

HOUSE BILL No. 1497

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.5-6; IC 6-3.5-7-5.

Synopsis: Penal county option income tax. Allows a county to increase its county income tax rate by 0.25% to finance county penal operations. Provides that money distributed to finance county penal operations is distributed before the rest of the county's distributive shares. Requires a county penal facility that receives county option income tax revenue to maintain its current level of operational funding from the county general fund. Provides that the combined tax rate for a county that imposes a county option income tax under these provisions and a county economic development income tax may not exceed 1.25%.

Effective: July 1, 2005.

Buck, Friend

January 18, 2005, read first time and referred to Committee on Ways and Means.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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HOUSE BILL No. 1497



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.5-6-10.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2005]: **Sec. 10.5. (a) Notwithstanding section**
4 **6 of this chapter, a county council may, by ordinance, determine**
5 **that additional county tax revenue is needed in the county to**
6 **finance the operations of a jail or another penal facility operated**
7 **by and located in the county.**

8 (b) If the county council makes a determination under
9 subsection (a), the county council may do one (1) or both of the
10 following:

11 (1) In addition to the rates permitted by sections 8 and 9 of
12 this chapter, and notwithstanding section 11 of this chapter,
13 impose the county option income tax at a rate not greater than
14 twenty-five hundredths percent (0.25%) on the adjusted gross
15 income of county taxpayers if the county council makes the
16 finding and determination set forth in subsection (a). The
17 additional penal county option income tax rate must be



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adopted before April 1 in the year in which the additional penal county option income tax rate first takes effect.

(2) Designate the county option income tax revenue generated by a part of the tax rate, not to exceed twenty-five hundredths percent (0.25%), as penal county option income tax revenue that will be used to pay the costs described in subsection (a). An action to designate a part of the county option income tax revenue as penal county option income tax revenue under this subdivision must be adopted before April 1 in the year immediately preceding the year in which it takes effect.

The total amount raised under subdivisions (1) and (2) may not exceed the amount necessary to pay the costs described in subsection (a).

(c) A copy of an ordinance adopted under this section must be distributed to the county treasurer and the department.

(d) The county treasurer shall establish a county penal revenue fund to be used only for purposes described in this section. County option income tax revenues derived from the penal county option income tax rate imposed under this section and the amount designated as penal county option income tax revenue under subsection (b)(2) shall be deposited in the county penal revenue fund before making a distribution under section 17 of this chapter. A county jail or another penal facility that receives money from a county penal revenue fund may not decrease its operational funding from the county general fund solely due to the receipt of money from the county penal revenue fund.

(e) County option income tax revenues derived from the penal county option income tax rate imposed under this section or designated as penal county option income tax revenue under subsection (b)(2):

(1) may be used only for the purposes described in this section; and

(2) may not be considered by the department of local government finance in determining the county's maximum permissible property tax levy limit under IC 6-1.1-18.5.

(f) If the county council imposes an additional tax rate or makes a designation under this section, the county council may decrease or rescind the rate or designation in the same manner in which the county council adopted the rate or designation.

SECTION 2. IC 6-3.5-6-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) Except for penal county option income tax revenue that must be used under

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1 **section 10.5 of this chapter to pay the costs of financing the**
 2 **operations of a jail or another penal facility operated by and**
 3 **located in the county,** revenue derived from the imposition of the
 4 county option income tax shall, in the manner prescribed by this
 5 section, be distributed to the county that imposed it. The amount that
 6 is to be distributed to a county during an ensuing calendar year equals
 7 the amount of county option income tax revenue that the department,
 8 after reviewing the recommendation of the budget agency, determines
 9 has been:

10 (1) received from that county for a taxable year ending in a
 11 calendar year preceding the calendar year in which the
 12 determination is made; and

13 (2) reported on an annual return or amended return processed by
 14 the department in the state fiscal year ending before July 1 of the
 15 calendar year in which the determination is made;

16 as adjusted (as determined after review of the recommendation of the
 17 budget agency) for refunds of county option income tax made in the
 18 state fiscal year.

