

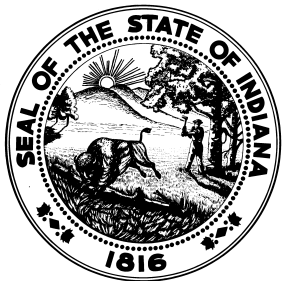


# The Tax Abatement Process

**Barry Wood**

**Assessment Division Director**

**December 2018**



# Today's Session Will Cover

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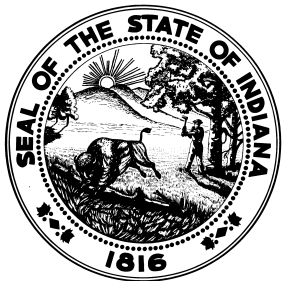
- Basic definitions.
- How the taxpayer and the designating body establish an abatement.
- How the taxpayer claims the deduction.
- How the officials review the deduction.
- Common problems.
- Problem solving options for consideration.



# Resource Information

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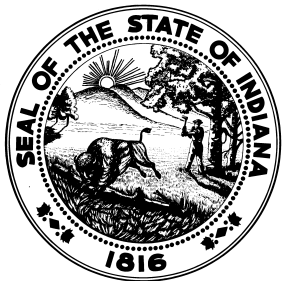
- Indiana Code – IC 6-1.1-12.1
- Indiana Administrative Code – 50 IAC 10
- Forms
- DLGF Website – [www.in.gov/dlgf](http://www.in.gov/dlgf)



# Basic Definitions

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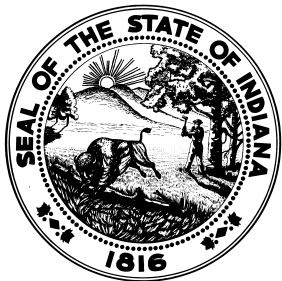
- Personal property abatement
  - A property tax deduction from the assessed valuation granted by a designating body for the installation of qualifying abatable equipment in an Economic Revitalization Area (ERA).



# Basic Definitions

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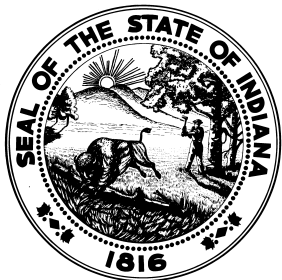
- Real property abatement
  - A property tax deduction from the assessed valuation granted by the designating body for the construction of a new structure or a rehabilitation of property in an ERA. (It does not include land.)



# Real Property Abatements

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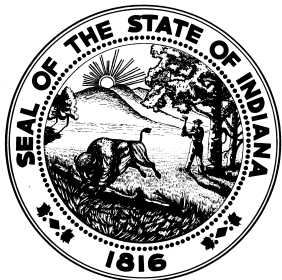
- Eligible property includes: construction of new structures, or the remodeling, repairs, or betterments of property if it increases the assessed value.
- Taxpayers need to understand that their real property abatement will be based on the increase to their assessed value because of that project and not the actual cost from their books for the building project.



# Basic Definitions

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- Vacant Building Abatement
  - A property tax deduction from the assessed valuation granted by the designating body for the occupancy of an eligible vacant building used & zoned for Commercial/Industrial (C/I) purposes in an ERA. (It must be unoccupied for at least one (1) year and it does not include land.)

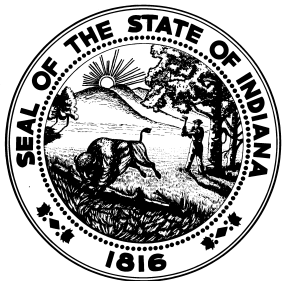


# Basic Definitions

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- Economic Revitalization Area (ERA)
  - An area that is within the corporate limits of a city, town, or county that has become undesirable for, or impossible of, normal development and occupancy.
- If ownership transfers, the designation transfers with the property if the new owner files an application and continues to use the property in compliance with previously determined standards. IC 6-1.1-12.1-5(g)

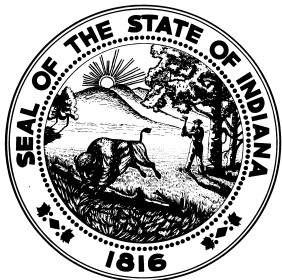




# Basic Definitions

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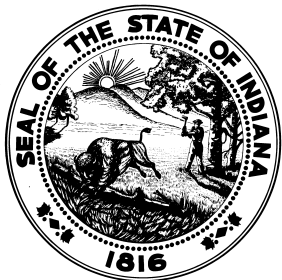
- Designating body
  - Also called a “governing body.”
  - For a county without a consolidated city, the designating body is the fiscal body of the city, town, or county.
  - For a consolidated city, the designating body is the metropolitan redevelopment commission.



