

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 378

July 2011

REMINDER OF ORDER OF BUSINESS

July

- 4 Legal Holiday - Independence Day [IC 1-1-9-1]
- 11 Distribute congressional interest to school corporations - second Monday. [IC 20-42-2-7]
- 20 Last day to report and make payment of balance of State and County Income Tax withheld in the month of June to Indiana Department of Revenue.
- 30 In those counties participating in Public Employee's Retirement Fund, last day to make pension report and payment for the second quarter of 2011 to the Public Employee's Retirement Fund. [5-10.3-7-12.5]
- 31 Last day to file quarterly unemployment compensation reports with Indiana Department of Workforce Development.

Last day for county treasurer to mail demand notices to delinquent personal property taxpayers. [IC 6-1.1-23-1]

August

- 3-5 County Treasurer's Annual Conference – Indianapolis
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of July to Indiana Department of Revenue.

September

- 5 Legal Holiday - Labor Day. [IC 1-1-9-1]
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of August to Indiana Department of Revenue.

COUNTY USER FEE FUND

Per IC 33-37-8-5, a county user fee fund is established in each county to finance various program services. The county fund is administered by the county auditor and consist of the following fees collected by a clerk and by the probation department for the juvenile court under IC 31-37-9-9:

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COUNTY USER FEE FUND (Continued)

- (1) The pretrial diversion program fee.
- (2) The informal adjustment program fee.
- (3) The marijuana eradication program fee.
- (4) The alcohol and drug services program fee.
- (5) The law enforcement continuing education program fee.
- (6) The deferral program fee.
- (7) The jury fee.
- (8) The problem solving court fee.

Upon implementation of the standard chart of accounts for counties, the county user fee fund will be fund number 2500 and will have the attributes assigned in the funds table distributed as part of the standard chart of accounts, including the fund type of special revenue. The county user fee fund will have a separate subaccount established for each of the programs within the county user fee fund. This includes having a separate subaccount for law enforcement continuing education fees for each law enforcement agency the court works with.

Many counties currently have separate funds for each of these fees which will become subaccounts under the standard chart of accounts. The subaccounts may be numbered from 2501 up through 2599. Fund 2500, the county user fee fund, will include the balances, receipt and disbursement transactions from all subaccounts. This means all postings to subaccounts must roll up into and be reported under fund 2500.

IC 33-37-8-6 state in part: "Upon receipt of monthly claims submitted on oath to the fiscal body by a program listed above, the county fiscal body shall appropriate from the county fund to the program or fund the amount collected for the program under IC 33-37-5." If the "appropriation" under this statute is to a program administered by a government other than the county, the county auditor will draft a warrant for the amount or electronically remit the amount to the administering government. If the "appropriation" by the county council is for a county program, the appropriation will be recorded in the subaccount so that the program may submit claims directly against the subaccount. The county auditor will not move the "appropriated" amounts to a separate program fund on the county's records.

ALLOCATION OF PENALTIES COLLECTED FOR FAILURE TO TIMELY REGISTER MOTOR VEHICLES

IC 9-18-2-1 and IC 9-17-2-1 state that within sixty (60) days of becoming an Indiana resident, a person must register and title all motor vehicles owned by the person that:

- (1) are subject to the motor vehicles excise tax under IC 6-6-5; and
- (2) will be operated in Indiana

A person must produce evidence concerning the date on which the person became an Indiana resident.

A person who is a resident of Indiana must register in Indiana all motor vehicles operated in Indiana. However, a person who is a resident of Indiana and who has a legal residence in a state that is not contiguous to Indiana may operate a motor vehicle in Indiana for no more than sixty (60) days without registering the motor vehicle in Indiana. Per IC 9-17-2-14 and IC 9-18-2-40 a person who violates either of these chapters of law commits a Class C infraction and may be assessed a judgment under IC 34-28-5. Additionally, IC 9-18-2-41 requires the person who violates IC 9-18-2-1 be assessed a judgment equal to the amount of the excise tax due on the vehicle under IC 6-6-5.

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(Continued)

Also per IC 9-18-2-41 the clerk shall collect the additional judgment in a amount specified by a court order and transfer the additional judgment to the County Auditor on a calendar basis. The Auditor shall distribute the funds to the law enforcement agencies, including the state police, responsible for issuing citations to enforce section 1 of this chapter. The percentage of the funds distributed to a law enforcement agency must equal the percentage of the total number of citation issued during the applicable year and may be used for any law enforcement purpose or contributions to the pension fund of the law enforcement agency.

