

Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1262

AN ACT to amend the Indiana Code concerning taxation.

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

SECTION 1. IC 5-13-9-4, AS AMENDED BY P.L.115-2010, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 4. (a) Each officer designated in section 1 of this chapter may, **subject to the restrictions provided in IC 5-13-8-9(a) through IC 5-13-8-9(e)**, deposit, invest, or reinvest any funds that are held by the officer and available for investment in transaction accounts issued or offered by a designated depository of a political subdivision for the rates and terms agreed upon periodically by the officer making the investment and the designated depository.

(b) The investing officer making a deposit in a certificate of deposit shall obtain quotes of the specific rates of interest for the term of that certificate of deposit that each designated depository will pay on the certificate of deposit. Quotes may be solicited and taken by telephone. A memorandum of all quotes solicited and taken shall be retained by the investing officer as a public record of the political subdivision under IC 5-14-3. If the deposit is not placed in the designated depository quoting the highest rate of interest, the investing officer shall:

- (1) place the deposit in the depository quoting the second or third highest rate of interest; and
- (2) note the reason for placing the deposit on the memorandum of quotes.

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(c) If all of the designated depositories of a political subdivision decline to issue or receive any deposit account, or to issue or receive the deposit account at a rate of interest equal to the highest rate being offered other investors, investments may be made in the deposit accounts of any financial institution designated for state deposits as a depository by the state board of finance under IC 5-13-9.5.

SECTION 2. IC 5-13-9-5, AS AMENDED BY P.L.115-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 5. (a) The board of county commissioners of each county, and the fiscal body of each political subdivision other than a county, may, **subject to the restrictions provided in IC 5-13-8-9(a) through IC 5-13-8-9(e)**, by ordinance or resolution authorize the investing officer of each, respectively, to invest in certificates of deposit of depositories that have not been designated by the local board of finance of either but have been designated by the state board of finance as a depository for state deposits under IC 5-13-9.5. An ordinance or a resolution adopted under this subsection must provide that the authority granted in the ordinance or resolution expires on a date that is not later than ~~two (2) years~~ **one (1) year** after the date the ordinance or resolution is adopted.

(b) With respect to any money to be invested in a deposit account under subsection (a), the investing officer shall solicit quotes for the certificates of deposit from at least three (3) depositories. If only one (1) depository has been designated for the political subdivision by its local board of finance, a quote must be solicited from that depository. If two (2) or more depositories have been designated for the political subdivision by its local board of finance, at least two (2) quotes must be solicited from the depositories thus designated. The quotes may be solicited and taken by telephone. A memorandum of all quotes solicited and taken shall be retained by the investing officer as a public record of the political subdivision under IC 5-14-3.

(c) If a deposit is not placed in the designated depository quoting the highest rate of interest, the investing officer shall follow the procedures and priority for placing deposits that are set forth in section 4 of this chapter and note the reason for placing the deposit on the memorandum of quotes.

SECTION 3. IC 5-13-9-11, AS ADDED BY P.L.117-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 11. (a) **As used in The following definitions apply throughout** this section:

(1) "Clearinghouse" refers to the clearinghouse registered with the department of state revenue under IC 6-8.1-9.5-3.5.



(2) "Investment pool" means the local government investment pool established by subsection (b).

(b) The local government investment pool is established within the office and custody of the treasurer of state.

(c) An officer designated in section 1 of this chapter may pay any funds held by the officer into the investment pool for the purpose of deposit, investment, and reinvestment of the funds by the treasurer of state on behalf of the unit of government paying the funds into the investment pool.

(d) The treasurer of state may pay state funds into the investment pool for the purpose of deposit, investment, and reinvestment of the state funds.

(e) The treasurer of state shall establish an account in the investment pool for the operator of the clearinghouse. The treasurer shall hold amounts paid by the department of state revenue for deposit in the clearinghouse operator's account in the investment pool.

(f) Upon signed written request of the operator of the clearinghouse, the treasurer of state shall distribute the money in the operator's account established under subsection (e):

(1) to the operator of the clearinghouse; or

(2) to specific investment pool accounts of political subdivisions represented by the clearinghouse, if the written request submitted under this subsection specifies:

(A) the political subdivision to which the funds are to be disbursed;

(B) the specific amount of the funds to be disbursed; and

(C) the specific investment pool account the disbursement is owed.

The clearinghouse shall assume any legal or administrative claims filed against a disbursement made by the treasurer of state that complies with this section.

