

# THE COUNTY BULLETIN

## And Uniform Compliance Guidelines

### ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 360

January 2008

#### REMINDER OF ORDER OF BUSINESS

#### January

- 1 Happy New Year! - Legal Holiday (IC 1-1-9-1)
- 15 "Assessment Date" for mobile homes as defined in IC 6-1.1-7-1. (IC 6-1.1-1-2)  
Last date to make pension report and payment for fourth quarter of 2006 by counties participating in Public Employees' Retirement Fund.
- 20 Last date to report and make payment of State Income Tax withheld in December to Indiana Department of Revenue. (IC 6-3-4-8.1)
- 21 Legal Holiday - Dr. Martin Luther King, Jr. Day (IC 1-1-9-1)
- 22 Last day that township boards meet to consider 2006 Annual Reports of township trustees - third Tuesday after the first Monday (IC 36-6-6-9)
- 28 Make distribution of interest on congressional and cemetery funds - last Monday in month. (IC 20-42-2-7) (IC 23-14-70-3)
- 30 File 2006 Annual Financial Report with State Board of Accounts. (IC 5-11-1-4)
- 31 Last day to file Form 100-R, Report of Names and Compensation of Officers and Employees with the State Board of Accounts. (IC 5-11-13-1)  
Last date to file quarterly unemployment compensation report with the Department of Workforce Development.  
Last date to convene a meeting of the local board of finance in order to elect a president and a secretary and review investment report from county treasurer. (IC 5-13-7-6)  
Last day to provide each employee with a W-2.  
Last day to file quarterly report for the last quarter of 2007 with Internal Revenue Service.  
Last day for the board of county commissioners and county council to meet to organize and elect officers for the year 2008.

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**REMINDER OF ORDER OF BUSINESS**  
**(Continued)**

**February**

- 1 Last day for township trustees to file annual reports and vouchers with County Auditor. [IC 36-6-4-12(d)]
- 12 Legal Holiday - Lincoln's Birthday (IC 1-1-9-1)
- 18 Legal Holiday - Washington's Birthday (IC 1-1-9-1)
- 20 Last date to report and make payment of State Income Tax withheld in January to Indiana Department of Revenue. (IC 6-3-4-8.1)

**March**

- 1 Annual assessment period begins, except mobile homes. (IC 6-1.1-1-2)
- 20 Last day to report and make payment of State Income Tax withheld in February to Indiana Department of Revenue. (IC 6-3-4-8.1)
- 21 Good Friday – Legal Holiday (IC 1-1-9-1)

**WELCOME TO NEW OFFICIALS**

To those officials who are taking office January 1, 2008, we wish to welcome you. Please feel free to contact this office at any time and we will try to help you in any way we can. The telephone numbers for the State Board of Accounts are as follows:

County Supervisors (317) 232-2512  
Front Desk (317) 232-2513

**THANKS AND BEST WISHES**

To all of those county officials who are leaving office, we wish to express our sincerest thanks and appreciation for the kindness and cooperation shown to this board, our supervisors and our field staff. We wish you the very best in your future endeavors!

**OBSOLETE VOLUMES**

All articles from Volumes 316 and earlier of *The County Bulletin* have now been updated and are no longer applicable; thus Volumes 316 and earlier may be deleted from your file.

A complete index to *The County Bulletin* is included for your reference.

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**SOCIAL SECURITY TAX BASE CHANGES JANUARY 1**

The 2008 contribution rate will remain at a total of 15.3 percent. The tax rate for both employees' and employers' shares for 2008 will be 7.65 percent (6.2% of Social Security and 1.45% Medicare).

The maximum amount of earnings that will be subject to Social Security contribution will be raised from \$97,500 to \$102,000 effective January 1, 2008.

Please contact the Internal Revenue Service at 1-800-829-1040 if you should have any questions on this matter.

**STATEMENT OF WAGES AND COMPENSATION**

We remind County Auditors to publish a statement of wages and compensation. Please review IC 36-2-2-19 for requirements.

At its second regular meeting each year, the executive shall make an accurate statement of the county's receipts and expenditures during the preceding calendar year. The statement must include the name of and compensation paid to each county officer, deputy, and employee. The executive shall post this statement at the courthouse door and two (2) other places in the county and shall publish it in the manner prescribed by IC 5-3-1.

**RATES FOR LEGAL ADVERTISING**

The rates for legal advertising did not change for calendar year 2008. IC 5-3-1-1 does not authorize any change in legal rates after December 31, 2005. Therefore, publishers of qualified publications should charge in accordance with the 2005 rates published in County Bulletin, Vol. 349 from January 2005.