19 (b) Before August 2 of each calendar year, the department, after
 20 reviewing the recommendation of the budget agency, shall certify to the
 21 county auditor of each adopting county the amount determined under
 22 subsection (a) plus the amount of interest in the county's account that
 23 has accrued and has not been included in a certification made in a
 24 preceding year. The amount certified is the county's "certified
 25 distribution" for the immediately succeeding calendar year. The amount
 26 certified shall be adjusted, as necessary, under subsections (c), (d), and
 27 (e). The department shall provide with the certification an informative
 28 summary of the calculations used to determine the certified
 29 distribution.

30 (c) The department shall certify an amount less than the amount
 31 determined under subsection (b) if the department, after reviewing the
 32 recommendation of the budget agency, determines that the reduced
 33 distribution is necessary to offset overpayments made in a calendar
 34 year before the calendar year of the distribution. The department, after
 35 reviewing the recommendation of the budget agency, may reduce the
 36 amount of the certified distribution over several calendar years so that
 37 any overpayments are offset over several years rather than in one (1)
 38 lump sum.

39 (d) The department, after reviewing the recommendation of the
 40 budget agency, shall adjust the certified distribution of a county to
 41 correct for any clerical or mathematical errors made in any previous
 42 certification under this section. The department, after reviewing the

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1 recommendation of the budget agency, may reduce the amount of the
 2 certified distribution over several calendar years so that any adjustment
 3 under this subsection is offset over several years rather than in one (1)
 4 lump sum.

5 (e) This subsection applies to a county that initially imposed a tax
 6 under this chapter in the same calendar year in which the department
 7 makes a certification under this section. The department, after
 8 reviewing the recommendation of the budget agency, shall adjust the
 9 certified distribution of a county to provide for a distribution in the
 10 immediately following calendar year and in each calendar year
 11 thereafter. The department shall provide for a full transition to
 12 certification of distributions as provided in subsection (a)(1) through
 13 (a)(2) in the manner provided in subsection (c).

14 (f) One-twelfth (1/12) of each adopting county's certified
 15 distribution for a calendar year shall be distributed from its account
 16 established under section 16 of this chapter to the appropriate county
 17 treasurer on the first day of each month of that calendar year.

18 (g) Upon receipt, each monthly payment of a county's certified
 19 distribution shall be allocated among, distributed to, and used by the
 20 civil taxing units of the county as provided in sections 18 and 19 of this
 21 chapter.

22 (h) All distributions from an account established under section 16
 23 of this chapter shall be made by warrants issued by the auditor of state
 24 to the treasurer of state ordering the appropriate payments.

25 SECTION 3. IC 6-3.5-6-18 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. (a) The revenue a
 27 county auditor receives under this chapter shall be used to:

- 28 (1) replace the amount, if any, of property tax revenue lost due to
 29 the allowance of an increased homestead credit within the county;
 30 (2) fund the operation of a public communications system and
 31 computer facilities district as provided in an election, if any, made
 32 by the county fiscal body under IC 36-8-15-19(b);
 33 (3) fund the operation of a public transportation corporation as
 34 provided in an election, if any, made by the county fiscal body
 35 under IC 36-9-4-42;
 36 (4) make payments permitted under IC 36-7-15.1-17.5;
 37 (5) make payments permitted under subsection (i); ~~and~~
 38 (6) make distributions of distributive shares to the civil taxing
 39 units of a county; **and**
 40 **(7) make payments permitted under section 10.5 of this**
 41 **chapter.**

42 (b) The county auditor shall retain from the payments of the county's

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1 certified distribution, an amount equal to the revenue lost, if any, due
2 to the increase of the homestead credit within the county. This money
3 shall be distributed to the civil taxing units and school corporations of
4 the county as though they were property tax collections and in such a
5 manner that no civil taxing unit or school corporation shall suffer a net
6 revenue loss due to the allowance of an increased homestead credit.

7 (c) The county auditor shall retain the amount, if any, specified by
8 the county fiscal body for a particular calendar year under subsection
9 (i), IC 36-7-15.1-17.5, IC 36-8-15-19(b), and IC 36-9-4-42 from the
10 county's certified distribution for that same calendar year. The county
11 auditor shall distribute amounts retained under this subsection to the
12 county.

13 (d) All certified distribution revenues that are not retained and
14 distributed under subsections (b) and (c) shall be distributed to the civil
15 taxing units of the county as distributive shares.

