TO: School Corporation Officials

FROM: Wesley R. Bennett, Commissioner

SUBJECT: School Corporation Waiver from the Implementation of Protected Taxes

DATE: April 16, 2018

This memorandum will discuss the procedures for a school corporation to waive the implementation of protected taxes for 2018, first implemented by House Enrolled Act 1062-2014 (“HEA 1062”) and amended by HEA 1109-2016 (“HEA 1109”). This memorandum supersedes all previous memoranda on this subject issued in 2014, 2015, 2016, and 2017.

Under IC 6-1.1-20.6-9.8, implementation of protected taxes provisions went into effect for Pay 2014. Protected taxes are designed to ensure sufficient tax collections in a taxing unit’s debt service funds in order to meet debt service obligations. In order to “protect” the debt service funds, the circuit breaker credits attributable to the tax rate for the debt service funds are applied against a taxing unit’s “unprotected” funds, i.e., its non-debt service funds. Section 3 of HEA 1062, signed by Governor Pence on March 25, 2014, adds IC 6-1.1-20.6-9.9 to allow certain school corporations a waiver from the implementation of protected taxes under IC 6-1.1-20.6-9.8, originally for 2014, 2015, or 2016 as applicable.

Section 1 of HEA 1109, signed by Governor Pence on March 23, 2016, amended IC 6-1.1-20.6-9.9 to extend the waiver from implementing protected taxes into 2017, 2018, and 2019. It also added an additional restriction for a school corporation seeking a waiver for 2018 and 2019. If a school corporation issues new bonds or enters into a new lease rental agreement for which the school corporation is imposing or will impose a debt service levy (except a levy to refinance or renew prior bond or lease rental obligations existing before January 1, 2017, or indebtedness approved by a local public question or referendum), and the school corporation’s total debt service levy and rate in the applicable year is greater than the school corporation’s 2016 debt service levy and rate, the school corporation is not eligible to allocate credits proportionately.

Under IC 6-1.1-20.6-9.9, a school corporation can determine its eligibility to waive the implementation of protected taxes for 2016, 2017, 2018, or 2019. School corporations that are eligible for the waiver in a given year will be allowed to allocate their 1%/2%/3% circuit breaker credits proportionally across all funds that are not exempt from circuit breaker credits without regard for whether the fund is a debt service fund. Only exempt (voter-approved referendum) funds are excluded from the application of 1%/2%/3% circuit breaker credits. Exempt funds are not excluded from the application of the Over 65 credits provided for in IC 6-1.1-20.6-8.5. This means debt service funds will be allowed to experience a loss associated with 1%/2%/3% circuit breaker credits for those school corporations that are eligible for and timely request the waiver from the implementation of protected taxes.
To determine if a school corporation is eligible for a waiver from the implementation of protected taxes, a school corporation should prepare the following analysis:

1. Determine the total debt service levy and tax rate for the school corporation in 2016. This should equal the certified debt service levy and tax rate from the 2016 Budget Order.

2. Ascertain whether the school corporation took on new debt in 2017 or will take on new debt in 2018, including issuing new bonds or entering into a new lease rental agreement, for which the school corporation is imposing or will impose a debt service levy. For purposes of this component, a debt service levy imposed to refinance or renew debt incurred before January 1, 2017 or debt approved by a voter referendum is excluded. If the answer to this component is “No”, please proceed to step 6. If the answer is “Yes”, continue with step 3.

3. Determine the total debt service levy and tax rate in 2018. This should equal the certified debt service levy and tax rate from the 2018 Budget Order.

4. Compare the school corporation’s total debt service levy in 2018 to the school corporation’s total debt service levy in 2016. Compare the school corporation’s total debt service rate in 2018 to the school corporation’s total debt service rate in 2016.

5. If both the school corporation’s total debt service levy and total debt service rate in 2018 are greater than those in 2016, the school corporation is ineligible to waive protected taxes. If the school corporation’s total debt service levy and total debt service rate in 2018 are not greater than those in 2016, or the school corporation did not take on new debt in 2017 or 2018, then proceed to the next step.