**ENCUMBERED APPROPRIATIONS**

Whenever a valid appropriation has been lawfully encumbered by a contract or by the issuance of a purchase order, the appropriation to the extent of the encumbrance may be carried forward to the succeeding year and made available for payment of the obligation which encumbered it. Only so much of the appropriation as is lawfully encumbered may be carried forward. All appropriations not lawfully encumbered by contract or purchase order revert at the close of the year.

**STATE ELECTION DIVISION INSTRUCTIONAL MEETING**

The Clerk of the Circuit Court is required by IC 3-6-4.2-14 to attend a meeting called by the State Election Division in which county election boards and the board of registration are instructed on their duties under the election laws. The meeting must be called before the primary election in years in which a primary election is held. The instructional meeting may not last more than two (2) days.

Each member of a county election board or board of registration is entitled to receive a:

- (1) per diem of twenty-four dollars (\$24) for attending the instructional meeting;
- (2) mileage allowance at the state rate for the distance necessarily traveled in going and returning from the place of the instructional meeting; and

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**STATE ELECTION DIVISION INSTRUCTIONAL MEETING (Continued)**

- (3) reimbursement for the payment of the instructional meeting registration fee from the county general fund without appropriation.
- (4) allowance for lodging for each night preceding conference attendance equal to the lodging allowance provided to state employees in travel status.

The Clerk of the Circuit Court as an ex-officio member of the county election board would be entitled to these reimbursements.

**SETTLEMENT OF FALL TAXES COLLECTED BEFORE MAY 10**

IC 5-13-6-3 requires all taxes collected by the County Treasurer to be deposited in one (1) fund in the several depositories selected for the deposit of county funds and remain in the depositories until distributed in the following semiannual distribution made by the County Auditor. The County Treasurer shall make settlement with the County Auditor semiannually for the amount of taxes and special assessments which the County Treasurer has collected (IC 6-1.1-27-2). Therefore, if both the spring and fall installments are collected before May 10, both installments must be part of June Settlement.

**DEPOSITS OF PUBLIC FUNDS**

IC 5-13-6-1(c) requires public funds to be deposited in the same form in which they were received. The following guidelines are recommended for compliance with this section of the law:

- (1) The cashing of employee payroll checks and employee personal checks should be prohibited.
- (2) Checks received in the mail in amounts which are over the amounts due a county for taxes and special assessments shall be applied to the amount of taxes and special assessments due and the remainder applied to the Surplus Tax Fund in accordance with IC 6-1.1-26-6.
- (3) Each County Treasurer should establish his/her own policy on receiving overpayments for taxes in the form of checks or money orders paid in person by taxpayers. If checks are made out in error for minimal amounts over the tax liability, change could be given back to the taxpayer for difference. However, we do not recommend making change for taxpayers whose checks are in excesses of the taxes due by large amounts.
- (4) Each County Treasurer should establish his/her own policy on whether or not they accept checks for deposit which are made payable to other county departments. For example, checks made payable to the County Health Department.
- (5) Overpayments from companies who act as escrow agents for tax payers shall be deposited in the Surplus Tax Fund in accordance with IC 6-1.1-26-6. If it is not practicable to identify the individual components of the amount overpaid by parcel number before the next settlement of taxes, the entire amount could be carried on line 53 of the Treasurer's Daily Balance of Cash and Depositories, County Form No. 47, until such time as the individual components can be applied by taxpayer and taxing district. Refunds cannot be made until after the overpayments are recorded in the Surplus Tax Fund Ledger and turned over to the County Auditor. As stated in prior articles in this publication, the Surplus Tax Fund Ledger may be turned over to the County Auditor at any time other than at each semiannual settlement.

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**SEWER LIENS – PENALTIES AFTER CERTIFICATION - SETTLEMENT**

IC 36-9-23-33(i) states that if a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the County Treasurer in the same way that delinquent property taxes are collected. Therefore, such charges, if not paid, should be assessed a ten percent (10%) penalty in the same manner as delinquent real or personal property taxes.

At the time of each semiannual tax settlement, the County Treasurer shall certify to the County Auditor all fees, charges, and penalties that have been collected. The County Auditor shall deduct the service charges and certification fees collected by the County Treasurer and pay over to the officer the remaining collections due the municipality. The County Treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the County General Fund.

