

Nonrule Policy Documents

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

To: Assessing Officials
Public Librarians

From: Assessment Division

Date: January 31, 2002

Re: Amended pages to 50 IAC 2.3

The attached pages shall serve as amended pages to 50 IAC 2.3 "Real Property Assessment Guidelines".
The following table identifies each amended page and the change that was made.

Book (1 or 2)	Chapter/Appendix	Page Number	Description of Change
1	2	126	Step 3a c.: changed Table Number
1	2	128	Step 3b c.: changed Table Number
1	3	57	"Completing the Summary of Residential Improvements Section": changed date from 2002 to 1999
1	3	65	Changed Table Number
1	3	77	Changed Brown Co. Amount
1	5	23	Step 4: changed "dwelling" to "Improvement"
1	A	50	Removed picture in bottom right corner
1	B	4	Removed last sentence in last paragraph
1	B	8	Removed unnecessary characters under Step 6 and Step 7
1	B	18	Changed life expectancies of top three items
1	B	23	Removed last sentence
1	B	24	Changed first row of "Age" column of Table B-13
1	C	15	Removed reference to depreciation schedule under Utility Sheds
1	C	16	Removed reference to depreciation schedule under Greenhouses
1	C	19	Removed reference to depreciation schedule under Chicken, Duck, Turkey Barns
1	C	20	Removed reference to depreciation schedule under Veal Confinement Facilities and Poultry Confinement Buildings
1	C	21	Removed reference to depreciation schedule under Trench and Bunker Silos and Slurry Tanks
1	C	23	Removed reference to depreciation schedule under Silos and Steel Grain Bins
2	F	39	Changed Table references (removed "e")
2	G	13	Removed "Typical Base Price" line and added clarifying text to elevated floor costs
2	G	16	Changed floor height for GCR first floor apartment
2	G	21	Added "in Appendix C" under Mall Concourse Areas cost schedule
2	G	22	Added "in Appendix C" under ATM enclosure and Atriums cost schedules
2	G	39	Changed "reproduction" to "replacement" under NOTE 1.

Thank you.

Residential and Agricultural Grade

Appendix A



“Custom” Grade Manufactured Home



“Custom” Grade Manufactured Home



“Custom” Grade Manufactured Home



“Custom” Grade Manufactured Home



“Custom” Grade Manufactured Home

Residential and Agricultural Depreciation**Appendix B**

Silos, masonry and steel	20 year life expectancy
Silos, trench and bunker	20 year life expectancy
Slurry tanks	20 year life expectancy
Solar and Geothermal units	Residential Depreciation Schedule (by <i>Grade</i>)
Stables	30 year life expectancy
Swimming pools and pool enclosures, in-ground	In-ground Swimming Pool Table
Swimming pools, above-ground	Above-ground Swimming Pool Table
Tennis courts	30 year life expectancy
Tobacco barns	30 year life expectancy

Appendix B

Residential and Agricultural Depreciation

Using the Swimming Pool Depreciation Tables

There are two (2) swimming pool depreciation tables. In order to use these tables you must first determine the following:

- which table to use
- the age of the swimming pool

Swimming pools that are designed and manufactured to stand alone without side support from surrounding ground are classified as above ground and are depreciated using the **Above Ground Swimming Pool Depreciation Table**. Swimming pools with the water level at or below the surrounding earth grade are depreciated using the **In-Ground Swimming Pool and Pool Enclosure Depreciation Table**.

The actual age of the swimming pool on the date of the general reassessment is to be used. Should the pool show excessive deferred maintenance for its actual age, an effective age of six (6) years less than the pool's construction age should be used to determine depreciation.

Note: Swimming pools are only depreciated during the general reassessment year; no further depreciation is to be applied until the next general reassessment.

To determine the total depreciation percentage for a swimming pool, perform the following steps:

- Step 1: In the "Age" column of the appropriate depreciation table, locate the row corresponding to the swimming pool's actual age or effective age.
- Step 2: Find the intersection of the selected row (age) and the "Depreciation" column. This number is the total depreciation percentage for the swimming pool.

Example: An in-ground swimming pool is nine (9) years old. The In-Ground Swimming Pool and Pool Enclosure Depreciation Table indicates the total depreciation percentage for the swimming pool is twenty-five percent (25%).

Note: Instructions for recording the total depreciation percentage on the property record card, converting this percentage to a multiplier, and using this multiplier to calculate the remainder value of a swimming pool are provided in the section **Task 4 - Calculating the Remainder Value** in Chapter 5.

Appendix B Residential and Agricultural Depreciation

**Table B-12.—ABOVE GROUND SWIMMING POOL
DEPRECIATION TABLE**

Age	Depreciation
1	8
2	16
3	24
4	32
5	40
6	48
7	56
8	64
9	72
10	80
Over	80-85

Physical and functional condition may contribute to an acceleration of the pool's age.

**Table B-13.—SWIMMING POOL and POOL ENCLOSURE
DEPRECIATION TABLE**

Price swimming pool from standard schedule and depreciate on the basis of a twenty-five (25) year life expectancy, as follows:

Age	Depreciation
1-2	5
3-4	10
5-6	15
7-8	20
9	25
10	30
11-12	35
13-14	40
15-16	50
17-18	55
19-20	60
21-22	65
23-25	70
Over 25	75-85

Physical and functional condition may contribute to an acceleration of the pool's age.

Depreciation Estimates

In estimating the cost new of the improvements, the assessor has determined the upper limit of value the improvements will have on the valuation date. Depreciation is defined as the loss in value, from this upper limit, that the improvements on a parcel of real property suffer from a variety of causes. Those causes can be physical causes, functional causes, and external causes. These causes can operate individually or they can operate in combination with each other to cause a loss in value.

The **physical causes** refer to the wear and tear that an improvement suffers from its regular use. It may also be caused by abuse, the impact of the weather, and insect infestation such as termites. This type of loss in value is called physical deterioration.

Functional loss in value is caused by some type of inutility within the structure and materials or design that diminishes the ability of the structure to perform the function for which it was constructed and/or might be used. This type of loss in value is called functional obsolescence.

External obsolescence typically is impairment in the utility or salability of the structure due to negative influences that occur outside the property.

Depreciation may begin at the moment the structure is under construction and, in some cases though not often, a structure may suffer from substantial depreciation on the day that it is first occupied. These kinds of losses in value tend to come from poor design, poor construction, failure of the owner or contractor to consider such things as sub-soil conditions, suitability of building materials, design considerations, or other similar situations.

There is probably no issue that is less understood than the application of depreciation in the valuation of a structure. We tend to hear about depreciation in a wide variety of areas including accounting, income tax, public utility regulation, and of course valuation purposes. The appropriate calculation of depreciation remains as one of the single most important parts of arriving at a fair and equitable valuation for real property taxation purposes.

Because we are using the concept of replacement cost new minus depreciation derived from the market, much of the *functional obsolescence* is taken care of. *External obsolescence* will be accounted for through the **neighborhood factor**.

The determination of depreciation must consider:

- a. The **chronological age** of the structure
- b. The **effective age** of the structure
- c. The **quality** of the materials, workmanship, and design used in the construction of the structure
- d. The **condition rating** of the structure
- e. The **neighborhood factor**

Determining the Neighborhood Factor

The assessing official must determine a neighborhood factor for the neighborhood in which the subject property is located. A neighborhood is defined as a geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics. In other words, it is the market or economic base for the subject property. The neighborhoods determined for establishing land values will be the same neighborhoods that are used in determining neighborhood factors for depreciation purposes.

The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services, and utilities. It also takes in to account the economic characteristics such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size.

Neighborhood factors are assigned to each neighborhood based upon an analysis of residential properties that have sold within the neighborhood. This is done using the following procedures:

- Step 1. Assemble the property record cards and disclosure statements on all improved residential properties that have sold with the neighborhood. These sales should be drawn from a twenty-four (24) month period of time representing twelve (12) months on each side of the valuation date. For the 2002 reassessment this would be 1/1/98 to 12/31/99.
- Step 2. Edit the sales and remove any which are not representative of arm's-length transactions between a willing seller and willing buyer.
- Step 3. For each of the remaining sales, subtract from the sale price the value of any personal property included in the transfer to arrive at the indicated sale price for the real property.
- Step 4. Subtract the assigned land value from the indicated sale price of the real property to determine the sale price of the improvements.
- Step 5. Locate the value for all improvements from the property record card for each property that sold.
- Step 6. Calculate the total adjusted sale prices (improvements only) and the total Improvement Value for all sales.
- Step 7. Divide the total adjusted sale prices by the total Improvement Value to get the neighborhood factor.
- Step 8. Apply the neighborhood factor to all residential improvements within the neighborhood as indicated on the property record card.

Appendix C Residential and Agricultural Cost Schedules

SCHEDULE G.1 (continued)

Residential Yard Improvements

Swimming Pool Enclosures

Cost represents average cost ranges per square foot of complete shell - type enclosures or buildings excluding swimming pools and aprons.

Swimming pool enclosure depreciation:
Use Swimming Pool and Pool Enclosure Depreciation Table

- Type 1 Unfinished - none of the following items are finished: floor, ceiling or walls.
- Type 2 Semifinished - one (1) or two (2) of the following are finished in a similar quality as the dwelling: floor, ceiling or walls.
- Type 3 Finished - all of the following items: floors, ceiling and walls are finished commensurate with the quality of the dwelling.

Frame (or equal), per square foot, average quality

Area	Type - 1	Type - 2	Type - 3
100	51.50	64.55	80.50
200	39.00	48.15	59.40
300	33.60	41.40	50.95
400	30.40	37.50	46.20
500	28.25	34.90	43.05
600	26.80	33.35	41.35
700	25.65	32.10	40.05
800	24.70	31.15	38.95
900	23.95	30.30	38.10
1000	23.30	29.60	37.35
1200	22.25	28.50	36.15
1300	21.80	28.05	35.65
1400	21.45	27.65	35.20
1500	21.10	27.25	34.80
1600	20.75	26.95	34.45

Brick (or equal), per square foot, average quality

Area	Type - 1	Type - 2	Type - 3
100	68.00	81.05	97.05
200	50.65	59.85	71.10
300	43.10	50.95	60.50
400	38.65	45.75	54.45
500	35.65	42.30	50.45
600	33.55	40.10	48.10
700	31.90	38.35	46.30
800	30.55	36.95	44.80
900	29.45	35.80	43.60
1000	28.50	34.85	42.55
1200	27.00	33.25	40.90
1300	26.40	32.60	40.20
1400	25.85	32.05	39.60
1500	25.35	31.50	39.05
1600	24.90	31.05	38.60

Adjust for quality grade from Schedule F.

Bath Houses

Per square foot

Area	Frame	C.B.	Brick	Add Heating
100	47.20	47.60	65.85	1.00
200	35.85	36.30	49.05	1.00
300	31.30	31.75	42.05	1.00
400	28.70	29.15	38.00	1.00
500	27.00	27.45	35.30	1.00
600	25.75	26.20	33.35	1.00
700	25.00	25.50	32.20	1.00
800	24.25	24.70	30.95	1.00
900	23.60	24.10	29.95	1.00
1000	23.10	23.60	29.10	1.00
1100	22.65	23.15	28.40	1.00
1200	22.25	22.75	27.75	1.00

Price includes 1 - hose bib and shower
Deduct for no plumbing 680
Add per additional fixture 590
Adjust for quality grade from Schedule F.

Utility Sheds

Per square foot, average quality

Area	Fr/Mtl	C.B.	Brick/Stn
25	29.60	74.15	85.00
50	20.95	52.45	60.10
75	17.50	43.20	49.50
100	15.55	37.80	43.25
125	14.30	34.20	39.05
150	13.35	31.55	35.95
175	12.65	29.50	33.60
200	12.10	27.85	31.70
250	11.30	25.35	28.80
300	10.70	23.55	26.65
350	10.25	22.15	25.05
400	9.85	21.00	23.70
500	9.30	19.25	21.70

Adjust for quality grade from Schedule F.
Sound value range \$ 100 to \$ 800

Residential and Agricultural Cost Schedules

Appendix C

SCHEDULE G.1 (continued)

Residential Yard Improvements

Greenhouses

Per square foot, average quality, steel/tubular framed glass

Area	Free		Attached		Lean	
	Standing	1 End	To	To	To	To
50	57.10		51.35		45.60	
100	46.15		42.05		38.00	
150	41.35		38.05		34.70	
200	38.55		35.65		32.80	
250	36.65		34.05		31.50	
300	35.25		32.90		30.55	
350	34.15		31.95		29.80	
400	33.25		31.25		29.20	
500	31.95		30.10		28.30	
600	30.95		29.30		27.65	
800	29.60		28.15		26.70	
1000	28.65		27.35		26.10	

Adjust for quality grade from Schedule F.

Tennis Courts

Add per value point - \$100

Typical cost per court, 60' x 120' average quality, including fencing.

	Type		
	Clay	Sod	Asphalt
Single Court	226	228	231
Add per Multiple	178	180	182

Adjust for quality grade from Schedule F.

Stables

Per square foot, average quality

Area	Type		
	Frame	C.B.	Brick
200	42.70	49.45	60.35
300	37.05	42.55	51.45
400	33.65	38.45	46.10
500	31.35	35.60	42.50
600	29.65	33.55	39.80
700	28.30	31.90	37.75
800	27.25	30.60	36.05
900	26.35	29.55	34.70
1000	25.60	28.65	33.50
1200	24.40	27.15	31.60
1400	23.45	26.05	30.15
1600	22.70	25.10	28.95
1800	22.10	24.35	27.95
2000	21.55	23.70	27.15
3000	19.75	21.50	24.30
4000	18.70	20.20	22.65

Deduct for earth floor 2.80

Add for unfinished loft 4.65

Add for masonry walls 1.05

Adjust for quality grade from Schedule F.

Note: Price pole frame construction from pole barn table (Type - 3) in Schedule G.2

Residential - Type Solar Heating and Cooling Systems

INDEPENDENT SOLAR SYSTEM (COMPLETE) RATES

Type	Liquid System	Air System
A	14100	16600
B	8700	10300
C	5500	6500
D	1400	1800

COMPONENT COSTS OF INDEPENDENT SOLAR SYSTEM

SOLAR COLLECTION UNITS

Type	SF	Per Unit
A	30	1400
B	25	700
C	20	400
D	minimal	200

SOLAR STORAGE MEDIUMS

Type	Liquid Storage	
	Gallons	Per Tank
A	120	400
B	80	200
C	60	100
D	40	100

Rock Storage

Type	Surface SF	Per Container
A	400	2900
B	300	1800
C	200	1100
D	Under 200	500

SOLAR DISTRIBUTION UNITS

(Includes the cost of pipe loops, transfer pumps, heat exchangers, air handlers, blowers, ducts, controls and control panels associated with either a liquid or air system.)

Type	
A	12300
B	7800
C	5000
D (integrated with existing base system.)	1100

Appendix C Residential and Agricultural Cost Schedules

SCHEDULE G.2 (continued)

Farm Buildings and Structures

Barns and Sheds (continued)

(3)-Pole Framed General Purpose Buildings									
Size	Area	All Walls		All Walls Insulated		1 Side Open		No Walls	
		14'	+/-2'	14'	+/-2'	14'	+/-2'	14'	+/-2'
60 x 100	6000	6.20	0.20	6.80	0.20	5.85	0.15	5.00	0.15
60 x 120	7200	6.15	0.20	6.65	0.20	5.70	0.15	4.90	0.15
60 x 140	8400	6.10	0.20	6.60	0.20	5.65	0.15	4.90	0.15
60 x 160	9600	6.00	0.20	6.50	0.20	5.55	0.15	4.90	0.15
60 x 180	10800	5.95	0.20	6.50	0.20	5.55	0.15	4.90	0.15
60 x 200	12000	5.95	0.20	6.45	0.20	5.50	0.15	4.90	0.15
60 x 250	15000	5.85	0.15	6.35	0.20	5.40	0.15	4.90	0.15
60 x 300	18000	5.80	0.15	6.30	0.20	5.35	0.15	4.85	0.15
80 x 40	3200	7.10	0.30	7.85	0.30	6.80	0.20	5.35	0.15
80 x 60	4800	6.50	0.20	7.15	0.30	6.20	0.20	5.20	0.15
80 x 80	6400	6.20	0.20	6.80	0.20	5.95	0.15	5.05	0.15
80 x 100	8000	6.10	0.20	6.65	0.20	5.80	0.15	5.05	0.15
80 x 120	9600	5.95	0.20	6.50	0.20	5.65	0.15	5.00	0.15
80 x 140	11200	5.85	0.15	6.45	0.20	5.55	0.15	5.00	0.15
80 x 160	12800	5.80	0.15	6.35	0.20	5.50	0.15	5.00	0.15
80 x 180	14400	5.70	0.15	6.30	0.20	5.50	0.15	4.90	0.15
80 x 200	16000	5.70	0.15	6.20	0.15	5.40	0.15	4.90	0.15
80 x 250	20000	5.65	0.15	6.15	0.15	5.35	0.15	4.90	0.15
80 x 300	24000	5.65	0.15	6.15	0.15	5.35	0.15	4.90	0.15
80 x 350	28000	5.55	0.15	6.10	0.15	5.25	0.15	4.90	0.15
80 x 400	32000	5.50	0.15	6.00	0.15	5.20	0.15	4.85	0.15
100 x 40	4000	7.10	0.30	7.85	0.30	6.80	0.20	5.40	0.15
100 x 60	6000	6.45	0.20	7.10	0.20	6.20	0.20	5.25	0.15
100 x 80	8000	6.15	0.20	6.75	0.20	5.95	0.15	5.10	0.15
100 x 100	10000	6.00	0.15	6.60	0.20	5.80	0.15	5.05	0.15
100 x 120	12000	5.85	0.15	6.45	0.15	5.65	0.15	5.05	0.15
100 x 140	14000	5.80	0.15	6.30	0.15	5.55	0.15	5.00	0.15
100 x 160	16000	5.70	0.15	6.20	0.15	5.50	0.15	5.00	0.15
100 x 180	18000	5.70	0.15	6.15	0.15	5.40	0.15	5.00	0.15
100 x 200	20000	5.65	0.15	6.15	0.15	5.40	0.15	5.00	0.15
100 x 250	25000	5.55	0.15	6.10	0.15	5.35	0.15	4.90	0.15
100 x 300	30000	5.50	0.15	6.00	0.15	5.25	0.15	4.90	0.15
100 x 350	35000	5.50	0.15	5.95	0.15	5.25	0.15	4.90	0.15
100 x 400	40000	5.40	0.15	5.85	0.15	5.20	0.05	4.85	0.15
Included for (deduct if not present):									
Stalls & other features			---		---		---		---
Loft floor			---		---		---		---
Plumbing			---		---		---		---
Lighting		0.20		0.20		0.20		0.20	
Concrete floor		2.00		2.00		2.00		2.00	
Roof insulation		---		0.35		---		---	
Add for interior finish - shop type								3.95	
(Interior liner, heat, insulation, & up-graded lighting)									
Add for interior finish office area								15.05	
(Wall and ceiling finish, minimal ptns and floor covering)									
Add for milk parlor & milk houses-Type-3								6.95	
Add for wood loft floors								3.50	
Add per square foot (of bin area) for wood bins								7.05	
Add for stable stall walls								2.10	
Deduct for Earth floor								2.00	
Adjust for quality grade from Schedule F									
Barns and Sheds									
Sound Value Guidelines									
Type-1	\$500	to	6200						
Type-2	\$400	to	5600						
Type-3	\$100	to	5900						

Interpolation Procedures - Type 3 Barns

1. Select the model width and length closest to the subject.
2. Select (or calculate) the square foot rate applicable to each of the two (2) areas immediately smaller than and larger than the subject.
3. Calculate the difference in the whole dollar value applicable to each of the areas selected in step #2.
4. Divide the result from step #3 by the difference in the areas used in step #2.
5. Apply the rate arrived at in step #4 to the difference in the area of the subject and the smaller area of the two (2) used in step #2.
6. Add the result from step #5 to the whole dollar value calculated for the smaller area in step #3 and round the result to the nearest ten dollars (\$10.00).

