

# THE COUNTY BULLETIN

## And Uniform Compliance Guidelines

### ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 408

March 2018

#### REMINDER OF ORDER OF BUSINESS

#### **April**

- 1 On or before April 1 is the last regular day for filing applications for tax exemption by Churches, Educational and Charitable organizations. (IC 6-1.1-11-3)

On or before April 1, of each even numbered year, the County Auditor shall provide to the County Assessor a list by taxing district of property for which a tax exemption was in effect for the immediately preceding year. (IC 6-1.1-11-5)

- 15 Members of Tax Adjustment Board to be appointed before this date to serve one year in counties that have not abolished such board. (IC 6-1.1-29-2) Abolishment of the board is provided under IC 6-1.1-29-9.

17-19 State Board of Accounts called meeting for County Recorders – Indianapolis

- 30 Last day to file quarterly report of federal withholding tax with Director of Internal Revenue Service.

#### **May**

- 1 Prepare report of school funds to Auditor of State and make payment of principal and interest due to Treasurer of State on the Common and Permanent Endowment Funds, and pay the Treasurer of State all fines and forfeitures on hand April 30, 2017, as shown in this report. (IC 20-42-1-6)

10 First installment of property taxes due. (IC 6-1.1-22-9)

15 Due date for personal property tax returns and filing for exemption. (IC 6-1.1-3-1.5)  
(IC 6-1.1-3-7.2)

17 May file a certification of the taxpayer's eligibility for the exemption instead of indicating the eligibility for the exemption on the taxpayer's personal property tax return before this date.

23, 24 & 25 State Board of Accounts called meeting for County Auditors – Fort Wayne

28 Memorial Day – Legal Holiday (IC 1-1-9-1)

REMINDER OF ORDER OF BUSINESS  
(Continued)

June

- 1 Last date for filing County Highway Annual Operational Report with the State Board of Accounts and other governmental agencies. (IC 8-17-4.1-7)

On or before this date the County Treasurer shall search the records to ascertain if person so certified is delinquent in payment of Property Taxes and certify to Auditor of State and state agencies the names of state employees owing delinquent taxes. (IC 6-1.1-22-14)

County Treasurer to prepare a list of persons owing delinquent taxes and believed to have money due from Auditor of State, Indiana Department of Transportation or any state institution or state school and furnish the list to those agencies on or before June 1. (IC 6-1.1-22-16)

- 13 & 14 State Board of Accounts called meeting for Clerk of the Circuit Courts - Indianapolis

- 20 On or before June 20th and December 20th of each year, the county auditor and the county treasurer shall meet in the office of the county auditor. Before each semi-annual meeting, the county auditor shall complete an audit of the county treasurer's monthly reports required under IC 36-2-10-16. In addition, the county auditor shall: (1) prepare a certificate of settlement on the form prescribed by the state board of accounts; and (2) deliver the certificate of settlement to the county treasurer at least two (2) days before each semi-annual meeting. (IC 6-1.1-27-1(a))

- 23 State Board of Accounts called meeting for County Council - Shelbyville

- 30 Immediately after each semi-annual settlement, the county auditor shall send a copy of the certificate of settlement and a statement of the distribution of the taxes collected to the state auditor. On or before June 30th and December 31st of each year, the county treasurer shall pay to the state treasurer the money due the state as shown by the certificate of settlement. (IC 6-1.1-27-3)

Last day for County Treasurer to certify list of real property eligible for tax sale to County Auditor if May 10 was first payment due date.

On or after January 1 of each calendar year in which a tax sale will be held in a county and not later than fifty-one (51) days after the first tax payment due date in that calendar year, the County Treasurer shall certify to the county auditor a list of real property eligible for tax sale. (IC 6-1.1-24-1(a))

### **OBSOLETE VOLUMES**

All articles from Volumes 362 and earlier of *The County Bulletin* have now been updated and are no longer applicable; thus Volumes 362 and earlier may be deleted from your file.

### **SMALL CLAIMS PROCEEDINGS – APPEARANCE BY LEGAL COUNSEL FOR CORPORATIONS**

For small claims cases exceeding one thousand five hundred dollars (\$1,500) a corporation must appear by counsel. For small claims cases not exceeding one thousand five hundred (\$1,500), a corporation may be represented by counsel or by a full-time employee of the corporation to appear as the corporation in the presentation of claims arising out of the business of the corporation.