**STATE DEPARTMENT OF CORRECTIONS HOUSING REIMBURSEMENTS**

Counties receive from the State Department of Corrections a reimbursement for housing state prisoners at county jails. This is a reimbursement of the costs incurred by the county; therefore, since the costs of the jail are paid from the County General Fund the reimbursement received from the state should be deposited in the County General Fund and not posted to an appropriation line item. An additional appropriation would be required for this revenue.

If the Board of County Commissioners passes a Home Rule ordinance allowing these reimbursements to be placed in a specific fund, we would not take an audit exception to this ordinance. The ordinance should be specific as to what fund these reimbursements shall be deposited, and what purposes this fund may be spent for. Under no circumstances should this reimbursement be deposited in the Commissary Fund or a separate bank account maintained by the County Sheriff.

**BUDGET TRANSFERS**

IC 6-1.1-18-6 states the following, "The proper officers of a political subdivision may transfer money from one major budget classification to another within a department or office if: 1) they determine the transfer is necessary; 2) the transfer does not require the expenditure of more money than the total amount set out in the budget as finally determined by this article; 3) the transfer is made at a regular meeting and by proper ordinance or resolution; and 4) the transfer is certified to the county auditor. A transfer may be made under this section without notice and without the approval of the department of local government finance."

This statute is addressing transfers from one major classification to another major classification within a department. For example, a transfer in the County Auditor's budget from a 300 account to a 200 account. No transfers are allowed from one department to another, i.e. from the County Auditor's budget to the County Treasurer's budget. To do this would require a budget reduction in one department and an additional appropriation to the other department by the County Council. Transfers within a major in a department may be made without County Council action unless your local policy is for all transfers to go before the County Council. (i.e. from a 200 account to another 200 account within the County Auditor's budget)

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**UNCLAIMED PROPERTY**

Periodically, county officials may receive a telephone call or a letter from companies claiming to be able to help the county recover monies they have coming to them. Of course, the company charges a finder fee. There is nothing illegal about hiring these companies but be aware that the service you are receiving is not anymore than you could do on your own, thus saving the county the finder fee. Most of the monies that are out there waiting for you to claim are unclaimed property. The reasons they exist can vary but the information is available to you from the same sources these companies use. Most of these unclaimed properties are being held by the State Attorney General. You may contact the Unclaimed Property section of the Attorney General's office or they are also listed on the Internet. A little work from you could reap a reward for the county as you claim what is legally the county's.

**COMPENSATORY TIME – FAIR LABOR STANDARDS ACT**

The following article was contributed by the Indianapolis Office of the Wage and Hour Division of the United States Department of Labor.

**Use of Compensatory Time Off Under the Fair Labor Standards Act**

The Fair Labor Standards Act (FLSA) is a federal law that sets standards for minimum wage, overtime, and child labor. Under Sec. 7(o), public sector employers may provide compensatory time off in lieu of monetary overtime compensation. The compensatory time off must be at the rate of not less than 1 and ½ hours for each overtime hour worked.

As a condition for use of compensatory time off in lieu of overtime payment in cash, an agreement of understanding must be reached prior to performance of the work. Such an agreement may involve a collective bargaining agreement, a memorandum of understanding, or any other type of agreement between the public agency and the employees' representative. (If the employees do not have representative, then the agreement must be between the public agency and the individual employee.) The agreement may contain provisions that address the preservation, use, or cashing out of compensatory time, as long as they are consistent with Sec. 7(o).

As an example, if an agreement specifically provides that an employee must use accrued compensatory time prior to the use of vacation leave, then this policy would be within the FLSA, assuming that employees have knowingly and voluntarily agreed to such a provision freely and without coercion or pressure. On the other hand, if the compensatory agreement did not specifically address that issue, then the employer could not require an employee to take their accrued compensatory time prior to vacation leave.

Here's a different type of example: An agreement states that requests for compensatory time off have to be submitted with adequate advance notice and that management will approve them based on scheduling needs, allowing only one employee off per shift. Sec 7(o)(5) of FLSA says that requests for use of compensatory time off will be permitted within a "reasonable period", if such use does not "unduly disrupt" the operations of the agency. In this example, the agreement would be inconsistent with the FLSA since it would allow for the denial of a request for reasons other than unduly disrupting the operations of the agency.

Remember, there are ceilings on how much FLSA compensatory time off an employee may accumulate:

480 hours of compensatory time off (representing 320 overtime hours work) for employees engaged in public safety, emergency response, or seasonal activity.

