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FISCAL IMPACT STATEMENT

LS 7696
BILL NUMBER: SB 500

NOTE PREPARED: Apr 3, 2007
BILL AMENDED: Apr 2, 2007

SUBJECT: Various Economic Development Matters.

FIRST AUTHOR: Sen. Kenley
FIRST SPONSOR: Rep. Kuzman

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Affordable Housing:* The bill provides various revenue sources to the Affordable Housing and Community Development Fund, to local affordable housing funds, and to the Marion County Housing Trust Fund.

Enterprise Zones: The bill makes numerous changes concerning Enterprise Zones.

Personal Property Abatements: The bill makes changes to the definitions of: (1) new manufacturing equipment; (2) new research and development equipment; and (3) new information technology equipment; for purposes of obtaining a property tax deduction for rehabilitation or redevelopment of real property in Economic Revitalization Areas.

Personal Property Tax Audits: The bill specifies that a person contracted to discover omitted or undervalued property may review only the three assessment years ending before January 1of the year in which a taxpayer receives notice of the person's actions under the contract. It also specifies the priority of payments from a special nonreverting fund created for the deposit of taxes resulting from additional assessments on undervalued or omitted property.

NFL Tax Exemption: The bill exempts a certain professional football game and related events from taxation.

Sales Tax Collection Allowance: The bill provides for a graduated Sales and Use Tax collection allowance for a retail merchant.

Sales Tax Exemption Restrictions: This bill restricts a Sales Tax exemption available under current law for

an electric utility that purchases distribution equipment or transmission equipment. It also restricts a Sales Tax exemption available under current law for a hotel or a restaurant that purchases electricity, water, gas, or steam.

Sales Tax Bad Debt Deduction: The bill amends the definition of affiliated group and amends the calculation of the bad debt deduction allowed for Sales Tax remittances.

Aircraft Tax Exemptions: The bill restricts a Sales Tax exemption available under current law for an aircraft lessor that purchases an aircraft for rental or leasing. It provides a limited Use Tax exemption for an aircraft that is titled or registered in another state or country and is temporarily brought to Indiana to be repaired, refurbished, remanufactured, or subjected to a prepurchase evaluation. It expands the limited Sales Tax exemption under current law for a transaction involving an aircraft to include transactions in which the aircraft that is purchased by a nonresident remains in Indiana for up to 30 days after the aircraft is repaired, refurbished, or remanufactured. It also expands the exemption from the aircraft registration requirements under the Aircraft License Excise Tax statute for a nonresident who bases an aircraft with a dealer while the aircraft is being repaired, remodeled, or refurbished to include aircraft that are based with a person that has been issued a Repair Station Certificate by the Federal Aviation Administration.

Public Transportation Exemption Verification: The bill provides that a retail merchant may verify that the sale of property used or consumed in providing public transportation is exempt from Sales Tax by obtaining certain information from the purchaser. It also allows a retail merchant that sold property to a person that used or consumed the property in providing public transportation to verify that the sale was exempt from Sales Tax by using the information contained in form ST-135 for the transaction.

Out-of-state Merchant Registration: The bill repeals a provision of the Sales Tax statute that requires certain out-of-state merchants making sales to customers in Indiana to register as retail merchants and remit Sales and Use Tax.

Cigarette Tax Stamp Discount: The bill increases the Cigarette Stamp Discount to distributors from 1.2% to 2%.

Tax Credit Repayments for Non-Qualified 529 Plan Withdrawals: The bill provides that an account owner of a college choice 529 education savings plan must repay a portion of a tax credit if any non-qualified withdrawal is made from the plan. The bill also includes as non-qualified withdrawals any withdrawals made from an account that is terminated within 12 months after the account is opened, rollovers to another qualified tuition program under Section 529 of the Internal Revenue Code that is not a college choice 529 education savings plan account, and other withdrawals that do not meet the requirements of a qualified withdrawal.

Corporate Estimated Tax Payments: The bill allows a corporation to use its annualized income to calculate the amount of its estimated Adjusted Gross Income Tax payments.

Corporate Tax Add Back: The bill requires corporations to add back dividends paid to shareholders of a captive real estate investment trust.

Electronic Returns and Funds Transfer Requirements: The bill specifies conditions under which a professional tax return preparer must file client returns electronically. The bill decreases various periodic tax liability thresholds at which taxpayers are required to make tax payments by electronic fund transfer from

$10,000 to $5,000. The bill provides that a tax payment made by electronic fund transfer is considered made on the date the taxpayer issues the payment order for the electronic fund transfer.

Interest on Tax Refunds & Excess Payments: The bill provides for the accrual of interest at the rate of 6% per annum on Inheritance Tax refunds that are not processed within 90 days by the Department of State Revenue (DOR). The bill specifies that the rate of interest paid by the DOR on excess tax payments must be the same as the rate of interest paid by a taxpayer for failing to pay the full amount of tax by the due date for a tax return.

Refund Hearings: The bill provides that when a taxpayer claiming a refund requests a hearing on the claim, the DOR must be hold the requested hearing.

Lake County Innkeeper's Tax: The bill reallocates Lake County Innkeeper's Tax Revenue to include two additional towns.

The bill also makes technical corrections.

Effective Date: (Amended) Upon Passage; January 1, 2007 (retroactive); March 1, 2007 (retroactive); July 1, 2007; December 16, 2007; January 1, 2008.