16 (e) The amount of distributive shares that each civil taxing unit in
17 a county is entitled to receive during a month equals the product of the
18 following:

19 (1) The amount of revenue that is to be distributed as distributive
20 shares during that month; multiplied by

21 (2) A fraction. The numerator of the fraction equals the total
22 property taxes that are first due and payable to the civil taxing
23 unit during the calendar year in which the month falls, plus, for a
24 county, an amount equal to the property taxes imposed by the
25 county in 1999 for the county's welfare fund and welfare
26 administration fund. The denominator of the fraction equals the
27 sum of the total property taxes that are first due and payable to all
28 civil taxing units of the county during the calendar year in which
29 the month falls, plus an amount equal to the property taxes
30 imposed by the county in 1999 for the county's welfare fund and
31 welfare administration fund.

32 (f) The department of local government finance shall provide each
33 county auditor with the fractional amount of distributive shares that
34 each civil taxing unit in the auditor's county is entitled to receive
35 monthly under this section.

36 (g) Notwithstanding subsection (e), if a civil taxing unit of an
37 adopting county does not impose a property tax levy that is first due
38 and payable in a calendar year in which distributive shares are being
39 distributed under this section, that civil taxing unit is entitled to receive
40 a part of the revenue to be distributed as distributive shares under this
41 section within the county. The fractional amount such a civil taxing
42 unit is entitled to receive each month during that calendar year equals

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the product of the following:

- (1) The amount to be distributed as distributive shares during that month; multiplied by
- (2) A fraction. The numerator of the fraction equals the budget of that civil taxing unit for that calendar year. The denominator of the fraction equals the aggregate budgets of all civil taxing units of that county for that calendar year.

(h) If for a calendar year a civil taxing unit is allocated a part of a county's distributive shares by subsection (g), then the formula used in subsection (e) to determine all other civil taxing units' distributive shares shall be changed each month for that same year by reducing the amount to be distributed as distributive shares under subsection (e) by the amount of distributive shares allocated under subsection (g) for that same month. The department of local government finance shall make any adjustments required by this subsection and provide them to the appropriate county auditors.

(i) Notwithstanding any other law, a county fiscal body may pledge revenues received under this chapter to the payment of bonds or lease rentals to finance a qualified economic development tax project under IC 36-7-27 in that county or in any other county if the county fiscal body determines that the project will promote significant opportunities for the gainful employment or retention of employment of the county's residents.

SECTION 4. IC 6-3.5-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Except as provided in subsection (c), the county economic development income tax may be imposed on the adjusted gross income of county taxpayers. The entity that may impose the tax is:

- (1) the county income tax council (as defined in IC 6-3.5-6-1) if the county option income tax is in effect on January 1 of the year the county economic development income tax is imposed;
- (2) the county council if the county adjusted gross income tax is in effect on January 1 of the year the county economic development tax is imposed; or
- (3) the county income tax council or the county council, whichever acts first, for a county not covered by subdivision (1) or (2).

To impose the county economic development income tax, a county income tax council shall use the procedures set forth in IC 6-3.5-6 concerning the imposition of the county option income tax.

(b) Except as provided in subsections (c), (g), (k), (p), and (r) the county economic development income tax may be imposed at a rate of:

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- 1 (1) one-tenth percent (0.1%);
- 2 (2) two-tenths percent (0.2%);
- 3 (3) twenty-five hundredths percent (0.25%);
- 4 (4) three-tenths percent (0.3%);
- 5 (5) thirty-five hundredths percent (0.35%);
- 6 (6) four-tenths percent (0.4%);
- 7 (7) forty-five hundredths percent (0.45%); or
- 8 (8) five-tenths percent (0.5%);

9 on the adjusted gross income of county taxpayers.

10 (c) Except as provided in subsection (h), (i), (j), (k), (l), (m), (n), (o),
 11 or (p), the county economic development income tax rate plus the
 12 county adjusted gross income tax rate, if any, that are in effect on
 13 January 1 of a year may not exceed one and twenty-five hundredths
 14 percent (1.25%). Except as provided in subsection (g), ~~or (p), or (t)~~, the
 15 county economic development tax rate plus the county option income
 16 tax rate, if any, that are in effect on January 1 of a year may not exceed
 17 one percent (1%).

