

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

SEPTEMBER 2016

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STATE MILEAGE REIMBURSEMENT RATE

Some cities and towns have adopted travel policies that use the State approved mileage rate for reimbursing officials and employees who use their personal vehicle for city/town related business. Effective August 1, 2016, the State mileage reimbursement rate was changed by the Indiana Department of Administration to \$.38/mile. For those who use the State rate, any mileage reimbursed to officials or employees for travel after August 1, 2016 should be at this new rate.

If you use a rate other than the State rate, this change will not have an impact on your travel reimbursement policy.

UPLOADING CONTRACTS TO GATEWAY

Effective July 1, 2016, IC 5-14-3.8-3.5 requires each political subdivision to scan and upload to Gateway the digital image of certain contracts. Many questions have been raised about the requirements and process for upload.

The Department of Local Government Finance (DLGF) issued a memo on May 24, 2016 regarding the contract reporting requirements. The memo concludes "Questions about reporting compliance should be directed to the political subdivision's attorney. Questions about the legislation can be directed to Mike Duffy, General Counsel, at (317) 233-9219 or MDuffy@dlgf.in.gov (**the Department reiterates that it cannot offer legal advice concerning contract management or redaction**). Technical questions about the Gateway upload should be directed to Geoff Kuester, Data Analysis Division Director, at (317) 233-8347 or GKuester@dlgf.in.gov."

The entire DLGF memo can be viewed here: http://www.in.gov/dlgf/files/pdf/160524_-_Schaafsma_Memo_-_Contract_Reporting_Requirements.pdf

LOCAL INCOME TAX

In 2017, new legislation will streamline the process for local income taxes. Local option income tax will be called "Local Income Tax" (LIT). The LIT distributions you receive will continue to be posted to the funds you have used for LOIT (CAGIT and CEDIT) even though the new terminology is LIT. There will not be a separate fund titled "Local Income Tax" or "LIT".

LIT - Certified shares (formerly CAGIT certified shares) will continue to be receipted to your general fund.

LIT - Economic Development distributions will still be receipted into your CEDIT fund and cities and towns will continue to follow their capital improvement plan and current appropriations.

LIT - Public safety distributions will be receipted to your current public safety fund.

**CUMULATIVE FIREFIGHTING, BUILDING AND EQUIPMENT
AND POLICE RADIO FUND**

IC 36-8-14 authorizes cities and towns to provide a cumulative building and equipment fund for the purchase, construction, renovation, or addition to buildings, or the purchase of land used by the fire department and for the purchase of firefighting equipment, including making the required payments under a lease rental with option to purchase agreement made to acquire the equipment. A municipality may also use the fund to purchase police radio equipment. The fund may also be used for the purchase, construction, renovation or addition to a building, the purchase of land, or the purchase of equipment for use of a provider of emergency medical services under IC 16-31-5 to the city or town establishing the fund.

The statute limits the tax levy to no more than thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100) of assessed valuation in the taxing district. Any tax collected after establishing this tax levy shall be deposited in a special fund to be known as the "building or remodeling, firefighting, and police radio equipment fund." This fund may not be used for any purpose other than the purpose for which it was raised. Expenditures may be made only after an appropriation has been made available.

Any questions regarding procedures to establish this fund should be directed to the Indiana Department of Local Government Finance, Indiana Government Center North, Room N1058, 100 N. Senate, Indianapolis, Indiana 46204.

**BONDS OF OFFICERS AND EMPLOYEES
OF THE DEPARTMENT OF PARKS AND RECREATION**

IC 36-10-3-16 lists the bonding requirements for officers and employees of a department of parks and recreation.

- "a. Every officer and employee who handles money in the performance of duties as prescribed by this chapter shall execute an official bond for the term of office or employment before entering upon the duties of the office or employment.
- b. The fiscal body of the unit may, under IC 5-4-1-18, authorize a blanket bond or crime insurance policy endorsed to include faithful performance to cover all officers' and employees' faithful performance of duties. The amount of the bond or crime insurance policy shall be fixed by the fiscal body and, in the case of a municipality, must be approved by the executive.
- c. All official bonds shall be filed and recorded in the office of the county recorder of the county in which the department is located."

FEDERAL EXCISE TAXES

As a general rule, governmental units are exempt from any federal excise tax. To obtain an exemption, a properly executed exemption certificate must be filed with the vendor from whom the purchase is made. This exemption certificate may be prepared at the time the order is placed or at the time payment is made. The exemption certificate may be a printed or copied form and should be substantially in the form currently used. For information concerning the form of the exemption certificate, contact the Internal Revenue Service.