Note: For areas larger than those included in the table, calculate the additive value by following the same procedure (steps #1 to #6) for the two (2) largest representative areas provided.

Chicken, Duck, Turkey Barns

(Typically associated with floor type operations.)

Per square foot, average quality, 12' eaves height

Area	Rate	+/-2	Area	Rate	+/-2
2000	8.05	0.45	7000	5.65	0.30
2400	7.60	0.45	8000	5.40	0.30
2800	7.25	0.35	9000	5.25	0.20
3200	6.95	0.35	10000	5.10	0.20
3600	6.75	0.35	12000	5.00	0.20
4000	6.50	0.35	14000	4.85	0.20
4400	6.35	0.30	16000	4.70	0.20
4800	6.20	0.30	18000	4.55	0.20
5200	6.10	0.30	20000	4.45	0.20
5600	5.95	0.30	22000	4.40	0.20
6000	5.85	0.30	24000	4.30	0.15

Prices are for metal clad, wood or light metal framed buildings with earth floor, minimal lighting and mechanically operated ventilator upper side walls.

Add for lighting	0.20
Add for plumbing	0.20
Add for concrete floor	2.00
Add for roof insulation	0.35
Add for loft floor	3.50

Adjust for quality grade from Schedule F

Residential and Agricultural Cost Schedules

Appendix C

SCHEDULE G.2 (continued)

Farm Buildings and Structures

Hog Confinement Facilities

Per square foot, average quality, based on 8' eaves height

Area	Wood Frame	Pole Frame	Add for	
	Wood Siding	Metal Siding	Slatted Floor	Pits
600	17.35	14.50	3.65	3.20
700	16.85	14.15	3.65	3.15
800	16.40	13.85	3.45	3.05
900	16.05	13.60	3.30	2.85
1000	15.75	13.40	3.15	2.70
1200	15.25	13.10	3.15	2.55
1400	14.85	12.80	3.05	2.55
1600	14.50	12.60	3.00	2.55
1800	14.20	12.45	2.85	2.40
2000	14.00	12.30	2.80	2.40
2200	13.85	12.15	2.70	2.35
2400	13.60	12.10	2.70	2.20
2600	13.45	12.00	2.65	2.20
2800	13.30	11.85	2.65	2.10
3000	13.25	11.80	2.55	2.10
3500	12.95	11.65	2.55	2.10
4000	12.75	11.50	2.50	2.10
4500	12.60	11.40	2.40	2.05
5000	12.45	11.25	2.40	2.00
5500	12.30	11.20	2.40	2.00
6000	12.15	11.15	2.35	1.90
7000	12.00	11.05	2.20	1.90
7500	11.95	11.00	2.20	1.90
8000	11.85	11.00	2.20	1.85
9000	11.70	10.85	2.10	1.85
10000	11.55	10.85	2.10	1.85
11000	11.50	10.75	2.10	1.85
12000	11.40	10.70	2.10	1.85
13000	11.35	10.60	2.10	1.75
14000	11.25	10.60	2.10	1.75
15000	11.20	10.55	2.10	1.75
16000	11.20	10.55	2.10	1.75
17000	11.15	10.55	2.10	1.75
18000	11.05	10.45	2.05	1.70
19000	11.05	10.45	2.05	1.70
20000	11.00	10.45	2.05	1.70
& Over	10.90	10.40	2.00	1.60

Included for (deduct if not present):

Plumbing	0.45
Lighting	0.65
Concrete floor	2.00
Insulation	0.35
Walls per LF	
Wood siding, wood frame	38.85
Metal siding, pole frame	23.40

NOTE: When adding for pits and slatted floors, the concrete floor price included in the base building becomes the concrete floor price in the pit area.

Lean-tos

Per square foot

	Average height				
	8'	10'	12'	14'	16'
Concrete floor	3.95	4.40	4.85	5.40	5.80
Earth floor	2.35	2.80	3.20	3.80	4.15

Veal Confinement Facilities

Price per square foot

Area	Cost	Area	Cost
500	20.00	9500	13.85
600	18.90	10000	13.85
700	18.15	11000	13.85
800	17.55	12000	13.75
900	17.05	13000	13.75
1000	16.75	14000	13.75
1500	15.65	15000	13.75
2000	15.15	16000	13.70
2500	14.85	17000	13.70
3000	14.55	18000	13.70
3500	14.40	19000	13.70
4000	14.35	20000	13.70
4500	14.25	21000	13.70
5000	14.20	22000	13.70
5500	14.15	23000	13.70
6000	14.15	24000	13.70
6500	14.05	25000	13.70
7000	14.05	26000	13.60
7500	13.90	27000	13.60
8000	13.90	28000	13.60
8500	13.90	29000	13.60
9000	13.85	30000	13.55

Included for (deduct if not present):

Plumbing	0.80
Lighting	0.65
Concrete floor	1.85
Insulation	0.75

Poultry Confinement Buildings

(Typically associated with cage type operations.)

Per square foot

Size	Area	Wood Siding	Metal Siding
		Wood Frame	Wood Frame or Pole
20 x 400	8000	12.75	11.80
20 x 600	12000	12.60	11.70
20 x 800	16000	12.50	11.70
20 x 1000	20000	12.45	11.65
40 x 400	16000	10.90	10.30
40 x 600	24000	10.85	10.30
40 x 800	32000	10.85	10.30
40 x 1000	40000	10.75	10.25
60 x 400	24000	10.30	9.80
60 x 600	36000	10.30	9.80
60 x 800	48000	10.25	9.80
60 x 1000	60000	10.20	9.75

Included for (deduct if not present):

Insulation	---
Concrete floor	1.85
Plumbing	0.65
Electricity	0.65

Factor for high-rise construction:

16' to 18' eaves	120%
Factor for each upper story	75%

Appendix C Residential and Agricultural Cost Schedules

SCHEDULE G.2 (continued)

Farm Buildings and Structures

Frame Corn Cribs

Per square foot

FREE - STANDING TYPE

Size	Area	Wood Slat	Weld Wire
6 x 24	144	13.40	11.50
6 x 38	228	12.95	11.20
6 x 52	312	12.80	11.15
6 x 66	396	12.75	11.05
6 x 80	480	12.60	11.00

DRIVE - THRU TYPE

Size	Area	Wood Slat	Weld Wire
24 x 30	720	10.90	10.60
28 x 30	840	10.85	10.45
28 x 34	952	10.75	10.40
30 x 36	1080	10.60	10.30
30 x 40	1200	10.55	10.25

Add for storage bins over crib

Wood slat	3.15
Weld wire	1.90
Add for lighting	0.65
Sound value range	\$ 100-\$ 700

Wire Corn Cribs

Per item

Cylindrical wire mesh cribs with concrete base, steel frame and conical steel roof.

Per bushel (1 cubic foot = .80 bushels, or

1 bushel = 1.25 cubic feet) 1.10

Included for (deduct if not present):

Concrete floor slab per sq. ft. 1.60

Roof 2.20

Add per square foot of surface for metal skin 1.90

Sound value range 100-600

See the formula located under the grain bin schedule to calculate the number of bushels.

Trench & Bunker Silos

Per linear foot

Primarily used for corn & grass silage, the trench type below grade and the bunker type above grade, open ends, concrete and plank floor and side walls. (Both side walls are included in the linear foot rate).

	Depth or Height					
	10'	12'	16'	20'	25'	30'
Trench						
Earth 30' Wide	101	111	126	139	158	179
Plank 30' Wide	152	171	211	247	297	343
+/-1" Wide	3.30	3.65	4.10	4.60	5.25	6.00
Bunker						
Plank 30' Wide	126	142	186	218	291	338
+/-1" Wide	2.00	2.00	2.00	2.00	2.00	2.00

Feed Lots

Per square foot

Canopies	2.85
Concrete flat work	1.60

Slurry Tanks

IN-GROUND

Round tanks	1.75	to	2.20	cu.ft.
Rectangular	1.90	to	2.65	cu.ft.
Plank cover, deduct			3.05	per SF
No cover, deduct			5.65	per SF

ABOVE GROUND

42 x 14	29000
42 x 19	35000
42 x 23	42000
62 x 14	42000
62 x 19	53000
62 x 23	66000
81 x 14	66000
81 x 19	81000
81 x 23	102000
101 x 14	83000
101 x 19	105000
101 x 23	116000

Poultry Houses

Average quality, nonconfinement type

Area	Frame	C. B.
240	15.15	18.45
360	13.45	16.20
480	12.50	14.80
600	11.85	13.90
800	11.15	12.90
1000	10.60	12.20
1200	10.25	11.70
1400	9.95	11.35
1600	9.75	11.05
1800	9.60	10.75
2000	9.45	10.55
2200	9.30	10.40
2400	9.20	10.25
2600	9.10	10.10
2800	9.00	9.95
3000	8.95	9.90

Adjust for quality grade from Schedule F.

Sound value range 100-1800

Butler Low Moisture Silage Silos

Per item

24' x 58'	53000
27' x 59'	61200
36' x 69'	100400

Granaries

Per square foot, average quality

Size	Area	1 Story
		& Loft
24 x 36	864	11.25
26 x 36	936	11.00
28 x 36	1008	10.65
28 x 40	1120	10.45
30 x 40	1200	10.30
36 x 40	1440	10.00

Add for storage bins 2.05

Adjust for quality grade from Schedule F

Sound value range 100-900

Residential and Agricultural Cost Schedules

Appendix C

SCHEDULE G.2 (continued)

Farm Buildings and Structures

Silos (continued)

Per item, typical costs including floor slabs & foundation

Diameter & Height	Concrete		Masonry		Steel	
	Stave	Reinf	Tile/C.B.	Brick	Unlined	Glass Lined
36' x 60'	31,500	42,300	35,300	48,200	45,500	61,600
36' x 70'	36,000	46,800	39,200	53,900	50,700	71,200
36' x 80'	38,400	51,800	42,900	59,900	55,800	81,700
36' x 90'	41,400	56,800	46,600	65,900	60,900	92,200
36' x 100'	44,500	61,800	50,200	71,900	66,000	102,800

Deduct for no roof

12'	900	18'	1,900	28'	3,500
14'	1,200	20'	2,300	30'	4,100
16'	1,500	24'	2,900	36'	4,700

Sound value range is \$ 100- \$ 5000

Steel Grain Bins

Per item, installed

Size	Capacity		Size	Capacity		Size	Capacity	
Dia. x Hgt.	(Bushels)	Cost	Dia. x Hgt.	(Bushels)	Cost	Dia. x Hgt.	(Bushels)	Cost
15' x 7'4"	1,035	2,800	27' x 33'0"	15,115	19,700	48' x 58'8"	84,920	77,800
15' x 11'0"	1,555	3,300	27' x 40'4"	18,470	22,700	60' x 18'4"	41,460	36,600
15' x 14'8"	2,070	4,300	27' x 47'8"	21,830	27,800	60' x 25'8"	58,040	51,500
15' x 18'4"	2,590	4,900	30' x 14'8"	8,290	10,200	60' x 33'0"	74,640	66,300
18' x 11'0"	2,240	4,500	30' x 18'4"	10,365	11,700	60' x 40'4"	91,225	81,000
18' x 14'8"	2,985	4,900	30' x 22'0"	12,440	13,400	60' x 47'8"	107,805	98,700
18' x 18'4"	3,730	6,000	30' x 25'8"	14,515	15,700	60' x 55'0"	124,345	106,700
18' x 22'0"	4,480	7,200	30' x 33'0"	18,660	21,600	60' x 66'0"	149,215	125,000
18' x 25'8"	5,225	8,400	30' x 40'4"	22,805	24,100	60' x 77'0"	174,080	143,900
18' x 33'0"	6,720	12,700	30' x 47'8"	26,955	30,400	72' x 33'0"	107,435	95,600
18' x 40'4"	8,210	14,600	36' x 14'8"	11,935	13,400	72' x 40'4"	131,295	112,700
18' x 47'8"	9,705	17,200	36' x 18'4"	14,925	15,700	72' x 47'8"	155,190	130,000
21' x 11'0"	3,050	5,700	36' x 22'0"	17,915	18,200	72' x 55'0"	178,055	148,100
21' x 14'8"	4,060	6,500	36' x 25'8"	20,895	20,600	72' x 66'0"	214,865	173,100
21' x 18'4"	5,170	7,500	36' x 33'0"	26,870	30,400	72' x 77'0"	250,680	196,600
21' x 22'0"	6,095	9,400	36' x 40'4"	32,840	33,600	75' x 33'0"	116,575	100,100
21' x 25'8"	7,110	10,200	36' x 47'8"	38,815	39,800	75' x 40'4"	142,465	119,300
21' x 33'0"	9,145	14,700	36' x 58'8"	47,770	48,800	75' x 47'8"	168,395	139,200
21' x 40'4"	11,175	16,200	42' x 14'8"	16,255	17,700	75' x 55'0"	194,290	156,600
21' x 47'8"	13,205	21,200	42' x 18'4"	20,320	20,900	75' x 66'0"	233,145	182,900
24' x 11'0"	3,980	6,900	42' x 22'0"	24,385	24,400	75' x 77'0"	272,005	213,400
24' x 14'8"	5,310	7,700	42' x 25'8"	28,445	28,400	78' x 33'0"	126,085	108,200
24' x 18'4"	6,635	9,000	42' x 33'0"	36,575	39,000	78' x 40'4"	154,090	129,000
24' x 22'0"	7,960	10,900	42' x 40'4"	44,775	46,000	78' x 47'8"	182,135	150,600
24' x 25'8"	9,290	12,400	42' x 47'8"	52,980	52,900	78' x 55'0"	210,140	169,300
24' x 33'0"	11,945	15,200	42' x 58'8"	65,020	64,900	78' x 66'0"	252,170	197,800
24' x 40'4"	14,595	18,100	48' x 14'8"	21,225	23,400	78' x 77'0"	294,200	224,500
24' x 47'8"	17,250	21,200	48' x 18'4"	26,535	27,900	90' x 33'0"	167,865	138,800
27' x 11'0"	5,040	7,500	48' x 22'0"	31,850	33,600	90' x 40'4"	205,150	165,300
27' x 14'8"	6,715	8,700	48' x 25'8"	37,155	36,600	90' x 47'8"	242,490	190,200
27' x 18'4"	8,395	10,400	48' x 33'0"	47,770	47,200	90' x 55'0"	279,775	213,500
27' x 22'0"	10,075	11,700	48' x 40'4"	58,385	55,900	90' x 66'0"	335,730	256,200
27' x 25'8"	11,755	13,400	48' x 47'8"	68,995	65,900	90' x 77'0"	391,685	298,900

To calculate the volume of a cylindrical bin:

1. Find the area of the circular base - (3.1415) x R x R (R=radius)
2. Multiply the area of the base times the height of the storage bin.
This results in the cubic feet or volume of storage contained by that particular storage bin.
3. You can convert the cubic feet of storage into the number of bushels by multiplying the cubic feet or volume of storage by .80
(3.1415) x R x R x H x .80=Number of Bushels

Appendix G Commercial and Industrial Cost Schedules

SCHEDULE A.1 (continued)

GCM Base Prices (continued)

