

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

AUDIT REPORT
OF
BOARD OF COUNTY COMMISSIONERS
PORTER COUNTY, INDIANA
January 1, 2009 to December 31, 2009



FILED
01/06/2011

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
County Officials	2
Transmittal Letter	3
Audit Results and Comments:	
Prosecutor Bad Check Fee	4
County Economic Development Income Tax Supplemental Distribution	4-5
Delinquent Accounts and Penalties – Porter County Expo Center	5
Exit Conference.....	6
Official Response	7-10

COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Auditor	James K. Kopp	01-01-07 to 12-31-10
Treasurer	James R. Murphy Michael Bucko	01-01-06 to 12-31-09 01-01-10 to 12-31-13
President of the County Council	Robert Poparad Daniel Whitten	01-01-09 to 12-31-09 01-01-10 to 12-31-10
President of the Board of County Commissioners	Robert Harper	01-01-09 to 12-31-10



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

TO: THE OFFICIALS OF PORTER COUNTY

We have audited the records of the Board of County Commissioners for the period from January 1, 2009 to December 31, 2009, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Audit Results and Comments. The financial transactions of this office are reflected in the Annual Report of Porter County for the year 2009.

STATE BOARD OF ACCOUNTS

September 21, 2010

BOARD OF COUNTY COMMISSIONERS
PORTER COUNTY
AUDIT RESULTS AND COMMENTS

PROSECUTOR BAD CHECK FEE

As stated in the prior three reports, the Prosecuting Attorney and County Commissioners have contracted with the American Corrective Counseling Services (ACCS) to provide a pretrial misdemeanor bad check diversion program. The Prosecuting Attorney retains full prosecutorial discretion and sets and modifies the seminar fees and terms of payment from participants.

A \$35 County service fee is assessed to the participants in the program. The ACCS collects all payments and remits \$25 to the Prosecuting Attorney as the County's share.

The County's share of the bad check service fees is being deposited into the Prosecutor's Check Deferral Fund (Fund 281). The County Commissioners passed an ordinance establishing this fund in December 2006. The ordinance was submitted to the Indiana State Board of Accounts for review in December 2007. The State Board of Accounts reviewed the ordinance and recommended the ordinance be amended to require the fees be deposited in the General Fund of the County and be subject to appropriation by the County Council. Fund 281 had a balance of \$25,530.83 as of December 31, 2009.

Prosecuting Attorneys desiring to maintain a Bad Check Account should submit a written request to the State Board of Accounts. The request should indicate whether all, or a portion of, the service charge on a bad check is to be retained by the prosecuting attorney. If a service fee is retained by the prosecuting attorney, it should be pursuant to enactment of a "Home Rule" ordinance that has been enacted in accordance with IC 36-1-3 concerning the imposition of costs and service charges, and a copy of the Ordinance should accompany the written request for approval from this office. The State Board of Accounts will review the ordinance and the proposed program with corresponding comments concerning what the audit position will be in a letter of response to the inquiring prosecutor.

If the prosecuting attorney assesses and retains a service charge for processing bad checks, that fee or service charge becomes the property of the county and must be submitted to and receipted by, the County Auditor for deposit into the county general fund. Funds so received by the county may be expended by the prosecuting attorney only by following the budget appropriation and claim procedure. Funds collected through imposition of a bad check service charge may not be disbursed from the bad check account for the direct payment of prosecuting attorney office expenses. Such funds may only become available for this purpose upon appropriation by the county council from the county general fund into a line item in the prosecuting attorney's budget. (The County Bulletin and Uniform Compliance Guidelines, April 2006, Volume 354, Page 10)

COUNTY ECONOMIC DEVELOPMENT INCOME TAX SUPPLEMENTAL DISTRIBUTION

Before October 2 of any year, the State of Indiana determines if the County is eligible for a supplemental distribution of county economic development income tax (CEDIT). Once the State of Indiana has determined a supplemental distribution may be made, the supplemental distribution must be made in January of the ensuing calendar year.

As stated in the prior report, in February 2009 and January 2010, the County received \$5,423,454.99 and \$5,679,604.00, respectively, of supplemental distributions of CEDIT from the State of Indiana. Of the totals received, the County receipted and distributed \$3,157,911.76 and \$3,307,059.86, respectively, to the County's 11 civil units of government as instructed by the State. The remaining

BOARD OF COUNTY COMMISSIONERS
PORTER COUNTY
AUDIT RESULTS AND COMMENTS
(Continued)

balances of \$2,265,543.23 and \$2,372,544.14, respectively, were receipted to the County's CEDIT Unallocated Fund (308). However, based on the instructions received from the State and IC 6-3.5-7-17.3, the supplemental distributions are to be deposited to the Rainy Day Fund. As of September 21, 2010, the County had not established a Rainy Day Fund in which to account for any CEDIT supplemental distributions received.

