

# STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO:** Township, City and Town Officials  
**RE:** Pay 2016 Statewide Average Township Assistance Tax Rate  
**DATE:** September 6, 2016

The purpose of this memorandum is to release the statewide average township assistance property tax rate for the Pay 2016 tax year. This average tax rate is to be calculated by the Department of Local Government Finance (“Department”) to allow municipalities to determine if they would qualify as an eligible municipality under Indiana Code (“IC”) 36-1-1.5.

For the Pay 2016 tax year, the statewide average township assistance property tax rate is \$0.0080 per \$100 of net assessed value (“NAV”). This average tax rate has been calculated as follows:

Sum of Pay 2016 township assistance tax rates	\$ 8.0377
Number of townships eligible to levy a township assistance tax rate for Pay 2016	<u>1,004</u>
Pay 2016 Statewide Average Township Assistance Tax Rate per \$100 NAV	<u>\$ 0.0080</u>

The calculation outlined above differs from the calculation used by the Department to compute the Pay 2015 statewide average township assistance tax rate. The change has been made in response to an advisory opinion provided to Representative Harold Slager by the Indiana Attorney General on February 3, 2016. The advisory opinion was provided to the Department by Representative Slager and is attached as Appendix A.

For information purposes only, the Department has computed the statewide average township assistance tax rate using the same method used for the Pay 2015 determination. This calculation is attached as Appendix B. It should be noted, however, that the calculation shown above is the official Department calculation for the purposes of determining whether a municipality is an eligible municipality under IC 36-1-1.5.



STATE OF INDIANA  
**OFFICE OF THE ATTORNEY GENERAL**

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**GREG ZOELLER**  
INDIANA ATTORNEY GENERAL

February 3, 2016

**Privileged and Confidential**  
**Attorney-Client Communication**  
*Advisory Letter # 16-006*

Rep. Harold Slager  
Indiana House of Representatives  
200 West Washington Street  
Indianapolis, IN 46204

RE: Calculation Method for Determining Statewide Average Township Assistance  
Property Tax Rate for Purposes of Ind. Code Chapter 36-1-1.5

Dear Rep. Slager:

You requested an expedited advisory opinion regarding the above-referenced matter. Given the time constraints, the following represents the expedited review and the informal opinion of the Office of the Attorney General. Should you require a more in-depth review and response, please let us know.

**Issue**

Does the word "average" in the phrase "the statewide average township assistance property tax rate" mean a "weighted average" or a "mean calculation"? To the extent there is an ambiguity in the statute, what is the better legal interpretation and application between the two alternatives?

**Brief Answer**

We cannot conclude that the statutory term of "average" is definitively unambiguous and that there is only one permissible legal interpretation and application of the term in this context. However, based on plain, ordinary, and usual sense or meaning of "average," we think that the better legal conclusion is that the legislature meant the term to equate to arithmetic mean. This conclusion is reached in recognition that a court may find there is an ambiguity. In that case, rules of statutory construction and contextual considerations used in instances where statutory ambiguities exist could lead to the conclusion that use of a weighted average approach by the administering agency is appropriate and not unreasonable.

## Background

In the 2013 session of the Indiana General Assembly, House Enrolled Act No. 1585 was passed (P.L. 234-2013). Sec. 10 of HEA 1585 added Ind. Code Chapter 36-1-1.5, establishing the procedure for the transfer of municipal territory to an adjacent township. Central to your question is the following language from Ind. Code § 36-1-1.5-2:

### **Ind. Code § 36-1-1.5-2 "Eligible municipality"**

Sec. 2. As used in this chapter, "eligible municipality" means a municipality that:

(1) includes any territory located in a township for which the township assistance property tax rate for property taxes first due and payable in 2015 or in any year thereafter is more than:

(A) the statewide average township assistance property tax rate for property taxes first due and payable in the preceding year (as determined by the department of local government finance); multiplied by