Floor Level	Fin Type	Use Type	Flr Hgt	Wall Type	Fire Resistant										Wood		Rein	F P
					1	2	3	4	5	6	7	8	9	10	+1	(-)	(+)	(+)
First	FD	Country Club	12'	1	54.00	56.30	58.60	60.90	63.20	65.50	67.80	70.15	72.45	74.75	2.30	1.72	8.27	9.92
				2	54.60	57.55	60.45	63.35	66.25	69.15	72.05	75.00	77.90	80.80	2.91	1.72	8.27	9.92
		Funeral Home	12'	1	47.70	50.00	52.30	54.60	56.90	59.20	61.50	63.80	66.10	68.40	2.30	1.72	8.27	9.92
				2	48.30	51.20	54.10	57.00	59.95	62.85	65.75	68.65	71.55	74.45	2.91	1.72	8.27	9.92
		Nursing Home	10'	1	46.85	48.80	50.75	52.75	54.70	56.65	58.60	60.55	62.50	64.45	1.95	1.72	7.94	9.55
				2	47.40	49.85	52.30	54.75	57.20	59.65	62.10	64.55	67.05	69.50	2.46	1.72	7.94	9.55
		Hotel -- Motel Unit	10'	1	49.25	51.20	53.15	55.10	57.05	59.00	60.95	62.90	64.85	66.80	1.95	1.72	7.94	9.55
				2	49.75	52.20	54.65	57.10	59.60	62.05	64.50	66.95	69.40	71.85	2.46	1.72	7.94	9.55
		Apartment	10'	1	33.80	35.75	37.70	39.60	41.55	43.50	45.40	47.35	49.30	51.20	1.93	1.71	7.86	9.46
				2	34.30	36.75	39.20	41.60	44.05	46.50	48.90	51.35	53.80	56.20	2.43	1.71	7.86	9.46
Wall Hgt.	UF	+/-	1'	1	0.35	0.50	0.65	0.80	0.95	1.10	1.25	1.40	1.55	1.70	0.15	0.03	0.22	0.24
				2	0.35	0.55	0.75	0.95	1.15	1.35	1.55	1.75	1.95	2.15	0.20	0.03	0.22	0.24
	SF	+/-	1'	1	0.55	0.70	0.90	1.05	1.25	1.40	1.60	1.80	1.95	2.15	0.18	0.02	0.24	0.26
				2	0.55	0.75	0.95	1.15	1.35	1.60	1.80	2.00	2.20	2.40	0.21	0.02	0.24	0.26
	FO	+/-	1'	1	0.75	0.90	1.05	1.25	1.40	1.60	1.75	1.90	2.10	2.25	0.17	0.01	0.19	0.21
				2	0.80	1.00	1.20	1.45	1.70	1.90	2.10	2.30	2.55	2.80	0.22	0.01	0.19	0.21
	FD	+/-	1'	1	1.10	1.25	1.45	1.65	1.85	2.00	2.15	2.35	2.50	2.70	0.18	0.01	0.17	0.20
				2	1.15	1.35	1.60	1.85	2.05	2.25	2.45	2.70	2.95	3.15	0.22	0.01	0.17	0.20
Upper	UF	Utility	12'	1	14.05	16.25	18.50	20.75	23.00	25.25	27.50	29.75	31.95	34.20	2.24	3.60	6.21	7.53
				2	14.60	17.35	20.15	22.95	25.75	28.55	31.35	34.15	36.90	39.70	2.79	3.60	6.21	7.53
		Parking Garage	10'	1	16.80	18.05	19.30	20.60	21.85	23.10	24.35	25.65	26.90	28.15	1.26	4.90	5.26	6.54
				2	17.25	18.95	20.65	22.40	24.10	25.80	27.55	29.25	30.95	32.65	1.71	4.90	5.26	6.54
				4	15.80	16.10	16.40	16.70	17.00	17.30	17.60	17.90	18.20	18.45	0.29	4.90	5.26	6.54
	FO	Health Club ***	12'	1	46.30	48.10	49.85	51.65	53.45	55.25	57.00	58.80	60.60	62.40	1.79	5.45	6.41	7.95
				2	46.90	49.30	51.65	54.05	56.45	58.85	61.20	63.60	66.00	68.40	2.39	5.45	6.41	7.95
		General Retail	10'	1	27.20	29.30	31.45	33.60	35.75	37.90	40.05	42.20	44.35	46.50	2.15	3.67	6.01	7.60
				2	27.75	30.50	33.20	35.95	38.65	41.40	44.10	46.85	49.55	52.30	2.73	3.67	6.01	7.60
		Mall Shops	14'	1	32.55	35.20	37.85	40.50	43.15	45.75	48.40	51.05	53.70	56.35	2.64	3.67	6.33	7.97
				2	33.10	36.30	39.45	42.65	45.85	49.00	52.20	55.40	58.55	61.75	3.18	3.67	6.33	7.97
		Department Store	14'	1	44.55	46.60	48.60	50.65	52.70	54.75	56.80	58.80	60.85	62.90	2.04	5.27	6.39	8.04
				2	45.20	47.95	50.65	53.40	56.10	58.80	61.55	64.25	67.00	69.70	2.72	5.27	6.39	8.04
		Dinning/Lounge	12'	1	45.70	47.95	50.20	52.45	54.70	56.95	59.20	61.50	63.75	66.00	2.25	3.67	6.01	7.60
				2	46.30	49.10	51.95	54.80	57.60	60.45	63.30	66.15	68.95	71.80	2.84	3.67	6.01	7.60
	FD	Hotel -- Motel Service	12'	1	48.30	50.65	52.95	55.25	57.60	59.90	62.20	64.50	66.85	69.15	2.32	3.98	6.47	8.01
				2	48.90	51.85	54.75	57.70	60.60	63.55	66.45	69.40	72.30	75.20	2.92	3.98	6.47	8.01
		General Office	12'	1	49.65	51.50	53.35	55.20	57.10	58.95	60.80	62.65	64.55	66.40	1.86	5.57	6.70	8.47
				2	50.25	52.75	55.25	57.75	60.25	62.75	65.25	67.75	70.25	72.75	2.50	5.57	6.70	8.47
		Medical Office	11'	1	52.55	54.70	56.85	59.00	61.15	63.30	65.40	67.55	69.70	71.85	2.14	4.00	6.57	8.34
				2	53.15	55.90	58.65	61.35	64.10	66.85	69.55	72.30	75.05	77.75	2.73	4.00	6.57	8.34
		Nursing Home	10'	1	43.40	45.25	47.10	49.00	50.85	52.70	54.55	56.40	58.25	60.10	1.86	3.98	6.13	7.64
				2	43.90	46.25	48.65	51.00	53.35	55.75	58.10	60.45	62.80	65.20	2.36	3.98	6.13	7.64
		Hotel -- Motel Unit	10'	1	45.75	47.65	49.50	51.35	53.20	55.05	56.90	58.80	60.65	62.50	1.86	3.98	6.13	7.64
				2	46.30	48.65	51.00	53.35	55.75	58.10	60.45	62.80	65.20	67.55	2.36	3.98	6.13	7.64
		Apartment	10'	1	30.25	32.10	33.90	35.75	37.60	39.45	41.30	43.15	44.95	46.80	1.84	3.94	6.58	8.06
				2	30.55	32.65	34.80	36.90	39.05	41.20	43.30	45.45	47.55	49.70	2.13	3.94	6.58	8.06
* Add to base price (1st floor) to account for roof deck parking													3.61					
** Adjust base price to account for balconies, per square foot of balcony area													23.11		1.53 2.15 4.29			
***Add per court -- racquetball													35,300					
-- squash													28,200					
1Add to base price (1st floor) to account for elevated floor construction													4.87		3.84 0.48 1.49			

1 These rates represent an amount of increased cost to elevate a floor over and above what is included in the model for a floor. For instance, most if not all of our first floor models, have included a concrete floor. These costs represent the increased cost to suspend (based on the framing types) a floor higher than the existing floor. An example of this type of entity would be a raised area in a department store, where a set of 3 or 4 steps is required to raise the customer onto a more specialized or exclusively priced area of the store. The raising of a floor over and above what is included in the models could occur in any of the GCM first floor models. These rates are only applicable to the area that is raised within a structure. If less than 100% of the structure or building section includes this feature, then the appropriate rate is multiplied by the percentage of the building or section that has this feature to determine the applicable adjustment.

Commercial and Industrial Cost Schedules

Appendix G

SCHEDULE A.3 (continued)

GCR Base Prices (continued)

Floor Level	Fin Type	Use Type	Flr Hgt	Wall Type	Wood Joist											
					1	2	3	4	5	6	7	8	9	10	+1	
First	FD	Motel Units	9'	1	37.20	38.50	39.80	41.10	42.40	43.65	44.95	46.25	47.55	48.85	1.29	
				2	37.70	39.50	41.30	43.05	44.85	46.65	48.45	50.20	52.00	53.80	1.79	
		Funeral Home	12'	1	43.90	45.55	47.20	48.90	50.55	52.25	53.90	55.55	57.25	58.90	1.67	
				2	44.55	46.85	49.15	51.50	53.80	56.15	58.45	60.75	63.10	65.40	2.32	
		Nursing Home	10'	1	49.55	50.95	52.40	53.80	55.20	56.60	58.05	59.45	60.85	62.25	1.41	
				2	50.10	52.05	54.00	56.00	57.95	59.90	61.85	63.85	65.80	67.75	1.96	
		Apartment	9'	1	29.10	30.40	31.70	33.00	34.25	35.55	36.85	38.15	39.45	40.75	1.29	
				2	29.60	31.40	33.20	34.95	36.75	38.55	40.35	42.10	43.90	45.70	1.79	
	Upper	FO	Motel Service	12'	1	39.40	40.95	42.55	44.10	45.70	47.25	48.85	50.40	52.00	53.55	1.57
					2	40.05	42.25	44.45	46.70	48.90	51.10	53.35	55.55	57.80	60.00	2.22
		Dinning/Lounge	12'	1	40.40	41.95	43.50	45.05	46.60	48.15	49.70	51.25	52.80	54.35	1.55	
				2	41.05	43.20	45.40	47.60	49.80	51.95	54.15	56.35	58.55	60.75	2.19	
FD		Motel Units	9'	1	31.85	33.05	34.25	35.50	36.70	37.90	39.10	40.35	41.55	42.75	1.21	
				2	32.35	34.05	35.75	37.45	39.15	40.85	42.50	44.20	45.90	47.60	1.70	
		Apartment	9'	1	23.75	24.95	26.15	27.40	28.60	29.80	31.00	32.20	33.45	34.65	1.21	
				2	24.25	25.95	27.65	29.35	31.00	32.70	34.40	36.10	37.80	39.50	1.70	
		Nursing Home	10'	1	44.15	45.55	46.95	48.35	49.75	51.15	52.55	53.95	55.35	56.75	1.40	
				2	44.70	46.65	48.60	50.55	52.50	54.45	56.40	58.35	60.30	62.25	1.95	

SCHEDULE A.4

GCK Base Rates

Light preengineered steel and pole framed buildings (used for C/I occupancies)
Per square foot, average quality, 12' eaves height

	Perimeter/Area Ratio										
	1	2	3	4	5	6	7	8	9	10	+1
Light metal/wood siding, pole frame	8.55	8.95	9.35	9.75	10.20	10.60	11.00	11.40	11.85	12.25	0.41
Add per P/A ratio:											
Exterior sheathing	0.10	0.20	0.30	0.40	0.50	0.60	0.70	0.80	0.90	1.00	0.10
Insulation	0.75	0.80	0.85	0.95	1.00	1.05	1.15	1.20	1.25	1.35	0.07
Steel girts and purlins	0.50	0.55	0.60	0.65	0.70	0.75	0.80	0.85	0.90	0.95	0.05
Aluminum siding and roofing	0.40	0.50	0.55	0.60	0.65	0.75	0.80	0.85	0.90	1.00	0.06
Interior liner (1)	1.45	1.60	1.80	1.95	2.15	2.30	2.45	2.65	2.80	3.00	0.17
Heavy gauge siding and roofing (2)	1.45	1.60	1.75	1.90	2.05	2.20	2.30	2.45	2.60	2.75	0.14
Plastic panel siding	0.35	0.75	1.10	1.45	1.80	2.20	2.55	2.90	3.30	3.65	0.36
Sandwich paneling	3.90	4.45	5.00	5.55	6.15	6.70	7.25	7.80	8.35	8.95	0.56
Interior finish (3)											
Unfinished occupancies (UF)	3.35									3.35	
Semi-finished occupancies (SF)	7.05									7.05	
Finished open occupancies (FO)	16.15	16.50	16.90	17.25	17.60	17.95	18.35	18.70	19.05	19.40	0.36
Finished divided occupancies (FD)	28.60	28.95	29.35	29.70	30.05	30.40	30.80	31.15	31.50	31.85	0.36
Add per square foot floor area for frame variations:											
Steel post and beam		0.75									0.75
Rigid steel frame construction		1.55									1.55
Deduct per square foot floor area for floor:											
Concrete floor		3.35									3.35
Add or deduct 2% (against the total rate) per foot of wall height variation.											
Deduct 2% (against the total rate) for low profile (1:12 or less pitch) roof construction.											
Adjust for quality grade from Schedule F.											
Note (1) Liner is included with manufactured sandwich paneling											
Note (2) 24 to 20 gauge steel; .032" to .050" thick aluminum.											
Note (3) Interior Components:	Walls/ LF	Flooring	Ceiling	Ptns&OF	Lighting	Heating	Add A/C	Sprk			
Unfinished occupancies (UF)	---	---	---	0.80	1.55	1.00	1.90	6			
Semi-finished occupancies (SF)	---	0.60	0.50	1.55	3.20	1.20	1.90	6			
Finished open occupancies (FO)	36.10	2.35	2.10	4.40	4.60	2.35	2.25	4			
Finished divided occupancies (FD)	36.10	3.35	2.75	12.35	6.20	3.60	5.10	3			

Appendix G Commercial and Industrial Cost Schedules

SCHEDULE E

GC Special Features

Mezzanines

Per square foot, including, soffit finish, lighting, heating and plumbing unless noted.

	Frame Type			
	1	2	3	4
Unfinished				
Light Util/Storage	8.30	11.95	12.50	13.45
Heavy Util/Storage	10.30	14.50	14.65	15.90
Semi - Finished				
Light Mfg	12.75	16.35	16.95	17.90
Heavy Mfg	14.75	18.95	19.05	20.30
Finished Open				
Retail	20.50	24.20	24.70	25.70
Lobby, Access Way	25.35	29.35	29.70	30.80
Office	26.60	30.55	30.95	32.00
Finished Divided				
Dinning/Lounge	31.75	35.45	35.95	36.95
Office	32.65	36.65	37.00	38.10

Add for air conditioning and sprinkler.

Penthouses

Per square foot
ELEVATORS AND STAIRWELLS

	Area			
	50	75	100	150
Metal or Light Wood Frame	42.20	35.75	31.90	27.35
Concrete Block or Equal	82.80	69.55	61.65	52.30
Brick or Equal	96.90	81.05	71.65	60.45

MECHANICAL ROOMS

	Area									
	200	400	600	800	1000	1200	1400	1600	1800	2000
Metal or Light Wood Frame	24.60	19.45	17.20	15.80	14.90	14.20	13.65	13.25	12.90	12.60
Concrete Block or Equal	46.70	36.15	31.50	28.70	26.80	25.40	24.30	23.40	22.70	22.05
Brick or Equal	53.75	41.15	35.55	32.20	29.95	28.25	26.95	25.90	25.05	24.30

NOTE: Price larger structures off of the GCI utility/storage upper floor model.

Mall Concourse Areas

Per square foot.
Costs include paving, ramps, stairs, lighting and typical permanent focal elements, and architectural treatment, such as built-in seating, planters, etc.

OPEN MALL

Open air pedestrian concourse areas, generally referred to as an arcade or courtyard.

COVERED MALL

Covered common areas, consisting of roof cover and open entrance areas. Minimal protection from weather conditions. Typical roof finishes include mansards or canopies. Apply costs to covered area only.

ENCLOSED MALL

Enclosed common concourse areas, completely climatized typical of modern shopping malls where concourse area is bordered on all sides by shops and stores.

Per S. F., average quality construction.

Type			
Open		7.30	
Covered	Wood Frame	23.10	
	Steel Frame	26.90	
	Reinforced Concrete	31.95	
	F.P. Steel Frame	38.15	
Enclosed		First	Upper
	Wood Frame	37.80	31.35
	Steel Frame	40.80	36.80
	Reinforced Concrete	48.50	42.70
	F.P. Steel Frame	49.95	44.35

*Additive for walls 3.25

Price basements from appropriate model in Schedule A. Adjust for quality grade from Schedule F in Appendix C.

NOTE: That the above rates are based on a zero (0) P/A ratio, add for walls by applying the additive rate to the subject P/A ratio, and adjusting the result to account for the percentage of walls priced with the shop enclosures. For example, a "T" shaped concourse area 60' x 200' and 60' x 100' x 20' high with shops 16' high would have a perimeter of 720 L/F and a P/A ratio of 4 (720 L/F / 18,000 SF) with 180 L/F of walls full height and 540 L/F clerestory walls 4' high. This amounts to an average of 40% wall coverage (.25 x 100% + .75 x 20%). The additive for walls would therefore be calculated as 4 x the additive rate x 40%.

Commercial and Industrial Cost Schedules

Appendix G

SCHEDULE E (continued)

GC Special Features

Banking Features

Cost per square foot of floor area, based on an average 8' ceiling height, exclusive of floor and doors but including lighting, ventilation, and interior finish.

Type	Low Cost	Average	Good
Money Vault	99.30	130.25	161.20
Record Storage	39.70	47.30	54.90

Add for money vault doors (thickness of steel plating w/o locking mechanism)

Thickness	Rectangular	Circular
2"	5500	---
3"	7900	---
4"	0	---
6"	21000	---
8"	26500	96900
10"	32100	103700
12"	39700	110700
14"	44400	118600
16"	53700	126700

Add for record storage vault doors

1/2 hour fire rating	1300
1 hour fire rating	2600
2 hour fire rating	3000
3 hour fire rating	3200
4 hour fire rating	3300
6 hour fire rating	4200

DRIVE-IN TELLER BOOTHS

Per square foot including finish, lighting, heating, air conditioning (average quality construction) add for drive-in windows, adjust for quality grade from Schedule F.