# Frequently Asked Question

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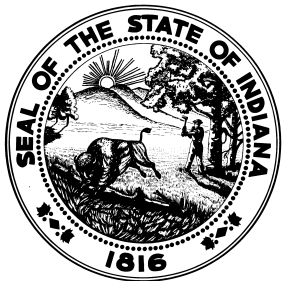
- Question: If a city council denies an abatement request, can the county council override them?
- Answer: No, the county council is not the fiscal body of that jurisdiction.  
IC 6-1.1-12.1-1 (7)  
IC 6-1.1-12.1-2 (a)



# Types of Abatements for Personal Property

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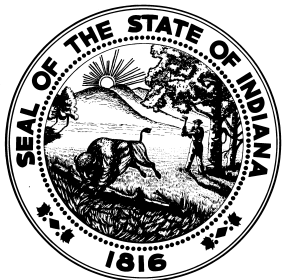
- A) Manufacturing
- B) Research & Development
- C) Information Technology
- D) Logistical Distribution



# Frequently Asked Question

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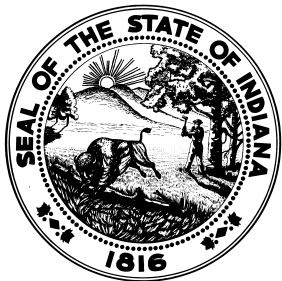
- Question: Can a farmer be considered a manufacturer?
- Answer: IC 6-1.1-12.1-1(3) defines “new manufacturing equipment” to include property used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or refinishing of other tangible property, including but not limited to the disposal of solid waste or hazardous waste.



# Frequently Asked Question

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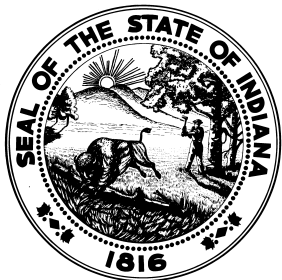
- Answer (continued): IC 6-2.5-5-2 (c)(1)(B) defines “agricultural machinery” as being used in the direct production, extraction, harvesting, or processing of agricultural commodities. This section exempts agricultural machinery from retail tax and has also established two categories of agricultural equipment. The second category of equipment under subsection (c)(1)(B) may be eligible from an abatement.



# Frequently Asked Question

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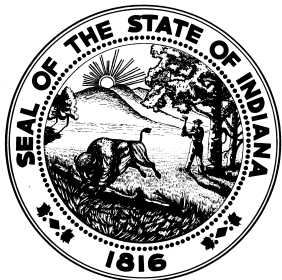
- Answer (continued): So while a producer of agricultural commodities would not be eligible to claim an abatement deduction, it is possible that an entity could produce the agricultural commodity and then process this raw material into another type of inventory. Examples might include converting milk into cheese or ice cream or converting livestock into processed meat. So where do you draw the line on what would qualify for an abatement?



## 50 IAC 10-1-6

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- “Qualified machinery and equipment” defined
- Personal property will be qualified machinery and equipment when it is used within the process that:
- **Begins** with the material handling equipment that carries or moves the raw materials from its on-site storage location to the first machine or production step; and

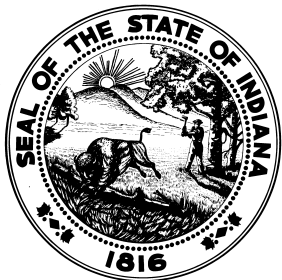


## 50 IAC 10-1-6

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- **Ends** with the material handling equipment that carries or moves the finished product from its final machine or production step to the in-plant finished good storage site.

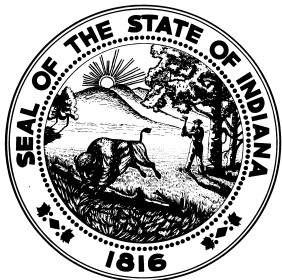




## 50 IAC 10-1-6 (cont'd)

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- “Qualified machinery and equipment”
- Beginning Example: The crane that lifts the coil of steel to the press that stamps out a car fender.
- Ending Example: The fork lift that moves the finished product from the production line to a shelf in the finished goods warehouse.



