STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

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TO: County Auditors, County Treasurers

FROM: Brian Bailey, Interim Commissioner BEB

RE: Tax Sale Surplus Fund Claims and Tax Sale Surplus Agreements

DATE: April 9, 2010

House Enrolled Act (HEA) 1183-2010 amended and added provisions to Indiana Code with respect to tax sale surplus fund claims and tax sale surplus recovery agreements.

I. Tax Sale Surplus Fund Claims

Effective July 1, 2010, a county auditor may not issue a warrant for a tax sale surplus claim without direction from the court having jurisdiction over the tax sale if the person who claims the money:

1. is the owner of record at the time the tax deed is issued who is divested of ownership by issuance of a tax deed and acquired the property from the delinquent taxpayer after the property was sold at tax sale; or
2. is not the owner of record at the time the tax deed is issued. This includes a person acting under a power of attorney from the owner of record at the time the tax deed is issued.

With respect to a claimant described above, the court may direct a county auditor to issue a tax sale surplus claim warrant only:

1. upon a petition to the court by such a claimant; and
2. within three (3) years after the date of the sale of the parcel in the tax sale.

II. Tax Sale Surplus Agreements

New section IC 6-1.1-24-7.5 governs tax sale surplus agreements and protects property owners by placing certain limitations and requirements on such agreements.

For purposes of this section, "property owner" is defined as the owner of record of the real property at the time the tax deed is issued who is divested of ownership by the issuance of the tax deed. In other words, the owner of the property before the tax deed is issued.

If a property owner enters into an agreement, on or after May 1, 2010, with the primary purpose of paying compensation to locate, deliver, recover or assist in the recovery of money deposited in the tax sale surplus fund, the agreement is valid only if it:

1. requires compensation of not more than ten percent (10%) of the amount collected from the tax sale surplus fund (unless the amount collected is fifty dollars ($50) or less);
2. is in writing;
3. is signed by the property owner; and
4. clearly sets forth the amount in the tax sale surplus fund and the value of the property owner's share of the amount collected from the fund after the compensation is deducted.

III. Effect of Invalid Tax Sale on Tax Sale Surplus Fund Money

Effective July 1, 2010, new subsection IC 6-1.1-25-11(d) concerns the effect of invalidation of the tax sale on a paid surplus claim.

If a tax sale is declared invalid after a claim for money in the tax sale surplus fund was paid, the county auditor must:

1. refund the purchase money plus six percent (6%) interest per annum from the county treasury to the tax sale purchaser, the purchaser's successors or assigns, or the purchaser of the certificate of sale under IC 6-1.1-24; and
2. certify the amount paid to the owner of the property at the time of the tax sale from the tax sale surplus fund as a lien against the property and as a civil judgment against the property owner.

If you have questions or concerns, please contact Staff Attorney Cathy Wolter at 317-233-4361 or cwolter@dlgf.in.gov.