Wall Hgt.	P/A Ratio								
	35.0	40.0	45.0	50.0	55.0	60.0	65.0	70.0	+/-
8'	93.45	101.95	110.45	118.95	127.45	135.95	144.45	152.95	1.70
9'	100.75	110.25	119.75	129.25	138.75	148.25	157.75	167.25	1.90
10'	108.00	118.50	129.00	139.50	150.00	160.50	171.00	181.50	2.10
Add per canopy, per square foot			18.10	28.70					

Atriums

Typical of those found in contemporary office buildings, hotels and high rise apartments

Equivalent No. Stories	Perimeter Area Ratio								
	0	1	2	3	4	5	6	+1	
12'	61.45	63.45	65.45	67.45	69.45	71.45	73.45	2.00	
22'	66.60	70.30	74.00	77.70	81.40	85.10	88.80	3.70	
32'	71.75	77.15	82.55	87.95	93.35	98.75	104.15	5.40	
42'	76.90	84.00	91.10	98.20	105.30	112.40	119.50	7.10	
52'	82.05	90.85	99.65	108.45	117.25	126.05	134.85	8.80	
62'	87.20	97.70	108.20	118.70	129.20	139.70	150.20	10.50	
72'	92.35	104.55	116.75	128.95	141.15	153.35	165.55	12.20	
82'	97.50	111.40	125.30	139.20	153.10	167.00	180.90	13.90	
Add per add'l floor	5.15	6.85	8.55	10.25	11.95	13.65	15.35	1.70	

Per square foot for average quality structural, glazed and fireproofed steel frame construction, adjust for variations in quality grade from Schedule F in Appendix C. It should be noted, however, that typical atrium construction is characterized by good quality materials, workmanship and features.

Sprinkler system is priced from Group 4 of the sprinkler schedule. Air conditioning in atrium areas is considered overflow from the main structure and no separate square foot pricing is required to adjust the atrium value.

NOTE: The zero (0) perimeter-to-area ratio is applicable to those areas that have no perimeter walls and therefore must not include an allowance for walls in the square foot rate. These areas are typically found in high rise atriums where structural walls forming the perimeter of concourse shops, offices, hotel units and other such occupancies should be valued as part of that space by applying the appropriate model rather than part of the atrium proper.

Drive-up/walk-up teller windows, each	9200
Vision window only, per station	1500
Night depositories, each	11200

Autotellers	
Complete with receptacle box, pneumatic tube, and intercom, each	17300

Tellervues	
Complete with receptacle box, pneumatic tube, 2-way screen and intercom, each	41500

NOTE: The pneumatic tube described above refers to in-ground permanent type construction.

ATM Enclosures, per square foot, average quality		
# of ATM	w/o Lobby	w/Lobby
1	479.00	225.00
2	272.00	165.00

Add for canopy, per square foot 18
Adjust for quality grade from Schedule F in Appendix C.

Appendix G Commercial and Industrial Cost Schedules

SCHEDULE G (continued)

Yard Improvements

Mobile Home Parks

General Specifications

EXCELLENT "A"

The excellent mobile home park provides deluxe accommodations for the largest single and double wide homes. It will have complete and varies recreational facilities of top quality and feature generous amounts of landscaping, sprinkler systems, etc.

GOOD "B"

The typical good park is one catering to the larger, permanent mobile home. It will accommodate a limited quantity of double wides and will feature complete recreational facilities. All utilities are underground and may include cable TV systems.

AVERAGE "C"

This type of park is built more for permanent occupancy and will have spaces to accommodate the manufactured home up to sixty (60) feet but few if, any, double wide versions. They will have utility buildings, office and possibly recreational facilities, electrical costs include underground service and telephone

to most sites as well as street lighting.

LOW COST "D"

Developed for transient or semi-permanent occupancy, these parks usually have car-drawn trailers up to forty-five feet (45) long. They feature limited planning and facilities and have sewer or septic system hook-ups and water, but not gas hook-ups, except to utility buildings and electrical service is overhead.

CHEAP "E"

Typical of sites developed in outlying rural areas where there is minimal or no building code enforcement. There will be close spacing and few facilities and are designed for smaller mobile homes. They feature water service to common hydrants with no trailer hook-ups.

COST PER SITE

	Quality Grade	A		B		C		D		E	
	*Site Size (Sq. Ft.)	2700 --	5100	2000 --	4700	1700 --	3700	1000 --	2900	700 --	2400
	**Cost Range (\$)	9860 --	10910	7110 --	8320	4670 --	5770	3190 --	4130	1630 --	2410
Components of above cost											
Engineering		970 --	1080	720 --	840	480 --	590	330 --	420	160 --	240
Site Grading		930 --	1030	650 --	770	410 --	510	260 --	340	130 --	190
Street Paving		1440 --	1590	1060 --	1240	700 --	870	530 --	690	320 --	470
Patios and Walks		1240 --	1370	810 --	950	530 --	650	350 --	450	180 --	260
Sewers		940 --	1040	770 --	900	580 --	720	420 --	540	250 --	370
Water		920 --	1010	700 --	820	480 --	590	350 --	450	200 --	300
Electric		1540 --	1700	1140 --	1330	760 --	940	520 --	670	270 --	400
Gas		600 --	670	420 --	490	260 --	320	160 --	210	--	--
Misc. (landscaping, recreation, facilities, etc.)		1280 --	1420	840 --	980	470 --	580	270 --	360	120 --	180
Total		9860 --	10910	7110 --	8320	4670 --	5770	3190 --	4130	1630 --	2410

*Site size refers to the average of the actual site on which the mobile home is situated, exclusive of access drives, recreation areas, and service areas.

**The cost range per site includes all of the components shown above, naturally, if the sites being appraised do not include all of the above components, proper deductions should be made according to the above schedule.

NOTE: In appraising mobile home parks through the use of this schedule, complete the following steps:

1. Enter the number of sites and proper rate in the SUMMARY OF IMPROVEMENTS section and calculate replacement cost.
2. Apply proper depreciation considering age and condition (use residential guidelines)
3. Appraise other structures (i.e. garages, community rooms, laundry buildings, etc.) from appropriate schedules.

NOTE: This schedule is NOT to be used for recreational vehicle parks.

**GRAIN ELEVATOR DEPRECIATION
CONSIDERATIONS**

Grain elevators are special purpose structures and, with very few exceptions are rarely convertible into other uses. Therefore, the assessor must carefully estimate all forms of depreciation correctly. Table F-4 allows the assessor to determine the physical deterioration and normal obsolescence suffered by the grain elevator but does not account for abnormal obsolescence caused by such factors as excess storage capacity, lack of transportation facilities (major highways, railroads, or waterways), nor other types of inutilities caused by changes in the agricultural economy.

Besides the normal depreciation from Table F-4, the assessor must also determine the amount of abnormal obsolescence caused by factors such as these. The determination of the amount of abnormal obsolescence requires a comparative analysis of current operating data and the total licensed capacity. For example, a grain elevator has a total licensed capacity of 300,000 bushels. Over the last five years of operation, the elevator has stored an average of 240,000 bushels. Therefore it is suffering from abnormal functional obsolescence because, in the current market, it has 60,000 bushels of excess capacity.

The assessor should value the grain elevator by first calculating the replacement cost new of the structure. Taking the average number of bushels stored for the most recent five years and multiplying by the unit costs given in this manual accomplishes this. Replacement cost is preferred as opposed to reproduction cost because replacement cost estimates the cost of a physical structure with similar utility. This estimate of cost should be closely aligned with value-in-use. As discussed under Concepts of Cost in the *Introduction* to this manual, "Replacement cost eliminates the cost of obsolete materials, design, and building techniques. In so doing, most forms of functional obsolescence have been "cured" and do not have to be accounted for in the depreciation estimate." The assessor should then follow the steps outlined in this appendix for determining the normal depreciation and apply this depreciation percentage to the replacement cost new estimate.

The amount of abnormal obsolescence should be reviewed annually and adjusted if necessary.

To complete the “Valuation Record” sections of the Agricultural, Residential, and Commercial and Industrial Property Record Cards, and to sign and date the cards, perform these steps:

- Step 1 In the “Assessment Year” row, enter the year when the assessment is being conducted.
- Step 2 If the assessment is being conducted as part of a general reassessment, “Revaluation” appears in the “Reason for Change” row.
If the assessment is being conducted to change the valuation of the property for a particular reason, enter the reason for the change in the “Reason for Change” row.
- Step 3a Complete the “True Tax Value” rows (*Agricultural Property Record Card*):
 - a. In the “Res Land” row, enter the amount recorded in the “Homesite(s) Value” cell from the “Land Data and Computations” section of the property record card.
 - b. In the “Res Imp” row, enter the amount recorded in the “Total Residential Improvement Value” cell from the “Summary of Residential Improvements” section of the property record card.
 - c. If applicable, in the “Shelter Allowance” row, enter the amount of shelter allowance for your county found in Table 3-15. Information about the shelter allowance is provided in the section *Shelter Allowance* in chapter 3.
 - d. Calculate the adjusted residential land and improvement values by subtracting the amount determined in sub step c from the “Res Imp” row first, and then if any shelter allowance is remaining, subtract from the “Res Land” row.
 - e. In the “Adj. Res Land” and “Adj. Res Imp” rows, enter the results from sub step d. If the shelter allowance is not applicable, carry the value determined in sub step a to the “Adj. Res Land” row, and from sub step b to the “Adj. Res Imp” row.
 - f. In the “Ag Excess Land” row, enter the amount recorded in the “92 Ag Excess Acres” cell from the “Land Data and Computations” section of the property record card.
 - g. In the “Non-Res Imp” row, enter the amount recorded in the “Total Non-Residential Improvement Value” cell from the “Summary of Non-Residential Improvements” section of the property record card.

In the “Farm/Classified Land” row, enter the amount recorded in the “Total Farmland/Classified Land Value” cell from the “Land Data and Computations” section of the property record card.

Land

In the assessment of agricultural properties, an equalization factor would only apply to the rows “Res Land”, “Res Imp”, “Ag Excess Land”, and “Non-Res Imp”.

Step 3b Complete the “True Tax Value” rows (*Residential Property Record Card*)

- a. In the “Res Land” row, enter the amount recorded in the “Total Residential Land Value” cell from the “Land Data and Computations” section of the property record card.
- b. In the “Res Imp” row, enter the amount recorded in the “Total Residential Improvement Value” cell from the “Summary of Residential Improvements” section of the property record card.
- c. In the “Shelter Allowance” row, enter the amount of shelter allowance for your county found in Table 3-15. Information about the shelter allowance is provided in the section *Shelter Allowance* in chapter 3.
- d. Calculate the adjusted residential land and improvement values by subtracting the amount determined in sub step c from the “Res Imp” row first, and then if any shelter allowance is remaining, subtract from the “Res Land” row.
- e. In the “Adj. Res Land” and “Adj. Res Imp” rows, enter the results from sub step d. If the shelter allowance is not applicable, carry the value determined in sub step a to the “Adj. Res Land” row, and from sub step b to the “Adj. Res Imp” row.
- f. In the “Non-Res Land” row, enter the amount recorded in the “Total Non-Residential Land Value” cell from the “Land Data and Computations” section of the property record card.
- g. In the “Non-Res Imp” row, enter the amount recorded in the “Total Non-Residential Improvement Value” cell from the “Summary of Non-Residential Improvements” section of the property record card.
- h. Calculate the total true tax value of the property by summing the “Adj Res Land” cell, “Adj Res Imp” cell, “Non-Res Land” cell, and “Non-Res Imp” cell.

Total True Tax Value	+	Adj. Res Land	+	Adj. Res Imp	+	Non-Res Land	+	Non-Res Imp
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- i. Enter the total true tax value in the “Total TTV” row.

Step 4b Complete the “Assessed Value” rows. The assessed values are 100% of the true tax values.

Chapter 3**Residential Dwelling Units**

To determine the grade adjustment and to calculate the adjusted sub-total of the dwelling, perform the following steps:

- Step 1 Next to the “Grade and Design Factor” cell label on the property record card, enter the letter grade assigned to the dwelling. Information about determining the grade for a dwelling is provided in Appendix A.
- Step 2 In the “Grade and Design Factor” cell, enter the grade factor percentage corresponding to the dwelling’s grade. Instructions for determining the grade factor percentage for a dwelling using Schedule F are provided in the section *Assigning Grades to Dwelling Units* in Appendix A.
- Step 3 Divide the grade factor percentage corresponding to the dwelling’s grade by 100 to arrive at a multiplier.
- Step 4 Calculate the dwelling’s adjusted sub-total by multiplying the amount in the “Sub-Total” cell (entered in Task 4, Step 3) by the multiplier obtained in Step 3. Enter the result in the “Adjusted Sub-Total” cell.

Task 6—Determining and Applying the Location Cost Multiplier

The cell labeled “Location Multiplier” is used to make an adjustment to the costs found in Appendix C. Due to the fact that costs are relative to location, we have included location cost multipliers, by county, to account for these differences. The table indicating the multiplier for your county and a more detailed explanation of location cost multipliers can be found in Appendix C.

- Step 1 Locate the multiplier in Table C-1 for your county.
- Step 2 Place the multiplier from Table C-1 in the “Location Multiplier” cell on the property record card.
- Step 3 Calculate the adjustment for location by multiplying the location cost multiplier by the “Adj. Sub Total” cell.
- Step 4 Place the product of Step 3 in the “Replacement Cost” cell, rounded to the nearest \$10.

Completing the Summary of Residential Improvements Section

The “Summary of Residential Improvements” section of the property record card, shown in Figure 3-12, provides space to record information about:

- the dwelling
- a detached garage (if it is the sole garage)
- improvements to the dwelling during non-reassessment years.

The addition schedule is designed to value stick-built room additions to mobile and manufactured homes during the general reassessment and to value room additions to dwellings in the interim years between general reassessment years. Room additions added to existing dwellings before March 2, 1999, must be calculated as part of the original structure and depreciated based on the age of the main structure.

**Solar Heating and Cooling System
Types**

Table 3-13 lists the types of solar heating and cooling systems.

Table 3-1. Solar Heating and Cooling Systems

This type	Indicates
Type A	A solar collection unit of thirty (30) square feet, a storage medium consisting of either a one hundred twenty (120) gallon tank for a liquid system or a storage vessel with a rock surface area of four hundred (400) square feet for an air system, and an elaborate contractor installed distribution unit that requires minimum occupant involvement on a day-to-day basis. This type of system virtually runs itself through the use of sophisticated monitoring equipment. This type of system is normally designed for and incorporated into the structure at the time of construction.
Type B	A solar collection unit of twenty-five (25) square feet, a storage medium consisting of either an eighty (80) gallon tank for a liquid system or a storage vessel with a rock surface area of three hundred (300) square feet for an air system, and a contractor installed distribution unit that requires limited occupant involvement in the day-to-day operation of the system.
Type C	A solar collection unit of twenty (20) square feet, a storage medium consisting of either a sixty (60) gallon tank for a liquid system or a storage vessel with a rock surface area of two hundred (200) square feet for an air system, and a contractor installed distribution unit that relies on the occupant to make internal adjustments within the system during the day-to-day operation of the system.
Type D	A homemade solar collection unit of less than twenty (20) square feet and a storage medium of either a forty (40) gallon tank for a liquid system or a storage vessel with a rock surface area of two hundred (200) square feet or less for an air system. The Type D system uses the structure's existing base heating and cooling system as the distribution unit for the system. The Type D distribution unit's cost included in the cost schedules reflect the additional cost incurred to hook-up the solar portion of the system to the base heating system included in the structure's calculation of replacement cost.

Shelter Allowances, by County

<u>County</u>	<u>Shelter Allowance</u>	<u>County</u>	<u>Shelter Allowance</u>
Adams	\$ 18,100	Lawrence	\$ 16,000
Allen	\$ 18,100	Madison	\$ 20,600
Bartholomew	\$ 22,700	Marion	\$ 20,600
Benton	\$ 16,000	Marshall	\$ 18,900
Blackford	\$ 16,000	Martin	\$ 16,000
Boone	\$ 20,600	Miami	\$ 16,000
Brown	\$ 20,200	Monroe	\$ 20,900
Carroll	\$ 16,000	Montgomery	\$ 18,600
Cass	\$ 16,000	Morgan	\$ 20,600
Clark	\$ 18,100	Newton	\$ 16,700
Clay	\$ 16,300	Noble	\$ 18,400
Clinton	\$ 19,700	Ohio	\$ 17,700
Crawford	\$ 16,000	Orange	\$ 16,000
Daviess	\$ 16,000	Owen	\$ 16,000
Dearborn	\$ 17,700	Parke	\$ 16,000
Decatur	\$ 16,000	Perry	\$ 16,000
Dekalb	\$ 18,100	Pike	\$ 16,000
Delaware	\$ 16,800	Porter	\$ 21,600
Dubois	\$ 16,000	Posey	\$ 18,100
Elkhart	\$ 21,100	Pulaski	\$ 16,000
Fayette	\$ 16,900	Putnam	\$ 17,400
Floyd	\$ 18,100	Randolph	\$ 16,000
Fountain	\$ 16,000	Ripley	\$ 16,000
Franklin	\$ 16,000	Rush	\$ 16,500
Fulton	\$ 17,600	St. Joseph	\$ 18,200
Gibson	\$ 16,000	Scott	\$ 18,100
Grant	\$ 16,900	Shelby	\$ 20,600
Greene	\$ 16,000	Spencer	\$ 16,000
Hamilton	\$ 20,600	Starke	\$ 16,000
Hancock	\$ 20,600	Steuben	\$ 19,500
Harrison	\$ 18,100	Sullivan	\$ 16,000
Hendricks	\$ 20,600	Switzerland	\$ 16,000
Henry	\$ 16,000	Tippecanoe	\$ 19,700
Howard	\$ 19,400	Tipton	\$ 19,400
Huntington	\$ 18,100	Union	\$ 16,000
Jackson	\$ 19,600	Vanderburgh	\$ 18,100
Jasper	\$ 16,000	Vermillion	\$ 16,300
Jay	\$ 16,000	Vigo	\$ 16,300
Jefferson	\$ 16,000	Wabash	\$ 16,000
Jennings	\$ 16,700	Warren	\$ 16,000
Johnson	\$ 20,600	Warrick	\$ 18,100
Knox	\$ 16,300	Washington	\$ 16,000
Kosciusko	\$ 16,000	Wayne	\$ 16,000
LaGrange	\$ 16,300	Wells	\$ 18,100
Lake	\$ 21,600	White	\$ 16,000
LaPorte	\$ 16,300	Whitley	\$ 18,100

To calculate the improvement value of the structure, perform these steps:

Step 1 *If abnormal obsolescence depreciation applies to the structure*, divide the dollar amount of abnormal obsolescence by the “Remainder Value” to get an abnormal obsolescence depreciation percentage. Enter this percentage in the “Abnorm Obs” Column of the property record card.