Claims and invoices should be carefully audited to see that no federal excise taxes are included and paid. Disbursing officers should require that invoices show separately the gross price, the amount of the excise tax, and the final price to the governmental unit.

In some instances, a city or town may have erroneously paid the excise taxes from which they are exempt. In such instances, the city or town has three years from the date the tax was paid to the Federal Government in which to file for a refund.

To obtain a refund, the city or town should submit to the seller an exemption certificate for each item on which excise tax was paid accompanied with documentary evidence that the exemption had not been claimed or received. Such evidence may be copies of invoices, affidavits, records, etc.

The Internal Revenue Service will provide forms on which the original taxpayer may claim reimbursement for excise tax erroneously paid by a city or town.

Any questions concerning federal excise tax should be directed to the Internal Revenue Service.

STATE SALES TAXES

Governmental units are eligible for an exemption from the state sales tax on purchases. To obtain the exemption, a Sales Tax Exemption Certificate must be obtained from the Department of Revenue. Application should be made to the Sales Tax Division of the Department of Revenue. This certificate must be presented at the time a purchase is made to avoid paying sales tax. If sales tax is paid erroneously, a refund application may be obtained from the Sales Tax Division.

Lodging for individuals in hotels and motels is usually not exempt from state sales tax. Therefore, reimbursements for lodging in approved travel status may include state sales tax. However, it should be kept in mind that claims for all such reimbursements must be supported by a fully itemized receipt showing date(s) of lodging, the name(s) of the person(s) occupying the room and the amount paid.

VOLUNTEER FIREFIGHTERS - CLOTHING AND AUTOMOBILE ALLOWANCE

IC 36-8-12-5 states:

- "(a) Unless otherwise provided by contract, a unit served by a volunteer fire department shall pay to each active and participating member of the department:
- (1) a clothing allowance of not less than one hundred dollars (\$100) per year; and
 - (2) an automobile allowance of not less than one hundred (\$100) per year for the use of the member's automobile in the line of duty.
- (b) A contract may also provide that fees for membership in a regularly organized volunteer firefighters' association be paid by the unit on behalf of the firefighters in the volunteer fire department."

RESIDENCY REQUIREMENTS - CITY POLICE AND FIRE DEPARTMENTS

Members of city police and fire departments must reside in Indiana in one (1) of the following areas:

1. within the county in which the city is located; or
2. within a county that is contiguous to the county in which the city is located. (IC 36-8-4-2)

A city with a population of less than seventy-five hundred (7,500) may impose more restrictive residency requirements as set out in IC 36-8-4-2 (c) and (d).

TRANSFERS OF TOWN FUNDS**Town with a Population of 500 or Less**

Notwithstanding the provisions of any other statute, a town may transfer money from any town fund to another town fund after the passage of an ordinance or a resolution by the town legislative body specifying the:

1. amount of the transfer;
2. funds involved;
3. date of the transfer; and
4. general purpose of the transfer. [IC 36-5-4-13(a)]

Town with a Population of More Than 500 But Less Than 2,000

Notwithstanding IC 8-14-1 and IC 8-14-2, a town may transfer money distributed to the town from:

1. the motor vehicle highway account under IC 8-14-1;
2. the local road and street account under IC 8-14-2 or
3. the:
 - A. motor vehicle highway account under IC 8-14-1; and
 - B. local road and street account under IC 8-14-2; to any other town fund after the passage of an ordinance or a resolution by the town legislative body that specifies the amount of the transfer, the funds involved, the date of the transfer, and the general purpose of the transfer. However, the total amount of all money transferred by a town may not exceed forty thousand dollars (\$40,000). [IC 36-5-4-13(b)]

IC 36-5-4-13(c) contains specific exceptions for municipalities in a county with a population of 15,000 to 15,500 and for certain towns in a county with a population of 37,125 to 37,500.

ORDINANCE VIOLATIONS BUREAU

The legislative body of a municipal corporation may establish, by ordinance or code, an ordinance violations bureau. Upon the creation of a bureau, the legislative body shall provide for the appointment of a violations clerk (who may be the clerk or clerk-treasurer of the municipal corporation) to be the administrator of the bureau.

If the legislative body does not establish an ordinance violations bureau, the clerk or clerk-treasurer of the municipal corporation is designated the violations clerk.

The violations clerk may accept written appearances, waiver of trial, admissions of violations, and payment of civil penalties of not more than two hundred fifty dollars (\$250) in ordinance violation causes, subject to the schedule prescribed under IC 33-36-3.