IC 6-3.5-7-17.3(b) states: "A supplemental distribution described in subsection (a) must be: (1) made in January of the ensuing calendar year; and (2) allocated in the same manner as certified distributions for deposit in a civil unit's rainy day fund established under IC 36-1-8-5.1."

DELINQUENT ACCOUNTS AND PENALTIES – PORTER COUNTY EXPO CENTER

The Porter County Expo Center has been severely delinquent on their utility vendor payments as follows:

1. Officials paid a claim totaling \$5,435.96 on July 23, 2010 for electric service at the Expo Center. A review of the vendor claims dated from January, 2008 to July, 2010 indicated that \$4,375.01 of the amount paid was for late fees. We did not review the claims prior to January, 2008. 77% of the claims were paid untimely ranging from 4 to 53 days past the due date of the invoices. Late charges were assessed each month even when the current bill was paid in a timely manner because officials did not remit the arrears (late charges from the previous statements).
2. An outstanding amount is owed to a utility vendor for gas service at the Expo Center totaling \$11,164.96. The amounts consists of two unpaid months for December 2007 and 2008 totaling \$8,823.82 and a utility tax that the Expo Center was exempt from totaling \$2,341.14 for the various months starting December 2005 through December 2008. The vendor has stated that a credit cannot be issued for the utility tax amount because of the lapse of time of the charges.
3. Vendor payments for water/sewage service were reviewed from January 2009 through July 2010. 67% of those claims were paid untimely ranging from 1 to 177 days after the due date.

Officials and employees have the duty to pay claims and remit taxes in a timely fashion. Failure to pay claims or remit taxes in a timely manner could be an indicator of serious financial problems which should be investigated by the governmental unit.

Additionally, officials and employees have a responsibility to perform duties in a manner which would not result in any unreasonable fees being assessed against the governmental unit.

Any penalties, interest or other charges paid by the governmental unit may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Counties, Chapter 1)

BOARD OF COUNTY COMMISSIONERS
PORTER COUNTY
EXIT CONFERENCE

The contents of this report were discussed on September 30, 2010, with Robert Harper, President of the Board of County Commissioners, and Gwenn R. Rinkenberger, County Attorney. The official response has been made a part of this report and may be found on pages 7 through 10.

COUNTY - PORTER

Gwenn R. Rinkenberger
Porter County Attorney



Porter County
Administration Center
155 Indiana Avenue
Suite 205
Valparaiso, Indiana 46383

(219) 465-3329

FAX: (219) 465-3362

E-MAIL: grinkenberger@portercoco.org

MEMO

**TO: BRUCE HARTMAN, STATE BOARD OF ACCOUNTS
MARY JO SMALL, STATE BOARD OF ACCOUNTS**

**FROM: PORTER COUNTY BOARD OF COMMISSIONERS IN
RESPONSE TO AUDIT RESULTS AND COMMENTS**

RE: CEDIT TAX--- DEPOSIT RAINY DAY FUND

DATE: OCTOBER 5, 2010

On March 31, 2003, the Porter County Council passed an ordinance imposing the County Economic Development Income Tax (CEDIT) in Porter County. The CEDIT tax is governed by IC 6-3.5-7 *et seq.* Pursuant to IC 6-3.5-7-5, the fiscal body is authorized to pass the tax.

Pursuant to Ordinance 03-03-02, the Porter County Council imposed the tax at a rate of twenty-five hundredths percent (0.25%) on the county taxpayers effective July 1, 2003.

IC 6-3.5-7-15 requires the adoption of a comprehensive plan by the Porter County Board of Commissioners before the county may receive its certified distribution of CEDIT money. The Plan must specify the uses for which the county proposes to use the CEDIT revenues. Pursuant to IC 6-3.5-7-15, a failure by the county executive to adopt a plan results in the county not receiving its share of funds.

IC 6-3.5-7.10 provides that a special account within the state general fund SHALL be established for each county adopting the tax. It further provides:

“Any revenue derived from the imposition of the CEDIT tax by a county SHALL be credited to that county’s account in the state general fund.”

Further, IC 6-3.5-7-13.1 provides that “the fiscal officer of each county, city, or town for a county in which the County Economic Development Tax is imposed SHALL establish an Economic Development Income Tax Fund. Except as provided in sections 23, 25, 26

and 27 of this chapter, the revenue received by a county, city, or town under this chapter SHALL be deposited in the unit's Economic Development Income Tax Fund.”