Before a designated employee is allowed to appear in a small claims proceeding, the corporation must have on file with the court exercising jurisdiction of the proceedings, a certificate of compliance with the provisions of Small Claims Rule 8.

No person who is disbarred or suspended from the practice of law in Indiana or any other jurisdiction may appear for a corporate entity.

### **EDUCATION LICENSE PLATE FEE**

IC 9-18.5-15 authorizes the collection of the Education License Plate Fee. The annual fee of this plate is \$25. Of this fee, 25% goes to the state superintendent of public instruction and 75% of this fee goes to one of the following: (1) an education foundation or (2) a school corporation.

If an educational foundation that is exempt from federal income taxation under Internal Revenue Code Section 501(c)(3) is established as an Indiana nonprofit corporation for the benefit of a school corporation designated to receive a fee, fees designated to go to the school corporation shall be distributed to an educational foundation that provides benefit to the designated school corporation. A school corporation that receives benefit from an educational foundation that meets the requirements of this section shall:

- (1) obtain a certificate from the educational foundation that certifies to the school corporation and the county auditor that the educational foundation:
  - (A) is exempt from federal income taxation under Internal Revenue Code Section 501(c)(3); and
  - (B) is established as an Indiana nonprofit corporation to provide benefit to the school corporation' and
- (2) provide a copy of the certificate to the county auditor.

If a school corporation designated to receive a fee does not receive benefit from an educational foundation, the fees designated to go to the school corporation shall be distributed to the school corporation; and may be used only for purposes other than salaries and related fringe benefits.

Before the twentieth day of the calendar month following the calendar month in which a fee was collected, the bureau shall distribute the fees collected to the county auditor of the county in which the designated school corporation's administration office is located. Each monthly distribution shall be accompanied by a report to the auditor that shows:

- (1) the total amount of the monthly distribution for all school corporations in the county that were designated to receive an education license plate fee; and
- (2) the amount of the fees that are to be distributed to each designated school corporation in the county.
- (d) Within thirty (30) days of receipt of a distribution from the bureau, the county auditor shall distribute the fees received to:
  - (1) an education foundation if the school corporation has provided a copy of the certificate; or
  - (2) the school corporation; whichever is applicable

The county auditor shall designate which school corporation is to receive benefit in connection with a distribution to an educational foundation. If the school corporation receives benefit from more than one (1) educational foundation, the superintendent of the benefited school corporation shall determine, and inform the auditor in writing, how fees received are to be distributed to the educational foundations. The county auditor shall, simultaneously with a distribution to an educational foundation, send the school corporation to receive benefit a notice of the distribution that identifies the recipient educational foundation and the date and the amount of the distribution.

Funds received by an educational foundation must be used to provide benefit to the designated school corporation.

We would recommend opening a new fund to account for the distribution from the Bureau of Motor Vehicles. A fund table is posted to our website under the Gateway section. This fund would be considered an agency fund. Distribution to the foundation or the school would be made from this fund without an appropriation.

#### **CAMPAIGN FINANCE REPORT CIVIL PENALTY**

IC-3-9-4-17 states, In addition to any other penalty imposed, a person who does any of the following is subject to a civil penalty:

- (1) Fails to file with a county election board a report in the manner required under IC 3-9-5.
- (2) Fails to file a statement of organization required under IC 3-9-1.
- (3) Is a committee or a member of a committee who disburses or expends money or other property for any political purpose before the money or other property has passed through the hands of the treasurer of the committee.
- (4) Makes a contribution other than to a committee subject to this article or to a person authorized by law or a committee to receive contributions in the committee's behalf.
- (5) Is a corporation or labor organization that exceeds any of the limitations on contributions prescribed by IC 3-9-2-4.
- (6) Makes a contribution in the name of another person.
- (7) Accepts a contribution made by one (1) person in the name of another person.

- (8) Is not the treasurer of a committee subject to this article, and pays any expenses of an election or a caucus except as authorized by this article.
- (9) Commingles the funds of a committee with the personal funds of an officer, a member, or an associate of the committee.
- (10) Wrongfully uses campaign contributions in violation of IC 3-9-3-4.
- (11) Fails to designate a contribution as required by IC 3-9-2-5(c).
- (12) Violates IC 3-9-3-5.
- (13) Serves as a treasurer of a committee in violation of any of the following: (A) IC 3-9-1-13(1). (B) IC 3-9-1-13(2). (C) IC 3-9-1-18.
- (14) Violates IC 3-9-3-2.5 by making a communication that contains a disclaimer that is not presented in a clear and conspicuous manner. This does not apply to a person whose sole act is, in the normal course of business, participating in the preparation, printing, distribution or broadcast of the communication containing the disclaimer.