Upon the appointment or designation of the violations clerk as provided by IC 33-36-2-1, the legislative body shall designate, by ordinance or code, a schedule of ordinance and code provisions of the municipal corporation that are subject to admission of violation before the violations clerk and the amount of civil penalty to be assessed a violator who elects to admit a violation. Civil penalties shall be paid to, receipted, and accounted for by the clerk under procedures provided for by the state board of accounts. Such payments should be receipted to the general fund. Payment of civil penalties may be made in person, by mail, or to an agent designated by the legislative body.

A person charged with an ordinance or code violation is entitled to a trial before a court as provided by law, unless the person waives the right to trial and enters an admission of the violation with the violations clerk. Upon such an admission, the clerk shall assess and receive from the violator the amount prescribed by the schedule of civil penalties established under IC 33-36-3-1.

If a person charged with a violation wants to exercise the right to trial, the person shall appear before the violations clerk and deny the violation or enter a written denial with the clerk.

In a county having a consolidated city, the schedule of ordinance violations designated by a municipal corporation must also be approved by the city-county legislative body.

If a person:

1. denies an ordinance or code violation;
2. fails to satisfy a civil penalty assessed by the violations clerk after having entered an admission of violation; or
3. fails to deny or admit the violation.

the clerk shall report this fact to the official having the responsibility to prosecute ordinance violation cases for the municipal corporation.

Proceedings in court against the person shall then be initiated for the alleged ordinance violations.

All sums collected by the violations clerk as civil penalties for ordinance violations shall be accounted for and paid to the municipal corporation as provided by law.

An ordinance violation admitted does not constitute a judgment for the purposes of IC 33-37, and an ordinance violation costs fee may not be collected from the defendant under IC 33-37-4. In addition, an ordinance violation processed may not be considered for purposes of IC 33-37-7-6 when determining the percentage of ordinance violations prosecuted in certain courts. (IC 33-36-3-6)

ORDINANCE VIOLATIONS BUREAU - Continued

IC 36-1-6-3 excludes moving vehicle traffic violations from being enforced under this procedure. State Examiner Directive 2015-1 also addresses the proper procedures for moving traffic violations.

CITY ATTORNEY – POWERS AND DUTIES - COMPENSATION

IC 36-4-9-12 lists the powers and duties of the head of the city department of law. These include:

1. manage the legal affairs of the city;
2. prosecute violators of city ordinances;
3. give legal advice to the officers, departments, boards, commissions, and other agencies of the city;
4. draft ordinances or other legal papers for the city and its departments, boards, commissions, and other agencies when requested by the proper officer;
5. maintain custody of the records of his office and turn them over to his successor in office;
6. make all title searches and examine all abstracts required in public work of any kind, including opening, widening, or changing a street, alley, or public place;
7. promptly commence all proceedings necessary or advisable for the protection or enforcement of the rights of the city or the public;
8. use all diligence to collect costs, fees, and recoveries within the scope of his duties;
9. report, in writing to the city executive all matters that he considers important; and
10. report, in writing, to the city fiscal officer all judgments for which the city is liable.

The compensation of a city attorney should be set out in the city's salary ordinance. If the city attorney is to receive additional compensation for services performed in connection with the creation or the operation of a municipally owned function or utility, the amount of such additional compensation should also be listed in the salary ordinance and be properly approved by the governing body over the utility, the mayor, and the common council.

We recommend that if a city hires a city attorney through an employment contract, the salary ordinance should incorporate the provisions of such contract. Such contract could provide for a specified dollar sum for annual compensation for normal services plus provisions for payment at hourly rates, or standard fee arrangements, for unique services such as litigation, bond issues, work with administrative agencies, or other similar services.

It is our audit position that, unless otherwise specified in an employment contract, routine litigation and work on general obligation bond issues fall within the duties of the municipal attorney.

RIVERBOAT GAMBLING – ADMISSION TAXES

Admission tax money paid to a unit of local government:

1. must be paid to the fiscal officer of the unit and deposited in the unit's general fund or riverboat fund established under IC 36-1-8-9 or both;
2. may not be used to reduce the unit's maximum or actual levy under IC 6-1.1-18.5 but may be used at the discretion of the unit to reduce the property tax levy of the unit for a particular year;
3. may be used for any legal or corporate purpose of the unit, including the pledge of money to bonds, leases, or other obligations under IC 5-1-14-4, and
4. is considered miscellaneous revenue. (IC 4-33-12-9)

RIVERBOAT GAMBLING – WAGERING TAXES

Wagering tax money paid to a unit of local government:

1. Must be paid to the fiscal officer of the unit and deposited in the unit's general fund or riverboat fund established under IC 36-1-8-9, or both;
2. May not be used to reduce the unit's maximum or actual levy under IC 6-1.1-18.5; and
3. May be used for any legal or corporate purpose of the unit, including the pledge of money to bonds, leases, or other obligations under IC 5-1-14-4.