(B) twelve (12); and

(2) is adjacent to one (1) or more townships other than the township described in subdivision (1).<sup>1</sup>

At the time this legislation was considered, the only township in Indiana that would have been affected by this law was Calumet Township in Lake County, Indiana. Its township assistance fund tax rate exceeded the "statewide average rate" by a multiple of 12 or more. The town of Griffith in Calumet Township contemplates becoming a part of St. John Township, a township adjacent to Calumet Township.<sup>2</sup>

The determination of the "statewide average township assistance property tax rate" was delegated to the Department of Local Government Finance (DLGF) by the legislature. The DLGF has employed a "weighted average" rather than a "mean calculation" to determine the "average."

## Analysis

Words and phrases in statutes are to be given their plain, ordinary, and usual sense or meaning. See Ind. Code § 1-1-4-1(1). See also *Foundations of East Chicago, Inc. v. City of East Chicago*, 927 N.E.2d 900, 905 (Ind. 2010) ("Where the statute is unambiguous, the Court will read words and phrases for their plain and ordinary meaning"); *LaPorte Civic Auditorium v. Ames*, 641 N.E.2d 1045, 1046 (Ind. Ct. App. 1994), *trans. den.* (1995) (the general rule of statutory construction is that all statutes are to be construed according to their plain meaning, and words and phrases are to be taken in their plain, ordinary and usual sense unless a different purpose is manifested by the statute itself).

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<sup>1</sup> The original language appeared at P.L. 234-2013, Sec. 10. The statute has been subsequently amended by P.L. 249-2015, Sec. 25 (SEA 436-2013), but the amendments do not affect your core concern.

<sup>2</sup> *Fiscal Impact Statement*, Legislative Services Agency, April 2, 2013, at p. 3. See <http://www.in.gov/legislative/bills/2013/PDF/FISCAL/HB1585.008.pdf> (last visited January 19, 2016).

“Average” typically means a “mean value, medial sum or quantity, made out of unequal sums or quantities; an arithmetical mean,” with “mean” further defined as “[o]ccupying a middle position; occurring between the limits or extremes; intermediate.” *Anderson v. Deering*, 318 S.W.2d 383, 387 (Mo. Ct. App. 1958) (relying upon *Webster’s New International Dictionary*, Second Edition, Unabridged).<sup>3</sup>

*Black’s Law Dictionary* defines “average” as “1. A single value that represents the midpoint of a broad sample of subjects; especially in mathematics, the mean of a series.” *Black’s Law Dictionary*, Tenth Edition, 2014.<sup>4</sup>

A “weighted average” is a method of computing an arithmetic mean from a set of numbers or factors where some elements of the set carry more importance (*i.e.*, “weight”) than others.<sup>5</sup> Nowhere in the *Black’s Law Dictionary* definition is there any usage of the term “weighted average” or references to the concept.

In other contexts, the legislature has been specific when addressing what sort of “average” it intends to be applied. See, *e.g.*, Ind. Code § 8-14.5-2-13 (defining “weighted average life” for the issue of bonds or notes) and Ind. Code § 8-14.5-2-14 (defining “weighted average useful life” of a project). These examples are not necessarily dispositive in this matter because the type of “average” at issue does not relate to negotiable instruments. In cases where courts have found that differing definitions and usage of terms can affect interpretive determinations, those instances related to the same statute or a related set of statutes.<sup>6</sup> However, use of “weighted average” in other sections of the Indiana Code provides support for the proposition that the General Assembly understands the difference between the two calculation methods and is purposeful in its selections in particular contexts.

In this instance, the legislature did not qualify or quantify its meaning of “average.” While ordinarily the default approach would be to employ the usual meaning of “average,” the legislature, through a parenthetical phrase inserted into Ind. Code § 36-1-1.5-2(1)(A), delegated authority to the DLGF to make certain determinations. While it is arguable that this delegation included a determination of the “statewide average” or was meant to be restricted to a

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<sup>3</sup> “In order to determine the plain and ordinary meaning of words, we may consult English language dictionaries.” *Reed v. Reid*, 980 N.E.2d 277, 289 (Ind. 2012).

