

# STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO:** All Unit Officials

**FROM:** Brian Bailey, Interim Commissioner, Department of Local Government Finance **BEB**  
Tim Berry, Auditor of State **TJB**  
Bruce Hartman, State Examiner **BH**

**RE:** Exempt and Nonexempt Rates and the Circuit Breaker

**DATE:** May 5, 2010

This memo clarifies and supersedes the Department of Local Government Finance ("Department") memo dated April 6, 2010, entitled "Circuit Breaker and Debt Service."

## Debt service that is not exempt from the circuit breaker

Most debt service is not exempt from the calculation of the circuit breaker. This section of the memo pertains to property tax rates and funds for debt service in 90 counties (Lake and St. Joseph are excluded) that is not issued pursuant to voter approval. These funds will receive a reduction in revenue as a result of the application of the circuit breaker credit.

However, I.C. 6-1.1-20.6-10(b) states that "Political subdivisions are required by law to fully fund the payment of their debt obligations in an amount sufficient to pay any debt service or lease rentals on outstanding obligations, regardless of any reduction in property tax collections due to the application of tax credits granted under this chapter." Otherwise put, circuit breaker credits do not justify defaulting on a unit's debt payments. If the revenue reductions from the circuit breaker leave a unit's debt service fund without sufficient money to pay its debt service obligations, the unit must **appropriate** the money from other funds to pay those obligations. The unit may not **transfer** money from other funds into the debt service fund.

Further, according to I.C. 6-1.1-20.6-10(c), if a unit does not pay its debt obligations, the State of Indiana must pay the debt obligations for the unit using state funds. The State recoups the amount of the payment through a reduction in (1) LOIT distributions and (2) any other State distributions, if necessary, that the State would otherwise distribute to that unit.

The fact that debt service funds are included in the allocation of circuit breaker credits **does not change the total circuit breaker credits** affecting the unit. Only the distribution of those credits among the unit's funds changes. The total revenue that each unit receives would be the same regardless of whether debt service funds are included in the circuit breaker allocation. This application

of the law gives the units the most flexibility on how to pay debt service but does not impact the amount of revenue the unit receives. For more details, please see the attached graphic entitled "Unit Payment of Debt Service."

**Debt service and voter-approved levies that are exempt from the circuit breaker**

Indiana Code 6-1.1-20.6-7(d) and (e) and IC 6-1.1-20.6-7.5(d) and (e) state that property taxes imposed after being approved by voters in a referendum and property taxes imposed for debt service issued before July 1, 2008 in eligible counties are not to be considered for the purpose of calculating the circuit breaker credit. Eligible counties are specified to be Lake and St. Joseph Counties. Voter approved taxes include all capital project and school referendum levies, in the latter case even those in effect before 2008. The law does not expressly require that exempt-rate funds must receive a revenue reduction as a result of circuit breaker credits. Nor would such a requirement be a reasonable inference.

**Therefore, the State Board of Accounts, the Auditor of State, and the DLGF offer guidance that beginning for taxes payable in 2010, the revenues generated from rates that are exempt from the circuit breaker will not be reduced as a result of the credit.** Otherwise put, the revenues that are exempt from the circuit breaker will be distributed directly to the unit that imposed the exempt rate. Revenues that are not exempt from the circuit breaker (which are lower than the levy in the event of circuit breaker credits) will be distributed to all other funds proportionately.

Please note that while exempt debt service revenue is not reduced by application of the circuit breaker, it may be reduced by other factors unrelated to the circuit breaker, such as: nonpayment, delinquency, or other collections issues.

The attached graphic entitled "Distribution Method With and Without Exempt Rates" shows how the revenues are to be distributed.

If you have any questions, please contact Deputy Commissioner Sarah Ancel at 317-234-4376 or [sancel@dlgf.in.gov](mailto:sancel@dlgf.in.gov).