Pursuant to state law, the Porter County Auditor's Office created a special account for deposit of CEDIT money. The money is appropriated by the Porter County Council pursuant to the comprehensive plan passed by the Porter County Board of Commissioners pursuant to IC 6-3.5-7-15. The Capital Improvement Plan must incorporate projects for which the costs are at least seventy-five percent (75%) of the unit's distribution share. The remainder of the funds are considered “unallocated CEDIT” funds. Unallocated CEDIT funds are governed by IC 6-3.5-7-10 and IC 6-3.5-7-13.1 and in compliance therewith are deposited into Fund 308 – Unallocated CEDIT.

IC 6-3.5-7-13.1 governs the appropriate use of CEDIT funds. IC 6-3.5-7-13.1 was amended effective July 1, 2005, through the addition of paragraph three which provides that CEDIT funds may be used “by a county, city, or town for any lawful purpose for which money in any of its other funds may be used.” The intention of the statute was to generate funds to promote economic development.

CEDIT Funds must be:

- (1) Deposited pursuant to IC 6-3.5-7-10 and IC 6-3.5-7-13.1;
- (2) Appropriated by the fiscal body pursuant to the plan passed by the executive to IC 6-3.5-7-15; and
- (3) Appropriated in compliance with IC 6-3.5-7-13.1.

The Porter County Council may not appropriate CEDIT money for expenditures unless the Porter County Board of Commissioners passes a Plan identifying those expenditures. The intention of the imposition of the tax was for the promotion of Economic Development Projects. (See IC 6-3.5-7-13(b)(1) and (b)(2).

On or about March 2, 2004, the Porter County Board of Commissioners passed Ordinance 04-04 and submitted therewith Exhibit A which was an Economic Development Income Tax Capital Improvement Plan of Porter County for 2004, 2005, 2006, and 2007.

On July 10, 2007, the Porter County Board of Commissioners passed Ordinance 07-11 which was an ordinance to adopt a Capital Improvement Plan pursuant to IC 6-3.5-7 for 2008, 2009, 2010, and 2011.

In January 2007, and January 2008, the county received \$4,722,300.87 and \$3,747,783.95 of CEDIT funds. Pursuant to IC 6-3.5-7-10 and IC 6-3.5-7-13.1, this CEDIT money was deposited in Fund 308 – Unallocated CEDIT.

The State Board of Accounts concludes that the CEDIT money received should be deposited in a Rainy Day Fund. The Porter County Board of Commissioners respectfully disagrees.

IC 36-1-8-5.1 governs “Rainy Day Funds.” IC 35-1-8-5.8 provides that a political subdivision MAY (not shall) establish a Rainy Day Fund. The Porter County Board of Commissioners is the legislative body in Porter County and is the body responsible for passage of ordinances in the county. The Porter County Board of Commissioners has exercised their discretion not to create a “Rainy Day Fund” pursuant to IC 36-1-8-5.1.

IC 35-1-8-5.1 provides that the Porter County Board of Commissioners “may” establish a Rainy Day Fund and further provides that if they exercise their discretion to establish a Rainy Day Fund, they “must” specify the purposes of the fund and the sources of the funds, which may (not shall) include Supplemental Distributions to the county of CEDIT tax.


IC 36-1-8-5.1(c) provides that the Rainy Day Fund is subject to the same appropriation process as other funds that receive tax money.

It is the position of the Porter County Board of Commissioners that the money received and referenced in the State Board of Accounts’ audit has been properly deposited into Fund 308 – Unallocated CEDIT for the following reasons:

- (1) The money is CEDIT funds, and pursuant to IC 6-3.5-7-10 and IC 6-3.5-7-13.1, these funds SHALL (not may) be deposited into a special account generated within the general funds for those funds, and that includes Fund 308 – Unallocated CEDIT.
- (2) IC 36-1-8-5.1 provides that the creation of a Rainy Day Fund is discretionary. The decision to pass a Rainy Day Fund; the decision to identify the purpose of the Rainy Day Fund; and the decision to identify the source of the Rainy Day Fund is up to the Porter County Board of Commissioners. The Porter County Board of Commissioners has decided NOT to create a Rainy Day Fund. Therefore, the CEDIT money must be deposited in Fund 308 – Unallocated CEDIT;
- (3) Deposit of the CEDIT money into a Rainy Day Fund violates IC 6-3.5-7-15 which requires that CEDIT funds be appropriated pursuant to a Capital Improvement Plan passed by the Porter County Board of Commissioners.
- (4) The CEDIT money referenced is not a Supplemental Distribution as that term is defined in IC 6-3.5-7-17.3.

Based on the foregoing, the Porter County Board of Commissioners respectfully disagrees with the State Board of Accounts' position.

Respectfully submitted,


Gwenn R. Rinkenberger
Porter County Attorney

GRR/vw

cc: Commissioner Robert Harper
Commissioner John Evans
Commissioner Carole M. Knoblock
James Kopp, Porter County Auditor
Melissa Hartig, Administrative Assistant