Note: This column can also be utilized to make adjustments for improvements less than 100% complete. Be sure to indicate what you have done in the memorandum section.

Step 3 Calculate the neighborhood factor and enter the result in the “Nhbd Factor” cell. Information on neighborhood factors can be found in Appendix B.

Step 4 The improvement value is the remainder value of the improvement, adjusted for % complete, abnormal obsolescence and neighborhood factor (if necessary), rounded to the nearest \$100. Enter this amount in the “Improvement Value” column on the property record card.

Example: The remainder value of a structure is \$3,850. Assuming the structure is 100% complete, suffers no abnormal obsolescence and the neighborhood factor is 1.00, the improvement value is \$3,900.

Task 6—Calculating the Total Non-Residential Improvement Value

Calculate the improvement value for each structure by performing Task 1 through Task 5 for each structure. If you run out of rows in the “Summary of Non-Residential Improvements” section of the property record card, use an additional card (or cards).

To calculate the total non-residential improvement value for the property, perform these steps:

Step 1 *If you used **only one** property record card to complete the “Summary of Non-Residential Improvements” for the property*, sum the entries in the “Improvement Value” column and enter the total in the “Total Non-Residential Improvement Value” cell.

*If you used **more than one** property record card to complete the “Summary of Non-Residential Improvements” for the property*, on each card except Card 001, sum the entries in the “Improvement Value” column and enter the total in the “Total Non-Residential Improvement Value” cell.

Step 2 Sum the entries in the “Total Non-Residential Improvement Value” cell of all of the property record cards except Card 001. Enter the total in the “Supplemental Card Non-Residential Improvement Total” cell on Card 001.

Step 3 On Card 001, sum the entries in the “Improvement Value” column, including the entry in the “Supplemental Card Non-Residential

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

TO: Local Assessing Officials

FROM: Assessment Division

DATE: January 31, 2002

RE: Clarification of 50 IAC 4.3-5-6; Elective inventory valuation method

The purpose of this Instructional Bulletin is to clarify the “Elective Inventory Valuation Method” as found in 50 IAC 4.3 (Personal Property Rule).

50 IAC 4.3-5-6, Elective inventory valuation method, reads as follows:

Sec. 6. (a) As an alternative method to valuing inventory, a taxpayer who is in possession of inventory may value finished goods and work in process inventory as follows:

(1) The cost of raw materials and supplies, which must include the total cost directly or indirectly incurred, including freight, to bring the property to the location where it will be utilized. Taxpayers acquiring manufactured products from related entities shall include in the accountability cost the sum of all costs directly or indirectly incurred in bringing the article to its existing condition and location on the assessment date. In addition, the cost of all direct production labor shall be added.

(2) Any adjustment taken from inventory valuation must be the same basis on which it was included in the tax return.

(3) This election must be applied to all locations within this state, except as noted in subdivision (4).

(4) This election is available only for a taxpayers finished goods or work in process inventories.

(b) Computations of the valuation method outlined in this section are required to be attached to the tax return and computed on Form 106.

This method is elective, not mandatory, and allows taxpayers to eliminate inventory expenses, such as overhead, from their reported inventory values. This election is available to all taxpayers regardless of the level of trade (manufacturing/processing, wholesale, or retail).

Although available to all taxpayers, this election will primarily be utilized by manufacturers and processors. This is due to the fact that manufacturers and processors build up costs to arrive at the value of work-in-process and finished goods inventory. These built-up costs may therefore include overhead costs that would not be reportable if the elective inventory method of valuation is chosen. Wholesalers and retailers typically start with their cost of finished goods as the value of their stock-in-trade inventory. Therefore, wholesalers and retailers typically do not have overhead costs built into the value of their reported inventories.

If wholesalers and retailers have included these overhead costs in the reported value of their inventories, they can elect to use this valuation method. Generally this will only happen if the federal government requires them to include these costs for federal inventory valuation purposes and they have used their federal values for personal property reporting purposes.

Listed below are key points to consider when reviewing returns that have used the elective inventory valuation method:

- The elective inventory valuation method, as defined in 50 IAC 4.3-5-6(a), is available to all taxpayers.
- The elective inventory valuation method is available to work-in-process and finished goods inventory. In general, the only taxpayers electing this method will be manufacturers or processors.
- Taxpayers with stock-in-trade inventory (retailers and wholesalers) could also elect this reporting method; however, the only costs that would not be included would be the overhead costs required to be added for federal tax purposes.
- The reportable value of work-in-process and finished goods inventories would consist of the direct and indirect costs of raw material and supplies, freight-in costs, and direct production labor costs.
- Costs that would not be included if this elective inventory valuation method is chosen are the manufacturing expenses considered overhead or indirect costs. These type expenses consist of, but are not limited to, the list found in 50 IAC 4.3-5-1(3).
- It is important to remember, that in the case of manufacturers or processors, this election only applies to inventory produced at the Indiana location for which the return is being prepared. If the taxpayer produces the finished goods out-of-state and ships them into Indiana for storage in a warehouse or distribution center, the taxpayer would not be eligible to report using the elective inventory valuation method.
- This elective inventory valuation method must be applied to all locations owned by the taxpayer within this state.
- All adjustments or calculations must be shown and explained on Form 106 and included as an attachment to Form 103. Any adjustment claimed must be on the same basis on which the book inventory was reported on the personal property tax return.

Should you have any questions or concerns, please contact the Assessment Division of the Department of Local Government Finance at (317) 232-3761.

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

TO: Local Assessing Officials

FROM: Assessment Division

DATE: January 31, 2002

RE: Use of Tables F-3a, F-3b, and F-3c, Typical Structure Lives” within the 2002 Real Property Assessment Guidelines Book 2

The Department of Local Government Finance has determined that the guidelines are ambiguous as to the selection of lives for mixed use, mixed grades and mixed framed improvements for purposes of determining a depreciation amount. Therefore, the following instructions are being provided.

Nonrule Policy Documents

As described in Appendix F, page 7, step 4 of the guidelines, the user must “determine the typical life expectancy in years of the structure by referring to **Table F-3. Typical Structure Lives.**” This table leads the user to the proper column of Table F-4 to determine depreciation for the improvement.

The series of F-3 Tables give typical lives of improvements by occupancy, quality grade, and framing type. These terms are defined below:

Occupancy - The predominant use of the improvement (e.g. warehouse, manufacturing, retail).

Quality Grade – The classification of an improvement based on certain construction specifications, design and quality of materials and workmanship (e.g. A, B, C).

Framing Type – The structural steel or wood members (columns, rafters, girts, purlins, brace rods, and so forth) that go together to make up the skeleton of a structure ready for covering to be applied. (i.e. wood joist, fire resistant, reinforced concrete, fireproof steel).

Occupancy

The column in Table F-3 labeled “occupancy” is referring to the predominant use of the improvement; not the individual mixed uses within the improvement.

In determining which occupancy to use in Table F-3, the user must determine the predominant use of the improvement and select it as the “occupancy”. The predominant use shall be determined by comparing the area of each use type within the improvement and selecting the use type with the most area.

EXAMPLE: The subject improvement has a total of 12,000 sq. ft. It has mixed uses of utility storage (2,000 sq. ft.) and light manufacturing (10,000 sq. ft.).

Utility Storage 2,000 sq. ft. C Grade	Light Manufacturing 10,000 sq. ft. B Grade
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A comparison of the areas of the two use types indicates light manufacturing is the predominant use of the improvement and is the “occupancy” selected for the entire improvement to be taken into Table F-3.

Quality Grade

The column in Table F-3 labeled “Quality Grade” is referring to the grade of the subject improvement.

If a structure has varying grades for a single improvement, the user shall select the grade that is applied to the occupancy as determined above (i.e. “B” as illustrated in the prior diagram) and taken into Table F-3.

Framing Type

The column in Table F-3 labeled “Framing Type” is referring to the type of framing of the subject improvement.

Although most improvements are built with consistent framing materials (i.e. wood joist, fire resistant, reinforced concrete, fireproof steel) there can be situations where an improvement has mixed framing throughout (e.g. wood joist and fire resistant as a result of additions over a period of time). In such cases, the user must determine the predominant framing type of the improvement and select it as the “framing type”. The predominant framing type shall be determined by comparing the area of each section containing a particular framing type within the improvement and selecting the section (of a particular framing type) with the most area.

EXAMPLE: The subject improvement has a total of 12,000 sq. ft., it has mixed framing types within different sections, the utility storage section (2,000 sq. ft.) has wood joist and the light manufacturing section (10,000 sq. ft.) has fire resistant.

Utility Storage (Wood Frame) 2,000 sq. ft.	Light Manufacturing (Fire Resistant) 10,000 sq. ft.
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A review of the area of the two framing types indicates that fire resistant is the predominant framing type of the improvement and is the “Framing Type” selected for the entire improvement and taken into Table F-3.

In most cases there will be a predominant occupancy, framing type and grade. However, in some instances there may be multiple occupancies, framing types and/or grades that are equally distributed among the area of the improvement. In such cases, the assessor should select the life expectancy most appropriate for that structure considering the definition of true tax value.

DEPARTMENT OF INSURANCE

February 11, 2002

Bulletin 108

Reinstatement of Insurance Producer License

This Bulletin is directed to all insurance producers in Indiana who have allowed their Indiana license to lapse and are seeking reinstatement of that license. Pursuant to Ind. Code § 27-1-15.6-7(e), effective January 1, 2002, an individual producer who allows his or her producer license to lapse and has completed all required continuing education before the license expired, may have the license reinstated upon payment of the renewal fee and a penalty of three (3) times the renewal fee. For Indiana resident producers the renewal fee is currently forty dollars (\$40) and the penalty is one hundred twenty dollars (\$120). For non-resident producers the renewal fee is ninety dollars (\$90) and the penalty is two hundred seventy dollars (\$270). The producer shall submit two separate checks to the Department of Insurance ("Department"), one for the renewal fee and one for the penalty.

An individual producer who allows his or her license to expire on or after January 1, 2002, without completing the required continuing education, may reinstate the producer license during the following twelve (12) months only after the producer completes all outstanding continuing education, passes the laws and regulations portion of the pre-licensing examination and pays to the Department the renewal fee and penalty stated above.

An individual producer who allows his or her license to expire on or after January 1, 2002 and seeks to renew more than twelve (12) months thereafter may not have the license reinstated. The producer must apply for a new license and complete all pre-licensing requirements.

A producer license that expired on or before December 31, 2001 is subject to the reinstatement procedures and requirements in effect at the time the license expired.

Licenses that are reinstated are effective as of the date the Department finds that the producer has complied with all applicable requirements as outlined in this Bulletin. A producer may be subject to additional penalties for any sale, solicitation or negotiation of insurance during the time the license was expired and before it was reinstated.

By: _____
Sally McCarty, Commissioner

NATURAL RESOURCES COMMISSION

Information Bulletin #14

(First Amendment: March 1, 2002)

SUBJECT: Standards for the Development of a Commission Floodway Pursuant to IC 14-28-1-28

Background

The Flood Control Act (IC 14-28-1) governs construction activities in a floodway as those activities may impact the capacity of the floodway, public safety, and fish, wildlife or botanical resources. There are two ways a floodway may be delineated. First, a floodway may be designated using technical criteria designed to predict the areas inundated and carrying flood waters during a 100-year frequency storm. Second, a floodway may be defined for a specific geographic area through designation as a "commission floodway."

The division of water has long used engineering principles for identification of the first type of floodway. Methodologies such as HEC 2 computer modeling have been approved by the commission and used with general professional and public acceptance.

The statutory authority for determining a "commission floodway" is flexible. As stated in IC 14-28-1-28:

(a) The commission may by order:

- (1) establish a floodway as a commission floodway; and
- (2) alter, change, or revoke and terminate the commission floodway.

(b) In the order establishing the commission floodway, the commission shall fix the following:

- (1) The floodway's length at any practical distance.
- (2) The floodway's width or the landslide limits so as to include parts of the flood plains adjoining the channel that, with the channel, are reasonably required to efficiently carry and discharge the flood waters or flood flow of the river or stream.

(c) Notwithstanding any other provision of law, an order establishing a commission floodway is not in force until notice has been given as follows:

- (1) In writing to the county executive in the county affected.
- (2) By publication at least two (2) times, seven (7) days apart, as follows: (A) In two (2) daily newspapers in the city of Indianapolis as provided in IC 5-3-1-6. (B) In newspapers in the counties where all or part of the commission floodway is established as provided in IC 5-3-1-6.

Nonrule Policy Documents

(d) All of the area within a commission floodway is the floodway for all purposes of this chapter.

A few procedural and jurisdictional background items are provided. An “order” to establish a “commission floodway” is defined as a “license” because it is “an approval... or similar form of authorization that may be issued to a person by... the commission... under Indiana law.” As such, the director or a designate initially issues an order for a commission floodway, subject to the commission authority for administrative review. IC 14-11-3-1 and IC 14-10-2-3. The authority to establish policy by permanent rule rests with the commission. IC 14-10-2-4(c) and IC 14-28-1-5. The director may adopt emergency or temporary rules in this context pursuant to IC 14-10-2-4(d).

Interim Guidelines

During its regular monthly meeting of June 20, 1996, the commission adopted criteria for commission floodways. The commission did so after determining the criteria were needed because of a growing desire to apply this statutory mechanism. On the other hand, there was a social need to approve the establishment of commission floodways only where they would not violate the spirit and intent of the Flood Control Act. Criteria were developed to facilitate the use of a statutory procedure and to assure implementation of the procedure would conform with statutory requirements for public safety and environmental protection. The standards were approved as guidelines, and made effective August 1, 1996, but with the expressed understanding they might later be considered for rule adoption. These guidelines were published in the August 1, 1996 Indiana Register at page 3240 as Information Bulletin #14.

Permanent Rules and First Amendment to Information Bulletin

The natural resources commission recently adopted 312 IAC 10-3-4 to address the delineation of commission floodways. Also to be noted is the term “commission floodway” is defined by 312 IAC 10-2-13. Effective January 1, 2002, the rule sections supersede the 1996 guidelines. As a consequence of the new rules, the commission on January 22, 2002 approved the First Amendment to Information Bulletin #14. This First Amendment is effective March 1, 2002.

NATURAL RESOURCES COMMISSION

Information Bulletin #32

GREAT LAKES COASTAL RESTORATION GRANTS PROGRAM

Introduction

The U.S. Congress has made available to states in the Great Lakes region, funds for competitive grants for community-based coastal restoration activities. Funding and oversight are provided by the National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management (OCRM). Projects must be consistent with the goals and objectives of the Coastal Zone Management (CZM) Act of 1972 (CZMA, 16 U.S.C. §1451 *et seq.*) and meet the requirements of the CZM Program administered by OCRM. Indiana is eligible for \$1.75 million to conduct a competitive grant program; future appropriations under this grant program are not expected.

Although Indiana has not completed the CZM program approval process, the State will require that projects are consistent with the CZM Act. For Indiana, this funding will be administered by the Department of Natural Resources, Division of Water, Lake Michigan Coastal Program (LMCP). You may visit the LMCP website at <http://www.in.us/dnr/lakemich> to view additional information about the program or to download copies of the grant guidance and application.

Purpose

This information bulletin is intended to establish the structure and requirements for Indiana’s Great Lakes Coastal Restoration Grants Program. The purpose of the Program is to protect and restore coastal natural resources in Northwest Indiana through partnerships between State and local government. Proposals for projects will be reviewed on a competitive basis utilizing the grant funds available to Indiana. At least fifty (50) percent of the state’s allocation will be directed to eligible local government projects.

Eligible Applicants

State and local governmental agencies are eligible to apply for funds, including:

- Units of local government, such as municipalities, townships, counties, and towns
- Area-wide agencies, including county and regional planning agencies
- State agencies
- State colleges, universities, and other state institutions of higher learning
- Conservancy districts and port authorities
- Basin commissions

Eligible Geographic Area

Projects must be located entirely within the LMCP Coastal Program Area, which comprises the northern portion of Lake, Porter, and LaPorte counties, (see map within application) unless the applicant can demonstrate that the project will have direct substantial benefits within the coastal region.

Eligible Projects

Funding is available for projects that protect and restore coastal resources and reduce or control threats from non-point sources of runoff. Projects must be consistent with CZM Act. The CZM Act can be found at: http://www.ocrm.nos.noaa.gov/czm/czm_act.html

Eligible projects will fall into one of three categories: non-construction, construction, or acquisition.

Non-construction: Projects that do not involve the use of machinery other than hand-held tools.

Construction: Projects that involve the use of machinery or the construction of man-made structures (for examples, pathways or site grading).

Acquisition: Projects that involve the acquisition of land from willing sellers of fee-simple or other interest in land (for example, purchasing an easement for a public right-of-way).