(g) Any interest accrued by the investment pool on funds held in the operator's account shall be distributed to the political subdivisions at a rate equal to the percentage owed to that political subdivision based on the overall setoff paid by the department of state revenue. No interest shall accrue under this subsection on any fees owed to the clearinghouse under IC 6-8.1-9.5-10(b).

(h) The treasurer of state shall invest the funds in the investment pool in the same manner, in the same type of instruments, and subject to the same limitations provided for the deposit and investment of state funds by the treasurer of state under IC 5-13-10.5.



~~(f)~~ (i) The treasurer of state:

- (1) shall administer the investment pool; and
- (2) may contract with accountants, attorneys, regulated investment advisors, money managers, and other finance and investment professionals to make investments and provide for the public accounting and legal compliance necessary to ensure and maintain the safety, liquidity, and yield of the investment pool.

~~(g)~~ (j) The treasurer of state shall establish and make public the policies that the treasurer of state will follow to ensure the efficient administration of and accounting for the investment pool. The policies must provide the following:

- (1) There is not a minimum time for which funds paid into the investment pool must be retained by the investment pool.
- (2) The administrative expenses of the investment pool shall be accounted for by the treasurer of state and shall be paid from the earnings of the investment pool.
- (3) The earnings of the investment pool in excess of the administrative expenses of the investment pool shall be credited to the state and each unit of government participating in the investment pool in a manner that equitably reflects the different amounts and terms of the state's investment and each unit's investment in the investment pool.
- (4) There is not a limit on the number of accounts that the state or a unit of government participating in the investment pool may establish within the investment pool.
- (5) The state and each unit of government participating in the investment pool shall receive electronic or paper reports, including:
 - (A) a daily transaction confirmation, reflecting any activity in the state's or unit's account; and
 - (B) a monthly report showing:
 - (i) the state's or unit's investment activity in the investment pool; and
 - (ii) the performance and composition of the investment pool.
- (6) The investment pool shall be audited at least annually by an independent auditing firm, with an electronic or a paper copy of the audit provided to the state and each unit of government participating in the pool.
- (7) No less than fifty percent (50%) of funds available for investment shall be deposited in banks qualified to hold deposits of participating local government entities.

~~(h)~~ (k) A unit of government participating in the investment pool



may elect to have any funds due from the state wired directly to the custodian bank of the investment pool for credit to the unit's investment pool account by submitting in writing a request to the auditor of state to wire the funds as directed. An election made by a unit of government under this subsection may be revoked at any time by the unit by submitting in writing a request to the auditor of state to cease wiring the funds as previously directed by the unit.

SECTION 4. IC 6-8.1-9-14, AS AMENDED BY P.L.239-2017, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 14. (a) Except as provided in subsection (n), the department shall establish, administer, and make available a centralized debt collection program for use by state agencies to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by state agencies. The department's collection facilities shall be available for use by other state agencies only when resources are available to the department.

(b) The commissioner shall prescribe the appropriate form and manner in which collection information is to be submitted to the department.

(c) The debt must be delinquent and not subject to litigation, claim, appeal, or review under the appropriate remedies of a state agency.

(d) The department has the authority to collect for the state or claimant agency (as defined in IC 6-8.1-9.5-1) delinquent accounts, charges, fees, loans, taxes, or other indebtedness due:

- (1) the state;
- (2) a claimant agency that has a formal agreement with the department for central debt collection; or
- (3) a claimant agency described in IC 6-8.1-9.5-1(B) that has an ~~interlocal~~ agreement with a clearinghouse that:
 - (A) is established under IC 6-8.1-9.5-3.5; and
 - (B) has a formal agreement with the department for central debt collection.

(e) The formal agreement must provide that the information provided to the department be sufficient to establish the obligation in court and to render the agreement as a legal judgment on behalf of the state. After transferring a file for collection to the department for collection, the claimant agency shall terminate all collection procedures and be available to provide assistance to the department. Upon receipt of a file for collection, the department shall comply with all applicable state and federal laws governing collection of the debt.

(f) The department may use a claimant agency's statutory authority



to collect the claimant agency's delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to the claimant agency.

(g) The department's right to credit against taxes due may not be impaired by any right granted the department or other state agency under this section.

(h) The department of state revenue may charge a debtor a fee not to exceed fifteen percent (15%) of any funds the department collects for a claimant agency. Notwithstanding any law concerning delinquent accounts, charges, fees, loans, taxes, or other indebtedness, the fifteen percent (15%) fee shall be added to the amount due to the state or claimant agency when the collection is made.

