STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

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To: County Councilmembers and County Auditors

From: Wesley R. Bennett, Commissioner

Re: Correctional and Rehabilitation Facilities Local Income Tax, IC 6-3.6-6-2.7

Date: September 21, 2018

This memorandum revises and supersedes the Department of Local Government Finance's ("Department") previous memorandum, released on May 11, 2018, on the above described manner.

On March 21, 2018, Governor Eric Holcomb signed into law House Enrolled Act 1263-2018 ("HEA 1263"). Indiana Code 6-3.6-6-2.7, added by Section 2 of HEA 1263 and effective upon passage, allows the county council to adopt an ordinance to impose a tax rate for correctional facilities and rehabilitation facilities in the county ("county jail tax rate").

Counties will need to be cautious in how they word their ordinances to ensure that their intent is clear and they recognize the impact that adopting the county jail tax rate may have on their overall local income tax ("LIT") rate and structure. For this reason, the Department strongly encourages that counties submit a proposed ordinance to the Department for pre-review under IC 6-3.6-3-2(b). Draft ordinances may be emailed to Budget Director Fred Van Dorp at fvandorp@dlgf.in.gov. Statute requires the Department to provide feedback within 30 days of receipt.

Moreover, the statute designates the county council as the adopting body for the county jail tax rate, even in counties with a local income tax council ("LIT council"). Therefore, the Department issues the following guidance for how to treat the county jail tax rate under two scenarios: in counties with a LIT council, and in counties without a LIT council.

Counties with a LIT council

In a county with a LIT council, the Department intends to treat the county council's action on the county jail tax rate as having no effect on the tax rates and distributions as adopted by the LIT council. In addition, the Department will strictly enforce the maximum expenditure rate under IC 6-3.6-6-2.

An example scenario is below.

Assume the following:

Expenditure rate – 2.00
Certified shares component rate – 1.50
Public safety component rate – 0.25
Economic development component rate – 0.25
Adopted county jail tax rate – 0.15

The adoption of the county jail tax rate will result in a total expenditure rate of 2.15 (1.50 + 0.25 + 0.25 + 0.15) with distributions as follows:

Certified shares component distribution – 1.50
Public safety component distribution – 0.25
Economic development component distribution – 0.25
County jail tax distribution – 0.15

Counties without a LIT council

In a county without a LIT council, the Department intends to follow the county's intent in adopting the county jail tax rate. However, where the intent is not clear the Department must treat an adopted rate as an addition to the existing expenditure rate. Therefore, the county's ordinance adopting the county jail tax rate must include a statement whether the rate will be within the county's current expenditure rate (i.e., no overall increase in the expenditure rate) or outside of the county's current expenditure rate (i.e., an overall increase in the expenditure rate).

If a county's ordinance adopting the county jail tax rate does not state whether the rate is included in or outside of the expenditure rate, the Department will treat the county jail tax rate as in excess of the current expenditure rate. Note that if the county is already at the maximum expenditure rate prior to adopting the county jail tax rate, and the ordinance adopting the county jail tax rate would have the effect of putting the expenditure rate above the statutory maximum, the ordinance will be invalid. Keep this in mind when drafting the ordinance, as per IC 6-3.6-3-4(b) a county can change a tax rate no more than once a year.

If the county intends to keep the county jail tax rate within the current expenditure rate, or if the county has already adopted its maximum expenditure rate prior to adopting the county jail tax rate, the ordinance must provide for a reduction in the other components of the expenditure rate. Specifically, the ordinance must state whether the reduction to the other components will be either pro rata (i.e., proportional to the component as a ratio of the expenditure rate) or in equal proportion (i.e., proportional to the number of components in the expenditure rate excluding the county jail tax rate). The examples below illustrate the differences in each approach.

Scenario #1: Reduction pro rata

Assume the following:

Expenditure rate – 1.50
Certified shares component rate – 1.00
Public safety component rate – 0.25
Economic development component rate – 0.25
Adopted county jail tax rate – 0.15
County elects to keep the county jail tax rate within the current expenditure rate.

The amount of the reduction will be as follows:

Certified shares component rate – 1.00 / 1.50 = 0.667 X 0.15 = 0.1
Public safety component rate – 0.25 / 1.50 = 0.1667 X 0.15 = 0.025
Economic development component rate – 0.25 / 1.50 = 0.1667 X 0.15 = 0.025

The amounts after the reduction will be as follows:

Certified shares component rate – 1.00 – 0.1 = 0.90
Public safety component rate – 0.25 – 0.025 = 0.225
Economic development component rate – 0.25 – 0.025 = 0.225

Scenario #2: Reduction in equal proportion

Assume the same adopted rates as in Scenario #1.

The reduction will be as follows:

0.15 (county jail tax rate) / 3 (# of components in expenditure rate excluding the county jail tax rate) = 0.05

The amounts after reduction will be as follows:

Certified shares component rate – 1.00 – 0.05 = 0.95
Public safety component rate – 0.25 – 0.05 = 0.20
Economic development component rate – 0.25 – 0.05 = 0.20

Questions regarding local income taxes may be directed to Budget Director Fred Van Dorp at fvandorp@dlgf.in.gov or (317) 234-3937.