240 hours of compensatory time off (representing 160 overtime hours worked) for all other employees.

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**COMPENSATORY TIME – FAIR LABOR STANDARDS ACT (Continued)**

When employees reach these ceilings, any additional overtime that is worked must be paid. FLSA compensatory time off stays on the books until the employee uses the time or until it is paid out. Employees cannot “use or lose” compensatory time off.

For answers to other questions on the Fair Labor Standards Act or the Family and Medical Leave Act, contact your nearest U.S. Dept. Of Labor, Wage & Hour office: Indianapolis: 317/226-6801; South Bend: 219/236-8331.

**ELECTED OFFICIALS – LEAVE POLICY**

We have received questions concerning the authority (or need) for elected officials to be included in the counties' vacation leave, sick leave, death leave, or other leave policy.

We have not taken audit exception to an elected official's compensation as long as the office to which the official was elected performs the duties and responsibilities of the office. Whether the elected official personally does the work, whether the elected official personally maintains office hours or whether the elected official shows up at the office are matters to be determined locally. Keep in mind our audit position relates only to elected officials. We recommend the county attorney provide specific written guidance that conflicts do not exist with IC 35-44-2-4, the Ghost Employment Statute.

In those few instances where elected officials choose to be included in such employee benefit policy (and were included in the authorizing resolution), the officials must maintain proper attendance records (the same as all other county employees) which shall clearly disclose days worked, days missed, type of leave taken, etc. We are of the audit position that the requirement for keeping proper attendance records would require the decision not be made just prior to the close of the officials' term.

A county is authorized to “grant vacation with pay, sick leave, paid holidays, and other similar benefits by ordinance” (resolution) to “employees of the political subdivision” pursuant to IC 5-10-6-1. The term “employees” is not defined.

**TEMPORARY LOANS**

IC 36-1-8-4(a) provides that the fiscal body of a political subdivision may, by ordinance or resolution, permit the transfer of a prescribed amount, for a prescribed period, to a fund in need of money for cash flow purposes from another fund of the political subdivision if all these conditions are met:

- (1) It must be necessary to borrow money to enhance the fund that is in need of money for cash flow purposes.
- (2) There must be sufficient money on deposit to the credit of the other fund that can be temporarily transferred.
- (3) Except as provided in IC 36-1-8-4(b), the prescribed period must end during the budget year of the year in which the transfer occurs.
- (4) The amount transferred must be returned to the other fund at the end of the prescribed period.
- (5) Only revenues derived from the levying and collection of property taxes or special taxes or from operation of the political subdivision may be included in the amount transferred.

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**TEMPORARY LOANS (Continued)**

IC 36-1-8-4(b) provides that if the fiscal body of a political subdivision determines that an emergency exists that requires an extension of the prescribed period of a transfer, the prescribed period may be extended for not more than six (6) months beyond that budget year of the year in which the transfer occurs if the fiscal body does the following:

- (1) Passes an ordinance or a resolution that contains the following:
  - (A) A statement that the fiscal body has determined that an emergency exists.
  - (B) A brief description of the grounds for the emergency.
  - (C) The date the loan will be repaid that is not more than six (6) months beyond the budget year in which the transfer occurs.
- (2) Immediately forwards the ordinance or resolution to the State Board of Accounts and the Department of Local Government Finance.

**STATE MATCHING GRANTS**

If a political subdivision receives state grant money requiring local matching money, the political subdivision shall create a special fund and deposit the grant money and matching money into the special fund. The money in the fund may be used only for the purposes of the grant.

If a political subdivision completes the project for which the state grant money was provided and money remains in the fund:

- (1) the political subdivision shall transfer the state's share of the remaining money to the Treasurer of State for deposit in the fund from which the grant was made; and
- (2) the political subdivision's pro rata share of the remaining money reverts to the political subdivision's general fund. (IC 36-1-8-12)

**NEW HIRES**

The Department of Workforce Development should be contacted for all questions concerning the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" and requirements that all employees must file a "new hire report" for each "newly hired" employee. Please consult the "Indiana New Hire Reporting Center" at (866) 879-0198 or [www.in-newhire.com](http://www.in-newhire.com).

**COSTS RESULTING FROM THE INSTUTIONAL PLACEMENT OF A CHILD ADJUDICATED A DELIQUENT CHILD OR A CHILD IN NEED OF SERVICES**

The cost of any services ordered by the juvenile court for any child, or the child's parent, guardian, or custodian other than secured detention and the cost of returning a child under IC 31-37-33 shall be paid from the County Family and Children's Fund. The county council shall provide sufficient funds to meet the court's requirements.