18 (d) To impose, increase, decrease, or rescind the county economic
 19 development income tax, the appropriate body must, after January 1 but
 20 before April 1 of a year, adopt an ordinance. The ordinance to impose
 21 the tax must substantially state the following:

22 "The _____ County _____ imposes the county economic
 23 development income tax on the county taxpayers of _____
 24 County. The county economic development income tax is imposed at
 25 a rate of _____ percent (____%) on the county taxpayers of the
 26 county. This tax takes effect July 1 of this year."

27 (e) Any ordinance adopted under this chapter takes effect July 1 of
 28 the year the ordinance is adopted.

29 (f) The auditor of a county shall record all votes taken on ordinances
 30 presented for a vote under the authority of this chapter and shall, not
 31 more than ten (10) days after the vote, send a certified copy of the
 32 results to the commissioner of the department by certified mail.

33 (g) This subsection applies to a county having a population of more
 34 than one hundred forty-eight thousand (148,000) but less than one
 35 hundred seventy thousand (170,000). Except as provided in subsection
 36 (p), in addition to the rates permitted by subsection (b), the:

- 37 (1) county economic development income tax may be imposed at
 38 a rate of:
 - 39 (A) fifteen-hundredths percent (0.15%);
 - 40 (B) two-tenths percent (0.2%); or
 - 41 (C) twenty-five hundredths percent (0.25%); and
- 42 (2) county economic development income tax rate plus the county

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1 option income tax rate that are in effect on January 1 of a year
2 may equal up to one and twenty-five hundredths percent (1.25%);
3 if the county income tax council makes a determination to impose rates
4 under this subsection and section 22 of this chapter.

5 (h) For a county having a population of more than forty-one
6 thousand (41,000) but less than forty-three thousand (43,000), except
7 as provided in subsection (p), the county economic development
8 income tax rate plus the county adjusted gross income tax rate that are
9 in effect on January 1 of a year may not exceed one and thirty-five
10 hundredths percent (1.35%) if the county has imposed the county
11 adjusted gross income tax at a rate of one and one-tenth percent (1.1%)
12 under IC 6-3.5-1.1-2.5.

13 (i) For a county having a population of more than thirteen thousand
14 five hundred (13,500) but less than fourteen thousand (14,000), except
15 as provided in subsection (p), the county economic development
16 income tax rate plus the county adjusted gross income tax rate that are
17 in effect on January 1 of a year may not exceed one and fifty-five
18 hundredths percent (1.55%).

19 (j) For a county having a population of more than seventy-one
20 thousand (71,000) but less than seventy-one thousand four hundred
21 (71,400), except as provided in subsection (p), the county economic
22 development income tax rate plus the county adjusted gross income tax
23 rate that are in effect on January 1 of a year may not exceed one and
24 five-tenths percent (1.5%).

25 (k) This subsection applies to a county having a population of more
26 than twenty-seven thousand four hundred (27,400) but less than
27 twenty-seven thousand five hundred (27,500). Except as provided in
28 subsection (p), in addition to the rates permitted under subsection (b):

- 29 (1) the county economic development income tax may be imposed
- 30 at a rate of twenty-five hundredths percent (0.25%); and
- 31 (2) the sum of the county economic development income tax rate
- 32 and the county adjusted gross income tax rate that are in effect on
- 33 January 1 of a year may not exceed one and five-tenths percent
- 34 (1.5%);

35 if the county council makes a determination to impose rates under this
36 subsection and section 22.5 of this chapter.

37 (l) For a county having a population of more than twenty-nine
38 thousand (29,000) but less than thirty thousand (30,000), except as
39 provided in subsection (p), the county economic development income
40 tax rate plus the county adjusted gross income tax rate that are in effect
41 on January 1 of a year may not exceed one and five-tenths percent
42 (1.5%).

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1 (m) For:
 2 (1) a county having a population of more than one hundred
 3 eighty-two thousand seven hundred ninety (182,790) but less than
 4 two hundred thousand (200,000); or
 5 (2) a county having a population of more than forty-five thousand
 6 (45,000) but less than forty-five thousand nine hundred (45,900);
 7 except as provided in subsection (p), the county economic development
 8 income tax rate plus the county adjusted gross income tax rate that are
 9 in effect on January 1 of a year may not exceed one and five-tenths
 10 percent (1.5%).

