upon request by the unit executive or the IEDC. The assessment is effective on the next assessment date. By “each assessor,” this provision likely refers to the assessor in each county where the District

resides, though it does not distinguish between township assessors and county assessors.

Therefore, the allocation area is treated the same as, for example, how an allocation area in a TIF district is treated.

H. Waiver of Property Tax Appeals by Taxpayer in District - Ind. Code § 36-7-32.5-15

Indiana Code § 36-7-32.5-15 allows an executive or the IEDC to enter into a written agreement with a taxpayer wherein the taxpayer would waive appeals of any assessment of tangible property in the District. The waiver would be for during the term of any specified bond or lease obligation payable, in whole or in part, from property taxes allocated and distributed to the IDD fund.

It also allows an executive or the IEDC to exempt any or a part of tangible real or personal property located in the District, with the following qualifications:

- No exemption can be placed on property after any bonds payable from the IDD fund have been issued and remain outstanding.
- The real property must be assessed as commercial or industrial property.
- Real property improvements are eligible for an exemption if they are constructed after the date the District was created under Ind. Code § 36-7-32.5-9.
- Personal property is eligible for an exemption if it is first entered into service after the date the District was created under Ind. Code § 36-7-32.5-9.
- Notice of the exemption must be given to the county assessor and the county auditor. This is to ensure that the exempt property can be removed from the tax rolls.
- The exemption can be terminated by providing notice to the county assessor and county auditor.
- An exemption or termination of an exemption is effective beginning with the assessment date that immediately follows the date that the notice is provided.

I. State Rules on Districts & Neutralization of Assessed Value – Ind. Code § 36-7-32.5-16

The State Board of Accounts (“SBOA”), DOR, and the Department may, under Ind. Code § 36-7-32.5-16, adopt rules and prescribe forms and procedures to implement a District. Before any rules may be adopted, SBOA, DOR, and the Department must submit a report to the budget committee that describes the rules and recommends statutory changes necessary to implement Ind. Code § 36-7-32.5.

After each reassessment or annual adjustment of property, the Department shall adjust the base assessed value of a District to neutralize any effect of a reassessment of real property in the District on the proceeds allocated to the IDD fund. This will be implemented as part of the TIF Neutralization process already in place for other allocation areas.

J. Ind. Code § 36-7-32.5-19 - Local Innovation Development Fund

Indiana Code § 36-7-32.5-19 requires the IEDC to establish a Local Innovation Development Fund for each District. Each fund will consist of property tax revenue captured from the incremental assessed value in a District and incremental gross retail and income tax revenue (as defined by Ind. Code § 36-7-32.5-5 and 7, respectively) as determined under Ind. Code § 36-7-32.5-18 and transferred by DOR.

It also requires that no later than August 1 of each year, the IEDC will transfer incremental property tax revenue to the general fund of each city, town, county, or school corporation located in the District. If there is an agreement between the IEDC and the unit executives, the amount transferred is the amount stated in the agreement. If there is no agreement, the IEDC may not transfer less than twelve percent (12%) of the annual amount of incremental property tax revenue. The amount must be transferred proportionately based on each city's, town's, county's, and school corporation's tax levy applied to property located within the District. A transfer will also not reduce the actual or maximum permissible levy of a city, town, county, or school corporation and may not be considered in determining a city's, town's, county's, or school corporation's maximum permissible levy.

Contact Information

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