Explanation of State Expenditures: (Revised) *Summary of Expenditures:* It is estimated that this bill will result in overall administrative cost savings for the Department of State Revenue (DOR). All of these provisions will cause the DOR to amend forms, rules and procedures related to administration of the corporate and individual Adjusted Gross Income (AGI) taxes, the Sales Tax, the Inheritance Tax, the Financial Institutions Tax, the Motor Fuel Taxes, and the Cigarette Tax. Although, it is estimated that these increased costs will be totally offset by the administrative costs savings resulting from provisions in the bill.

The provisions of the bill estimated to result in administrative cost *savings* are as follows:

> *Electronic Returns and Funds Transfer Requirements:* The bill lowers the threshold amount of tax liability that is required before the DOR may require payment by electronic funds transfer from $10,000 to $5,000. It is estimated that the incremental costs of receiving payments electronically is lower than receiving payment by other means. The exact amount of savings is indeterminable.
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> The bill also provides that if a professional tax preparer files more than 100 individual AGI Tax returns in a calendar year, then in the immediately following calendar year the preparer must file their returns electronically.
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> *Interest on Tax Refunds & Excess Payments:* This bill provides for the accrual of interest, *from the date the refund is filed*, at the rate of 6% per annum on Inheritance Tax refunds that are not processed within 90 days by the DOR. Under current law, the same rate of interest accrues, but *from the date the tax was paid*. It is estimated that this will result in a savings to the DOR. The savings will ultimately be determined by the difference in the amount of interest that would have been paid from the date the tax was paid versus the date the claim refund was filed. Any savings could be increased or offset by the provision in the bill specifying that the rate of interest paid by the DOR on excess tax payments must be the same as the rate of interest paid by a taxpayer for failing to pay the full amount of tax by the due date for a tax return. To the extent that the rate required by current statute for a rate of interest on excess payments differed from the rate of interest on taxpayer

delinquencies there could be either a savings or increase in state expenditures. The impact of this provision is indeterminable.

DOR Employee Incentives: It is estimated that the DOR could realize a cost savings from the provision of the bill allowing them to establish production quotas for agents based on the number of cases closed. The amount of savings will ultimately be determined by the possible increase in productivity as a result of these incentives and quotas being implemented by the DOR.

The following provisions could result in an *increase* in administrative costs to the DOR.

Aircraft Tax Exemptions & NFL Sales Tax Exemption: The DOR will have to amend Sales and Use Tax forms, and Aircraft License Excise Tax forms, as well as update computer software. The DOR could also be required to issue more Sales and Use Tax exemption certificates for certain entities. It is estimated that these provisions of the bill can be implemented within the existing level of resources available to the DOR.

Tax Credit Repayments for Non-Qualified 529 Plan Withdrawals: The DOR will incur additional expenses to revise tax forms, instructions, and computer programs, and to administer tax credit reduction and repayment programs under the bill. The bill would require the DOR to utilize information provided by the Education Savings Authority to collect repayments of tax credits claimed by a taxpayer for contributions to the taxpayer's Indiana College Choice 529 Investment Plan account if the taxpayer makes non-qualified withdrawals from that account. The Department's current level of resources should be sufficient to implement these changes.

Cigarette Tax Stamp Reporting Requirements: The provisions of the bill requiring the DOR to report certain information concerning Cigarette Tax stamps will cause an indeterminable increase in administrative costs to the DOR. The impact will ultimately depend on the current recording of this information, and the computer software changes that may need to be made to satisfy these reporting requirements. The bill requires the DOR to submit a report to the Budget Agency and the Budget Committee before the end of 2007 which includes the following for FY 2007:

(1) The number of distributors who purchase cigarette tax stamps.
(2) The amount of cigarette tax stamps purchased by distributors.
(3) The amount of tobacco products tax collected from distributors
(4) The total amount of cigarette tax discounted to distributors.
(5) A breakdown of the amount of cigarette tax discounted to each distributor.
(6) The total number of registration certificates issued by the department.
(7) The total amount of tobacco products tax licence fees received by the department from distributors.
(8) The total amount of tobacco products tax discounted to distributors.
(9) A breakdown of the amount of tobacco products tax discounted to each distributor.

Refund Hearings: The bill provides that when a taxpayer claiming a refund requests a hearing on the claim, the Department of State Revenue *must* hold the requested hearing. Under current law, the DOR may, but does not have to hold a hearing on a refund claim.

The impact of the following provisions on the administrative costs of the DOR are indeterminable.

Sales Tax Exemption Restrictions: This bill restricts a Sales Tax exemption available under current

law for an electric utility that purchases distribution equipment or transmission equipment. The bill restricts a Sales Tax exemption available under current law for a hotel or a restaurant that purchases electricity, water, gas, or steam. This bill also restricts a Sales Tax exemption available under current law for an aircraft lessor that purchases an aircraft for rental or leasing.

Restricting these exemptions and specifying what these exemptions do and do not apply to could result in a savings to the DOR to the extent that fewer administrative actions are filed contesting DOR interpretation on the issues more clearly specified in this bill. Although, by adding specific restrictions to these exemptions could lead to more administrative hearings on whether the restrictions apply to certain taxpayers or certain situations. Any possible increase in cost could be offset by the increase in Sales Tax collections that could result from these provisions (see *Explanation of State Revenues*).