6. Determine the amount of circuit breaker credits being applied to the school’s transportation fund. This amount should be calculated assuming protected taxes are in place for the school corporation. To determine this amount, the school corporation can use the Department of Local Government Finance’s (Department) circuit breaker reports. These reports can be found on the Department’s webpage at http://in.gov/dlgf/9644.htm. The values computed for these reports assume the implementation of protected taxes for the school corporation’s funds. The school corporation can utilize the circuit breaker credit amount shown for its transportation fund. Cross-county school corporations should sum the circuit breaker credits from each of the applicable county circuit breaker reports to arrive at a total amount of credits for the transportation fund. The school corporation may only use a report for the applicable year in which the waiver would apply. Reports from prior years may not be used.

7. Determine the amount of the transportation fund levy for the school corporation. This should equal the certified levy for the school transportation fund from the 2018 Budget Order. The certified levy is also shown on the circuit breaker report for easy reference. Cross-county school corporations should sum the certified levy from each of the applicable county budget orders or reports to arrive at a total certified levy for the transportation fund.

8. Divide the circuit breaker credit amount by the transportation fund levy and express it as a percentage. If the circuit breaker loss equals at least 10% of the transportation fund levy, the school corporation is eligible for a waiver from the implementation of protected taxes. In order to qualify, this calculation must show a loss of at least 10%. Rounding up the calculation in order to achieve 10% will be not accepted.
A school corporation that is eligible and would like to waive the implementation of protected taxes must submit a written request to the Department for a certification that the school corporation’s calculation is correct. This written request must be provided to the Department by April 30 of the year in which the school corporation wants the waiver from the implementation of protected taxes. In order to facilitate the calculation detailed above and the written request by the school corporation, the Department has prepared a standard form for the written request. The form is attached to this memorandum. A school corporation desiring to be eligible for a waiver from the implementation of protected taxes should complete this form and email it to the Budget Division field representative for the county where the school corporation is located. Budget field representative county assignments and contact information can be found at http://www.in.gov/dlgf/files/Field_Rep_Map_-_Budget.pdf. For a cross-county school corporation where each county has a different field representative, the request only needs to be sent to one of them.

It is recommended, but not required, that a form be accompanied with a school board resolution or similar action authorizing submission of the application. Any written request received by the Department after April 30 will not be accepted.

After receiving a written request from a school corporation, the Department shall determine whether the percentage computed by the school corporation is accurate and whether the school corporation is eligible for the waiver from the implementation of protected taxes. The Department must complete its actions by June 1 of the year for which the waiver is requested.

Indiana Code 6-1.1-20.6-9.9 allows for a waiver to be granted for taxes payable in 2016, 2017, 2018, or 2019. A school corporation that is approved in one year for a waiver must submit a written request and calculation again in each future year in order to qualify. As an example, if a school corporation received a waiver in 2017, it must submit a written request again by April 30, 2018 using 2018 circuit breaker credit and levy information in order to qualify for the waiver in 2018. Each waiver applies only to one applicable tax year.

For those school corporations that have timely submitted a written request and that the Department has determined to be eligible for the waiver from the implementation of protected taxes, additional steps will be necessary when the school corporation receives its tax distributions in June and December. The school corporation will be responsible for reallocating its tax distribution among the appropriate funds in order to eliminate the impact of protected taxes. Further information and guidance on this process will be provided by the Department in advance of the June tax distributions.

A school corporation should submit this request only if it intends to proceed with the waiver. A school corporation that submits a request but later rescinds it could delay or disrupt its 2019 budget certification. School corporations are highly encouraged to review their financial situation, work with their financial advisors, or confer with the Department about how the mechanics of waiving protected taxes will affect the school corporations’ other funds, before submitting their requests.

Questions related to the process outlined above should be directed to the Department’s Budget Field Representative team.