This applies to a person who is subject to a civil penalty under subsection (a)(1) or (a)(2) for filing a defective report or statement. If the county election board determines that a person failed to file the report or a statement of organization not later than noon five (5) days after being given notice, the county election board may assess a civil penalty. The penalty is ten dollars (\$10) for each day the report is late after the expiration of the five (5) day period, not to exceed one hundred dollars (\$100) plus any investigative costs incurred and documented by the board. The civil penalty limit applies to each report separately.

This applies to a person who is subject to a civil penalty under subsection (a)(1) or (a)(2) for a delinquent report or statement. If the county election board determines that a person failed to file the report or statement of organization by the deadline, the board shall assess a civil penalty. The penalty is fifty dollars (\$50) for each day the report is late, with the afternoon of the final date for filing the report or statement being calculated as the first day. The civil penalty may not exceed one thousand dollars (\$1,000) plus any investigative costs incurred and documented by the board. The civil penalty limit applies to each report separately.

If the county election board determines that a person is subject to a civil penalty under (a) (3), (a) (4), (a) (6), (a) (7), (a) (8), (a) (9), or (a) (10), the board may assess a civil penalty of not more than one thousand dollars (\$1,000), plus any investigative costs incurred and documented by the board.

If the county election board determines that a person is subject to a civil penalty under (a)(5), the board may assess a civil penalty of not more than three (3) times the amount of the contribution in excess of the limit prescribed by IC 3-9-2-4, plus any investigative costs incurred and documented by the board.

This applies to a person subject to a civil penalty under (a) (11). If the county election board determines that a corporation or a labor organization has failed to designate a contribution in violation of IC 3-9-2-5(c), the board shall assess a civil penalty equal to the greater of two (2) times the amount of the contributions undesignated or one thousand dollars (\$1,000). To either of these is added any investigative costs incurred and documented by the board.

If the county election board determines, by unanimous vote of the entire membership of the board, that a person has violated IC 3-9-3-5, the board may assess a civil penalty of not more than five hundred dollars (\$500), plus any investigative costs incurred and documented by the board.

If the county election board determines, by unanimous vote of the entire membership of the board, that a person has served as the treasurer of a committee in violation of any of the statutes listed in subsection (a) (13), the board may assess a civil penalty of not more than five hundred dollars (\$500), plus any investigative costs incurred and documented by the board.

If the county election board determines, by unanimous vote of the entire membership of the board, that a person is subject to a civil penalty under subsection (a)(14), the board may assess a civil penalty of not more than one thousand dollars (\$1,000) for each communication circulated or published (but not for each of the copies of the communication actually circulated or published), plus any investigative costs incurred and documented by the election division.

All civil penalties collected shall be deposited with the county treasurer to be deposited by the county treasurer in a separate account to be known as the campaign finance enforcement account. The funds in the account are available, with the approval of the county fiscal body, to augment and supplement the funds appropriated for the administration of this article.

Money in the campaign finance enforcement account does not revert to the county general fund at the end of the county fiscal year.

Proceedings of the county election board under this section are subject to IC 4-21.5. Per IC 3-9-4-18 (e) and (f) for a person who:

- “(1) is assessed a civil penalty; and
- (2) is elected to office in the subsequent election.

The election board may order the auditor of state or the fiscal officer of the political subdivision responsible for issuing the person’s payment for serving in the office to withhold from the person’s paycheck the amount of the civil penalty assessed. If the amount of the paycheck is less than the amount of the civil penalty, the auditor or fiscal officer shall continue withholding money from the person’s paycheck until an amount equal to the amount of the civil penalty has been withheld.

The auditor of state or fiscal officer shall deposit an amount paid, recovered or withheld under this section in the election board’s campaign finance enforcement account.”