Out-of-state Merchant Registration: The bill also repeals a provision of the Sales Tax statute that requires certain out-of-state merchants making sales to customers in Indiana to register as retail merchants and remit Sales and Use tax. This provision could result in a cost savings for the DOR, by requiring the DOR to register fewer merchants. Although, it must be noted that any possible decrease in costs could be offset by the decrease in Sales Tax collections that could result from these provisions (see *Explanation of State Revenues*).

Indiana Education Savings Authority: The bill requires the Executive Director of the Authority to annually submit to the DOR a copy of all information returns or statements issued to taxpayers with respect to withdrawals or distributions made from an Indiana College Choice 529 Investment Plan account for the taxable year; or account closings for the taxable year.

(Revised) *Personal Property Audits:* Under current law a board of county commissioners, a county assessor, or an elected township assessor may enter into a contract for the discovery of property that has been undervalued or omitted from assessment. This proposal directs the Department of Local Government Finance (DLGF) to adopt rules to certify persons who wish to obtain an audit contract.

Secondary Impact: (PTRC and Homestead Credits): The state pays Property Tax Replacement Credits (PTRC) in the amount of 60% of school General Fund levies attributable to all property. The state also pays 20% of the portion of operating levies (including the remaining 40% of the school GF levy) that are attributable to real property and non-business personal property. Homestead credits are paid by the state in the amount of 20% of the net property tax due for qualifying funds on owner-occupied residences.

Under this provision, subject to appropriation, state expenditures for Property Tax Replacement Credit (PTRC) and Homestead Credits could vary. The amount of the increase or decrease would depend on how successful the audit program is in identifying undervalued personal property.

Explanation of State Revenues: (Revised) *Affordable Housing:* The state Affordable Housing and Community Development Fund (AHCDF) would receive revenues from various sources of both state and local origin. The revenue that could potentially be distributed to state AHCDF is summarized in the table below. Ultimately, the revenues to AHCDF will depend on the actions of the local units in adopting ordinances for recording fees and recovery of issuance costs, revenue from which is to be distributed to the AHCDF. If additional counties establish local affordable housing funds, money distributed to the AHCDF would be higher than reflected in the table. A brief description of each revenue sources is provided after the table.

State Affordable Housing and Community Development Fund	
Revenue Source in the bill	*Annual Increase in Revenue (in millions)*
Potential Recording Fees	$1.40
Interest from the Abandoned Property Fund	$0.27
Interest from the Property Custody Fund	$0.08
Debt Issuance Cost Recovery	$0.87
Sales Tax Collection Allowance Rate Change	$12.60
Cigarette Tax Distribution Change	$0.76
TOTAL (beginning in FY 2008)	**$15.98**
Interest from the Public Deposit Insurance Fund*	$5.30
TOTAL (beginning in FY 2013)	$21.28

*Begins in FY 2013.

Recording Fees: The AHCDF would receive 40% of the additional revenues if any county with an affordable housing fund adds a document fee of $5 for the first page and $1 for each additional page for each recording. (Note: 60% of the revenue would be distributed to the adopting county's affordable housing fund.)

Property Custody Fund and Abandoned Property Fund: The AHCDF would also receive the interest balance from the Abandoned Property and Property Custody Funds. The estimated interest revenue accrued to the state General Fund under current law is $270,000 from the Abandoned Property Fund, and $75,000 from the Property Custody Fund. These estimates are based on the average interest earnings from FY 2004 to FY 2006.

Issuance Costs: The AHCDF would receive 40% of issuance cost from a county that adopts an ordinance requiring each political subdivision of the county to recover 0.5% on each obligation issued. (Note: 60% of the revenue would be distributed to the adopting county's affordable housing fund.)

Sales and Use Tax Collection Allowance: The bill provides for a graduated Sales and Use Tax collection allowance. This provision of the bill will increase Sales Tax collections by an estimated $12.6 M beginning in FY 2008, and specifies that the additional revenue is to be distributed to the AHCDF.

Cigarette Tax Distribution Change: The bill adds a distribution of 0.523% to the Cigarette Tax distribution formula of which 40% would be deposited in the AHCDF. This estimated to total about $760,000. (Note: 60% of the revenue would be distributed to county affordable housing funds.)

Public Deposit Insurance Fund Interest: Beginning in FY 2013, the state AHCDF will receive the interest from the Public Deposit Insurance Fund. In FY 2006 the interest earnings from the PDIF totaled approximately $5.3 M.

(Revised) *NFL Tax Exemption:* The bill exempts from all state and local taxes on property owned by the

NFL, revenue of the NFL, and expenditures and transactions of the NFL in connection with a Super Bowl, and resulting from holding a Super Bowl in Indiana or making preparatory advance visits to Indiana in connection with the Super Bowl. The bill also extends this tax exemption to any corporation, partnership, limited liability company, or other entity owned or controlled by the NFL; any member of an NFL club; or any not-for-profit charitable organization affiliated with the NFL. The amount of state taxes from the NFL that could potentially be foregone due to this provision is indeterminable. However, this could be offset by a potentially significant increase in other tax revenue generated from this event.

The bill also specifies that the tax exemptions will not reduce or adversely affect the levy and collection of taxes pledged to the payment of bonds, notes, leases, or subleases payable from such taxes.