(i) Fees collected under subsection (h) shall be retained by the department after the debt is collected for the claimant agency and are appropriated to the department for use by the department in administering this section.

(j) The department shall transfer any funds collected from a debtor to the claimant agency **or clearinghouse, as applicable**, within thirty (30) days after the end of the month in which the funds were collected.

(k) When a claimant agency requests collection by the department, the claimant agency shall provide the department with:

- (1) the full name;
- (2) the Social Security number or federal identification number, or both;
- (3) the last known mailing address; and
- (4) additional information that the department may request;

concerning the debtor.

(l) The department shall establish a minimum amount that the department will attempt to collect for the claimant agency.

(m) The commissioner shall report, not later than March 1 for the previous calendar year, to the governor, the budget director, and the legislative council concerning the implementation of the centralized debt collection program, the number of debts, the dollar amounts of debts collected, and an estimate of the future costs and benefits that may be associated with the collection program. A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(n) The department may not assess a fee to a state agency or a custodial parent for seeking a set off to a state or federal income tax refund for past due child support.

SECTION 5. IC 6-8.1-9.5-1, AS AMENDED BY P.L.239-2017, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 1. The following

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definitions apply throughout this chapter:

(1) "Claimant agency" means:

(A) any state department, institution, commission, committee, board, division, bureau, authority, officer, official, or clerk of a circuit court; or

(B) a ~~unit of local government~~ **political subdivision** that has an ~~interlocal~~ agreement with a clearinghouse established under section 3.5 of this chapter.

(2) "Clearinghouse" refers to a clearinghouse registered with the department under section 3.5(c) of this chapter.

~~(2)~~ **(3)** "Debtor" means any person or legal entity that is delinquent in paying a debt to a claimant agency that has not been adjudicated, satisfied by court order, set aside by court order, or discharged in bankruptcy.

~~(3)~~ **(4)** "Debt" means any liquidated amount owed and due to a Title IV-D agency of another state, or to any claimant agency which has accrued through contract, subrogation, assignment for purposes of collection, tort, operation of law, or any other legal theory, regardless of whether there is an outstanding judgment for that sum.

~~(4)~~ "Unit of local government" means a county, city, town, township, and any other political subdivision, commission, or agency created under Indiana law. The term includes a school corporation under IC 20.

(5) "Investment pool" has the meaning set forth in IC 5-13-9-11.

(6) "Political subdivision" has the meaning set forth in IC 36-1-2-13.

SECTION 6. IC 6-8.1-9.5-3, AS AMENDED BY P.L.239-2017, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 3. (a) To obtain a set off by the department, a claimant agency **described in section 1(1)(A) of this chapter** must

~~(1) in the case of a claimant agency described in section 1(1)(A) of this chapter, file an application for the set off or~~

~~(2) in the case of a claimant agency described in section 1(1)(B) of this chapter, direct the clearinghouse with which the claimant agency has an interlocal agreement under section 3.5(d) of this chapter to file an application for the set off on behalf of the claimant agency;~~

with the department before November 30 of the year preceding the calendar year in which a tax refund is payable by the department.



(b) To obtain a set off by the department, a claimant agency described in section 1(1)(B) of this chapter must direct the clearinghouse with which the claimant agency has an agreement to file an application for the set off on behalf of the claimant agency before a date determined by the department and published on the department's Internet web site.

(c) The department shall prescribe the form of and the contents of the application.

~~(b)~~ (d) An application filed pursuant to under this section is effective only for the purpose of set off of tax refunds that are payable in for the calendar year that succeeds the calendar year in for which an application is filed.

SECTION 7. IC 6-8.1-9.5-3.5, AS ADDED BY P.L.239-2017, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 3.5. (a) As used in this section, "claimant agency" refers only to a claimant agency described in section 1(1)(B) of this chapter.

(b) The department may enter into a contract with a nonprofit entity organized in Indiana that represents ~~units of local government exclusively in Indiana~~ **political subdivisions** to establish a clearinghouse for the following purposes:

- (1) To compile and consolidate debts of claimant agencies in a format that is consistent with the department's requirements for the set off of tax refunds under this chapter.
- (2) To act as an intermediary on behalf of a claimant agency with respect to the department for purposes of this chapter.
- (3) To submit an application for the set off of tax refunds with the department on behalf of a claimant agency under section ~~3(a)(2)~~ **3(b)** of this chapter.
- (4) To provide any other assistance to a claimant agency or the department that the department considers appropriate. Assistance under this subdivision may include authorization for the clearinghouse to establish and maintain a toll free telephone number that enables a debtor to make inquiries concerning a tax refund set off under this chapter.