To facilitate the handling and allocation of these fees the following procedures should be observed.

1. The Clerk of the Court which collects these judgments must include a memorandum with the remittance which shows the number of citations filed in the court by each law enforcement agency for failure to timely register a motor vehicle. Such memorandum could be as follows:

<u>Law Enforcement Agency</u>	<u>Number of Citations</u>
_____ County Sheriff	6
Urban City Police	2
Best Town Marshal	<u>2</u>
Total	<u><u>10</u></u>

2. The amount received from the Clerk would be receipted to a fund called "Additional Excise Tax Judgments." Fund Number 1198.
3. The amount receipted to the Additional Excise Tax Judgments Fund would then be multiplied by the percentage of the total citations which were filed by each law enforcement agency during the applicable period to determine the amount due each law enforcement agency.

Using the number of citations shown in Item 1 above an example of a worksheet to determine the allocation of funds is as follows:

Amount Received From Court	<u>\$450.00</u>		
<u>Law Enforcement Agency</u>	<u>Number of Citations</u>	<u>Percentage of Total</u>	<u>Amount Due Agency</u>
_____ County Sheriff	6	60%	\$270.00
Urban City Police	2	20%	90.00
Best Town Marshal	<u>2</u>	<u>20%</u>	<u>90.00</u>
Total	<u><u>10</u></u>	<u><u>100%</u></u>	<u><u>\$450.00</u></u>

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4. After the amount due each law enforcement agency is determined a warrant should be issued to the disbursing officer of the particular governmental unit for the amount due. The warrant should be accompanied by a brief explanation showing the purpose of the distribution.
5. The amount due to the county on account of citations filed by the sheriff's department should be receipted by quietus to a fund called "Motor Vehicle Registration Penalties." Fund number 1214. This fund can be expended for any law enforcement purpose. However, disbursement should be by county warrant and only after a duly itemized claim has been approved by the Board of County Commissioners.
6. Any amount due on account of citations issued by the State Police would be sent to the Auditor of State.

VACATION AND SICK LEAVE

IC 5-10-6-1(b) states: "Employees of the political subdivisions of the state may be granted a vacation with pay, sick leave, paid holidays, and other similar benefits by ordinance of the legislative body of a county, city, town, township, or controlling board of a municipally owned utility, board of directors or regents of a cemetery, or board of trustees of any library district."

It is extremely important for all counties to have written policies concerning vacation and sick leave. If your county has not done so we recommend the board of county commissioners to do so.

PAID BREAKS FOR EXPRESSING MILK

IC 5-10-6-2 states: " (a) The state and political subdivisions of the state shall provide reasonable paid break time each day to an employee who needs to express breast milk for the employee's infant child. The break time must, if possible, run concurrently with any break time already provided to the employee. The state and political subdivisions are not required to provide break time under this section if providing break time would unduly disrupt the operations of the state or political subdivisions.

(b) The state and political subdivisions of the state shall make reasonable efforts to provide a room or other location, other than a toilet stall, in close proximity to the work area, where an employee described in subsection (a) can express the employee's breast milk in privacy. The state and political subdivisions shall make reasonable efforts to provide a refrigerator or other cold storage space for keeping milk that has been expressed. The state or a political subdivision is not liable if the state or political subdivision makes a reasonable effort to comply with this subsection."

FORFEITURES OF TEN PERCENT (10%) CASH BONDS

The following items should be kept in mind in regard to ten percent (10%) cash bonds:

1. IC 35-33-8-3.2 states in part: "...A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection (d)...."

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FORFEITURES OF TEN PERCENT (10%) CASH BONDS (Continued)

2. If any assigned counsel represents the defendant and there are publicly paid costs of representation, the costs of this representation should be retained from the 10% cash bond and receipted to the supplemental public defender services fund. [IC 35-33-6-3.2 and Jones v. State, 716 N.E.2d556, (Ind, App. 1999)]
3. If the cash bond is forfeited and the court entered a judgment, any amount remaining after the deduction of the administrative fee, fines, costs, fees, restitution, and the supplemental public defender services fee should be transferred to the state common school fund. (IC 35-38-8-7(e))

JAIL COMMISSARY FUND – COPY OF RECORDS TO BE FURNISHED TO THE COUNTY COUNCIL

IC 36-8-10-21(e) requires the sheriff to maintain a record of the jail commissary fund's receipts and disbursements. Such records shall be maintained on General Form No. 358, Ledger of Receipts, Disbursements and Balances. The Sheriff shall semiannually provide a copy of such record to the county council.