(Revised) *Sales Tax Bad Debt Deduction*: This bill provides that an entity which defers losses under the Internal Revenue Code (IRC) section 267, and later deducts those losses under IRC section 165, is allowed to deduct those losses under IC 6-2.5-6-9. This provision will allow a company that transfers a debt to a related company before the debt becomes uncollectible to deduct this bad debt in the same manner that the bad debt could have been deducted from company's Sales Taxable gross receipts had the company not transferred the debt. This provisions will result in a decrease in Sales Tax collections to the extent that a company could not have deducted this bad debt under current law. The amount of the decrease is indeterminable.

Sales Tax Exemption Restrictions: To the extent that restricting these exemptions leads to less exemptions being awarded, there will be an indeterminable increase in Sales tax collections.

Aircraft Tax Exemptions: These provisions of the bill could result in an indeterminable impact in Sales and Use Tax. The bill provides for a new Use Tax exemption, and expands the Sales Tax exemption, for aircraft purchased by nonresidents. Any potential decrease in Sales or Use Tax revenue could be offset by a potential increase in Adjusted Gross Income Tax if this exemption provides an incentive for more repair work to be conducted in Indiana.

<u>Use Tax:</u> The bill provides that Use Tax may not be imposed on the exercise of any right or power over an aircraft if that aircraft is:

(1) titled, registered, or based in another state or country;
(2) delivered to Indiana by or for a nonresident owner or purchaser;
(3) delivered to Indiana for the sole purpose of repair, refurbishment, remanufacture, or prepurchase evaluation (as defined in the bill); and
(4) transported out of Indiana after completion of any work listed in item (3).

<u>Sales Tax:</u> The bill also amends the Sales Tax exemption for an aircraft purchased by a nonresident. Under current statute an aircraft is exempt from Sales Tax if:

(1) purchased by a nonresident;
(2) transported out of Indiana within 30 days of delivery; and
(3) will be titled or registered for use in another state or country and not titled or registered in Indiana.

The bill moves the exemption to a new code cite, and adds certain provisions to the exemption requirements. The bill adds the ability for a nonresident purchaser to receive the exemption for an aircraft if it is transported out of Indiana within 30 days after completion of a repair, refurbishment, or remanufacture of the aircraft.

The bill also adds that an exemption may be granted if the aircraft will be based in another state or country (in the case of a state or country that does not require an aircraft to be titled or registered.)

Public Transportation Exemption Verification: This provision of the bill is expected to have a minimal fiscal impact on Sales and Use Tax collections. This bill provides that a retail merchant may verify an exempt sale of tangible personal property used or consumed in providing public transportation by obtaining certain information from the purchaser. The bill also provides that if a retail merchant previously sold tangible personal property to a person under this exemption for property consumed in providing public transportation and provides proof as previously contained in DOR form ST-135, the retail merchant may request a refund or satisfaction of outstanding liability from the DOR.

The impact of these changes will ultimately be determined by the actions of the DOR, retail merchants, and purchasers. These provisions do not change the number of exempt purchases that could occur, bur rather, any impact will only be to the extent that these provisions allow purchasers to more easily obtain the exemption.

Out-of-state Merchant Registration: To the extent that repealing these registration and remittance requirements leads to fewer out-of-state merchants remitting Sales Tax, state revenues will decrease. Although, the impact of this provision is indeterminable. It must be noted that many out-of-state merchants now register to remit Sales Tax to various states under the Streamlined Sales Tax Agreement (SSTA).

(Revised) *Cigarette Tax Stamp Discount:* The bill increases the cigarette stamp discount to distributors from 1.2% to 2.0%. The increase in this discount will decrease Cigarette Tax collections by approximately $2.8 M in FY 2008 and $2.8 M in FY 2009. This estimate is based on data from the December 14, 2006, *State Revenue Forecast*. The state General Fund will be decreased by $2.4 M in those years, while the Cigarette Tax Fund and the Pension Relief Fund will each be decreased by $0.2 M in both FY 07 and FY 08.

Tax Credit Repayments for Non-Qualified 529 Plan Withdrawals: The bill provides that the owner of an Indiana College Choice 529 Investment Plan account who claimed tax credits during the taxable year or a prior taxable year for contributions to the account, must repay the tax credits if the account owner makes any non-qualified withdrawal from the account. The bill requires the repayment to be made in the taxable year in which the non-qualified withdrawal is made.

The bill defines a "qualified withdrawal" as a withdrawal or distribution from an Indiana College Choice 529 Investment Plan account that is made:

(1) to pay for qualified higher education expenses, except when the savings plan is terminated within 12 months after the account is opened;

(2) as a result of the death or disability of an account beneficiary;

(3) because an account beneficiary received a scholarship that paid for the qualified higher education expenses, with the qualified withdrawal equal to or less than the scholarship amount; and

(4) by an Indiana College Choice 529 Investment Plan as a result of a transfer of funds by a plan from one third-party custodian to another.

The bill specifies that a qualified withdrawal does not include a rollover distribution or transfer of assets from an Indiana College Choice 529 Investment Plan to any other qualified tuition program under Section

529 of the Internal Revenue Code that is not an Indiana College Choice 529 Investment Plan.

(Revised) *Corporate Estimated Tax Payments:* It is estimated that the use of the annualized calculation in determining estimated corporate AGI Tax payments will result in a one-time indeterminable decrease in AGI tax collections in FY 2008. The impact of basing the penalty calculation on these annualized payments is indeterminable.

This bill, beginning December 16, 2007, allows a corporation to make estimated AGI Tax payments equal to the lesser of:

(1) 25% of the corporation estimated AGI Tax liability for the taxable year; or

(2) the annualized income installment calculated as provided in IRC Section 6655(e).