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**COSTS RESULTING FROM THE INSTITUTIONAL PLACEMENT OF A CHILD ADJUDICATED A DELINQUENT CHILD OR A CHILD IN NEED OF SERVICES (Continued)**

A parent or guardian of the estate of a child adjudicated a delinquent child or a child in need of services is financially responsible for any services ordered by the court. Each parent of a child alleged to be a child in need of services or alleged to be a delinquent child shall, before a dispositional hearing, furnish the court with an accurately completed and current child support obligation worksheet on the same form that is prescribed by the Indiana Supreme Court for child support orders.

The parent or guardian of the estate of any child returned to Indiana under the interstate compact on juveniles (IC 31-37-23) shall reimburse the county for all costs involved in returning the child that the court orders the parent or guardian to pay whether or not the child has been adjudicated a delinquent of a child in need of services.

The juvenile court shall order the child's parents or the guardian of the child's estate to pay for services provided to the child or parent or guardian unless the court finds that the parent or guardian is unable to pay or that justice would not be served by ordering payment from the parent or guardian.

Whenever the court orders institutional placement of the child, if an existing support order is in effect, the court shall order support payments to be assigned to the county office of family and children for the duration of the institutional placement. If no existing order, the court shall refer to the child support guidelines adopted by the Indiana Supreme Court to determine the financial contribution required from each parent of the child or the guardian of the child's estate.

Payments received for support or reimbursement of cost under these circumstances shall be distributed according to 42 U.S.C. and 45 CFR 302.52. All amounts remaining shall be deposited in the family and children's fund of the county that paid the cost of services. A support order entered must be paid through the clerk of the circuit court as trustee for remittance to the county. (IC 31-40-1)

If the parent or guardian of the estate defaults in reimbursing the county or fails to pay any fee authorized, the juvenile court may find the parent or guardian in contempt and may enter judgment for the amount due. (IC 31-40-4)

A juvenile court may order each delinquent child who receives supervision or the child's parent, guardian, or custodian to pay to the probation department or the clerk of the court:

- (1) an initial probation user's fee of at least twenty-five dollars (\$25) but not more than one hundred dollars (\$100); and
- (2) a probation user's fee of at least ten dollars (\$10) but not more than twenty-five (\$25) for each month the child receives supervision;
- (3) an administrative fee of one hundred dollars (\$100) if the delinquent child is supervised by a juvenile probation officer.

Deposit of these fees shall be into the county supplemental juvenile probation services fund.

The fiscal body of the county shall appropriate money from the county supplemental juvenile probation services fund to the juvenile courts of the county for the courts' use in supplementing probation services to juveniles and supplementing the salaries of juvenile probation officers in accordance with the salary schedule under IC 31-2-16.5. The county supplemental juvenile probation serviced fund may be used only for supplementing probation serviced and to supplement the salaries for probation officers, in accordance with IC 31-31-5. Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the county supplemental juvenile probation services fund.

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**COSTS RESULTING FROM THE INSTUTIONAL PLACEMENT OF A CHILD ADJUDICATED A DELIQUENT CHILD OR A CHILD IN NEED OF SERVICES (Continued)**

The county supplemental juvenile probation services fund may not be used to replace other funding or probation services. (IC 31-40-2)

A juvenile court may order the parent or guardian of the estate of any child for whom a guardian ad litem or court appointed special advocate is appointed to pay to the probation department a user fee of not more than one hundred dollars (\$100) for deposit by the probation department in:

- (1) the guardian ad litem fund, if a guardian ad litem has been appointed; or
- (2) the court appointed special advocate fund, if a court appointed special advocate has been appointed.

The fiscal body of the county shall appropriate money from the guardian ad litem fund or the court appointed special advocate fund to the juvenile courts of the county for the courts' use in providing guardian ad litem or court appointed special advocate services and the costs of representation for them. Any money remaining in either fund at the end of the year does not revert to any other fund but continues in the guardian ad litem fund or court appointed special advocate fund. (IC 31-40-3)

**PAYMENT OF EMPLOYEES DURING ABSENCE FROM WORK ON ACCOUNT OF COMPENSABLE INJURY**

Official Opinion of the Indiana Attorney General, No. 134 of 1945, established guidelines to be observed in paying school teachers in instances where an absence from work was because of circumstances under which the teacher received compensation benefits through the provisions of the Workmen's Compensation Act. In that opinion, it was clarified that a teacher who receives benefits under the Workmen's Compensation Act while absent from work would be entitled to receive from the school corporation only the difference between the amount received under the Workmen's Compensation Act and the full benefits provided by law allowing teachers to be absent without loss of pay for a stated number of days; that the laws considered in the opinion do not authorize double payment for the same injury.

