

# STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO:** All Assessors, Auditors, and Treasurers  
**FROM:** Brian Bailey, Commissioner *BEB*  
**RE:** Tax Sales & Payment of Delinquent Property Taxes, HEA 1090  
**DATE:** June 29, 2012

## INTRODUCTION

On March 14, 2012, Governor Mitch Daniels signed House Enrolled Act 1090, effective March 14, 2012 ("HEA 1090"). HEA 1090 addresses payment of delinquent property taxes and procedures for conducting tax sales and affects IC 6-1.1-24, IC 6-1.1-25, and IC 6-1.1-37. This memorandum provides guidance on these changes.

## AGREEMENT REGARDING PAYMENT OF DELINQUENT TAXES, IC 6-1.1-24-1.2

HEA 1090, Section 1, amends IC 6-1.1-24-1.2 to permit an auditor of a county, regardless of the county's population, to remove a tract or an item of real property from the list certified under IC 6-1.1-24-1 prior to a tax sale if the county treasurer and the taxpayer agree to a mutually satisfactory arrangement for the payment of delinquent taxes.

The auditor may remove the tract or item from the list if the agreement between county treasurer and taxpayer:

- (1) is in writing;
- (2) is signed by the taxpayer; and
- (3) requires the taxpayer to pay the delinquent taxes in full not later than the last business day before July 1 of the year after the date the agreement is signed.

Moreover, IC 6-1.1-24-1.2(e) now provides that if the taxpayer fails to make a payment under the agreement with the county treasurer, the agreement is void. In which case, the county auditor must immediately place the tract or item of real property on the list of real property eligible for sale at a tax sale.

## **Limitation on Taxpayer to Enter into Subsequent Agreements**

Under IC 6-1.1-24-1.2(f), if a taxpayer fails to make a payment under the agreement with the county treasurer, and the county auditor removes the tract or item that was the subject of the agreement, the taxpayer may not enter into another arrangement with respect to that same tract or

item after the due date of the payment and before the date that succeeds by five (5) years the date on which the original arrangement would have expired if the arrangement had not become void.

*Example: In 2013, Taxpayer entered into an agreement with the county treasurer to pay all delinquent taxes on property A in full not later than the last business day before June 30, 2014 ("the due date"). Under this arrangement, Taxpayer must pay in monthly installments. The county auditor removed property A from the list of properties subject to a tax sale. Taxpayer failed to pay the first monthly installment due on June 1, 2013. Thereafter, the county auditor put property A back on the list. Taxpayer may not enter into another arrangement to pay delinquent taxes on property A from the day after the day the first installment was due until the day after the five (5) year anniversary of the due date, in this case June 30, 2019.*

### **WAIVER OF INTEREST AND PENALTIES, IC 6-1.1-37-10.1**

HEA 1090, Section 18, adds section IC 6-1.1-37-10.1(effective upon passage) regarding waiver of certain interest and penalties for delinquent property taxes. Under this section, the fiscal body of a county may, before July 1, 2012, adopt an ordinance to have IC 6-1.1-37-10.1 apply throughout the county. If the fiscal body of a county adopts an ordinance under IC 6-1.1-37-10.1(a), the ordinance applies after June 30, 2012, and until July 1, 2013. The fiscal body must deliver a copy of the ordinance to the county treasurer and the county auditor.

Under IC 6-1.1-37-10.1(b), the county treasurer of a county to which IC 6-1.1-37-10.1 applies must waive all interest and penalties added before January 1, 2012 to a delinquent property tax installment or special assessment on a tract or an item of real property notwithstanding any payment arrangement entered into by the county treasurer and the taxpayer under IC 6-1.1-24-1.2 or under any other law if:

- (1) all of the delinquent taxes and special assessments on the tract or item of real property were first due and payable before January 1, 2012; and
- (2) before July 1, 2013, the taxpayer has paid:
  - (A) all of the delinquent taxes and special assessments described in IC 6-1.1-37-10.1(a)(1); and
  - (B) all of the taxes and special assessments that are first due and payable on the tract or item of real property after December 31, 2011, and before July 1, 2013 (and any interest and penalties on these taxes and special assessments).