(c) A clearinghouse ~~established under subsection (b)~~ must register with the department. **The department may recognize only one (1) clearinghouse may be registered to represent units of local government political subdivisions at any given time.**

(d) A ~~unit of local government~~ **political subdivision** may enter into an ~~interlocal~~ agreement under ~~IC 36-1-7~~ with a clearinghouse ~~established registered~~ under subsection ~~(b)~~ (c) to carry out activities



on behalf of the ~~unit of local government political subdivision~~ as authorized in a ~~contract under subsection (b): the agreement.~~

(e) The department may adopt rules under IC 4-22-2 that set forth the procedures and format requirements that must be included in an ~~interlocal~~ agreement entered into under subsection (d).

SECTION 8. IC 6-8.1-9.5-3.7 IS REPEALED [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]. ~~Sec. 3-7: (a) A unit of local government may not submit a debt for a set off of a tax refund under section 3(a)(2) of this chapter unless the unit of local government first complies with the requirements of this section:~~

~~(b) A unit of local government must send written notice to a debtor that the unit of local government intends to submit the debt owed by the debtor for the tax refund set off under this chapter. The notice must state substantially the following:~~

~~(1) The unit of local government's basis for the claim to the debt and set off.~~

~~(2) The unit of local government intends to submit the debt owed by the debtor for the tax refund set off under this chapter.~~

~~(3) The debtor has the right to contest the matter by filing a protest and request for hearing with the fiscal officer of the unit of local government.~~

~~(4) The time limits and procedures for protesting and requesting the hearing.~~

~~(5) A statement that the failure to protest and request a hearing within the required time will result in the debt being submitted for the tax refund set off under this chapter.~~

~~(6) A statement that in addition to the amount of the debt owed by the debtor, the total amount of the set off of the debtor's tax refund may include the following fees for processing the set off of the debtor's tax refund, as applicable:~~

~~(A) The collection fee described in section 10(a) of this chapter.~~

~~(B) One (1) or more local collection assistance fees described in section 10(b) of this chapter.~~

The notice required under this subsection must be made in the same manner as set forth in IC 4-21.5-3-1 for adjudicative proceedings.

~~(c) A debtor may protest a proposed tax refund set off by submitting a written objection to the fiscal officer of the unit of local government not later than thirty (30) days after the notice under subsection (b) was served on the debtor. The rules for computing a period of time under IC 4-21.5-3-2 apply.~~

~~(d) The fiscal officer of the unit of local government shall hold a~~



hearing on a debtor's protest that is timely filed under subsection (c). The hearing must be conducted in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts. The debtor must be afforded the opportunity to respond to the written notice provided under subsection (b); present evidence and argument; cross-examine witnesses; and submit rebuttal evidence. At the conclusion of a hearing, the fiscal officer of the unit of local government shall issue a written decision on the debtor's protest that includes findings of fact and conclusions of law for all aspects of the decision.

(e) A debtor that disagrees with a written decision of the fiscal officer of a unit of local government may file an action in the circuit or superior court of the county in which the unit of local government is located to stay the submission of the debt owed by the debtor for the tax refund set off under this chapter. The court has jurisdiction in such an action and shall determine the matter de novo, with the burden of proof on the unit of local government to sustain its written decision.

(f) A unit of local government that fails to comply with the requirements of this section before submitting a debt for a tax refund set off under this chapter is liable to the debtor for the amount of any tax refund set off applied by the department for the debt to the claimant agency, including any collection fee.

SECTION 9. IC 6-8.1-9.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]:
Sec. 5. **(a)** After a claimant agency receives notice that a debtor is entitled to a tax refund from the department, the claimant agency **or the clearinghouse, as provided in subsection (b),** must within fifteen (15) days of the receipt of the notice of a tax refund send written notice to the debtor and the department of its intent to have the tax refund set off. This notice must clearly set forth the basis for the claim to the debt and set off.

(b) An agreement described in section 3.5(d) of this chapter may provide that the clearinghouse is responsible for sending written notice to the debtor described in subsection (a) on behalf of a claimant agency described in section 1(1)(B) of this chapter.