11 (n) For a county having a population of more than six thousand
 12 (6,000) but less than eight thousand (8,000), except as provided in
 13 subsection (p), the county economic development income tax rate plus
 14 the county adjusted gross income tax rate that are in effect on January
 15 1 of a year may not exceed one and five-tenths percent (1.5%).

16 (o) This subsection applies to a county having a population of more
 17 than thirty-nine thousand (39,000) but less than thirty-nine thousand
 18 six hundred (39,600). Except as provided in subsection (p), in addition
 19 to the rates permitted under subsection (b):

20 (1) the county economic development income tax may be imposed
 21 at a rate of twenty-five hundredths percent (0.25%); and
 22 (2) the sum of the county economic development income tax rate
 23 and:

24 (A) the county adjusted gross income tax rate that are in effect
 25 on January 1 of a year may not exceed one and five-tenths
 26 percent (1.5%); or
 27 (B) the county option income tax rate that are in effect on
 28 January 1 of a year may not exceed one and twenty-five
 29 hundredths percent (1.25%);

30 if the county council makes a determination to impose rates under this
 31 subsection and section 24 of this chapter.

32 (p) In addition:

33 (1) the county economic development income tax may be imposed
 34 at a rate that exceeds by not more than twenty-five hundredths
 35 percent (0.25%) the maximum rate that would otherwise apply
 36 under this section; and
 37 (2) the:

38 (A) county economic development income tax; and
 39 (B) county option income tax or county adjusted gross income
 40 tax;
 41 may be imposed at combined rates that exceed by not more than
 42 twenty-five hundredths percent (0.25%) the maximum combined

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1 rates that would otherwise apply under this section.
2 However, the additional rate imposed under this subsection may not
3 exceed the amount necessary to mitigate the increased ad valorem
4 property taxes on homesteads (as defined in IC 6-1.1-20.9-1) resulting
5 from the deduction of the assessed value of inventory in the county
6 under IC 6-1.1-12-41 or IC 6-1.1-12-42.

7 (q) If the county economic development income tax is imposed as
8 authorized under subsection (p) at a rate that exceeds the maximum
9 rate that would otherwise apply under this section, the certified
10 distribution must be used for the purpose provided in section 25(e) or
11 26 of this chapter to the extent that the certified distribution results
12 from the difference between:

- 13 (1) the actual county economic development tax rate; and
- 14 (2) the maximum rate that would otherwise apply under this
15 section.

16 (r) This subsection applies only to a county described in section 27
17 of this chapter. Except as provided in subsection (p), in addition to the
18 rates permitted by subsection (b), the:

- 19 (1) county economic development income tax may be imposed at
20 a rate of twenty-five hundredths percent (0.25%); and
- 21 (2) county economic development income tax rate plus the county
22 option income tax rate that are in effect on January 1 of a year
23 may equal up to one and twenty-five hundredths percent (1.25%);
24 if the county council makes a determination to impose rates under this
25 subsection and section 27 of this chapter.

26 (s) Except as provided in subsection (p), the county economic
27 development income tax rate plus the county adjusted gross income tax
28 rate that are in effect on January 1 of a year may not exceed one and
29 five-tenths percent (1.5%) if the county has imposed the county
30 adjusted gross income tax under IC 6-3.5-1.1-3.3.

31 **(t) This subsection applies to a county that imposes a penal**
32 **county option income tax rate under IC 6-3.5-6-10.5. The county**
33 **economic development tax rate plus the county option income tax**
34 **rate, if any, that are in effect on January of a year may not exceed**
35 **one and twenty-five hundredths percent (1.25%).**

36 SECTION 5. [EFFECTIVE JULY 1, 2005] **Notwithstanding**
37 **IC 6-3.5-6-10.5(b), as added by this act, an action adopted under**
38 **IC 6-3.5-6-10.5(b)(1) or IC 6-3.5-6-10.5(b)(2), both as added by this**
39 **act, before January 1, 2006, takes effect January 1, 2006.**

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