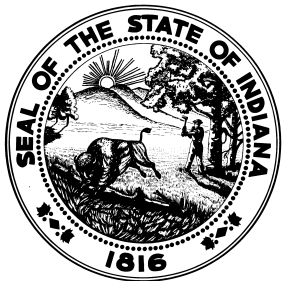
# Assets Not Qualifying For Standard Mfg. Abatement

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- Pollution Control Equipment
  - Why? Not manufacturing equipment, plus it's 100% exempt every year.
- Office Equipment
  - Why? Not manufacturing equipment.
- Semi Tractors & Trailers
  - Why? They are subject to excise tax.



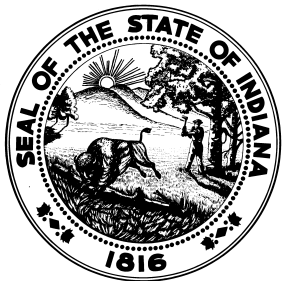
# Steps In Establishing An Economic Revitalization Area



# Establishing An ERA

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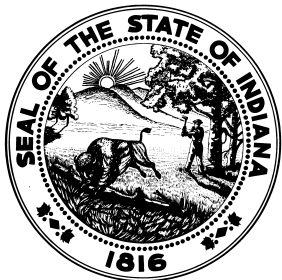
- Establish geographical area by:
  - Designating body makes a determination.
    - Prepares maps and plats that identify the area.
    - Prepares a simplified description of property boundaries.
    - Passes a preliminary resolution.
- After approving a preliminary resolution, designating body publishes a notice of adoption and substance of resolution.



# Establishing An ERA

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- Designating body can designate an ERA on its own or upon application of a property owner.
- If designating body works on its own, no Statement of Benefits (Form SB-1) is necessary for a preliminary designation; however one will be required later when finalizing the details for a new business that desires to locate there.
- If the property owner asks for an ERA designation, a Form SB-1 must be filed.



## Statement of Benefits – Personal Property (Form SB-1/PP)

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- The form on which the property owner submits information regarding the installation of new manufacturing, research and development, logistical distribution, or information technology equipment to the designating body.
- This form should be incorporated into the designation process.



## Statement of Benefits – Personal Property (Form SB-1/PP)

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- The Form SB-1/PP provides information on the proposed project and is an estimate of costs, jobs created, etc. This is done before the project begins.
- A taxpayer could have a single Form SB-1 or multiple Form SB-1's which could cover several projects over a number of years.

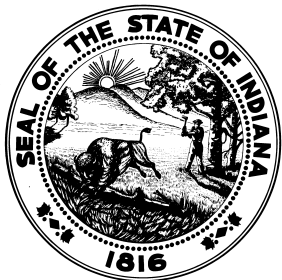


# Statement of Benefits – Personal Property (Form SB-1/PP)

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- The reason why the Form SB-1/PP is so important is because the designating body must determine if the totality of the benefits (number of jobs, salaries, & other benefits) is sufficient to justify the deduction.
- IC 6-1.1-12.1-3

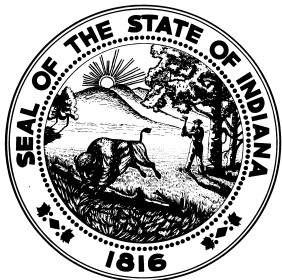




## Statement of Benefits – Personal Property (Form SB-1/PP)

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- The taxpayer must attach an approved copy of Form SB-1/PP to his personal property return.
    - Page 1 is completed and signed by the taxpayer.
    - Page 2 is completed and signed by the designating body. It sets the limits and guidelines for the abatement.
- IC 6-1.1-12.1-5.1 (b)



# Abatement Deduction Schedule

## IC 6-1.1-12.1-17

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- Sec. 17. (a) A designating body may provide to a business that is established in or relocated to a revitalization area and that receives a deduction under section 4 or 4.5 of this chapter an abatement schedule based on the following factors:



# Abatement Deduction Schedule

## IC 6-1.1-12.1-17

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- (1) The total amount of the taxpayer's investment in real and personal property.
- (2) The number of new full-time equivalent jobs created.
- (3) The average wage of the new employees compared to the state minimum wage.
- (4) The infrastructure requirements for the taxpayer's investment.