The following are examples of projects that are eligible for funding:

- Wetland restoration and protection
- Restoration and protection of corridors along rivers, streams, and lakes
- Restoration and protection of coastal natural resources
- Stormwater management and control
- Conservation buffers
- Restoration of natural hydrologic functions of rivers and streams
- Contaminated site clean-up
- Planning for coastal resource protection, restoration, or management

Requested funding for eligible projects can include:

- Plans, studies, and reports
- Site design, planning, and engineering
- Natural features studies and inventories
- Planting and restoration of native plant communities
- Stream bank stabilization and restoration
- Community and land use planning
- Low-cost construction projects consistent with the purposes of CZM Act, including but not limited to paths, walkways, and fences
- Land acquisition through fee-simple title or by the purchase of rights through easement from willing sellers

Ineligible projects include:

- Construction projects on privately owned land without a conservation easement
- Large scale, hard structure erosion control projects (total project costs exceed \$100,000)
- Beach renourishment
- Infrastructure projects related to water and sewer line construction
- Dredging
- Restrooms
- Road construction
- Routine maintenance
- General recreational facilities such as playgrounds, ball fields, and courts, etc.
- Wetland or other habitat restoration that is required as a condition of a permit or other regulatory action
- Contaminated site clean up that is required as a condition of a permit or other regulatory action

Funding Limitations

A guideline of no more than \$100,000 per grant request will be used to evaluate proposals. For example, projects with a total cost of no more than \$125,000 with a documented match of \$25,000 or 25% of requested funds will be eligible.

Land Acquisition

Acquisition of land is an eligible project. Acquisition may also include the purchase of easements, entering into leases, and purchase of development rights. However land purchases are limited to areas that provide or improve public access or that provide for preservation of a significant natural resource. Additional documentation and a professional appraisal are required for acquisition projects. You must provide an acquisition cost analysis including the following information in your budget for any parcel of land to be acquired: parcel number, acreage, estimated value of land, estimated value of improvements, total estimated purchase price, certification of title, a clearly discernible location map showing property lines of proposed acquisition and existing structures, and review for potential contamination.

Under federal guidelines, only units of government, or other public entities are eligible to apply for and receive acquisition funds. Acquisition applications may include direct costs associated with the acquisition of land and water including appraisal costs but must exclude such costs as legal fees and court costs. If an actual appraisal, completed after award of funds, results in a purchase price higher than the amount applied for, the grant award will reimburse only the original estimated amount.

Scope of Projects

Projects should be able to stand alone without being dependent on the completion of other work that may or may not be completed. All projects must be designed using sound environmental and engineering principles and be consistent with current federal, state and local laws. In addition, construction projects are required to obtain all necessary federal, state, and local permits before construction may commence. For construction projects, all funds shall only be used for projects on publicly owned or leased land, or land for which a long-term easement has been obtained for the life of the project (a minimum of 20 years). Funds will not be used solely to improve private property or for other private enterprises. A compelling public benefit and commitment to maintenance of the project must be shown to receive funding.

Match Requirements

Grants are awarded with a match of 25% of requested funds. Federal funding may not be used as a match. State and local funding can be used as a match. The match may be in the form of cash or "in-kind" services or a combination of the two. Cash includes salaries, travel expenses (at not more than the approved state rate-see application), and purchase of equipment, supplies and other reasonable items associated with the projects. An "in-kind" match includes the use of equipment, supplies, land or other commodity already owned by the applicant or the use of items or staff donated by a third party. Partnerships that include meaningful private contributions as part of the local match are encouraged. Gifts and donations are acceptable, but only if they are made during the grant period. In-kind match cannot begin accruing until after the grant agreement is signed and NOAA gives final approval.

Volunteer time used as an in-kind match must be charged at the rate paid for the type of work being done or at the rate paid for minimum wage (\$5.15/hour). For example, the time an attorney spends doing data entry work for a project is charged at the rate paid to data entry operators. If the attorney volunteers legal work for the project, the attorney's volunteer time is charged at the rate paid an attorney. The Indiana Department of Workforce Development publishes average wages for most Indiana jobs and industries. Wage information can be found at <http://www.in.gov/dwd/inews/lmi.asp>.

Documentation of all match requirements is required before reimbursement is made.

Qualifying Criteria:

Qualifying criteria: each of the following must be met for an application to be eligible:

1. The proposed project is compatible with the CZM Act.
2. The proposed project addresses a category described above in "eligible projects."
3. The applicant is eligible as described above.
4. The applicant demonstrates the administrative capacity to manage the grant and the legal authority to implement the project.
5. For construction projects, public access is incorporated to the extent possible and compliance with the Americans with Disabilities Act is demonstrated.
6. For construction and acquisition projects, broad and lasting public benefits are demonstrated.
7. The application is submitted before the close of business on **April 26, 2002**.

Indirect Costs

Indirect costs, those costs of an organization that are not readily identifiable with a particular project or program, within the proposed project budget are **not** allowed. Examples of indirect costs include the costs of operating and maintaining buildings, grounds, and equipment, and depreciation.

Payment Methods

The LMCP will approve project expenditures on a reimbursement basis. Thus, the project sponsor is expected to make the initial outlays for the project and then request reimbursement. Payments will be linked to project performance, and payment will be withheld if project schedules and deliverables are not met.

Application Process

Applicants are encouraged to contact the LMCP by March 15, 2002 to discuss eligibility of any proposed project before a completed application is submitted.

1. The applicant must submit a completed application to the Division of Water, LMCP by **April 26, 2002**. Completion of the Notice of Receipt will provide that you receive confirmation of receipt of your application.
2. The LMCP will review proposals. If the application is incomplete the LMCP will notify the applicant. The applicant will then have five (5) business days to submit the missing material to remain eligible. If the project is ineligible, the LMCP will notify the applicant.
3. The LMCP will review all complete and eligible proposals. The LMCP will seek additional review and input as needed on the scientific, engineering, and other technical merits and details of the proposed projects.
4. The Department of Natural Resources will select projects for submission to NOAA for final approval.
5. The Department of Natural Resources will announce approved projects and notify applicants by **July 15, 2002**.
6. The applicant and Department of Natural Resources will sign a grant agreement.
7. The LMCP will provide the grantee with a Grants Manual to assist in the administration and completion of the project.

Application Format

Attached is a hard copy of the application. Please use one (1) inch margins and 11-point type. If you would like an electronic version of the application, please send an e-mail request, along with your preference for Text (*.txt), Microsoft Word (*.doc), or Rich Text Format (*.rtf) to coastal@dnr.state.in.us or download the application from www.state.in.us/dnr/lakemich. The original signed application, three (3) copies, and if possible, one (1) electronic copy, must be received by the close of business (4:45 p.m. E.S.T.) **April 26, 2002**. The electronic copy may be e-mailed by the same deadline to coastal@dnr.state.in.us, but this is not a substitute for the signed application and three (3) copies.

Grant applications can be mailed or hand delivered to:

Indiana Department of Natural Resources
Division of Water- Lake Michigan Coastal Program
402 West Washington Street Room W264
Indianapolis, Indiana 46204

Additional pieces of information such as maps, photos, drawings, or similar items may be submitted but should be limited to essential information. Letters of support demonstrating community support for your proposed project are encouraged but not required. Letters should not exceed three pages each.

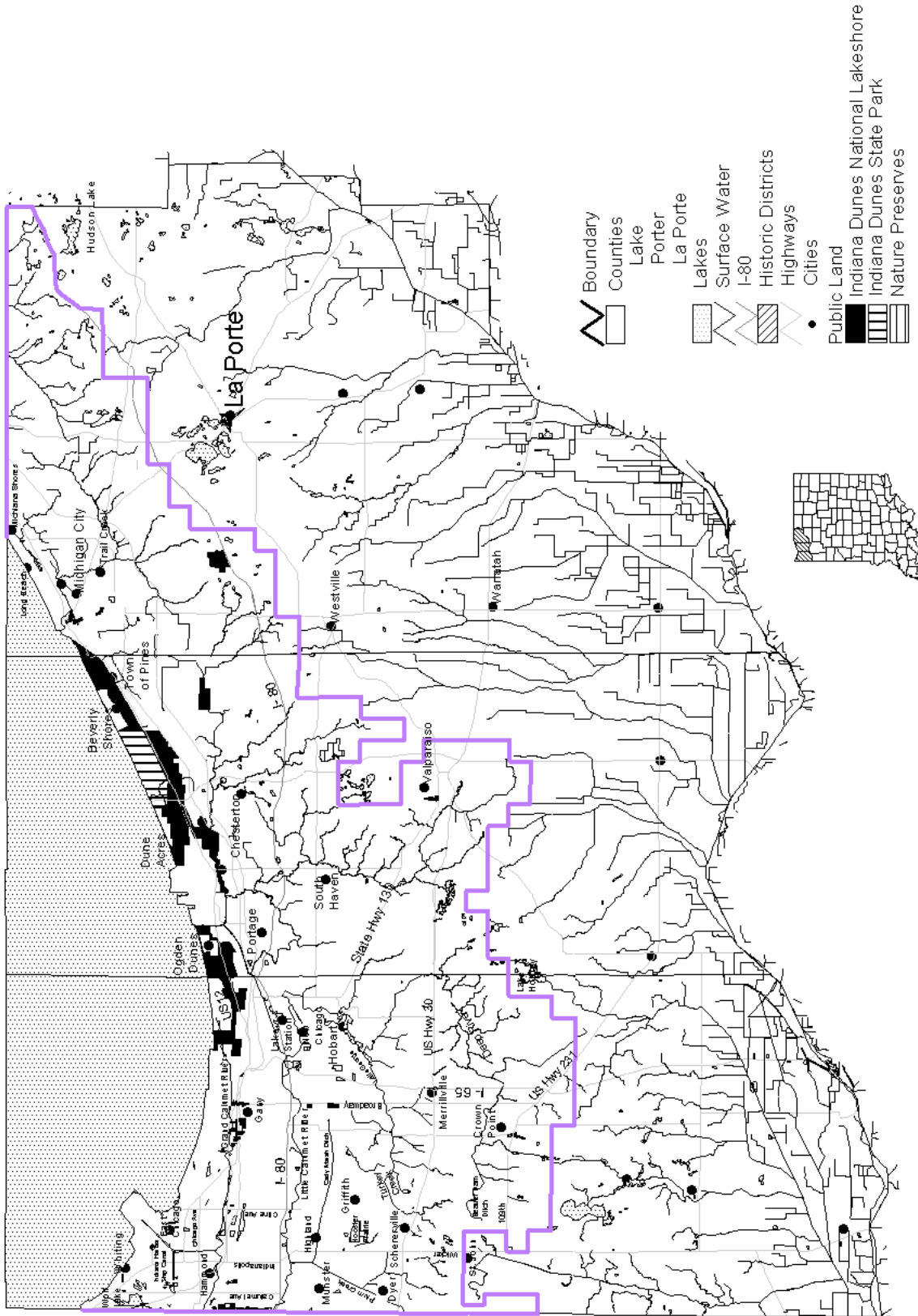
Grant Agreements

The sponsors of selected proposals will be entering into a grant agreement with the State of Indiana. A legal contract will need to be executed by an authorized individual. An authorization should be made by resolution of the governing body, with a copy of the resolution returned with the grant agreement. It is recommended that local units of government place the topic of LMCP grant acceptance, and authorization to sign pertinent agreements, on their governing board meeting agenda well in advance of receipt of the grant agreement. The signed agreement will then be processed as soon as it is received. A vendor number may need to be assigned as well, which may result in additional processing time. Work conducted prior to the time that all agreements have been approved by the Department of Natural Resources and NOAA, and the grantee receives a signed copy, is not reimbursable.

Commission Approval and Timing

This information bulletin was approved by the Natural Resources Commission as a nonrule policy document, effective immediately, on January 22, 2002. Timing requirements set forth in the information bulletin are of the essence and are determined upon their actual receipt by the LMCP.

Lake Michigan Coastal Program Area



**GREAT LAKES COASTAL RESTORATION GRANTS
APPLICATION REQUIREMENTS****A. Project Description and Timeline**

Please provide a detailed narrative for each of the following items. The narrative should be as clear and concise as possible, and should include adequate detail to define fully the proposed scope of work. The narrative should not exceed three (3) double-sided pages or six (6) single sided pages.

1. Project purpose, reasons for undertaking the project, and problem(s) addressed.
2. Project goals, objectives and the steps that will be taken so that they are accomplished.
3. Benefits that will result from the project to specific natural resources, surrounding communities, the region, or the state.
4. Methods that will be used by the project for public outreach, education, or distribution of information to share project results and techniques throughout the coastal region.
5. How the project will implement actions recommended in existing management plans created through local or state governments, regional organizations, or other public processes.
6. Project timeline that includes all project phases, primary and secondary tasks for each phase, approximate time devoted to each task, deadlines for project objectives, and responsible party for each task.

B. Budget

Please provide a detailed project budget. Be sure to account for the total cost of the proposed project, not just the requested amount. Budget must include the following categories:

1. Personnel. This category refers only to persons on the regular payroll of the sponsoring organization. Persons employed on a contractual basis for the sole purpose of working on the grant-assisted project are accounted for in the "Contractual" line-item.
2. Fringe Benefits. Fringe benefits for paid personnel are an allowable cost. To facilitate the budget process, fringe benefit expenses are often expressed as a percentage of the "Personnel" costs.
3. Volunteer Personnel. This category refers to persons who donate their time towards the completion of the grant-assisted project. Volunteer time is valued at minimum wage (\$5.15/hour) unless other arrangements are made in advance with the Lake Michigan Coastal Program. While volunteer time can make up the entire matching share amount, it cannot exceed that amount. Note that, in general, the State prefers to fund projects that include little or no volunteer personnel time, since it is often difficult for the Project Sponsor to keep volunteers working on a set schedule.
4. Travel. Approved expenditures made for travel will be reimbursed by the State at the current rate paid by the State of Indiana. Travel expenses can only be reimbursed in accordance with the State Travel Policies and Procedures as specified in Financial Management Circular (#97-1.1). If the project involves travel outside the State of Indiana, please note this in the budget separately and provide a justification in the Project Description.
5. Supplies. Only those items necessary for the completion of the project may be purchased under this grant. Documentation for each purchase (in the form of invoices and canceled checks or similar documents) will be required in order to receive reimbursement. Note that any single item costing more than \$5,000 is considered to be equipment, and not a supply item. Grant funds cannot be used to purchase equipment without advance written permission from the Lake Michigan Coastal Program.
6. Contractual. This category refers to the cost of professionals engaged to work on the project on a contractual basis. Note that federal regulations require an open selection process in the hiring of all consultants and contractors connected with a federally-funded position. The grant recipient must either advertise the position or distribute a request for proposals to a reasonable number of qualified individuals or firms, and must receive back at least three written bids. After the open selection process, the Lake Michigan Coastal Program must approve of the selected consultant or contractor before they may be hired by the grant recipient. No person employed as a consultant (or volunteering their professional services) may be paid (or valued at) more than \$70 per hour. When hiring consultants or contractors for a grant project, the subgrantee must also provide evidence that:
 - The fee is appropriate considering the qualifications of the consultant/contractor, the fees which the consultant/contractor ordinarily charges, and the nature of the services to be provided; and
 - That no consultant/contractor with equal experience and qualifications is available for a lesser amount.

The rate restriction of \$70 per hour applies to individuals paid an hourly rate outside of a fixed fee contract. The Lake Michigan Coastal Program reserves the right to reject consultants and contractors selected by grant recipients to work on grant projects. Consultants who have failed to perform adequately on past projects will not be approved. The grant applicant is warned not to make any commitments to any parties prematurely, as this could make the applicant ineligible for grant funding. Additional information on contracting with consultants may be found in the Grants Manual, which will be supplied to grant recipients with their award letter.

7. Other. Costs which do not fall into any of the above categories should be entered on this line. Examples of items often accounted for here include printing and publishing expenses. Please indicate the nature of any expenses listed in this category. Note that construction projects often require the formal advertisement of bidding opportunities in several newspapers. These costs should be included in the project budget.

C. Matching Share

The matching share is the amount of funding the Project Sponsor is responsible for having “up-front,” and at a minimum is equal to 25% of the total requested funds. Please indicate the source of matching share. The dollar amount, source of match, and total for each match category must be included. A written statement from the authorized fiscal officer for the Project Sponsor must be included which references the project title and sponsor. The statement should verify that the items listed or total amount included in the grant application as matching share are available and that those resources will be allocated only to the Great Lakes Coastal Restoration Grant project. If elements of the matching share are being provided by entities other than the sponsoring organization, attach copies of letters from those entities showing a firm and binding commitment to provide the promised donation. There are three categories of matching share. The amount proposed as match for the project must be described in detail for each of the following categories:

- a. Cash. When grant recipients use their own funds to purchase goods or services specifically for the grant project (in other words, goods or services which recipients would not otherwise purchase as part of their own on-going programs), or when a third party donates cash to the grant recipient for the same purpose, it is considered to be a cash donation to the grant project. Examples include where grant recipients use their own funds to hire a temporary employee or a consultant solely and specifically to work on the grant project, where they use their own funds to purchase supplies for use on the project that are not ordinarily stocked in their own supply room, or where they receive cash from a third party to help them do either of the preceding activities.
- b. In-kind Services and Goods. When grant recipients arrange to perform some or all of the grant work by using their existing staff and by drawing supplies from their own supply room, or when a third party draws on its own existing staff and supplies to assist the project, it is considered to be an in-kind donation to the grant project.
- c. Volunteer Services. When the grant recipient arranges to have individuals perform work on the project without any remuneration, it is considered to be a volunteer services donation to the grant project. Establishing the value of volunteer services can be difficult. If the volunteer is normally a paid professional in a given field of endeavor, and is providing free services in that same field, then it is usually possible to value the volunteer’s time using their regular hourly rate of pay. However such an arrangement must be approved in advance by the Lake Michigan Coastal Program. Ordinarily however, volunteer services are valued at minimum wage (\$5.15/hour). Accurate time sheets must be kept to document the amount of volunteer services performed.