IC 4-33-13 does not prohibit the city or county designated as the home dock of the riverboat from entering into agreements with other units of local government in Indiana or in other states to share the city's or county's part of the tax revenue received. (IC 4-33-13-6)

LOCAL MAJOR MOVES CONSTRUCTION FUND

IC 8-14-16 requires cities and towns in counties traversed by the Indiana Toll Road to set up a local major moves construction fund for deposit of a special distribution from the County Auditor on or before September 15, 2006. Money in the fund may be expended only for the following purposes:

1. Construction of highways, roads and bridges.
2. In a county that is a member of the northwest Indiana regional development authority, or in a city or town located in such a county, any purpose for which the regional development authority may make expenditures under IC 36-7.5.
3. Providing funding for economic development projects (as defined in the specified statutes referenced in IC 8-14-16-5).
4. Matching federal grants for a purpose described by statute.
5. Providing funding for interlocal agreements under IC 36-1-7 for a purpose described in statute.
6. Providing the city's or town's contribution to a regional development authority established under IC 36-7.6-2-3.

Such fund must be appropriated as part of the annual budget for the calendar year in accordance with IC 6-1.1-17.

FINANCIAL ASSISTANCE TO NON-GOVERNMENTAL ENTITIES

Cities and towns providing financial assistance to non-governmental entities are required to notify those entities annually in writing the following information:

1. The Entity Annual Report (E-1) filing requirement established by IC 5-11-1-4 and the audit requirement established by IC 5-11-1-9;
2. The source(s) of the funding provided;
 - a. Local and/or state funds (in the case of subsidies, contributions, or general aid),
 - b. Federal grants passed through including the formal name of the program and CFDA number, or
 - c. Fee for service arrangements,
3. The State Board of Accounts may request documentation to support the categorization of the financial assistance,
4. The E-1 is not to be confused with the Secretary of State's Business Entity report, and
5. The entity may obtain additional information from the State Board of Accounts at notforprofit@sboa.in.gov.

Furthermore, this financial assistance provided is to be reported by the city or town on the Annual Financial Report via Gateway.

"Entity" is defined in IC 5-11-1-16 as "any provider of goods, services, or other benefits that is:

- (1) maintained in whole or in part at public expense; or
- (2) supported in whole or in part by appropriations or public funds or by taxation."

This includes for-profit and not-for-profit corporations, unincorporated associations, organizations, individuals, etc. Examples of non-governmental entities are volunteer fire departments, a local YMCA, youth leagues, senior citizen centers, 4-H clubs, daycare centers, health service organizations, emergency medical service organizations, community centers, historical societies, etc.

Financial assistance to non-governmental entities is defined as payments received in the form of grants (whether from local, state, or federal sources), subsidies, contributions as permitted by statute, aid, or other agreements. For more information on what constitutes financial assistance, please refer to the State Board of Accounts' *Uniform Compliance Guidelines for Examinations of Entities Receiving Financial Assistance from Governmental Sources* found on the State Board of Accounts' website at www.in.gov/sboa under Private Examiner Audits/Non-Governmental Entities Receiving Governmental Assistance/Uniform Compliance Guidelines.

Each non-governmental entity receiving financial assistance from governmental units is required to submit a Gateway financial report, the E-1, in accordance with IC 5-11-1-4(a). Information requested includes the source and use of financial assistance provided by governmental units. The entity is subject to a State Board of Accounts audit in accordance with IC 5-11-1-9 if certain funding thresholds are met.

QUESTIONS AND ANSWERS FROM THE JUNE 2016 TRAINING SCHOOL

Question No. 1: Internal controls - Is it mandatory that the employee training be done annually or is it a one-time mandatory training?

Answer No. 1: There is no requirement the training be provided annually. All those who meet the definition of "personnel" are required to have the training [IC 5-11-1-27(g)]. Once they've had that training, they would not be statutorily required to have additional training unless internal controls changed. New employees in subsequent years who meet the definition of "personnel" would be required to receive training. The policies and procedures adopted by the city or town may require additional or continued training.

Question No. 2a: We are a small town. We do not draw up contracts for work done for the town. Bids that are approved by Council are signed. Would these be considered "contracts" per SEA 67 and need uploaded if they meet the threshold?