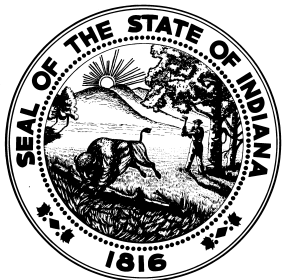


# Abatement Schedule

IC 6-1.1-12.1-17

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- (b) For a statement of benefits (Form SB-1) approved after June 30, 2013, the designating body shall establish an abatement schedule for each deduction. An abatement schedule must specify the percentage amount of the deduction for each year of the deduction.

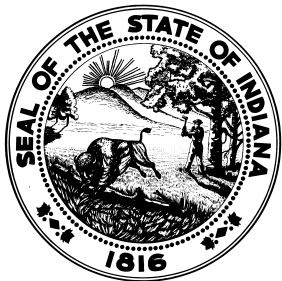


# Abatement Schedule

## IC 6-1.1-12.1-17

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- (c) For a statement of benefits (Form SB-1) approved before July 1, 2013, the abatement schedule approved for that particular taxpayer remains in effect until the terms of the resolution or Form SB-1 expire.

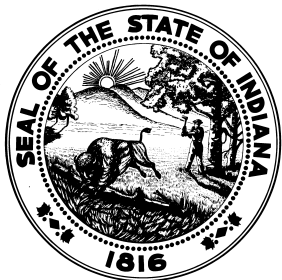


# Abatement Schedule

## IC 6-1.1-12.1-17 & 18

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- IC 6-1.1-12.1-17 states that an abatement schedule may not exceed ten (10) years.
- Effective July 1, 2015, IC 6-1.1-12.1-18 allows the designating body to approve an enhanced abatement of up to twenty (20) years on certain business personal property – including the installation of new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment.

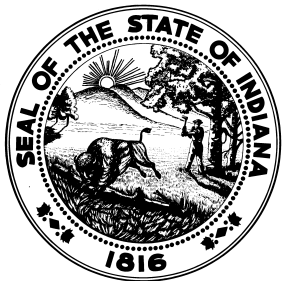


# Enhanced PP Abatements

## IC 6-1.1-12.1-18

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- Besides allowing an abatement cycle for up to 20 years, Section 18 also removes the forklift-to-forklift concept for the manufacturing abatement and would permit a deduction on office equipment or other non-manufacturing personal property.



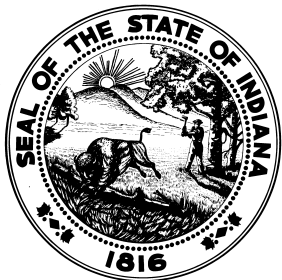
# Enhanced PP Abatements

## IC 6-1.1-12.1-18

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- Question: So Section 18 cannot be used for personal property belonging to a retail business?
- Answer: That is correct. The business would need to qualify under one of the four categories – manufacturing, R & D, logistical distribution, or information technology (IT).



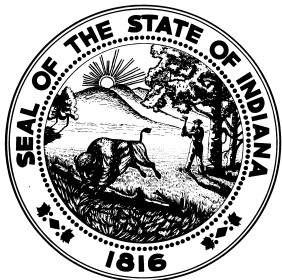


# Enhanced PP Abatements

## IC 6-1.1-12.1-18

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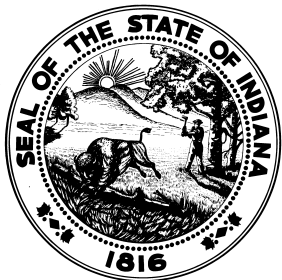
- IC 6-1.1-12.1-18 also requires that if an enhanced personal property abatement is granted for a period exceeding ten years, the designating body shall conduct a public hearing & review the Form CF-1/PP for each year after the tenth year of the abatement deduction cycle.



# Establishing An ERA

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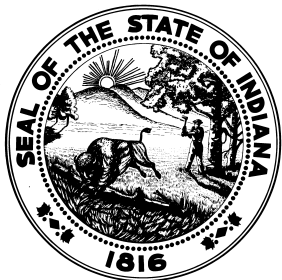
- The designating body's final action is to determine whether the qualifications for an ERA are met and to confirm, modify or rescind the preliminary resolution and contains a description of the affected area.
- If confirmed, a confirmatory resolution is passed.
- Minutes to a council meeting do not qualify as a resolution.