Under current law option (1) is the only way that estimated payments may be calculated. It is estimated that some corporations could make smaller estimated payments in the first two quarters of CY 2008. Therefore, AGI Tax collections for FY 2008 could be less than what would have been collected under current law.

The total amount of AGI Tax that will ultimately be collected will not change, but the collections will not be reconciled until the corporations file their tax returns in April of 2009. There will not be a surplus of collections in FY 2009, but rather what AGI Tax that would have been collected in FY 2008 will be shifted to FY 2009, FY 2009 shifted to FY 2010, and so on. Please note, that depending on when the collections are deposited there could also be a decrease in the interest earned on AGI Tax collections.

The bill also provides that a penalty may not be assessed when an estimated payment is equal to or exceeds:

(1) 25% of the final tax liability for the taxpayer's previous taxable year; or

(2) the annualized income installment (as calculated above).

The annualized income installment penalty calculation option replaces the option to calculate the penalty under current law based on 20% of the final tax liability for the current taxable year. The impact of this change in the penalty calculation is indeterminable. Ultimately, the payment and income amounts of a particular corporation will determine whether a penalty is assessed.

(Revised) *Corporate AGI Tax Add Back:* The bill establishes an add back of deductions taken on a corporation's federal income tax return for dividends paid to shareholders of a "captive real estate investment trust"(REIT). The amount of revenue that could potentially be captured due to the add back is indeterminable and dependent on the number of corporate taxpayers currently utilizing captive REITs. Since the add back is effective beginning in 2008, the fiscal impact of this provision could commence in FY 2008 or FY 2009 depending upon its effect on quarterly estimated tax payments. The bill defines a captive REIT as a corporation, a trust, or an association:

(1) that is considered a REIT for federal income tax purposes under the Internal Revenue Code (IRC);
(2) that is not regularly traded on an established securities market; and
(3) in which more than 50% of the voting power, beneficial interests, or shares are owned or controlled, directly or constructively, by a single C-corporation.

(Revised) *Background Information:* Affordable Housing: The state Affordable Housing and Community Development Fund (AHCDF) provides financial assistance to meet affordable housing and community development needs for low and very low income families, elderly, persons with disabilities, and homeless individuals. It also may be used to provide technical assistance to nonprofit developers of low income housing. At least 50% of the dollars allocated must be used to serve very low income households. Sources of revenue to the Fund include appropriations from the General Assembly; gifts, grants, and donations of any tangible or intangible property from public or private sources; investment income; repayments of loans from the Fund; and funds borrowed from the Board for Depositories Insurance Fund.

Recording Fees: Assuming that the four counties that have affordable housing funds (Allen, Marion, Monroe, and Vanderburgh) adopt the additional recording fee, based on 2005 recording information, the total received for the additional fee would be $3.6 M and the state AHCDF would receive $1.4 M. The Indiana Affordable Housing and Community Development Authority collected information on the number of documents recorded in about 20 counties. The table below shows the number of documents recorded in counties with affordable housing funds taken from this information.

County	Mortgage	Deed	Release	Other
Allen	27,696	18,549	30,510	8,805
Marion	55,703	46,501	40,580	14,272
Monroe	8,383	5,993	10,000	1,212
Vanderburgh	12,166	8,685	13,364	5,130
Total	103,948	79,728	94,454	29,419
The Indiana Affordable Housing and Community Development Authority estimated that mortgages are 20-page documents, deeds are 2-page documents , and releases and other documents consist of one page.				

Property Custody Fund and Abandoned Property Fund: The Property Custody Fund was established to receive property that is presumed abandoned but that has not yet reached the status of abandoned property. In P.L. 246-2005, the interest balance in the Property Custody Fund is transferred to the state General Fund. Under the Constitution, land and other property escheated to the state for want of heirs is placed in the Common School Fund. In noncode provisions of P.L. 224-2003 any balance in excess of $500,000 in the Abandoned Property Fund is transferred to the state General Fund, and, in P.L. 246-2005, the interest balance in the Abandoned Property Fund is transferred to the state General Fund. The estimated interest revenue accrued to the state General Fund under current for these funds is presented below:

Estimated Interest Revenue			
Fund	**FY2004**	**FY2005**	**FY 2006**
Abandoned Property Fund	$268,855	$237,141	$308,825
Property Custody Fund	$45,761	$60,430	$119,742
Source: Auditor's Data; Treasurer of State			

Issuance Costs: If the fiscal body of each of the four counties that have an affordable housing fund adopts an ordinance to recover issuance costs, the state AHCDF could receive an estimated $869,893. This is based on the level of debt issuances of the political subdivisions in these counties during CY 2006. The bill does not limit the authority to adopt an ordinance to one of these counties. If other counties were to adopt the issuance cost recovery, the state would receive more funds based on the obligation value.

Public Deposit Insurance Fund Interest: Under current law, until 2011 the interest on the Public Deposit Insurance Fund less expenses is distributed to municipalities to assist with pre-1977 police and fire pension liabilities. In FY 2006 the amount distributed was approximately $5.3 M.