### **Declaration of waiver of penalties, IC 6-1.1-24-2(a)(15) & IC 6-1.1-24-4(a)**

HEA 1090, Section 2, adds IC 6-1.1-24-2(a)(15). With respect to a tract or an item of real property that is subject to sale under IC 6-1.1-24 after June 30, 2012, and before July 1, 2013, the auditor's notice must contain a statement declaring whether an ordinance adopted under IC 6-1.1-37-10.1 is in effect in the county and, if applicable, an explanation of the circumstances in which penalties on the delinquent taxes and special assessments will be waived. HEA 1090, Section 3, also adds this language within IC 6-1.1-24-4(a). The remainder of IC 6-1.1-24-4(a) is unaffected.

**AUTHORITY OF COUNTY TREASURER TO HOLD TAX SALE,**  
**AMENDED IC 6-1.1-24-5**

HEA 1090, Section 4, amends IC 6-1.1-24-5(e) such that the county treasurer must sell a tract or item of real property in a tax sale, subject to the right of redemption, to the highest bidder at public auction whose bid is at least the minimum bid specified in IC 6-1.1-24-5(f) or IC 6-1.1-24-5(g), as applicable.

**ORDINANCES ALLOWING BIDS BELOW GROSS ASSESSED VALUE OF**  
**PROPERTY, IC 6-1.1-24-15**

Under IC 6-1.1-24-15(a), the fiscal body of a county may adopt an ordinance authorizing the county treasurer to accept a bid on a tract or an item of real property offered for sale under IC 6-1.1-24 that is greater than or equal to the lesser of:

- (1) the amount determined under IC 6-1.1-24-5(f) for the tract or item of real property; or
- (2) seventy-five percent (75%) of the gross assessed value of the tract or item of real property, as determined on the most recent assessment date.

**Notice of ordinance adoption or repeal to county treasurer and auditor, IC 6-1.1-24-15(b)**

If the fiscal body of a county adopts an ordinance under IC 6-1.1-24-15(a) or repeals an ordinance adopted under IC 6-1.1-24-5(a), the fiscal body shall promptly deliver a copy of the ordinance to the county treasurer and the county auditor.

**New limitation on amount for which real property can be sold under an ordinance pursuant to IC 6-1.1-24-15**

New subsection IC 6-1.1-24-5(g) applies when a county adopted an ordinance permitting a minimum bid as prescribed in IC 6-1.1-24-15(a). If an ordinance adopted under IC 6-1.1-24-15(a) is in effect in the county in which a tract or an item of real property is located, the tract or item of real property may not be sold for an amount that is less than the lesser of:

- (1) the amount determined under IC 6-1.1-24-5(f); or
- (2) seventy-five percent (75%) of the gross assessed value of the tract or item of real property, as determined on the most recent assessment date.

**Limitation on amount for which the real property can be sold**

IC 6-1.1-24-5(f) is amended to apply in all cases except when a county adopted an ordinance under IC 6-1.1-24-15(a). When IC 6-1.1-24-5(f) applies, a tract or an item of real property may not be sold for an amount which is less than the sum of:

- (1) the delinquent taxes and special assessments on each tract or item of real property;

- (2) the taxes and special assessments on each tract or item of real property that are due and payable in the year of the sale, regardless of whether the taxes and special assessments are delinquent;
- (3) all penalties which are due on the delinquencies;
- (4) the amount prescribed by IC 6-1.1-24-2(a)(3)(D) reflecting the costs incurred by the county due to the sale;
- (5) any unpaid costs which are due under IC 6-1.1-24-2(b) from a prior tax sale; and
- (6) other reasonable expenses of collection, including title search expenses, uniform commercial code expenses, and reasonable attorney's fees incurred by the date of the sale.

In addition, the amount of penalties due on the delinquencies under IC 6-1.1-24-2(a)(3) must be adjusted in accordance with IC 6-1.1-37-10.1, as applicable.

### **ALLOCATION OF PROCEEDS OF TAX SALE, IC 6-1.1-24-7**

#### **Allocation of proceeds in general, IC 6-1.1-24-7(a)**

When real property is sold under IC 6-1.1-24, the purchaser at the sale must immediately pay the amount of the bid to the county treasurer. The county treasurer shall apply the payment in the following manner:

- (1) first, to the taxes, special assessments, penalties, and costs described in IC 6-1.1-24-5(f);
- (2) second, to other delinquent property taxes in the manner provided in IC 6-1.1-23-5(b);  
and
- (3) third, to a separate "tax sale surplus fund."