# Resolution

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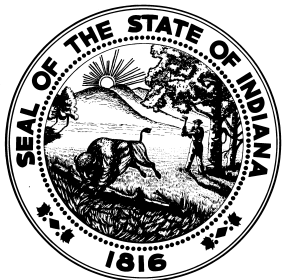
- According to IC 6-1.1-12.1-2.5, the resolution declares an area as an economic revitalization area.
- The resolution specifies the abatement schedule.
- The resolution could contain an expiration date when the designation ceases to exist or other limitations or conditions.



# Resolution

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- If there is an expiration date of the ERA designation, it is simply the window of opportunity in which a company can install new abatable equipment and receive a deduction.
- This expiration date can easily be extended or renewed.



# Frequently Asked Question

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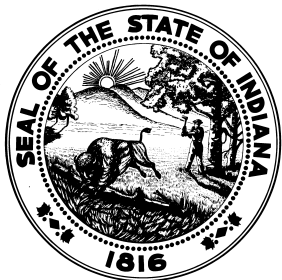
- Question: Can an abatement be approved in a TIF District?
- Answer: Yes, but IC 6-1.1-12.1-2(k) requires that the legislative body for the TIF also adopts a resolution that approves the Form SB-1 since it could affect repayment of the bonds.



# Establishing An ERA - Fees

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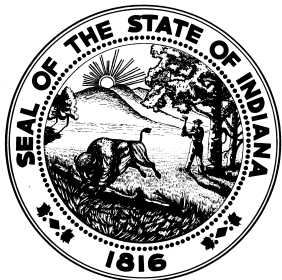
- Designating body may impose a fee for filing a deduction application. This one-time fee may be sufficient to defray actual processing and administrative costs. IC 6-1.1-12.1-2(h)
- Designating body may also impose an annual fee with the consent of the property owner.
- This fee is based on a percentage not to exceed 15% of the tax savings and is used to promote economic development. IC 6-1.1-12.1-14



# Abatements Vs. Tax Caps

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- Question: Is it possible that the Constitutional tax cap could override the tax abatement deduction on a company's tax bill?
- Answer: Yes, the calculation of the tax cap on the tax bill is separate from the calculation of the assessed value less any deductions on the tax bill. The amount actually due on the tax bill reflects the lesser of these two numbers.



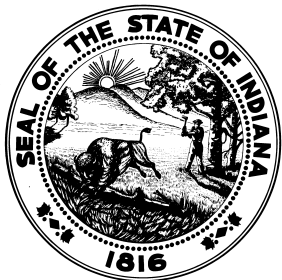
# Unauthorized Facilities

## IC 6-1.1-12.1-3 (e)

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- The following facilities are not authorized to receive a real property deduction:
- Golf courses; country clubs; massage parlors; tennis clubs; skating facilities; handball or racquetball facilities; hot tub facilities; suntan facilities; racetracks; package liquor stores holding a liquor dealer's permit;
- any facility that has a primary purpose of retail food and beverage service, automobile sales and service, or other retail unless...



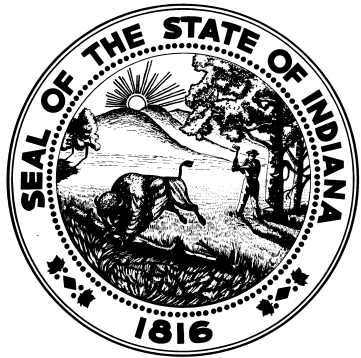


# Unauthorized Facilities

## IC 6-1.1-12.1-3 (e)

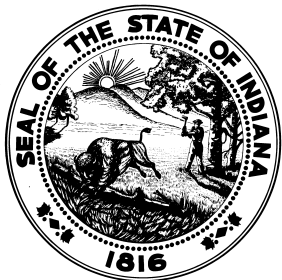
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- ...unless the facility is located in an economic development target area established under IC 6-1.1-12.1-7.
- Residential facilities may not be approved unless it is multifamily of which at least 20% of the units are for low – moderate income individuals OR is in an economic development target area OR is designated as a residentially distressed area.



# Filing Requirements for Taxpayers on Tax Abatements

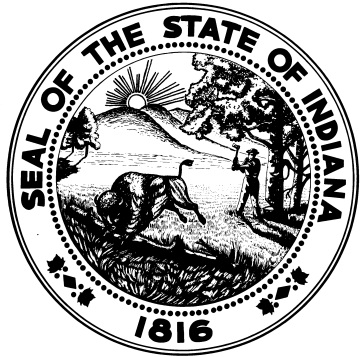
## Filing Requirement Basics



# Personal Property - Self Assessment System

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- Taxpayer is responsible for filing his personal property assessment in a timely manner with the proper assessing official.
- Assessors do not have the authority to file a return for the taxpayer; however, the assessor can assist the taxpayer.
- Taxpayer **MUST** sign the return.



