

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE N1058(B)
INDIANAPOLIS, IN 46204
PHONE (317) 232-3777
FAX (317) 974-1629

TO: All Political Subdivisions

FROM: Daniel Shackle, Commissioner

DATE: June 18, 2024

RE: Legislation Affecting Economic Development Matters

The Department of Local Government Finance (“Department”) issues this memorandum to inform the public of legislative changes concerning economic development matters. Please note that this memorandum is for informational purposes only, and it is not a substitute for reading the law. Except as otherwise stated, all provisions are effective July 1, 2024.

I. Innovation Development Districts & Tax Increment Financing Districts

As adopted during the 2022 Legislative Session under Senate Enrolled Act 361 (“SEA 361”), Ind. Code § 36-7-32.5 was added as a new chapter to the Indiana Code, which allows the Indiana Economic Development Corporation (“IEDC”) to establish an innovative development district (“IDD”) as an allocation area for property tax, income tax, and gross retail tax. Section 9 of the new chapter specified that the IEDC may not designate or establish an IDD after June 30, 2025. Additionally, Section 10 of the new chapter specified that an IDD cannot be created in a preexisting allocation area established under:

Ind. Code § 5-1-17.5	(Motorsports Investment Districts)
Ind. Code § 6-1.1-39	(Economic Development Districts)
Ind. Code § 8-22-3.5	(Airport Development Districts)
Ind. Code § 36-7-13	(Community Revitalization Enhancement District)
Ind. Code § 36-7-14	(Tax Increment Financing Districts)
Ind. Code § 36-7-15.1	(Tax Increment Financing Districts in Marion County)
Ind. Code § 36-7-30	(Federal Military Base Reuse Areas)
Ind. Code § 36-7-30.5	(Multicounty Federal Military Base Reuse Areas)
Ind. Code § 36-7-31	(Professional Sports Development Areas in Marion County)
Ind. Code § 36-7-31.3	(Professional Sports Development Areas)
Ind. Code § 36-7-31.5	(Additional Professional Sports Development Areas in Marion Co.)
Ind. Code § 36-7-32	(Certified Technology Parks)
Ind. Code § 36-7.5-4.5	(Northwest Indiana Regional Development Authority)

Any other provision that authorizes the creation of an allocation area.

On March 13, 2024, Governor Eric J. Holcomb signed into law Senate Enrolled Act 256 (“SEA 256”) regarding fiscal matters, including innovation development districts established by the IEDC. Section 17 of SEA 265 removes the deadline for establishing an IDD. While Ind. Code §

36-7-32.5-10 was not repealed, Section 18 of SEA 256 specifies that the IEDC may designate a territory that is located in an existing allocation area described in Ind. Code § 36-7-32.5-10(b) as an IDD after: (1) budget committee review; and (2) obtaining the consent from the executive, executives, or the board of any military base reuse authority. Additionally, several provisions¹ were added to the Indiana Code stating that if the IEDC designates a territory that is located in an existing allocation area, the allocation area may not be renewed or extended until the term of the innovation development district expires.

For any IDD that is established for territory that is located in an existing allocation area, there are additional conditions that must be met in addition to the review and consent requirements:

- (1) Execution of an agreement between the IEDC and the local unit(s).
- (2) Continued allocation of incremental property tax revenue to the existing allocation area.

Agreement with Local Unit(s)

Section 20 of SEA 256 specifies that if an IDD will include territory that is located in an existing allocation area, the executive² or executives must enter into an agreement establishing the terms and conditions governing the IDD. The agreement must include:

- (1) A description of the area, including a list of parcels to be included within the district.
- (2) Covenants and restrictions, if any, upon all or a part of the properties in the District and terms of enforcement of any covenants or restrictions.
- (3) The due diligence and financial commitments of any party to the agreement and of any owner or developer of property within the District.
- (4) The financial projections of the District.
- (5) The proposed use of the (1) net gross retail and income tax incremental amounts (as defined in Ind. Code § 36-7-32.5-8); and (2) incremental property tax amount that will be captured within the district.
- (6) The aggregate percentage of annual incremental property tax revenue that will be transferred to any city, town, county, or school corporation. The amount transferred cannot be less than twelve percent (12%) of the annual amount of incremental property tax revenue that is deposited in the innovation

¹ The following statutes were added to the Indiana Code under SEA 256: Ind. Code § 6-1.1-39-5.7 (SEC.5); Ind. Code § 8-22-3.5-9.3 (SEC. 6); Ind. Code § 36-7-13-12.4 (SEC. 8); Ind. Code § 36-7-14-39.8 (SEC. 9); Ind. Code § 36-7-15.1-26.8 (SEC. 10); Ind. Code § 36-7-30-25.2 (SEC. 11); Ind. Code § 36-7-30.5-30.3 (SEC. 12); Ind. Code § 36-7-31-14.5 (SEC. 13); Ind. Code § 36-7-31.3-13.5 (SEC. 14); Ind. Code § 36-7-31.5-8.5 (SEC. 15); Ind. Code § 36-7-32-17.3 (SEC. 16); Ind. Code § 36-7-32.5-11.5 (SEC. 19); and Ind. Code § 36-7.5-4.5-21.5 (SEC. 22).