### **OPTICAL IMAGES OF CHECKS**

The Indiana State Board of Accounts is of the audit position both sides of a check are part of the original record. Therefore, both sides of an "optical imaged check" should be available for public inspection and audit. The optical imaged checks should be produced or at least be retrievable. Encoding, printing and bank certification should exist to ascertain that the back side of a check is part of a particular check, i.e. endorsements should belong to the front side of a check presented.

Indiana Code 5-15-5.1-10(a) states in part: “Each . . . local government shall: (1) Make and preserve records containing adequate and proper documentation of . . . essential transactions of the . . . local government to protect the legal and financial rights of the government. . . .”

An optical image copy of a check would be treated as an original as long as the foregoing was followed.

Furthermore, Indiana Code 26-2-8-111 states in part:

"(a) If a law requires that certain records be retained, that requirement is met by retaining an electronic record of the information in the record that:

- (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
- (2) remains accessible for later reference. . .

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a)." [Emphasis added]

## **INVESTMENTS**

This is a follow up to the article that was in the January 2018 Bulletin on investments. The investment officer for the county is the Treasurer. The Treasurer will make the final decision on which investments, if any to make with county funds. However, there are restrictions on the types of investments that a Treasurer may make. First, the investment made by the Treasurer must follow statute (Indiana Code 5-13) for allowable investments and maturity dates. The investment must also comply with policies established by the Board of Finance and an investment policy for the county established under Indiana Code 5-13-9-5.7.

The Treasurer has the authority to contract with a federally regulated investment advisor or other institutional money manager. Any contracts should be reviewed by your county attorney to ensure that the county funds are adequately safeguarded within the contract. Even when utilizing the services of an investment advisor, it is ultimately the responsibility of the Treasurer to make the final decision on the investments, having done due diligence to ensure that the investments comply with statute and with the county's investment policy. You should keep the documentation of your decision process.

## **RECEIPTING PROCESS**

All money payable to the county treasury must be received and deposited by the county treasurer. The only money the county auditor should be collecting are the fees for county auditor services which are deposited with the county treasurer. Those fees would be posted to the auditor's fee book and remitted through the receipting process with a report of collections.

The process was designed to support the county's compliance with Indiana Code 36-2-9-12 and Indiana Code 36-2-10-10 for the separation of duties between the auditor and treasurer. The prescribed form is Form 20-21, however, you do not have to use the prescribed form if you have an approved form in its place.

The process begins with the auditor's office preparing a document that shows the date, fund or funds to be credited, amount, person paying and source of payment. The person paying then needs to take the payment to the treasurer to be counted and deposited. The information provided by the auditor on the payment, needs to be transferred to the treasurer either by the person paying, taking a copy of the document prepared by the auditor or an electronic transfer of the information between the two offices. The treasurer gives a receipt to the person paying.

A copy of that receipt is returned to the auditor, (or an electronic transfer of the receipt information is sent) where a quietus is issued by the auditor to the payer. At the end of this process, the auditor has the information needed to post the funds ledger and proof that the money is in the custody of the treasurer. The treasurer has the information needed to post their copy of the funds ledger based on the amount on the quietus. The payer has the information on the amount posted to the funds as well as a receipt to show transfer of custody of the funds to the treasurer.

We have often heard that in many counties, the departments remitting their departmental collections do not want to wait until the process is completed. Sometimes the report of collections and the collection itself are dropped into a basket or on a desk in the auditor's office. It is then left to the auditor to take the collection to the treasurer and the quietus is provided to the department at a later time. This is not proper procedure. The custody of the amount collected by the department does not transfer to the county until it is receipted in by the treasurer. If the collection dropped off by the department does not match the report of collections, the department would be held accountable for the variance. For example, if the report of collections shows total collections of \$500 but the actual collections remitted to the treasurer is only \$450, the missing \$50 is the responsibility of the department. For a department, at the end of the process, you should have a receipt from the treasurer to document the amount you turned in to the county treasury and a quietus to show what funds and revenue lines your collection is being posted.

When you receive a payment electronically (ACH, EFT, etc.) the payment is being deposited to the county's bank account instead of being turned in for deposit. You should still have notification of the date, source and amount of the payment. If you don't, you need to contact the entity paying and ensure that in the future you receive the notices. The process still requires the auditor to propose how the payment is to be posted in the funds ledger, and the treasurer to post the cash book and the treasurer's fund ledger. The transfer of information between the two offices is still needed and there should be policy established to ensure that the posting is timely.