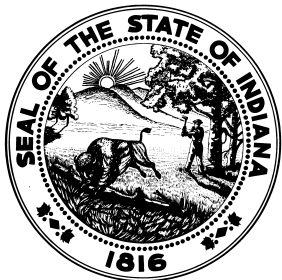
# The Abatement Calendar



# Timetable for Personal Property

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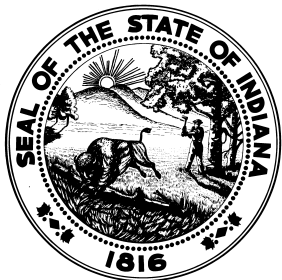
- The taxpayer files the tax return & supporting schedules by May 15 or the extended due date.
- The township assessor, if any, has until September 15 or 4 months from the extended due date to review the tax return.  
IC 6-1.1-16-1(a)(1)



# Timetable for Personal Property

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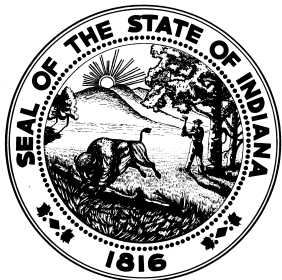
- The county assessor or the County Board of Appeals (PTABOA) have until October 30 or 5 months to review the entire return (assessment & deduction). IC 6-1.1-16-1 (a)(2)
- Taxpayer has twelve months from the filing date or the extended due date to amend the return. IC 6-1.1-3-7.5



# IC 6-1.1-16-1

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- If the assessing official fails to change an assessment within the time prescribed, the assessed value claimed by the taxpayer is final.

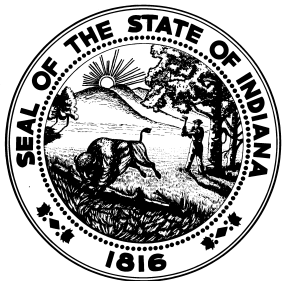


## IC 6-1.1-12.1-5.4(e)

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- For Abatement Deductions:
- The assessing official may review the deduction schedule and has until the next assessment date to deny or alter.
- However, it is recommended to use the four and five month deadlines. Waiting until December 31 could cause problems with tax rates and shortfalls.

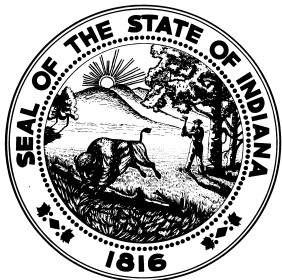




# Timeframe for Real Property

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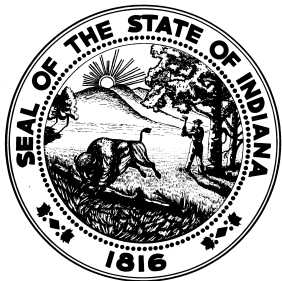
- The Form 322/RE must be filed with the county auditor before May 10 or within 30 days of the mailing date of the Form 11 (Notice of Assessment) if mailed after April 10. IC 6-1.1-12.1-5



# Frequently Asked Question

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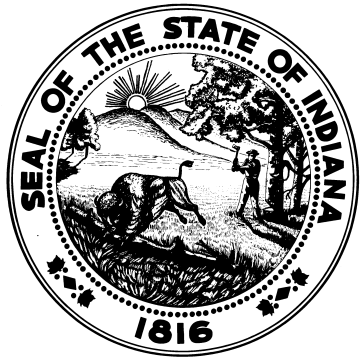
- Question: What if no Form 11 is given?
- Answer: IC 6-1.1-12-5(b) says that if no Form 11 is sent, the tax bill would then serve as first notice so the taxpayer would have 30 days after receiving the tax bill to file the Form 322/RE.



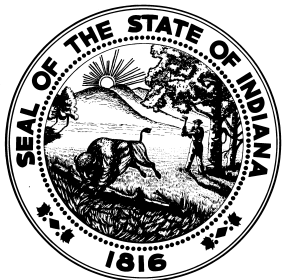
# Frequently Asked Question

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- Answer: This means that the deduction would be given after budgets were approved and tax rates were set so if it was a sizable deduction, there could be issues with shortfalls (or a loss of revenue to the local units).