² Indiana Code § 36-7-32.5-3 defines “executive” to mean: (1) in the case of a county that does not have a consolidated city, the president of the board of county commissioners; (2) in the case of a county having a consolidated city, the mayor; (3) in the case of a city, the mayor; (4) in the case of a town that: (A) does not have a mayor, the president of the town council; or (B) does have a mayor, the mayor.

development district fund.

- (7) The duration of the district. Per Ind. Code § 36-7-32.5-11, the duration cannot exceed thirty (30) years, except as approved by the budget committee.
- (8) The terms of enforcement of the agreement.
- (9) The public facilities to be developed for the district and estimated costs of those facilities.
- (10) A provision prohibiting the city, county, town, or other entity that established the existing allocation area from incurring any additional obligations that require a pledge of future incremental property tax revenue to be paid from the existing allocation area without first obtaining the consent of the IEDC.
- (11) A provision requiring the maintenance of all applicable property tax records for the parcel or parcels located within the IDD during the term of the IDD.

If the executive or executives cannot enter into an agreement with the IEDC, the designation of the territory under Ind. Code § 36-7-32.5-9 is no longer effective and the IDD may not be designated or otherwise established.

Continued Allocation of Incremental Revenue

Section 21 of SEA 256 states that if an IDD is established in an area that includes territory located in an existing allocation area, the county auditor is required to continue allocating any incremental property tax revenues to the existing allocation area as if the IDD had not been designated under this chapter. In other words, if an IDD is established on a territory that is included in an existing allocation area, the IDD will only capture incremental state individual income tax and incremental gross retail tax until the expiration of the pre-existing allocation area.

All referenced Sections of SEA 256 are effective upon passage.

II. Residential Property within a Tax Increment Financing District

As adopted during the 2022 Legislative Session under House Enrolled Act 1260 (“HEA 1260”), Section 50 and Sections 71-75 clarified how residential property would be identified for any of the following allocation areas established after June 30, 2024:

Airport Development Districts	Ind. Code § 8-22-3.5-9
Redevelopment Project Areas	Ind. Code § 36-7-14-39
Redevelopment Project Areas in Marion County	Ind. Code § 36-7-15.1-26; 53
Federal Military Base Reuse Areas	Ind. Code § 36-7-30-25
Multicounty Federal Military Base Reuse Areas	Ind. Code § 36-7-30.5-30

For any of the referenced allocation areas established after June 30, 2024, “residential property” is defined to mean: (1) the assessed value of property that is allocated to the one percent (1%) homestead land and improvement categories in the county tax and billing software system, along

with the residential assessed value as defined for purposes of calculating the rate for the local income tax property tax relief credit designated for residential property under Ind. Code § 6-3.6-5-6(d)(3).

To further clarify, the Department would note that in addition to the one percent (1%) property, only the residential value of a property that would qualify for the non-homestead residential local income tax credit under Ind. Code § 6-3.6-5-6(d)(3) would be considered residential property. In other words, only property that meets the definition of “residential property” under Ind. Code § 6-1.1-20.6-4³ – in counties that have adopted a property tax relief credit and dedicate a percentage of the property tax relief credit revenue to that property – would be considered “residential property” for purposes of an allocation area.

For example, a county adopted a new local income tax ordinance specifying that the county property tax relief credit rate is (0.29%) and selected the following allocation categories: (1) 1% Allocation (56%); and (2) Residential Property (34%).

³ Indiana Code § 6-1.1-20.6-4 defines “residential property” to include single family dwellings and land that are not part of a homestead, real property consisting of two (2) or more dwelling units and common areas, and land rented or leased for the placement of a manufactured home or mobile.