Official Opinion No. 17 of 1975 supports the prior opinion in that it concludes that while a teacher is entitled to each earned sick leave day for actual sickness or injury, in the event a teacher also receives workmen's compensation payments during the same time frame as receiving sick leave, an adjustment must be made so that the combined earned sick leave days and workmen's compensation payments do not exceed that teacher's normal salary for the same time frame.

Applying the same rule to county employees we must conclude that, when absent, an employee would be entitled to receive only the difference between the amount received under the Workmen's Compensation Act and the full benefits otherwise provided by any local board regulation authorizing sick leave. Double payment for the same time frame or overlapping payment of compensation on account of the same injury is not authorized for a public employee under Indiana law.

**SEATBELT VIOLATION**

IC 9-19-10-2 states "Each front seat occupant of a passenger motor vehicle that is equipped with a safety belt meeting the standards stated in the Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) shall have a safety belt properly fastened about the occupant's body at all times when the vehicle is in forward motion."

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**SEATBELT VIOLATION (Continued)**

IC 9-19-10-8 states "A person who violates section 2 (see above) of this chapter commits a Class D infraction."

IC 34-28-5-4(d) states "A judgment of up to twenty-five dollars (\$25) may be entered for a violation constituting a Class D infraction." IC 34-28-5-5(b) states "If a judgment is entered for a violation constituting a Class D infraction... the defendant is not liable for costs."

Therefore, this agency's audit position would be that the payment by the defendant for a safety belt infraction would be a judgment (fine) of up to \$25 as set by the court.

**REFUNDS FOR ERRONEOUS OR EXCESSIVE TAX PAYMENT**

A person, or his heirs, personal representative, or successors, may file a claim for refund of all or a portion of a tax installment which he has paid. The claim must be filed with the auditor of the county in which the taxes were originally paid, within three (3) years after the taxes were first due, on County Form No. 17T, Claim for Refund of Taxes, prescribed by the State Board of Accounts. (Our Emphasis)

The claim shall be based upon one of the following grounds: (1) taxes on the same property have been assessed more than once for the same year; (2) the taxes, as a matter of law, were illegal; or (3) there was a mathematical error either in the computation of the assessment upon which the taxes were based or in the computation of the taxes. (IC 6-1.1-26-1)

If the claim is for refund of taxes paid on an assessment made or determined by the Department of Local Government Finance and the claim is based upon the grounds provided in items (2) and (3) of the above cited statute (IC 6-1.1-26-1), the county auditor shall forward the claim to the Department of Local Government Finance for approval or disapproval.

If a person desires to initiate an appeal of a disapproved claim by the Department of Local Government Finance then the person must file a petition for review with the appropriate county assessor not more than 45 days after the disapproval. (IC 6-1.1-26-2)

A refund claim which is not subject to review by the Department of Local Government Finance under IC 6-1.1-26-2 shall be either approved or disapproved by the county auditor, the county treasurer, and the county assessor. If the claim for refund is disapproved by either the county auditor, the county treasurer, or the county assessor, the claimant may appeal that decision to the Indiana Board of Tax Review (Indiana Board). The claimant must initiate the appeal and the Indiana Board shall hear the appeal in the same manner as assessment appeals are initiated and heard. (IC 6-1.1-26-3)

The county auditor shall submit a refund claim to the board of county commissioners for final review after the appropriate county officials either approve or disapprove the claim and, if the claim is disapproved, an appeal to the Indiana Board is not initiated under IC 6-1.1-26-3. The county board of commissioners shall disallow a refund claim if one of the appropriate county officials does not approve the claim and an appeal to the Indiana Board was not initiated under IC 6-1.1-26-3. The county board of commissioners may either allow or disallow a refund claim which is submitted to it for final review. If the county board of commissioners disallows a claim, the claimant may appeal that decision to the Indiana Board. (IC 6-1.1-26-4)