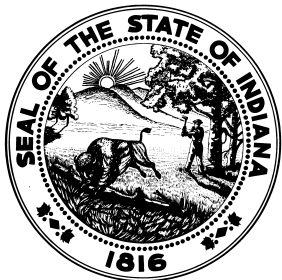
# Verification of Personal Property Tax Abatements



## IC 6-1.1-3-14

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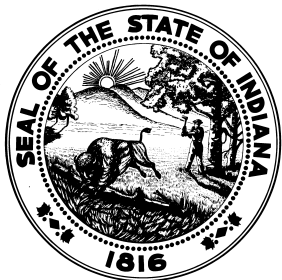
- The township or county assessor shall examine and verify the accuracy of personal property tax returns.



## IC 6-1.1-12.1-5.4

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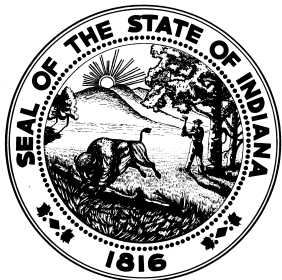
- The assessor may approve, deny, or alter the amount of the deduction.
- The assessor shall notify the taxpayer of any changes made in the deduction amount on Form 113/PP which allows the taxpayer to challenge the change if desired.



# Form 103-ERA

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- Schedule of Deduction from Assessed Valuation
- Required to be filed each year a deduction is desired even if no new abatable equipment is installed in that assessment year.
- Form must be filed with the assessor in the county in which the abatable equipment is located.

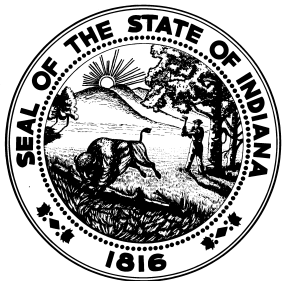


# Confidential information

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- IC 6-1.1-35-9 affects:
  - All assessing officials, employees, and anyone under contract to any assessing official.
  - All information that is related to earnings, income, profits, losses, or expenditures.
- Disclosure of confidential information can carry severe penalties.
- Includes supplemental forms attached to return.
- What's public information? Assessed Value.

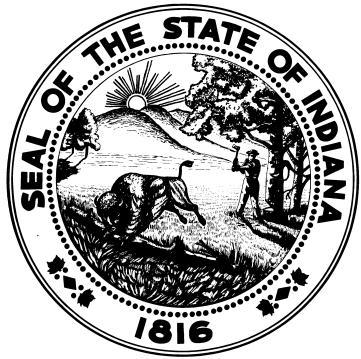




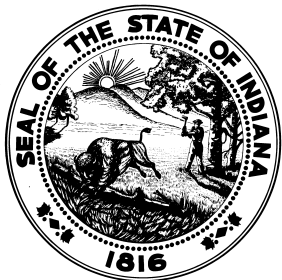
# Maintenance of Records

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- County auditor shall maintain real property abatement records.
- The assessing officials are responsible for the maintenance of the personal property abatement records.  
(IC 6-1.1-3-21)



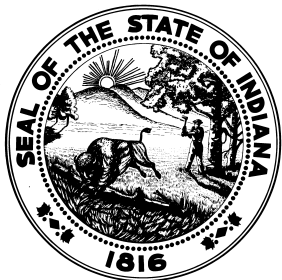
# Solving Problems That May Arise



# Late Filing

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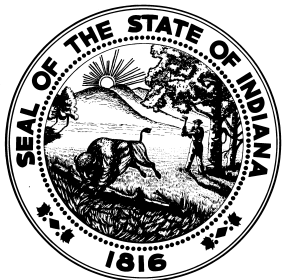
- IC 6-1.1-12.1-5.4 states the taxpayer must file a certified deduction schedule with a timely personal property return if they wish to receive an abatement.
- A return filed late which includes a Form 103-ERA should have the deduction denied immediately.



# Waiver of Noncompliance

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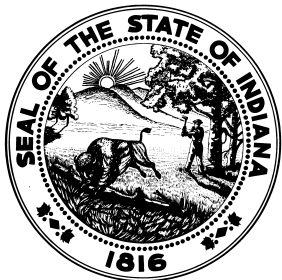
- The taxpayer could accept the loss of Year #1 of the abatement and claim it for Year #2 through the remainder of the abatement's term or...
- The taxpayer could request a waiver of non-compliance through the designating body in order to forgive the mistake.