The semiannual reports are due on July 1 and December 31 of each year.

COUNTY RECORDING FEES

IC 36-2-7-10 states in part: "The county recorder shall tax and collect the fees prescribed by this section for recording, filing, copying, and other services the recorder renders,... The county recorder may not tax or collect any fee for:

1. Recording an official bond of a public officer, a deputy, an appointee, or an employee; or
2. Performing any service under any of the following:
 - IC 6-1.1-22-2(C)
 - IC 8-23-7
 - IC 8-23-23
 - IC 10-17-2-3
 - IC 10-17-3-2
 - IC 12-14-13
 - IC 12-14-16.

The state and its agencies and instrumentalities are required to pay the recording fees and charges that this section prescribes..."

Therefore, it is our audit position that the proper recording fees are to be charged for services provided to the county and other political subdivision unless it is the recording of an official bond under item 1 above or any of the services listed in item 2.

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GUARANTEED ENERGY SAVINGS CONTRACTS

Requirements for guaranteed energy savings contracts may be found under IC 36-1-12.5. Please make sure that adequate documentation exists to show that you are in compliance. For example, that the contract that includes stipulated savings specifies the methodology used to calculate the savings using industry engineering standards as per IC 36-1-12.5-11; that improvements that are not casually connected to a conservation method included in a guaranteed savings contract meet the requirements under IC 36-1-12.5-12; that the information required under IC 36-1-12.5-10 and IC 36-1-12.5-12 is reported to the LT. Governor's office. Information regarding this program may be found through the Lt. Governor's Office of Energy Development.

QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE

Question #1: Should a document be rejected for recording when you think you know that the reference instrument number is incorrect to the release?

Answer #1: We do not see authority for you to reject a document that meets the recording requirements. It is not up to the county recorder's office to research and ensure the validity of a document. However, you may ask questions of the person or entity requesting the recording to serve the public interest of having accurate records.

Question #2: How much money is the Recorders bond supposed to be now?

Answer #2: If signed into law HB 1025 does not affect the amount but affects the time period of the coverage. Under this bill, the recorder's bond would be \$15,000 for the term of office instead of \$15,000 of annual coverage.

Question #3: Can you give me a statement from the SBOA to give to our county Auditor so they will pay the sales tax that will be applied to my hotel bill? When I checked in, I gave the clerk my tax exempt certificate. In the past, they deleted the sales tax from my bill upon check out. I charged the room on my personal credit card and submitted the claim to the Auditor to be reimbursed. Now I'm told the tax exempt policy only applies if you use a company or county credit card or pay your hotel bill with a county check.

Answer #3: The Department of Revenue is the interpretive authority for state sales tax exemptions. When you as an individual in travel status are charged sales tax it is our position that you should be reimbursed for the taxes you pay that are supported by fully itemized receipts. This position may be found in the October 2006 *County Bulletin* on page 3. On our certification sent to the Auditor's we will try to include the information needed to provide for efficient reimbursement.

Question #4: Bill 1022 – Do I understand this bill correctly? My sister works part-time for me. I am the Recorder. She was the Assessor. Come July 1, 2011, do I have to let her go?

Answer #4: This legislation is still being determined. As it is written now there must be a policy in place. This policy should comply with statute. The bill stated that an elected official may not be in the line of supervision of the relative. If this is passed you should work within your county policy and if questions consult with your county attorney.

Post Conference – HB 1022 failed to pass into law.

Question #5: Can you tell me how you (SBOA) are involved in legislation by offering comments on the portion of HB 1022 that addresses Nepotism? Purpose? Intent?

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QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (Continued)

Answer #5: The SBOA watches legislation so that we may prepare for new laws that require our action as an agency. Additionally, we watch the legislative process to see what may affect local government financial accounting matters that may require training. The purpose and intent are best addressed by your association or legislator. The Association of Indiana Counties stays involved on your behalf with the legislative process. They can keep you up to date regarding legislation and assist you in having an impact.

Question #6: Is SBOA the enforcer of legislation, or does SBOA actually have input on the writing of legislation?