When a claim for refund is allowed either by the county board of commissioners, the Department of Local Government Finance, the Indiana Board, or the Indiana tax court on appeal, the claimant is entitled to a refund. The amount of the refund shall equal the amount of the claim so allowed plus interest at four percent (4%) from the date on which the taxes were paid or payable, whichever is later, to the date of refund. The county auditor shall, without an appropriation being required, issue a warrant to the claimant payable from the county general fund for the amount due the claimant. In the June or December settlement and apportionment of taxes, or both the June and December settlement and apportionment of taxes, immediately following a refund the county auditor shall deduct the amount refunded from the gross tax collections of the taxing units

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**REFUNDS FOR ERRONEOUS OR EXCESSIVE TAX PAYMENT (Continued)**

(districts) for which the refunded taxes were originally paid and shall pay the amount so deducted into the general fund of the county. However, the county auditor shall make the deductions and payments required no later than the December settlement and apportionment. (IC 6-1.1-26-5)

All tax refunds (except surplus tax), whether made under the provisions of the laws cited or as a result of invalid tax sales, shall be made without appropriation. The amounts disbursed from this account shall, at each December settlement be scheduled by taxing district, the amount for each taxing district deducted on the apportionment sheet for such district.

**INVALID TAX SALE – REFUND OF PURCHASE MONEY**

If, before the execution of a deed to real property sold for taxes, it is found that the sale was invalid, the county auditor shall not execute the deed, but he shall refund the purchase money plus six percent (6%) interest per annum from the county treasurer to the purchaser, assigns or the purchaser of the certificate of sale. (IC 6-1.1-25-10)

Subsequent to the issuance of the order directing the auditor to issue a deed to real property sold for taxes, a county auditor shall refund the purchase money plus six percent (6%) interest per annum from the county treasury to the purchaser, or his successors or assigns, or the purchaser of the certificate of sale if it is found that: (1) the real property described in the deed was not subject to the taxes for which it was sold; (2) the delinquent taxes or special assessments for which the real property was sold were properly paid before the sale; or (3) the legal description of the property in the tax deed is void for uncertainty. (IC 6-1.1-25-11)

A person, including the county, to whom a refund is made under this section shall execute, acknowledge, and deliver to the owner a deed conveying whatever interest the purchaser may have acquired by the tax sale deed. If a county is required to execute a deed under this section, the deed shall be signed by the board of county commissioners and acknowledged by the clerk of the circuit court. (IC 6-1.1-25-11)

A refund may not be made under this section while a court action initiated under IC 6-1.1-25-14 or 6-1.1-25-16 is pending. (IC 6-1.1-25-11)

**TAX ON PROPERTY ACQUIRED BY A SCHOOL CORPORATION**

Although a school corporation is exempt from having any of its property assessed for general property taxes it is not exempted from this payment of taxes already charged on the property it acquires. School corporations are not included in IC 6-1.1-36-7 as a governmental unit eligible for cancellation of tax on property it acquires. It follows that taxes charged on property acquired by a school corporation can be discharged only by payment of such taxes.

**NOTICES BY COUNTY AUDITOR TO GOVERNMENT UNITS – TAX RATES – DUTY OF AUDITOR**

If the county board of tax adjustments (before January 1, 2009) or the county board of tax and capital projects review (after December 31, 2008) fails to complete the duties assigned to it within the time prescribed or to reduce aggregate tax rates so that they do not exceed the maximum rates permitted under IC 6-1.1-18 the county auditor shall calculate and fix the tax rate with each political subdivision of the county so that the maximum rate permitted under IC 6-1.1-18 is not exceeded.

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**NOTICES BY COUNTY AUDITOR TO GOVERNMENT UNITS – TAX RATES – DUTY OF AUDITOR  
(Continued)**

When the county auditor calculates and fixes tax rates, he shall send a certificate notice of the rate he has fixed to each political subdivision of the county. The county auditor shall send these notices within five (5) days after publication of the notice to taxpayers of final tax rates.

When the county auditor calculates and fixed tax rates, his action shall be treated as if it were the action of the county board of tax adjustment (before January 1, 2009) or the county board of tax and capital projects review (after December 31, 2008).

**COURT FEES**

State Court Administration has provided the following clarification on charging of fees for hardship licenses and the special death benefits. This clarification should help all Counties process these transactions consistently. We will expect that each County adopt the positions taken below during the audit for calendar year 2008, if you are not already treating hardship licenses and special death benefit fees in this manner.