<sup>4</sup> The second definition in *Black’s Law Dictionary* is “2. The ordinary or typical level; the norm.” The third definition is a maritime law reference inapplicable to the questions presented.

<sup>5</sup> See also Oxford Dictionaries On-Line at [http://www.oxforddictionaries.com/us/definition/american\\_english/weighted-average?q=weighted+average](http://www.oxforddictionaries.com/us/definition/american_english/weighted-average?q=weighted+average), defining “weighted average” as “An average resulting from the multiplication of each component by a factor reflecting its importance.” (Last visited on January 19, 2016.)

<sup>6</sup> “The legislative definition of certain words in one statute, while not conclusive, is entitled to consideration in construing those same words in another statute.” *State Board of Accounts v. Ind. University Foundation*, 647 N.E.2d 342, 347-48 (Ind. Ct. App. 1995), citing *State v. Turner*, 567 N.E.2d 783, 784 (Ind. 1991).

determination of the tax rate for property taxes due in a given time frame, the delegation language could create some ambiguity.<sup>7</sup>

The DLGF has indicated that the calculation method it has employed for this purpose “is the same calculation method that was used to prepare the fiscal impact statement” relied upon by the legislature in passing HEA No. 1585-2013.<sup>8</sup> While the DLGF’s interpretation and application of “average” may not be the same definition an individual legislator would have employed, when a court is required to interpret a statute, “we do not impute the opinions of one legislator, even a bill’s sponsor, to the entire legislature unless those views find statutory expression.” *A Woman’s Choice-East Side Women’s Clinic v. Newman*, 671 N.E.2d 104, 110 (Ind. 1996). See also *O’Laughlin v. Barton*, 582 N.E.2d 817, 821 (Ind. 1991) and *Utility Center, Inc. v. City of Fort Wayne*, 868 N.E.2d 453, 459 (Ind. 2007).

Given the language in the statutory provision with a seeming delegation of authority to the DLGF to define “average” coupled with the DLGF’s subsequent interpretation and application, it cannot be said that the DLGF’s actions were absurd or in derogation of the statute itself.

When a statute is susceptible to more than one interpretation, it is ambiguous and thus open to judicial construction. *Sees v. Bank One, Ind., N.A.*, 839 N.E.2d 154, 157 (Ind. 2005). See also *Elmer Buchta Trucking, Inc. v. Stanley*, 744 N.E.2d 939, 942 (Ind. 2001). “A cardinal principle of statutory construction mandates the court to interpret ambiguous statutes in order to ascertain and effectuate the general intent of the legislature.” *Indiana Alcoholic Beverage Commission v. Osco Drug, Inc.*, 431 N.E.2d 823, 833 (Ind. Ct. App. 1982).

However, a court will construe a statute in such a way so as to prevent absurdity and hardship, as well as to favor public convenience. This requires a consideration of the necessary repercussions of interpretations. *Bushong v. Williamson*, 790 N.E.2d 467, 471 (Ind. 2003). A court will adopt a “rule of rationality and ordinary intelligence and discretion” and apply this rule to a statute in order to avoid an absurd or illogical application of the statute. An “absurdity” means “anything which is so irrational, unnatural or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion.” *Marks, et al. v. State of Indiana*, 40 N.E.2d 108, 111 (Ind. 1942). See also *Skirvin v. Review Board of Ind. Employment Sec. Div.*, 355 N.E.2d 425, 427 (Ind. Ct. App. 1997).