#### **County allowing sale below gross assessed value may get part of proceeds, IC 6-1.1-24-7(b)**

HEA 1090 Section 9 provides that, under certain conditions, a taxing unit where the real property sold resides receives a proportion of the proceeds of the sale. Under IC 6-1.1-24-7(b), if:

- (1) a tract or an item of real property sold under IC 6-1.1-24-5 is located in a county in which an ordinance adopted under IC 6-1.1-24-15 is in effect in the county; and
- (2) the sales price of the tract or item of real property is less than the amount specified in IC 6-1.1-24-5(f);

in addition to the application of any payment received under IC 6-1.1-24-7(a)(1), each taxing unit having an interest in the taxes on the tract will be charged with the part of the tax due to the taxing unit equal to an amount that bears the same relationship to the tax due to the taxing unit as the amount determined under IC 6-1.1-24-5(f) minus the selling price bears to the amount determined under IC 6-1.1-24-5(f).

Hence, the taxing unit receives a portion of the tax sale proceeds relative to what it would have received had the county not adopted an ordinance allowing for a minimum bid that is either:

- (1) the amount needed to satisfy all taxes, penalties, interests, and expenses; or
- (2) seventy-five percent (75%) below the gross assessed value of the property, as determined on the most recent assessment date.

*Example: Property A, located in city C, is sold at a tax sale. Its gross assessed value is \$100,000. The county where property A is located adopted an ordinance allowing for a sale price below what is required in IC 6-1.1-24-5(f). Without the ordinance, the sale price would have been \$90,000, which is also the amount required to satisfy all the obligations under IC 6-1.1-24-5(f). The proceeds of the tax sale total \$80,000. The tax due to city C is \$10,000. City C shall receive a portion of the proceeds relative to what it would receive from a tax sale had the county not adopted the ordinance allowing a sale price below the required value in IC 6-1.1-24-5(f). Hence, city C will receive the \$10,000 due to it from the tax sale as required by IC 6-1.1-24-7(a), but it will not receive any additional proceeds from the sale of property A.*

### **REDEMPTION OF REAL PROPERTY, IC 6-1.1-25-2 & IC 6-1.1-25-4**

HEA 1090, Section 13, adds new subsection IC 6-1.1-25-2(f). The total amount required for redemption now includes, in addition to the amounts required under IC 6-1.1-25-2(b) and (e), all taxes, special assessments, interest, penalties, and fees on the property that accrued after the sale.

#### **Procedures for redemption of real property after tax sale, IC 6-1.1-25-4**

Finally, HEA 1090, Section 14, amends or adds the following subsections to IC 6-1.1-25-4:

IC 6-1.1-25-4(b) is now subject to IC 6-1.1-25-4(l) and IC 6-1.1-24-9(d), but still provides that the period for redemption of real property:

- (1) on which the county executive acquires a lien under IC 6-1.1-24-6; and
- (2) for which the certificate of sale is not sold under IC 6-1.1-24-6.1;

is one hundred twenty (120) days after the date the county executive acquires the lien under IC 6-1.1-24-6.

Under new subsection IC 6-1.1-25-4(l), if a tract or item of real property did not sell at a tax sale and the county treasurer and the owner of real property agree before the expiration of the period for redemption under IC 6-1.1-25-4(b) to a mutually satisfactory arrangement for the payment of the entire amount required for redemption under IC 6-1.1-25-2 before the expiration of a period for redemption extended under this subsection:

- (1) the county treasurer may extend the period for redemption; and
- (2) except as provided in IC 6-1.1-25-4(m), the extended period for redemption expires one (1) year after the date of the agreement.

Under new subsection IC 6-1.1-25-4(m), if the owner of real property fails to meet the terms of an agreement entered into with the county treasurer under IC 6-1.1-25-4(l), the county treasurer may terminate the agreement after providing thirty (30) days written notice to the owner. If the

county treasurer gives notice under this subsection, the extended period for redemption established under IC 6-1.1-25-4(1) expires thirty (30) days after the date of the notice.

**CONTACT INFORMATION**

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