**HARDSHIP LICENSE FEES:**

At this time, Clerks of the Courts should be charging a \$103 filing fee for ALL hardship license cases. IC 9-30-10-7 states that this amount should be charged for cases involving habitual violators. To simplify this process, State Court Administration advises Clerks to charge this fee for all hardships cases. State Court Administration will seek changes to clarify this issue. The filing fee includes the following:

Court Costs for an Infraction	\$ 70.00
Civil Service (If applicable)	
Court Administration	3.00
Automated Record Keeping	7.00
Judicial Insurance Adjustment	1.00
Judicial Salaries	17.00
Public Defense Administration	3.00
Document Storage	<u>2.00</u>
<b>Total</b>	<b>\$103.00</b>

**SPECIAL DEATH BENEFIT:**

It is the recommendation of State Court Administration that Clerks charge a \$5 fee that is over and above the amount of the bail bond. This should be collected on all bond types in CRIMINAL cases only. Once again, State Court Administration will work to change the statute to provide more clear guidance for all of us.

**PARTIAL PAYMENTS OF CRIMINAL COURT COSTS AND FEES**

There is always much discussion surrounding the application of partial payments to court costs. It was brought to our attention that there is guidance for accepting partial payments of court costs on a criminal case that will assist Clerks when the court does not provide specific guidance.

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**PARTIAL PAYMENTS OF CRIMINAL COURT COSTS AND FEES (Continued)**

IC 33-37-4-1(e) states: "Unless otherwise directed by a court, if a clerk collects only part of a criminal costs fee from a defendant under this section, the clerk shall distribute the partial payment of the criminal costs fee as follows:

- (1) The clerk shall apply the partial payment to general court costs.
- (2) If there is money remaining after the partial payment is applied to general court costs under subdivision (1), the clerk shall distribute the remainder of the partial payment for deposit in the appropriate county user fee fund.
- (3) If there is money remaining after distribution under subdivision (2), the clerk shall distribute the remainder of the partial payment for deposit in the state user fee fund.
- (4) If there is money remaining after distribution under subdivision (3), the clerk shall distribute the remainder of the partial payment to any other applicable user fee fund.
- (5) If there is money remaining after distribution under subdivision (4), the clerk shall apply the remainder of the partial payment to any outstanding fines owed by the defendant."

This statute only applies to criminal cases. For partial payments on other case types look for direction from the Court.

**LEASE PURCHASE AGREEMENTS**

The State Board of Accounts is of the audit position that in purchasing computers, equipment or any other good from public funds, the Board of County Commissioners as the purchasing authority of a county has the right to enter into a rental with option to purchase agreement if the rental charge is fair and reasonable.

However, before such an agreement is entered into, there must be a sufficient appropriation balance available for payment of the current year's rental charge. The agreement should not obligate the county for payment of rental beyond the current year's appropriation. Provision may be made in the agreement for renewal for succeeding years by rental payments subject to appropriations being available.

If the original gross cost of the equipment (without consideration of any trade-in) exceeds one hundred fifty thousand dollars (\$150,000), the purchasing agency must comply with the "Public Purchases Law", IC 5-22 (certain exceptions exist), by advertising for the bids and by awarding with reasonable promptness by written notice a contract to the lowest responsible and responsive bidder. Only by awarding a contract pursuant to IC 5-22 would the county have authority to purchase the equipment at a later date. A lease-purchase agreement will often contain an option to purchase at the end of the lease term for nominal consideration or no additional consideration.

The specifications for the equipment must be recognized standard specifications to allow competitive bidding and should provide for the bidder to quote the total purchase cost, the rental charge to be made, and the percentage of the amount of the rental charge that will be credited toward the purchase cost should the county exercise the option to purchase. Any interest or carrying charges must be made a part of the original bid price without specific reference made thereto.

Compliance with the above requirements will allow the purchasing agency to exercise the option to purchase at any time a sufficient appropriation for the equipment is available.

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**LEASE PURCHASE AGREEMENTS (Continued)**

Remember, as mentioned above, whether or not the equipment should be bid is based on the original cost of the equipment and is not based on cost less trade-in or on the annual lease rental payment amount.

**HOMESTEAD CREDIT REBATE CHECKS**

PL1 – 2008, which passed and became effective November 21, 2007, changes the process for the County to apply refunds to delinquent property taxes. Prior to this amendment, County Treasurers were to apply the homestead credit refunds calculated to delinquent property taxes before sending the remainder by rebate check to the property owners.

Since the effective date of PL1, a county legislative body may adopt an ordinance providing that the amount of the refund shall be applied first against any delinquent property taxes owed in the county by the taxpayer before the County Auditor issues a warrant for the remainder of the refund. Our audit position is that the refunds should only be applied to the delinquent taxes if there is an ordinance adopted by the county legislative body.