Answer #6: There are times where the legislators or their assistants request us to provide information and on very rare occasion we may be asked by a legislator to testify on a bill. We have the powers as provided under IC 5-11 which includes ability to make public exceptions we find and prescribe a uniform system of accounting. We are a reporting agency; therefore, we may report results of an examination to law enforcement but we do not directly have enforcement powers.

Question #7: Do the findings of SBOA directly relate to the drafting of new or amended legislation?

Answer #7: No. There may be some legislative changes that are an indirect affect to our reporting. If there is a public outcry after the results of examination are reported to the public, the legislators occasionally hear of it and want to take action.

Question #8: Is a two sided copy \$1 or \$2?

Answer #8: IC 36-2-7-10 states the cost per page is \$1 but it stops short of defining a page. We recommend you adopt a policy based on a legal opinion in writing and apply that policy consistently.

Question #9: Assumed Business Name – Does it need a Notary, Affirmation Statement and prepared by? (Form on internet by SBOA does not have a place for this)

Answer #9: SBOA does not have an assumed business name form that is prescribed or on our website. The Secretary of State's Office does have a form for this purpose on their website as required by IC 23-15-1. IC 36-2-11-15 provides the requirements for a prepared by statement and describes the documents that are exceptions to this requirement, like documents executed or acknowledged outside Indiana. The recorder may receive for record an instrument that conveys, creates, encumbers, assigns, or otherwise disposes of interest in or lien on property only if there is a prepared by statement and affirmation. IC 32-21-2-3 describing the recording process requires an instrument to be recorded be acknowledged. A notary public is just one way to acknowledge a document for recording.

Question #10: Sheriff's Deed – Do all of the banks need to be indexed?

Answer #10: IC 36-2-11-12 states the recorder shall index by: 1. Name of each grantor. 2. Name of each grantee. (3. Mortgages also need each mortgagor and mortgagee) with a description of the property, date of the deed and where the deed is recorded.

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QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (Continued)

Question #11: Can a County Recorder get written up during an audit for charging more or less than \$1.00 per page for copies of recorded documents?

Answer #11: If you are not in compliance with what is required to be charged by statute, you may have a supplemental report for your office with this shown as an audit result and comment. Ultimately, it could be a recorder's personal liability or could result in other actions.

Question #12: Can Recorder's, Auditor's and Clerk's become a notary since it is no longer a lucrative office?

Answer #12: Not currently, it may be possible in the future to be recorder and notary public without forfeiting office. IC 32-21-2-3 already allows recorder, auditor or clerk to acknowledge any conveyance, mortgage or instrument of writing to be recorded.

Post Conference – HB 1022 failed to pass. There is no legislative change in this area.

Question #13: When a Sewage Lien is signed by the City Clerk Treasurer, does their signature have to be notarized?

Answer #13: IC 36-9-23-33 requires the following information be on the list or instrument provided for recording the lien: owner name, property description, delinquent fees and penalties amount. There is no requirement for a signature or notary public. Additionally, the clerk treasurer may acknowledge documents for recording as stated in IC 32-21-2-3.

Question #14: Where can I find a list of controls that may help or be required to assist in fraud control in my office?

Answer #14: Controls are everything around you. Having a safe; the layout of the office, training policies and procedures are just some of the infinite number of internal controls. There is no list. Implementation of strong internal controls requires management to observe, understand, analyze and plan for the controls that are possible and practical in each office.

Question #15: Can the Recorder notarize a person's signature on papers that are to be recorded?

Answer #15: Not currently, it may be possible in the future to be recorder and notary public. IC 32-21-2-3 already allows recorder to acknowledge any conveyance, mortgage or instrument of writing to be recorded.

Post Conference – HB 1022 failed to pass. There is no legislative change in this area.

Question #16: Transfer to Real Estate for Manufactured Home – The Auditor is required to put on their stamp. Are they required to charge a \$5 fee for transfer?

Answer #16: IC 36-2-9-18 requires the endorsement fee be collected for "endorsing" a document. I know it is commonly called a transfer; it is a fee for endorsing the document as "entered for taxation" or other applicable statutory endorsement used.

Question #17: When documents have been redacted on microfilm, must those records be maintained in a lock down area away from public access?

Answer #17: If they have been redacted they would no longer contain confidential information and there would be no reason to keep them from public access unless you are trying to preserve the microfilm.