D. Statements on Meeting Ranking Criteria

Ranking Criteria are enclosed in the application packet and will be used to rate and rank applications. Separate criteria have been developed for land acquisition projects. The application must address concisely all criteria in narrative form and include supporting documentation to receive points. For land acquisition projects, please only respond to the category of criteria specifically for land acquisition projects. All projects will be rated according to maximum points possible and ranked. Please clearly identify to which criteria any supporting documentation applies.

Note: For all projects involving land-based projects, it is important to include clear and accurate maps of the project location and the approximate location on the project site of all activities that will be conducted for the project. Map should clearly identify surrounding landmarks such as roads or rivers, project boundaries, property lines, existing features, and any other information that will assist in reviewing the proposed project.

GREAT LAKES COASTAL RESTORATION GRANTS RANKING CRITERIA

The following criteria will be used to rate and rank applications for funding from the Great Lakes Coastal Restoration Grants. Applications will be rated using from zero to the maximum points possible listed below, based on supporting documentation provided. Separate criteria have been developed for land acquisition projects and non-land acquisition projects. The application must address each criterion in narrative form and include supporting documentation to receive points. For land acquisition projects, please only respond to the category of criteria specifically for land acquisition projects. Construction and non-construction projects will be rated according to maximum points possible and ranked.

For clarification of any of the criteria below, please contact the Lake Michigan Coastal Program at 219-983-9912

Criteria for non-land acquisition projects:

PROJECT ADMINISTRATION CRITERIA:		
Priority will be given to projects which:	Maximum points possible	Documentation required
Have an individual capable of grant administration to act as Project Coordinator	8	Provide the name of this person, list their qualifications and grant-administration experience (if any).
Have the ability to maintain the proposed project in perpetuity or for a reasonable time frame of not less than 20 years	10	Provide the estimated life of the project and documentation that demonstrates both financial and administrative commitment to the long-term maintenance of the project.
Have clear and measurable goals for the defined scope of work. The scope of work must be realistic and commensurate with the amount of grant funding requested	10	Describe the project methodology and the results or products which will be produced.
Have requested or received all necessary permits or other forms of approval (including land owner permission) required to complete the scope of work	10	Provide copies of applicable forms of approval.
Have a detailed timeline, schedule, and budget	8	Include a detailed timeline and budget. The timeline must show the approximate amount of time that will be devoted to each phase, task, or component of the project. The budget must include a detailed budget breakdown and indicate how the budget figures were computed and include copies of estimates received.
Have an applicant with 100% of the matching share on-hand and documented.	4	Provide bank statements, employee position descriptions, or other documentation to demonstrate that matching funds are available.
Total Points	50	
PROJECT PURPOSE AND BENEFIT CRITERIA:		
Priority will be given to projects which:	Maximum points possible	Documentation required
Include a clear plan for distribution and transfer of information concerning project techniques and results throughout the coastal region, including the use of education and outreach strategies	5	Provide a description and timeline for the distribution and transfer of project information. Include material to be produced, distribution methods, partners, and potential recipients.
Implement actions recommended in existing management plans created through local governments, regional organizations, or other public processes	8	Provide a reference or copy of the pertinent sections of the management plan and a detailed description of how the project addresses the goals or recommendations of the plan. Include a list of entities that participated in the development of the plan.
Protect or restore a wetland type that is considered by the State as an outstanding priority type (wet prairie, wet sand prairie, panne, seep springs, marl beaches, dune swales, fens, bogs, wet floodplain forest, shrub-swamp, swamp, sedge meadow)	8	Provide documentation from the DNR Division of Nature Preserves that the project site or area of immediate effect includes an outstanding wetland priority type. Include a map of the wetland that shows its location in relation to the proposed project boundaries.
Address non-point sources of pollution to rivers or streams designated as outstanding, Salmonid, or tributaries required for Salmonid spawning and release sites	8	Provide a map of the project site and clearly highlight the location and affected portion of the designated river or stream. Designated outstanding rivers and streams in the coastal region include Deep River one mile south of U.S. 30 to Little Calumet River, Little Calumet River East Fork C.R. 600E to S.R. 249. Salmonid rivers and tributaries include Salt Creek, Little Calumet River, and Trail Creek. Provide documentation that the project site or area of effect includes a Salmonid river or tributary from the DNR Division of Fish and Wildlife Lake Michigan Research Field Station in Michigan City.

Nonrule Policy Documents

Benefit the habitat of plant and animal species that are endangered, threatened, or otherwise listed in the Indiana Natural Heritage Database	8	Provide documentation from the DNR Division of Nature Preserves that the project site or area of effect most likely includes the habitat of endangered or threatened plant or animal species. Include a map of the habitat that shows its location in relation to the proposed project boundaries.
Clearly demonstrate a lasting, broad public benefit or if applicable, public access that will result from the project and if that public access complies with the Americans with Disabilities Act.	3	Clearly describe, for all phases of the project, what benefits or public access will result, the estimated life of those benefits, and what communities will benefit from the project. If applicable, include maps of any public access sites or entry points.
Are based in sound science and engineering principles and if applicable will utilize best management or conservation practices to accomplish project goals	4	Provide detailed information on the professional qualifications and certification of all members of the project planning, design or construction team. If applicable, describe the best management or conservation practices that will be used to achieve project goals including but not limited to: practices described in the Indiana Drainage Handbook, the Indiana Handbook for Erosion Control, the use of native vegetation, and practices to minimize on and off site impacts.
Include a site or project area assessment or provide detailed steps that will be taken to develop a site or project area assessment	3	Clearly identify problems to be addressed, project area description including existing structures, existing conditions, sensitive areas or resources that should be considered, and stakeholders in the project. If possible, provide a map. Or clearly identify the steps that the applicant will take to provide the above information.
Provide for local or general public participation through all phases of the project	3	Provide a description and timeline of all public participation activities, material that will be produced, and entities that will be targeted to participate.
Total Points	50	

Criteria for Land Acquisition Projects Only:

Priority will be given to projects which:	Maximum points possible	Documentation required
Propose to acquire protection for property in perpetuity	20	Clearly define the type of acquisition which is proposed and any clauses that will be included in the acquisition agreement. For example, will the property be acquired in fee simple or will a conservation easement for development rights be secured.
Are sponsored by an entity that will have the ability and resources to manage the property over the long-term	15	Describe the ultimate owner of the property to be acquired, the entity responsible for long-term management (if different), the number of staff dedicated to land management, and any other information that will demonstrate a commitment of resources to protect the proposed acquisition project.
Provide protection to lands in close proximity or adjacent to existing protected properties with compatible land uses	15	Provide a copy of a topographic map that clearly identifies the property boundaries of the proposed acquisition and the boundaries of existing protected properties.
Provide protection to lands within the 100-year floodplain	5	Provide a map that clearly identifies the boundaries of the 100 year floodplain and the property boundaries of the proposed acquisition.
Provide protection to a wetland type that is considered by the State as an outstanding priority type (wet prairie, wet sand prairie, panne, seep springs, marl beaches, dune swales, fens, bogs, wet floodplain forest, shrub-swamp, swamp, sedge meadow)	10	Provide documentation from the DNR Division of Nature Preserves that the project site or area of immediate effect includes an outstanding wetland priority type. Include a map of the wetland that shows its location in relation to the proposed project boundaries.
Provide protection for the habitat of plant and animal species that are endangered, threatened, or otherwise listed in the Indiana Natural Heritage Database	10	Provide documentation from the DNR Division of Nature Preserves that the project site or area of effect most likely includes the habitat of endangered or threatened plant or animal species. Include a map of the habitat that shows its location in relation to the proposed project boundaries.

Incorporate public access and comply with the Americans with Disabilities Act	10	Clearly describe the public access provided following project completion including maps of any public access sites or entry points.
Demonstrate evidence of public and local unit of government support for the project	5	Provide documentation of support by affected communities, and local units of government
Have received the approval required to accept ownership of the property and an option to purchase from the landowner	5	Provide documentation of approval and options.
Demonstrate compatibility with local land use plans or other management plans developed through local governments, regional organizations, or other public processes	5	Provide a reference or copy of the pertinent sections of the management plan and a detailed description of how the project addresses the goals or recommendations of the plan. Include a list of entities that participated in the development of the plan.
Total Points	100	

**GREAT LAKES COASTAL RESTORATION GRANTS
RATING POINTS DISTRIBUTION SYSTEM**

PROJECT ADMINISTRATION CRITERIA:

- 1) Has an individual capable of grant administration to act as Project Coordinator:
 - _____ 0 points There is no person identified as Project Coordinator
 - _____ 2 points Person is qualified but has no previous grant management experience
 - _____ 4 points Person is qualified and has minimal previous grant management experience
 - _____ 8 points Person is qualified and has significant previous grant management experience
- 2) Has the ability to maintain the proposed project in perpetuity or for a reasonable time frame of not less than 20 years.
 - _____ 0 points Project sponsor has not demonstrated the ability to maintain the project either directly or through an agreement with another party.
 - _____ 5 points Project will be maintained for at least 20 years
 - _____ 10 points Project will be maintained in perpetuity
- 3) Has clear and measurable goals for the defined scope of work. The scope of work must be realistic and commensurate with the amount of grant funding requested.
 - _____ 0 points Project does not have clear and measurable goals for the defined scope of work
 - _____ 2 points Project has clear goals; however, the scope of work is not realistic for the grant funding or time frame and methods for measuring success is unclear.
 - _____ 5 points Goals are clear and realistic however, the methods for measuring success is unclear or not adequately matched to the defined scope of work.
 - _____ 10 points Goals are clear, measurable and realistic
- 4) Has requested or received all necessary permits or other forms of approval (including land owner permission) required to complete the scope of work.
 - _____ 0 points Project sponsor has not addressed the need for permits or approval to complete the described project.
 - _____ 5 points Project sponsor has submitted copies of paperwork to request all necessary permits or other forms of approval but has not received final approval.
 - _____ 10 points Project sponsor has documented the receipt of all necessary permits or other forms of approval required to complete the scope of work.
- 5) Has a detailed timeline, schedule, and budget.
 - _____ 0 points Timeline, schedule, or budget has not been submitted.
 - _____ 4 points Timeline, schedule, and budget has been submitted, but are not detailed enough to capture all phases and tasks included in the scope of work.
 - _____ 8 points Submitted timeline, schedule, and budget are detailed, demonstrate requirements and costs for all phases and tasks, and indicate methods of computed budget figures or includes estimates from outside sources.
- 6) Has an applicant with 100% of the matching share on-hand and documented.
 - _____ 0 points Applicant has not submitted documentation of match share
 - _____ 4 points Applicant has submitted documentation that 100% of their matching share is on-hand

PROJECT PURPOSE AND BENEFIT CRITERIA:

- 7) Includes a clear plan for distribution and transfer of information concerning project techniques and results throughout the coastal region including the use of education and outreach strategies

Nonrule Policy Documents

- _____ 0 points No plan for distribution was submitted.
- _____ 2 points Plan includes distribution to a limited area or limited audience
- _____ 3 points Plan includes distribution of information on project techniques to the coastal region, but does not include clear public education or outreach strategies, does not plan for sufficient or adequate educational material to be produced, or does not provide a clear timeline.
- _____ 5 points Plan includes a clear timeline for the distribution of information, a clear description of material and methods to distribute information on project techniques, and clear and effective public education and outreach strategies throughout the coastal region.
- 8) Implements actions recommended in existing management plans created through local governments, regional organizations, or other public processes.
- _____ 0 points Project does not implement actions recommended in an existing plan
- _____ 4 points Project does implement actions recommended in an existing plan; however, the plan was either not created with the participation of local government or organizations or was made without adequate public input.
- _____ 8 points Project implements actions recommended in an existing plan that was created with participation of local governments or organizations with adequate public input.
- 9) Protects or restores a wetland type that is considered by the State as an outstanding priority type (wet prairie, wet sand prairie, panne, seep springs, marl beaches, dune swales, fens, bogs, wet floodplain forest, shrub-swamp, swamp, sedge meadow)
- _____ 0 points Project does not protect or restore an outstanding priority wetland type or the applicant has not provided adequate documentation.
- _____ 8 points Applicant has documented that the project will protect or restore an outstanding priority wetland type.
- 10) Addresses non-point sources of pollution to rivers or streams designated as outstanding, Salmonid, or tributaries required for Salmonid spawning and release sites
- _____ 0 points Project does not address non-point sources of pollution to rivers or streams so designated or the applicant has not provided adequate documentation
- _____ 8 points Applicant has documented that the project will address non-point sources of pollution to rivers or streams so designated.
- 11) Benefits the habitat of plant and animal species that are endangered, threatened, or otherwise listed in the Indiana Natural Heritage Database.
- _____ 0 points Project does not benefit the habitat of plant and animal species that are endangered, threatened, or otherwise listed in the INHD.
- _____ 8 points Project benefits the habitat of plant and animal species that are endangered, threatened, or otherwise listed in the INHD.
- 12) Clearly demonstrates a lasting, broad public benefit and if applicable, public access that will result from the project that complies with the Americans with Disabilities Act.
- _____ 0 points There is no lasting, broad public benefit demonstrated and project does not incorporate public access or comply with ADA.
- _____ 1 points Benefits will result to a broad public in the coastal region; but they are not long lasting or in perpetuity.
- _____ 3 points Benefits will result to a broad public in the coastal region, and will be long lasting or in perpetuity and the project incorporates public access and complies with ADA.
- 13) Is based in sound science and engineering principles and if applicable will utilize best management or conservation practices to accomplish project goals
- _____ 0 points The applicant did not demonstrate that the project techniques or foundation are based in sound science and engineering principles and there is no documentation or description of BMPs that will be utilized.
- _____ 2 points The applicant demonstrated that the project planning, design, or construction team will consist of professionally qualified individuals; however, the project techniques are not clearly described. And if applicable, the applicant describes specific BMPs that will be utilized, but the scope of their use or the area of implementation is limited. There is no description of the use of BMPs following construction activities.
- _____ 4 points The applicant clearly demonstrates that the project will use professionally qualified individuals and the project techniques are based in sound science and engineering principles. And if applicable, the project has a clear plan to incorporate specific BMPs into construction activities throughout the project and over the entire project area affected by construction activities. The plan includes BMPs that will remain or be maintained following construction activities.
- 14) Includes a site or project area assessment or provides detailed steps that will be taken to develop a site or project area assessment.

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- _____ 0 points Applicant does not document that a site assessment has been completed or describe steps that will be conducted to complete a site assessment during the proposed project.
- _____ 2 points The project has not completed a site assessment but includes specific and clear steps that will be taken to complete one during the project.
- _____ 3 points Applicant documents that a complete site assessment has been completed.
- 15) Provides for local or general public participation through all phases of the project.
- _____ 0 points The applicant does not document that local or general public participation will occur through all phases of the project.
- _____ 3 points A clear timeline of all public participation activities and production of materials is provided and a description of targeted audiences included.

Total Points

100 Maximum points possible for Non-land Acquisition Projects

CRITERIA FOR LAND ACQUISITION PROJECTS ONLY:

- 1) Proposes to acquire protection for property in perpetuity.
- _____ 0 points Acquisition is for less than perpetuity.
- _____ 10 points Acquisition is for perpetuity through a conservation easement or other agreement.
- _____ 20 points Acquisition is for perpetuity through fee simple purchase.
- 2) Is sponsored by an entity that will have the ability and resources to manage the property over the long-term.
- _____ 0 points Applicant has not demonstrated the ability and resources to manage the property over the long-term.
- _____ 7 points Applicant has demonstrated the ability to manage the property over the long-term, but has not clearly described resources available for land management.
- _____ 15 points Applicant has demonstrated the ability and resources to manage the property over the long-term.
- 3) Provides protection to lands in close proximity or adjacent to existing protected properties with compatible land uses.
- _____ 0 points Does not demonstrate that acquisition will protect property in close proximity to or adjacent to existing protected properties.
- _____ 7 points Project proposes to protect land within close proximity (within an area of five square miles or less) to other protected properties.
- _____ 10 points Project proposes to protect land in close proximity (within an area of two square miles) to existing properties with compatible land uses.
- _____ 15 points Project proposes to protect land adjacent to existing protected properties with compatible land uses.
- 4) Provides protection to lands within the 100-year floodplain.
- _____ 0 points Project does not protect lands within the 100-year floodplain.
- _____ 5 points Project protects lands predominately within the 100-year floodplain.
- 5) Protects a wetland type that is considered by the State as an outstanding priority type (wet prairie, wet sand prairie, panne, seep springs, marl beaches, dune swales, fens, bogs, wet floodplain forest, shrub-swamp, swamp, sedge meadow)
- _____ 0 points Project does not protect an outstanding priority wetland type or the applicant has not provided adequate documentation.
- _____ 10 points Applicant has documented that the project will protect an outstanding priority wetland type.
- 6) Benefits the habitat of plant and animal species that are endangered, threatened, or otherwise listed in the Indiana Natural Heritage Database.
- _____ 0 points Project does not benefit the habitat of plant and animal species that are endangered, threatened, or otherwise listed in the INHD.
- _____ 10 points Project benefits the habitat of plant and animal species that are endangered, threatened, or otherwise listed in the INHD.
- 7) Incorporates public access and complies with the Americans with Disabilities Act.
- _____ 0 points Project does not incorporate public access or comply with ADA
- _____ 10 points Project incorporates public access and complies with ADA.
- 8) Demonstrates evidence of public and local unit of government support for the project.
- _____ 0 points Applicant does not demonstrate local support.
- _____ 5 points Applicant demonstrates local support.
- 9) Has received the approval required to accept ownership or the property and an option to purchase from the landowner.
- _____ 0 points Applicant has not demonstrated receipt of approvals.
- _____ 5 points Applicant has demonstrated receipt of approvals.

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10) Demonstrates compatibility with local land use plans or other management plans developed through local governments, regional organizations, or other public processes.