Question No. 2b: Does SEA 327 apply to new contracts or past contracts, or both? It was hinted that contracts 15-20 years old would need to be uploaded. Can you clarify?

Answer No. 2: As mentioned previously in this *Bulletin*, questions regarding SEA 327 and the uploading of contracts in Gateway should be addressed to the Department of Local Government Finance.

Question No. 3: We currently have a CEDIT fund. How do we budget it for 2017 when effective July 1, 2017 it will no longer exist.

Answer No. 3: As stated previously in this Bulletin, distributions will be renamed "LIT – Economic Development" and should continue to be receipted to your CEDIT fund. Cities and Towns will continue to follow their capital improvement plan.

Question No. 4: How or what type of internal controls can a one person office establish? Can two small units review each other's work, and if so, what type of liability would there be?

Answer No. 4: For one person offices, consideration may be given to increasing your council members' involvement in the process. Segregation of duties is a common term referred to in relation to internal control. This means to have a separation of functions over certain activities that would provide internal control. The fundamental premise of segregation of duties is that an individual or small group of individuals should not be in a position to initiate, approve, undertake, and review the same action.

Without proper segregation of duties, it is difficult to have an effective system of internal control. Sufficient compensating controls would then need to be implemented. There are two main advantages to implementing segregation of duties. The first is that fraud is more difficult to perpetrate when proper segregation of duties is in place because it would require collusion of two or more individuals. Secondly, with several individuals involved in the process, innocent errors are more likely to be detected and corrected. Officials have the fiduciary responsibility to ensure the proper accountability of financial activity. This is accomplished by making sure there is proper oversight, reviews and approvals.

In addition to the materials available on our website (www.in.gov/sboa) in the Internal Control section, the June, 2013 *Cities and Towns Bulletin* provides some useful information on internal controls and segregation of duties.

QUESTIONS AND ANSWERS FROM THE JUNE 2016 TRAINING SCHOOL

Question No. 5: We implemented a Life Insurance fringe benefit for our employees. The first employee deduction should have occurred in the prior pay period, but we missed it, can we double up on the withholding in the next pay period?

Answer No. 5: Yes, you can double up on the withholding in the next pay period, as the employee is responsible for his/her share of the cost.

Question No. 6: Do I need to establish a separate fund for the Special LOIT Distribution, or can I just leave it in my MVH fund? I received the distribution, and placed the 25% in the Rainy day fund, but I put the 75% in the MVH fund, as we only use the MVH fund for road paving. Also, do I have to have an Ordinance to establish this separate fund?

Answer No. 6: Yes, you should establish a separate fund for the Special LOIT Distribution. See our memo dated April 22, 2016 for specific instructions.

Question No. 7: How do we show State Revolving Fund (SRF) Bank of New York (BNY) accounts on the funds ledger?

Answer No. 7: First, set up BNY accounts as funds on your ledger. Show the activity going into the BNY accounts as receipts on your ledger. Show the activity going out of the BNY accounts as disbursements.

Question No. 8: How do we establish a Fire Territory and what is involved?

Answer No. 8: The procedures for establishing a Fire Territory may be found in IC 36-8-19.

Question No. 9: Do insurance proceeds for a destroyed park pavilion have to be appropriated?

Answer No. 9: Per IC 6-1.1-18-7, any insurance recovery for insurance damages may be appropriated by the city or town fiscal officer, without advertising and without approval of the Department of Local Government Finance, to repair or replace like property within twelve (12) months following the receipt thereof.

Question No. 10: We rented a booth at the fair and wanted to purchase T-shirts for the staff and coloring books to promote the City. What fund can I use for this?

Answer No. 10: These types of disbursements may be covered or permitted by a local Promotion of Business appropriation. Please see the December 2015 *Cities and Towns Bulletin* for more information.

Question No. 11: We are opening a concession stand with the pool. Do I have to collect and pay sales tax on the concession stand?

Answer No. 11: All questions concerning the law or procedure for paying and collecting sales tax should be directed to the Indiana Department of Revenue, Sales Tax Division at 317-233-4015.

QUESTIONS AND ANSWERS FROM THE JUNE 2016 TRAINING SCHOOL

Question No. 12: Do we still have to keep original records if our records have been converted to electronic records?

Answer No. 12: If the records are electronic as long as they can be readily retrieved, readable, and adequately protected, the originals can be destroyed. See Indiana Code 5-15-1-1 or contact the Indiana Archives and Records Administration at www.in.gov/iara.

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