In this matter, it is not altogether clear what the legislature meant by “average” for the purpose of Ind. Code Chapter 36-1-1.5, given the parenthetical delegation that is not specifically restricted to tax-rate calculations. Either interpretation of “average” could very well be the legislative intent. Neither is absurd nor illogical, and both could be applied. “When a statute is subject to different interpretations, the interpretation of the statute by the administrative agency charged

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<sup>7</sup> Courts will look at the sentence structure in attempts to divine legislative intent. See, e.g., *Leehaug v. State Bd. of Tax Commissioners*, 583 N.E.2d 211, 213 (Ind. Tax Ct. 1991) (“If an antecedent consists of a group of words, ambiguity results from placing the relative pronoun at the end of the group if the reader cannot be sure which words from the group the relative pronoun modifies”).

<sup>8</sup> DLGF Memorandum to Township, City and Town Officials from Commissioner Courtney L. Schaafsma (March 9, 2015).

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with the duty of enforcing the statute is entitled to great weight, unless that interpretation is inconsistent with the statute itself.” *Ind. Dep’t of Environmental Management v. Boone County Resource Recovery Systems, Inc.*, 803 N.E.2d 267, 273 (Ind. Ct. App. 2004), *trans. den.* The DLGF’s interpretation cannot be determined to be inconsistent with the statute itself.

Conversely, using the interpretation of arithmetic mean would not be inconsistent with the statute, and if the DLGF utilized this interpretation it would be a reasonable interpretation and application of the statute. If the DLGF were to continue to utilize its current interpretation, and the legislature disagreed with the DLGF’s interpretation of the statute and application of its definition for “average,” it would need to consider amending the statute so as to be clear as to what the DLGF’s responsibilities are, including any limitations on the discharge of these responsibilities. Failure to do so could be construed as acquiescing in the DLGF’s interpretation. “[I]f the legislature fails to change a statute administered by a state agency, then this inaction indicates the legislature’s acquiescence in and satisfaction with the administrative construction.” *Indiana Alcoholic Beverage Commission v. Osco Drug, Inc.*, 431 N.E.2d 823, 834 (Ind. Ct. App. 1982).

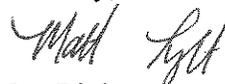
## Conclusion

The plain, ordinary, and usual meaning of “statewide average” as it appears at Ind. Code § 36-1-1.5-2(1)(A) would typically be construed as a “mean calculation.” However, the parenthetical language in this subsection can be interpreted as delegating to the DLGF the responsibility for determining what the “statewide average” will be. The DLGF employed a “weighted average” that utilized the same calculation method the Legislative Services Agency used in preparing the Fiscal Impact Statement that informed the legislature in making its policy decisions. The subsection can be interpreted as meaning either a “mean calculation” or a “weighted average.” This creates an ambiguity.

With the potential that there is an ambiguity in the statute, it cannot be said that the DLGF’s interpretation and application of “average” as a “weighted average” is absurd, illogical, or otherwise inconsistent with the statute itself, especially as there appears to be a delegation to the DLGF by the legislature to define “average” for the purpose of Ind. Code Chapter 36-1-1.5. Should the legislature not amend the statute in question, it could be construed that the legislature has acquiesced in the DLGF’s interpretation and application of “average” for this purpose.

In reference to the question of what the Office of Attorney General thinks is the better legal interpretation, considering the statutory text and relevant considerations, we would focus on the “plain, ordinary, and usual sense and meaning” of the term “average” and conclude that it is more likely that the General Assembly intended to utilize arithmetic mean.

Sincerely,



Matt Light  
Chief Deputy

**FOR INFORMATION PURPOSES ONLY**

The calculation below does not represent the Department of Local Government Finance's official calculation of the Pay 2016 statewide average township assistance tax rate.

Pay 2016 statewide total township assistance levy	\$ 37,244,916
Pay 2016 statewide total NAV on which township assistance levy was assessed	<u>287,498,230,828</u>
Pay 2016 township assistance tax rate per \$100 NAV	<u>\$ 0.0130</u>