Sales and Use Tax Collection Allowance: This provision of the bill will increase Sales Tax collections by an estimated $12.6 M beginning in FY 2008. The bill provides for a graduated Sales and Use Tax collection allowance. The current collection allowance rate is 0.83%. The new rates are based on a retail merchant's Sales Tax liability. The bill provides that until a retail merchant accrues $750,000 in Sales Tax liability in a calendar year, the rate stays at 0.83%, and then for liability accrued above $750,000 the collection allowance is 0.13%. Under the current rate, these taxpayers would be entitled to retain an estimated $19.4 M, and under the bill's new rate these taxpayers would be entitled to retain approximately $6.8 M.

Please note that this estimate represents a simulation of the change in the collection allowances based on 2005 Sales Tax return data provided by the DOR. The actual impact on revenue collections will depend on sales tax transactions beginning July 1, 2007. The bill requires that the total amount of the increase in Sales Tax collections as a result of adjusting the collection allowance shall be deposited in the Affordable Housing and Community Development Fund.

Cigarette Tax Distribution Change: The bill adds a distribution of 0.523% to the Cigarette Tax distribution formula of which 60% goes to county's affordable housing funds by the formula and 40% would be deposited in the AHCDF. The bill decreases the state General Fund distribution percentage by 0.523% to 83.447%. This results in a shift of $1.9 M from the state General Fund to the distributions listed above for the affordable housing funds.

Corporate AGI Tax Add Back: An example of how a captive REIT may be utilized by a corporation to reduce its taxable income within a state is as follows. A retail corporation operates it's stores in Indiana but establishes both a REIT and a subsidiary property company that is the parent to the REIT. The REIT is controlled by the property company which owns the stores operated by the corporation in Indiana. The corporation pays rent to the REIT for its Indiana stores and deducts these rent payments as a business cost from its Indiana AGI. Both the REIT and its parent property company would be established in a state like Delaware that doesn't tax income distributed from either entity. The REIT is able to make tax deductible dividend distributions to the property company. Upon receiving the dividends from the REIT, the property company would then pay dividends to the parent the corporation that operates the stores in Indiana. The dividends paid from the subsidiary property company to the parent would not be included in the corporation's Indiana AGI.

A REIT is a corporation, trust or association that acts as an investment agent specializing in real estate and real estate mortgages. Under IRC a REIT, unlike an ordinary corporation, is entitled to claim a deduction for dividends paid to shareholders against their ordinary income and net capital gains. A REIT must meet certain requirements as to ownership and organization, source of income, investment of assets, and distribution of

income to shareholders.

A REIT must be taxable as a domestic corporation and must have at least 100 beneficial owners for 335 days of a 12-month tax year. At least 95% of the REIT's gross income must be from a combination of real-property sources (e.g., rents from real property, gain from the disposition of real property) and investments (e.g., dividends, interest, gains from dispositions of securities), with at least 75% of the REIT's gross income from real-property sources. The REIT generally must distribute to its shareholders during the tax year the sum of 90% of its ordinary taxable income and 90% of its net income from foreclosure property, over its excess noncash income.

Explanation of Local Expenditures: (Revised) *Affordable Housing:* If the county's fiscal body adopts an ordinance requiring each political subdivision of the county to recover 0.5% on each new obligation issued for purposes of affordable housing funds, this may increase the cost of issuing the bonds for that political subdivision or redirect a portion of the revenue generated for the specific project, ultimately affecting expenditures.

(Revised) *Personal Property Audits:* Under current law, the township assessor or their contractor, is required to examine and verify the accuracy of each personal property return and, if appropriate, compare the return to the taxpayer's books. Township assessors must forward copies of all personal property tax returns with AV exceeding $150,000 to the county assessor who, in turn, forwards these returns to the DLGF.

A board of county commissioners, a county assessor, or an elected township assessor may enter into a contract for the discovery of property that has been undervalued or omitted from assessment. Contractors may not audit property if its assessment is under appeal or has not yet been finalized. The auditor may create a special nonreverting fund in which to deposit additional taxes from under-assessed valuations and from which the contractor is to be paid.

Under this proposal the contractor is limited to examining returns over the previous three assessment years, and they may also audit property for which a return has not been filed. The contractor is required to notify the taxpayer in writing that the taxpayer's returns will audited and the years over which the audit will cover.

Background Information: According to the DLGF, there is a contractor available who, as of September 2006, has completed audits for about 13 counties. Using Census data, this contractor estimated that there are potentially 68,000 personal property returns whose true tax value exceeds $50,000 (returns with AV $50,000 and over comprise about 93 percent of the total AV), and so far it has audited approximately 13 percent of these returns. Contract costs and fees were approximately $6.5 M, about 30 percent of the total revenue recovered. The contractor estimates the remaining statewide under-assessment at approximately $2.7 B. It is estimated that the annual fee for auditing these returns would be about $29 M. (These costs could be offset by increased revenue collections. See *Explanation of Local Revenues*.)

The contractor classifies and set the audit fees based on the AV in the return. The table below has the fee schedule for audits completed in Marion County in 2004.

Assessed True Tax Value	Audit Fee
$50,000 - $399,999	$700
$400,000 - $999,999	$1,400
$1,000,000 - $4,999,999	$2,200
$5,000,000 - $19,999,999	$6,000
Over $20,000,000	$10,000

The Marion County Treasurer's Office confirmed that the county paid the contractor between $700 and $10,000 per audit based on the size and complexity of the taxpayer's return. The contractor invoiced the county for $7.1 M for audits performed in 2005 and 2006 of which $6.2 M has been paid. If the entire invoice amount is paid, contract fees for the county will be about 57% of the total amount of revenue recovered (versus the estimated 30%). The county also had to refund approximately $2 M to taxpayers whose property was found to be over-valued. After refunds, contract fees will be about 68% of the revenue collected.