ORDINANCE # 2024 - 01
ORDINANCE MODIFYING LOCAL INCOME TAX RATES
Example COUNTY

BE IT ORDAINED by the *Example County Tax Council of Example County.*
 (Adopting Body) (County Name)

that a need now exists to modify the local income tax rates imposed in the following way:

Allocation Rate Category	Existing LIT Rate	Proposed LIT Rate
Certified Shares (IC 6-3.6-6)	0.7%	0.7%
Public Safety (IC 6-3.6-6)	0.21%	0.27%
Economic Development (IC 6-3.6-6)	0.4%	0.4%
Property Tax Relief Rate (IC 6-3.6-5)	0.32%	0.29%
Special Purpose Rate (IC 6-3.6-7-___)	0%	0%
Correctional or Rehabilitation Facilities (IC 6-3.6-6-2.7)	0%	0%
Emergency Medical Service (IC 6-3.6-6-2.8)	0%	0%

Property Tax Credit Allocation Categories (IC 6-3.6-5-6)	Existing Percent of Revenue	Proposed Percent of Revenue
All Property Tax Allocation Categories	0%	0%
1% Allocation Type <i>Homesteads eligible for a credit under IC 6-1.1-20.6-7.5.</i>	84%	56%
2% Allocation Type <i>Residential property, agricultural land, long term care property, and other tangible property eligible for a credit under IC 6-1.1-20.6-7.5.</i>	16%	10%
3% Allocation Type <i>Nonresidential real property, personal property, and other tangible property eligible for a credit under IC 6-1.1-20.6-7.5.</i>	0%	0%
Residential property, as defined in 6-1.1-20.6-4.	0%	34%
Qualified Residential Property <i>Refers to any of the following, apartment complex, homestead, or residential rental property</i>	0%	

With the example above, excess residential property and apartment properties that are located within an allocation area would be considered “residential property”.

In the alternative, another county adopted a new local income tax ordinance specifying that the county property tax relief credit rate is (0.40%) and only selected the 1% Allocation category.

ORDINANCE # 2024 - 08
 ORDINANCE MODIFYING LOCAL INCOME TAX RATES
 Example COUNTY

BE IT ORDAINED by the *Test County Tax Council* of *Test County*.
 (Adopting Body) (County Name)

that a need now exists to modify the local income tax rates imposed in the following way:

Allocation Rate Category	Existing LIT Rate	Proposed LIT Rate
Certified Shares (IC 6-3.6-6)	<i>0.7%</i>	<i>0.7%</i>
Public Safety (IC 6-3.6-6)	<i>0.2%</i>	<i>0.2%</i>
Economic Development (IC 6-3.6-6)	<i>0.3%</i>	<i>0.3%</i>
Property Tax Relief Rate (IC 6-3.6-5)	<i>0.35%</i>	<i>0.4%</i>
Special Purpose Rate (IC 6-3.6-7-__)	<i>0%</i>	<i>0%</i>
Correctional or Rehabilitation Facilities (IC 6-3.6-6-2.7)	<i>0%</i>	<i>0%</i>
Emergency Medical Service (IC 6-3.6-6-2.8)	<i>0%</i>	<i>0%</i>

Property Tax Credit Allocation Categories (IC 6-3.6-5-6)	Existing Percent of Revenue	Proposed Percent of Revenue
All Property Tax Allocation Categories	<i>0%</i>	<i>0%</i>
1% Allocation Type <i>Homesteads eligible for a credit under IC 6-1.1-20.6-7.5.</i>	<i>100%</i>	<i>100%</i>
2% Allocation Type <i>Residential property, agricultural land, long term care property, and other tangible property eligible for a credit under IC 6-1.1-20.6-7.5.</i>	<i>0%</i>	<i>0%</i>
3% Allocation Type <i>Nonresidential real property, personal property, and other tangible property eligible for a credit under IC 6-1.1-20.6-7.5.</i>	<i>0%</i>	<i>0%</i>
Residential property, as defined in 6-1.1-20.6-4.	<i>0%</i>	<i>0%</i>
Qualified Residential Property <i>Refers to any of the following, apartment complex, homestead, or residential rental property</i>	<i>0%</i>	

With this example, only homestead property under the one percent (1%) property tax cap located within an allocation area would be considered “residential property”.

On March 13, 2024, Governor Eric J. Holcomb signed into law House Enrolled Act 1120 (“HEA 1120”). Section 54 of HEA 1120 amends Ind. Code § 36-7-14-39(k) and delays the effective date of the refined definition of “residential property” for redevelopment project allocation areas. While the new definition of “residential property” will apply to all other allocation areas established after June 30, 2024, it will first apply to redevelopment projection allocation areas established after June 30, 2025.

Section 54 of HEA 1120 is retroactively effective on January 1, 2023.

Contact Information

Questions may be directed to Emily Crisler, General Counsel at emcrisler@dlgf.in.gov or David Marusarz, Deputy General Counsel at dmarusarz@dlgf.in.gov.