SECTION 10. IC 6-8.1-9.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]:
Sec. 6. A debtor who receives written notice pursuant to section 5 of this chapter is entitled to contest the claimant agency's right to the debt and set off at a hearing only if the debtor within thirty (30) days of **his the debtor's** receipt of notice mails to the claimant agency written notice that ~~he the debtor~~ intends to contest the claimant agency's right



to the debt.

SECTION 11. IC 6-8.1-9.5-7, AS AMENDED BY P.L.239-2017, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 7. (a) This subsection applies to a claimant agency described in section 1(1)(A) of this chapter. If a claimant agency receives written notice that a debtor intends to contest its claim to a debt and set off, the claimant agency shall hold a hearing under IC 4-21.5-3.

(b) This subsection applies to a claimant agency **that is a political subdivision** described in section 1(1)(B) of this chapter. If a claimant agency receives written notice that a debtor intends to contest the claim to a debt and set off following the notice provided under section 5 of this chapter, the claimant agency shall **send written notice of and hold a hearing under section 3.7(d) of this chapter. If a hearing was previously held on the debtor's protest under section 3.7(d) of this chapter, the hearing under this subsection shall be conducted as a rehearing of the unit of local government's written decision. as provided in subsection (c).**

(c) A notice issued by a political subdivision under subsection (b) must state substantially the following:

- (1) The political subdivision's basis for the claim to the debt and set off.
- (2) The date on which the political subdivision submitted the debt owed by the debtor for a tax refund set off under this chapter.
- (3) The date, time, and place at which the political subdivision will conduct the hearing.
- (4) The procedures under which the hearing will be conducted.
- (5) A statement that in addition to the amount of the debt owed by the debtor, the total amount of the set off of the debtor's tax refund may include the following fees for processing the set off of the debtor's tax refund, as applicable:
 - (A) The collection fee described in section 10(a) of this chapter.
 - (B) One (1) or more local collection assistance fees described in section 10(b) of this chapter.

SECTION 12. IC 6-8.1-9.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 8. After a final determination of the validity of a debt due a claimant agency pursuant to sections 6 and 7 of this chapter, the claimant agency shall certify to the department the amount owed by the



debtor to the claimant agency that is subject to set off. Upon receipt of certification of a debt, the department shall set off the appropriate amount and pay it to:

- (1) the appropriate claimant agency; **or**
- (2) **the clearinghouse for deposit in the clearinghouse's account in the investment pool established under IC 5-13-9-11(e).**

SECTION 13. IC 6-8.1-9.5-10, AS AMENDED BY P.L.239-2017, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 10. (a) The department of state revenue may charge a debtor a fee of fifteen percent (15%) of any debts collected under this chapter as a collection fee for the department's services, not including any local collection assistance fees charged under subsection (b).

(b) This subsection applies to a debt collected for a claimant agency **that is a political subdivision** described in section 1(1)(B) of this chapter. A local collection assistance fee not to exceed twenty dollars (\$20) shall be imposed on each debt submitted by the claimant agency and collected through a set off under this chapter. The board of the nonprofit organization that operates the clearinghouse registered under section 3.5 of this chapter shall determine the amount of the fee by resolution. Notwithstanding any law concerning delinquent accounts, charges, fees, loans, taxes, or other indebtedness, the local collection assistance fee shall be added to the amount due the claimant agency when the collection is made, not including any fee charged by the department of state revenue under subsection (a). A fee collected under this subsection shall be distributed by the department to:

- (1) the nonprofit entity with which the department has entered into a contract under section 3.5(b) of this chapter; **or**
- (2) **at the direction of the nonprofit entity, the nonprofit entity's account held by the investment pool.**

SECTION 14. [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)] (a) **Notices to debtors that were issued by a unit of local government (before the elimination of the term by IC 6-8.1-9.5-1, as amended by this act) before January 1, 2018, in anticipation of the effective date of IC 6-8.1-9.5-3.7 (as added by P.L.239-2017, SECTION 27, and repealed by this act) on January 1, 2018, are legalized and validated to the extent that the notices to debtors conformed with the requirements of IC 6-8.1-9.5-3.7 (as added by P.L.239-2017, SECTION 27, and repealed by this act).**

(b) **Notices to debtors that are legal and valid under subsection (a) shall be construed as legal and valid notices to debtors under**



IC 6-8.1-9.5-7, as amended by this act.

(c) This SECTION expires January 1, 2019.

SECTION 15. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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