Explanation of Local Revenues: (Revised) *Affordable Housing:* Recording Fees: Under current law, the county recorder collects the various fees for recording, filing, copying, and other services rendered. The bill would allow counties that have affordable housing funds to add to the fees collected and to retain 60% of the funds collected for deposit in the county's affordable housing funds by the formula. A county with a consolidated city would also be able to adopt an ordinance with 60% of the fee collected to be deposited in the housing trust fund. The remaining 40% of funds collected is to be transferred to the State Treasurer for deposit in the state AHCDF. This may increase reporting transactions for county recorders minimally. Based on totals for documents recorded in the four counties with affordable housing funds (see *Explanation of State Revenues*) , these counties would receive about $2.2 M. The table below shows by county an estimate of total fee collected and the county's share based on the estimated number of documents shown above.

County	Total Fee Collected	County Share (60%)
Allen	$972,573	$583,544
Marion	$1,890,138	$1,134,083
Monroe	$293,210	$175,926
Vanderburgh	$436,564	$261,938
Total	$3,592,485	$2,155,491
Number of documents and pages recorded from the Affordable Housing and Community Development Authority.		

Issuance Costs: County affordable housing funds may receive revenues if the county's fiscal body adopts an ordinance requiring each political subdivision of the county to recover 0.5% on each new obligation issued. This money is distributed to each affordable housing fund within the county based on a formula in the bill. A total of 60% of the revenue would be distributed to the adopting county's affordable housing fund. (Note: 40% of the revenue would be distributed to the state AHCDF.) The table below shows the amount of

obligations issued in CY 2006 in the four counties that have affordable housing funds and the amount of issuance cost they would have received based on the CY 2006 level of activity.

County	Obligations by Local Units	Obligations by School Corps.	Total	Issuance Costs	County Share
Allen	$0	$72,406,000	$72,406,000	$362,030	$217,218
Marion	$59,074,597	$287,625,000	$346,699,597	$1,733,498	$1,040,099
Monroe	$2,190,500	$12,000,000	$14,190,500	$70,953	$42,572
Vanderburgh	$1,650,246	$0	$1,650,246	$8,251	$4,951
Total	$62,915,343	$375,276,000	$438,191,343	$2,190,957	$1,314,574
CY 2006 obligations from Control Board Activities Report.					

(Revised) *Enterprise Zones:* The bill makes several changes relating to the Enterprise Zon (EZ) Investment Deduction beginning with 2007 Pay 2008 property taxes. The potential impact on utilization of the Investment Deduction due to these changes is indeterminable. The changes are as follows:

(1) The bill provides that the Investment Deduction for qualified investment in an EZ located within an allocation area must be approved by the governing body of the allocation area. The number of EZs that intersect allocation areas is unknown.

(2) The bill extends the deadline for filing applications for the Investment Deduction from May 10th to May 15th each year. The bill also allows the county auditor to provide a 30-day extension for filing the application for the Investment Deduction, and allows the Urban Enterprise Association that operates an EZ to waive the failure to file a timely or complete application for the Investment Deduction.

(3) The bill allows a taxpayer to claim the Investment Deduction (up to the 10-year limit under current statute) for an assessment date after the expiration of the EZ in which the property where the qualified investment was made. This provision does not apply to property located in Indianapolis.

The EZ Investment Deduction allows the increase in AV from "qualified investment" in real and/or personal property of an EZ business to be deducted for up to 10 years. A taxpayer must apply to the county auditor to claim the deduction for a particular year. The county auditor would determine whether the taxpayer is eligible for the deduction. Qualified investment at an EZ location includes: (1) purchase of a building, new manufacturing or production equipment, or new computers and related office equipment; (2) costs associated with the repair, rehabilitation, or modernization of an existing building and related improvements; (3) onsite infrastructure improvements; (4) construction of a new building; and (5) costs associated with retooling existing machinery.

Personal Property Abatements: Under current law, new or used manufacturing, research and development, and logistic equipment may qualify for property tax abatements. The property, whether new or used, must be acquired in an arms length transaction from an unrelated seller. Under this bill, only used property would be subject to the arms length sale rule. New property could be acquired in any other manner and qualify for an abatement. The impact of this provision on the total number and value of abatements in Indiana is not

known.

Personal Property Audits: Under current law after contract costs have been paid any remaining funds will be distributed to the local taxing units. This proposal stipulates that after all contract fees have been paid, up to 20 percent of the remaining funds would be deposited in the county's reassessment fund; the remainder would then be distributed to the appropriate taxing units.

The amount of additional revenue counties may potentially gain from this program would depend on the amount of under-assessed value the audits discover. Under current law, property tax collections that exceed 100% of a taxing unit's certified levy must be deposited into the unit's levy excess fund. Money in this fund may only be used to pay tax refunds and to reduce future tax levies.

Background Information: After auditing 13 percent of eligible returns as of August 2006, the contractor discovered approximately $600 M in under-assessed value, which resulted in a net positive revenue for the counties of approximately $15 M after subtracting out contract fees. The contractor estimates an additional state-wide under-assessment of approximately $2.7 B. Total projected revenue is estimated at $96 M which, after deducting approximately 30 % for contract costs, could result in an additional $67 M for the counties.