# Waiver of Noncompliance

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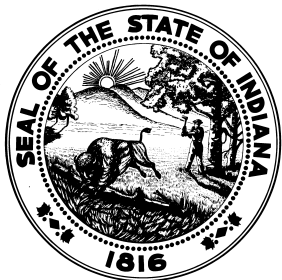
- If the designating body wishes to waive non-compliance, they shall conduct a public hearing and then may adopt a resolution.  
IC 6-1.1-12.1-11.3
- The decision to grant, deny, or partially grant a waiver of non-compliance rests on the shoulders of the designating body.



# Waiver of Noncompliance

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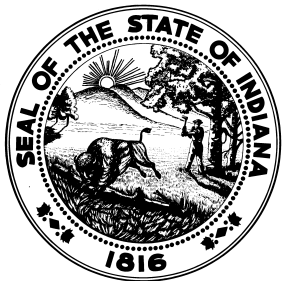
- IC 6-1.1-12.1-11.3 covers:
- Failure to submit the Form SB-1 to the designating body before the hearing.
- Failure to submit the Form SB-1 to the designating body before the project begins.
- Failure to designate the ERA zone before the project begins.



# Waiver of Noncompliance

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- IC 6-1.1-12.1-11.3 covers:
- Failure to make the required findings of fact before designating the area.
- Failure to file a timely application.
- Failure to file a complete application.
- NOTE: It does not give the designating body the authority to grant abatements on assets that don't qualify.

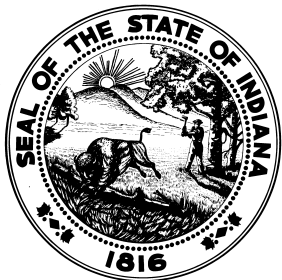


# Waiver of Noncompliance

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- IC 6-1.1-12.1-9.5 covers:
- Correction of clerical errors such as mathematical errors or omitted signatures.
- The adoption of a waiver of non-compliance resolution is the remedy to correct these issues as well.

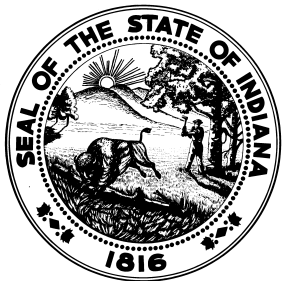




# Local Control

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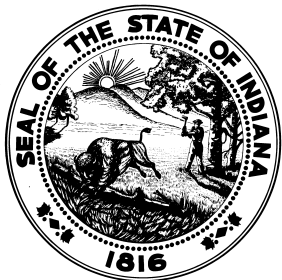
- There are many scenarios when it comes to dealing with tax abatement issues.
- The facts for each situation will need to be reviewed and discussed by the designating body who have the option of getting legal advice from their attorney.
- Tax abatements are given locally and local control prevails when resolving these issues.



# Real Property Abatements

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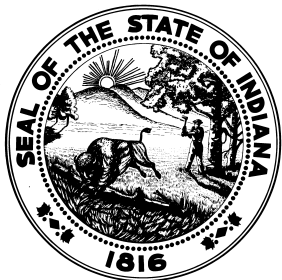
- A timely deduction application will have to be filed in order to receive the deduction. (Form 322/RE or Form 322/VBD)
- The Form CF-1 is required to be filed for each year the deduction is requested.
- The county auditor has the authority to approve, deny, or alter a real property abatement deduction.



# Real Property Abatements

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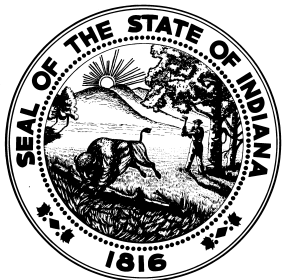
- The main differences between the real property abatement process and the personal property process are:
- Self Assessment (PP) versus the assessor generating the assessed value that the auditor applies the deduction to for real property.
- Annual filing for the deduction by the taxpayer (PP) versus a single filing for the improvements for that assessment date on real property.



# Real Property Abatements

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- The taxpayer has appeal rights if there are questions concerning the correct deduction amount. IC 6-1.1-12.1-5 (j)
- The designating body can consider adopting a waiver of non-compliance resolution to resolve certain issues while other issues are not covered under those provisions and would have to be addressed through the appeals process.



# Contact Us

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- “Contact Us”

<http://www.in.gov/dlgf/2338.htm>