Information from Marion County shows that the contractor's audits resulted in the county collecting approximately $12.5 M in taxes, penalties, interest and additional PTRC. After subtracting $7.1 M in contract fees and refunding an additional $2 M to taxpayers because of previous property over-assessment, the county distributed about $3.4 M to its townships. For Marion County, the actual contract cost to additional revenue collected has been about 68%.

(Revised) *NFL Tax Exemption:* The bill exempts the NFL and other eligible entities from all local taxes in connection with or resulting from a Super Bowl held in Indiana. (See Explanation of State Revenues for further explanation of exempt entities.) The amount of local taxes from the NFL that could potentially be foregone due to this provision is indeterminable. The bill also provides that the Marion County Admission Tax does not apply to a Super Bowl. The Admission Tax is 6% of the price of admission to any event held in the RCA Dome, the Convention Center, Victory Field, Conseco Fieldhouse, or Lucas Oil Stadium (once it is open). The tax is imposed on each person paying the price of admission. The amount of admission tax that could potentially be foregone due to this provision is indeterminable. However, this could be offset by a potentially significant increase in other tax revenue generated from this event.

The bill also specifies that the tax exemptions will not reduce or adversely affect the levy and collection of taxes pledged to the payment of bonds, notes, leases, or subleases payable from such taxes.

Aircraft Tax Exemptions: The bill also expands the exemption for nonresidents from registering an aircraft for the purposes of imposing the Aircraft License Excise Tax (ALET). The bill adds repair station (as defined in the bill) to the list of places a nonresident may base an aircraft for repair, refurbishment, or remodeling in Indiana for more than 60 days without registering the aircraft for the purposes of imposition of the ALET. Currently, an aircraft may only be exempt from this registration if the aircraft is based for repair, refurbishment, or remodeling in Indiana with a dealer. Please note that a nonresident only needs to complete the ALET registration if the aircraft will be based in Indiana for more than 60 days.

ALET revenues are distributed on a quarterly basis to the county where the aircraft is usually located when it is not being operated. However, in Allen County, the funds go to the Ft. Wayne Airport Authority

quarterly.

In FY 2006, there was approximately $595,000 in ALET collections. The weight, class, and age of the aircraft determine taxes owed. Revenues are distributed on a quarterly basis to the county where the aircraft is usually located when it is not being operated. However, in Allen County, the funds go to the Ft. Wayne Airport Authority quarterly.

(Revised) *Lake County Innkeeper's Tax:* Lake County Innkeepers Tax: The bill changes the distribution of the Lake County Innkeepers Tax. Under current statute, the first $1.2 M in annual revenue is divided between: (1) the Lake County Convention and Visitors Bureau; (2) IU-Northwest for medical education and allied health education programs; (3) Lake County cities and towns for economic development projects; (4) Purdue University-Calumet for nursing education programs; and Gary and Hammond for convention facilities. The bill increases this distribution to $1.25 M beginning in CY 2008, and changes the distribution percentages applicable to these entities. The table below summarizes the impact of the distribution changes.

The distribution change will shift $50,000 from distributions to: (1) the Lake County convention, tourism, and visitor promotion fund; (2) Purdue University-Calumet for nursing education; and (3) IU-Northwest for allied health education programs. Under current statute, these distributions are made from the annual Innkeepers Tax revenue exceeding the first $1.2 M. Under the bill, these distributions will be made from the annual tax revenue exceeding the first $1.25 M.

Recipient	Current Share	Current Amount	Proposed Share	Proposed Amount
Lake County CVB	35%	$420,000	36%	$450,000
IU-Northwest	44.33%	531,960	42.77%	534,625
Lake County Cities and Towns	9%	108,000	9.68%	121,000
Purdue Univ.-Calumet	9%	108,000	8.88%	111,000
Gary & Hammond Convention Facilities	2.67%	32,040	2.67%	33,375
Total	100%	$1,200,000	100%	$1,250,000

In addition, the bill changes the distribution of the amount for Lake County cities and towns. Current statute provides for Gary, Hammond, and E. Chicago to each receive 10% shares of this revenue, with the remaining cities and towns receiving 5% shares. The bill reduces the Gary, Hammond, and E. Chicago shares to 9% each. The amount distributed to each city would increase from $10,800 to $10,890 due to the increase in the total amount distributed under the bill. The bill also provides that the remaining 73% is divided equally between the remaining cities and towns in Lake County. There are four cities (besides Gary, Hammond, and E. Chicago) and 12 towns in Lake County to which this distribution would be made. This would result in an increase in the distribution amount for this group from $75,600 to $88,330, which would be divided equally among these cities and towns.

State Agencies Affected: Department of State Revenue; Indiana Education Savings Authority; Treasurer of State; Affordable Housing and Community Development Authority; IU-Northwest; Purdue University-Calumet.

Local Agencies Affected: County Airport Authorities; Ft. Wayne Airport Authority; County recorders; County assessors; Township assessors; County auditors. Counties with affordable housing funds. Cities and towns in Lake County. Local units with enterprise zones.

Information Sources: Department of State Revenue, Sales Tax database; http://ihcda.in.gov/forms/Development_Fund_Report.pdf; Joseph Palus, 317-233-1813; 2006 Control Board Activity Report; Michael Frick, 317-232-6260.J. Barry Wood, Director, Assessment Division, DLGF, 317-232-3773; Cindy Land, Marion County Treasurer's Office, 317-327-4040.

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