_____ 0 points Applicant does not demonstrate compatibility
 _____ 5 points Applicant demonstrates compatibility.

Total Points

100 Maximum points possible for Land Acquisition Projects

**GREAT LAKES COASTAL RESTORATION GRANTS
 APPLICATION CHECKLIST**

All grant applicants must submit the following items in the order below.

1. Project Proposal Cover Sheet _____
2. Grant Application Checklist _____
3. Eligibility Questionnaire _____
4. Application Requirements and Any Required Attachments _____
 - Project Description and Timeline _____
 - Budget _____
 - Matching Share _____
 - Statements on Meeting Ranking Criteria and Any Required Attachments _____
5. Applicable Signed Statements _____
 - Assurances (form for either Construction or Non-construction projects) _____
 - Attorney Title Opinion (for construction or land acquisition projects) _____
 - Public Ownership Affidavit (for construction projects) _____

**GREAT LAKES COASTAL RESTORATION GRANTS
 PROJECT PROPOSAL COVER SHEET**

Application for Federal funds administered by the Indiana Department of Natural Resources, Division of Water, Lake Michigan Coastal Program: 402 West Washington Street; Rm W264, Indianapolis, Indiana 46204. Phone (317) 232-4160.

1. Project Title: _____

2. Project Type: (check one)
 _____ Non-construction _____ Construction _____ Acquisition
3. Project Sponsor: _____

 Address: _____
 Telephone Number: _____
4. Federal Employer's Identification Number: _____
5. Congressional District Number: _____
6. Project Coordinator: _____
 Address: _____
 Telephone Number: _____ Fax: _____
7. Project Budget Summary
 Total Project Cost: \$ _____
 Amount of funds requested \$ _____
 Amount of match provided \$ _____
8. Project Schedule Summary
 Beginning Date (may start August 1, 2002): _____
 Ending Date (must be no later than July 31, 2004): _____
9. Project Location
 County: _____
 Township, Range, and Section if site-specific: _____
10. Project Deliverables or Products Summary: _____

This application prepared and submitted by:
Name and Title:
Address:
Phone Number: Fax Number:
Signature: Date:

GREAT LAKES COASTAL RESTORATION GRANTS
ELIGIBILITY QUESTIONNAIRE

- 1. Project Title:
2. Project Sponsor:
3. Sponsor Type: (please select applicable type and describe fully sponsor's name and affiliation)
Local government agency:
Area-wide agency:
State agency:
Institutions of higher learning:
School district:
Conservancy district:
Port authority:
Basin commission:
Other:
4. Check which project type applies:
Non-construction:
Construction or land acquisition:
5. For construction or land acquisition projects, will the project result in a public benefit:
a) This project is on public land or on publicly controlled easement and is for public benefit.
b) The facility will be open to the general public.
c) If the answer to 5b is "No," the project is NOT eligible for funding unless access to the facility will be limited for one or more of the following reasons:
d) The applicant needs a deed, lease, or easement to conduct the activity.
e) If the answer to 5d is "Yes," what is the life of the document (provide duration in terms of years or specify if in perpetuity).
f) The document in 5d contains a reversionary clause.
g) The sponsor will contract with a non-profit organization to complete part or all of this project.
6. Title Opinion, Certificate, and Appraisal
a) A title opinion, certificate, or affidavit showing that the property for the proposed project is publicly owned or leased in perpetuity or for the expected life of the project (at least 20 years) is attached.
b) If purchasing an interest in land, the sponsor has obtained an independent appraisal.
7. Indiana State Historic Preservation Officer (SHPO) Clearance and National Historic Preservation Act.
a) The sponsor has attached SHPO clearance.

Nonrule Policy Documents

- b) The project will affect properties listed in the National Register of Historic Places or is otherwise protected by section 106 of the National Historic Preservation Act or a similar Indiana Preservation Act.
 Yes No
8. National Flood Insurance Program:
- a) The project is located in a designated floodway or "V" zone on a National Flood Insurance Program Floodway Map.
 Yes No
If the answer to 8a. is "No," proceed to 9.
- b) The community associated with the project area is participating in the Flood Insurance Program.
 Yes No
If the answer to 8b is "No," the project is NOT eligible for funding.
9. Endangered Species Act: The proposed project will not adversely affect threatened or endangered species or critical habitat under the jurisdiction of the National Marine Fisheries Service or the U.S. Fish and Wildlife Service as defined by the Endangered Species Act. Yes No
If the answer is "No," the project is NOT eligible for funding.
10. National Environmental Policy Act:
- a) The proposed project may significantly affect the human environment.
 Yes No
- b) The proposed project involves unresolved conflicts concerning alternative uses of available resources.
 Yes No
- c) This action would have significant adverse effects on public health and safety.
 Yes No
- d) This action will have highly controversial environmental effects.
 Yes No
- e) This action will have highly uncertain environmental effects or involve unique or unknown environmental impacts.
 Yes No
- f) The project will have significant adverse impacts on other natural resources not covered elsewhere in this checklist, e.g. beaches and dunes, wetlands, estuarine areas, wildlife habitat, or other resources.
 Yes No
- g) The project will have insignificant effects when performed separately, but will have significant cumulative effects.
 Yes No
- If the answer to any one subpart of 10 is "Yes," an Environmental Assessment (EA) may be required. If "Yes," attach a description of the resource(s) affected and the nature and scope of the effects. If "Yes," the sponsor shall provide additional information stating why the sponsor believes an EA or EIS is not required. Additional environmental information may be required in cases where project impacts are not clearly described or where probable impacts require an EA or EIS.
11. Handicapped accessibility: The proposed project is handicapped accessible.
 Yes No N/A
If the answer to 11 is "No," attach to this form an explanation as to why the project is not handicapped accessible.
12. User Fees. The public will not be charged a user fee for the proposed project.
 Yes No N/A
If the answer to 12 is "No," attach a description of the user fee which includes how much, differential fees (if any), the need for the fees, and proposed use of the revenue.
13. Environmental Justice: The project will not have a disproportionately high and adverse human health or environmental effects on minority or low income populations.
 Yes No
If the answer to 13 is "No," the project is NOT eligible for funding.
14. State and Local Laws: The project is consistent with state and local laws.
 Yes No
If the answer to 14 is "No," the project is NOT eligible for funding.
15. The project sponsor possesses the legal authority to implement the proposed project.
 Yes No
If the answer to 15 is "No," the project is NOT eligible for funding.
16. I can attest that the statements made in this eligibility questionnaire and other information provided as attachment are, to the best of my knowledge, true and accurate.

Signature of project sponsor

Printed name of project sponsor

**GREAT LAKES COASTAL RESTORATION GRANTS
ASSURANCES- NON-CONSTRUCTION PROJECTS**

Note: Certain of these assurances may not be applicable to your project or program. If you have any questions, please contact the Lake Michigan Coastal Program. These assurances are required of applicants for federal funds.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F.)
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-155), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a and 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity

Nonrule Policy Documents

of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523) and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.)
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL, TITLE

APPLICANT ORGANIZATION, DATE SUBMITTED

GREAT LAKES COASTAL RESTORATION GRANTS ASSURANCES- CONSTRUCTION PROJECTS ONLY

Note: Certain of these assurances may not be applicable to your project or program. If you have any questions, please contact the Lake Michigan Coastal Program. These assurances are required of applicants for federal funds.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
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10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of

the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-155), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a and 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523) and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.)
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL, TITLE
APPLICANT ORGANIZATION, DATE SUBMITTED

TITLE OPINION

Date

RE: _____
Project Title

I hereby certify that I am a member in good standing of the bar of Indiana and have been requested to determine record ownership for the parcel (s) of property on which the above-referenced project will be constructed, _____ (name and brief description of land). After thoroughly examining the public land records or other appropriate records in accordance with the laws of Indiana, I hereby certify that record title to the parcel is held by _____ in (check one):

Nonrule Policy Documents

_____ fee simple absolute
_____ other (specify) _____

I have determined that there are (check one):

_____ no easements or other encumbrances on the property
_____ easements or other encumbrances on the property (list below or attach a list)

Other Comments: _____

Signature Bar number (must include)

Name

Telephone number

Address

SUGGESTED AFFIDAVIT OR CERTIFICATION OF PUBLIC OWNERSHIP

On a separate sheet of paper, prepare an affidavit and explain your authority to certify that the property on which the proposed project is located is publicly owned. The person signing this affidavit should be an official with knowledge and authority to certify ownership. Use the title: "Public Ownership Affidavit", and the language provided below.

I solemnly affirm upon personal knowledge that the following statements are true:

I (*name of official*) being duly sworn state that:

1. Official must state what his/her title is and what authority he/she has to say that the property is publicly owned.
2. *Official must identify the property and attest that the property is owned or leased by the state or local government and there are no encumbrances on the property that will interfere with the proposed project.*

Signed _____

(printed name of official)

Subscribed and affirmed before me this _____ day of _____ (month), _____ (year).

Notary Public Signature
My Commission expires: _____

DEPARTMENT OF STATE REVENUE

04970139.LOF

**LETTER OF FINDINGS NUMBER: 97-0139
Withholding, Food and Beverage, Retail Sales Taxes
For the Years 1996 and 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Withholding, Retail Sales, Food and Beverage Tax Assessments Made Against Taxpayers As Responsible Officers
Authority: IC 6-2.5-2-1(a, b); IC 6-2.5-6-1(a); IC 6-2.5-9-3; IC 6-3-4-8(g); IC 6-8.1-5-1(b); IC 6-9-12-7; Indiana Dept. of Revenue v. Safayan, 654 N.E.2d 270 (Ind. 1995)

Taxpayers protest the assessment of retail sales, food and beverage, and withholding taxes as responsible corporate officers.

STATEMENT OF FACTS

Taxpayers were determined to be responsible officers of a failed restaurant business and, as a result, were assessed individual liability for unpaid food and beverage, retail sales, and withholding taxes for the years 1996 and 1997 due from the restaurant business. The taxpayers filed a protest of that assessment on March 3, 1997 in which the taxpayers, while admitting that they were designated corporate officers at the time of the restaurant's existence, denied having the ability to direct or control the day-to-day business operations. In addition, the taxpayers denied ever having the ability to pay the taxes due from the restaurant business. Rather, the taxpayers maintained that the restaurant was managed entirely by the corporation's original president who purportedly had sole responsibility for the corporation's bank accounts and was the only corporate officer who ever had the authority to issue checks on behalf of the corporation.

The business tax application filed with the state on October 28, 1990 listed the taxpayers as vice-president and as secretary-treasurer of the restaurant corporation. The business tax application indicated that the restaurant was incorporated on April 4, 1990. The business tax application was signed by one of the taxpayers then serving in his capacity as corporate "secretary."

The corporate tax returns for the years ending 1992 and 1994 both list one of the taxpayers – serving as secretary-treasurer – as owning 25% of the corporation's shares.

During 1996 and 1997, one of the two taxpayers – then serving as the corporate vice-president – regularly signed and filed with the Department Indiana sales and use tax returns (Form ST-103A).

A document filed with the bankruptcy court on February 14, 1997, indicated that the two taxpayers, designated therein as two of the restaurant's "current directors," met on January 6, 1997. At that meeting, the two taxpayers – acting unilaterally – voted to remove the original president of the corporation and to substitute one of the two taxpayers, previously designated as vice-president, as successor president of the corporation. A second document filed with the bankruptcy court on May 1, 1997, indicated the taxpayer continued to serve as the successor president. A third document filed with the bankruptcy court, and dated June 30, 1997, indicated that the taxpayer continued to serve as successor president as of that date.

Both taxpayers have filed affidavits purporting to delineate the extent of their relationship with the corporation. The affidavit filed by the first taxpayer – originally designated as the vice-president and later as successor president – asserted that she did not actively participate in the restaurant's business operations, did not perform any functions as an officer or director of the corporation, and had no access to the book or records of the restaurant. Rather, prior to the filing for bankruptcy relief early in 1996, the original president exercised day-to-day control over the corporate business, retained possession and control over all corporate records, and designated those persons who were directly responsible for corporate financial and tax matter. The taxpayer indicates that, subsequent to filing for bankruptcy relief, the bankruptcy examiner was in sole control of the day-to-day operations of the restaurant business but admits that the taxpayer had the authority to perform certain managerial functions and to issue checks in payment of the normal business expenses.

In his affidavit, the second taxpayer, originally designated as corporate secretary-treasurer, maintains that the corporation was controlled by the original president until the time the bankruptcy examiner assumed exclusive responsibility. The taxpayer indicated that he was never privy to the corporation's financial records nor did the taxpayer ever sign or issue corporate checks. Allegedly, the previous president signed all checks, prepared all financial records, represented to the other directors that all taxes had been paid, made all personnel decisions, and was entirely responsible for decisions relating to the initial decision to file for bankruptcy relief. Taxpayer asserts that either the original president or the bankruptcy examiner were, at all relevant times, in absolute control of the corporation's books, records, and business operations.

DISCUSSION

I. Withholding, Retail Sales, Food and Beverage Tax Assessments Made Against Taxpayers As Responsible Officers

The taxes at issue include food and beverage, retail sales, and withholding taxes as against the taxpayers individually.

Withholding taxes may be assessed against a responsible officer under the provisions of IC 6-3-4-8(g) which states that, "[I]n the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Similarly, an individual may be held personally liable for unpaid sales taxes. IC 6-2.5 et seq. describes the manner in which the retail sales tax is assessed, imposed, and collected.

An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana. The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. *The retail merchant shall collect the tax as agent for the state.* IC 6-2.5-2-1(a, b) (*Emphasis added*).

Each person liable for collecting the state gross retail or use tax shall file a return for each calendar month and pay the state gross retail and use taxes that the person collects during that month... IC 6-2.5-6-1(a).

An individual who: (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and (2) has a duty to remit state gross retail or use taxes to the department; holds those taxes in trust for the state and *is personally liable for the payment of those taxes*, plus any penalties and interest attributable to those taxes, to the state. IC 6-2.5-9-3 (*Emphasis added*).

A responsible officer may also be assessed for the payment of unremitted food and beverage taxes. Under IC 6-9-12-7, “The county food and beverage tax shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5.” Accordingly, assessing “responsible officers” for the payment of county food and beverage taxes is authorized under IC 6-2.5-6-1(a) by means of the mandate provided in IC 6-9-12-7.

Pursuant to *Indiana Dept. of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995), three factors are relevant in determining if the taxpayer is a corporate officer who had the authority and responsibility for the payment of taxes held in trust for the state. The court will look to the person’s authority within the power structure of the corporation. Where that person is a high-ranking corporate officer within the corporate power structure, that officer is presumed to have had control over the company’s finances sufficient to give rise to a duty to remit trust taxes. The presumption may be rebutted by a showing the officer did not in fact have that authority.

Second, the court will look to the authority of the officer as established by the articles of incorporation, bylaws, or employment contract.

Third, the court will consider whether the person actually exercised control over the finances of the business including whether the person controlled the corporate bank account, signed corporate check and tax returns, or determined when and in what order to pay creditors.

Both taxpayers occupied – as vice-president, secretary-treasurer, and later as president – positions of considerable responsibility within the corporate structure. As persons occupying those positions, the presumption is that they had “sufficient control over the company’s finances to give rise to a duty to remit the trust taxes.” *Safayan*, 654 N.E.2d at 273. The presumption is especially strong “where the person was both a high ranking officer and a member of the board of directors, and a major shareholder in a closely held corporation.” *Id.*

Both taxpayers were members of the restaurant corporation’s board of directors. Both taxpayers were corporate officers. The taxpayer who served as secretary-treasurer was also a major shareholder of the corporation.

Taxpayers maintain that they both were removed from the day-to-day operations of the corporation and depended on the original taxpayer and the bankruptcy examiner to assure that the corporation’s tax liabilities were met. However, as the court explained in *Safayan*, “[a] party may be liable for trust taxes without having exclusive control over the corporation’s funds.” *Id.* at 274. Although if, as the taxpayers’ maintain, they delegated total corporate responsibility to first the original president and then to the bankruptcy examiner, neither of them at any time relinquished their corporate offices or their positions within the corporation. To the contrary, the evidence indicates that both taxpayers maintained control over the corporation’s affairs, during the period in which the corporation had sought bankruptcy relief, sufficient to remove the original president and to substitute the taxpayer – originally designated as the vice-president – in his place.

Taxpayers’ argument that they were unwitting bystanders to the corporation’s day-to-day activities is not entirely borne out by the facts. The information before the Department indicates that the taxpayer, then serving as vice-president, signed and submitted the corporation’s monthly sales and use tax returns. The second taxpayer, in his capacity as secretary-treasurer, signed and submitted the corporation’s business tax application.

However, even accepting the taxpayers’ averments at face value, the taxpayers’ positions as corporate directors and officers of the corporation are sufficient to impute to them the responsibility and liability for the unpaid state taxes. *Safayan*, 654 N.E.2d at 274. Taxpayers, having taken unto themselves the privileges and advantages conferred by the corporate structure and the responsibilities and liabilities as officers of the corporation, cannot then escape the consequences which then flow as a result of those same decisions by simply asserting that they knew nothing of daily corporate operations.

Taxpayers have failed to meet the burden established under IC 6-8.1-5-1(b) which states that, [t]he notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong *rests with the person against whom the proposed assessment is made.*” (*Emphasis added*).

FINDING

Taxpayers’ protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

04970382.LOF

LETTER OF FINDINGS NUMBER: 97-0382 ST
State Gross Retail Tax
For Years 1994, 1995, and 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUES

I. State Gross Retail Tax – Application of Public Transportation Exemption

Authority: IC § 6-2.5-5-27; *Panhandle Eastern Pipeline Co. v. Indiana Department of State Revenue*, 741 N.E.2d 816 (Ind. Tax Court 2001)

Taxpayer protesting assessment of use tax on taxpayer's purchase of trucks that taxpayer predominantly used in public transportation.

STATEMENT OF FACTS

Taxpayer is an Indiana S Corporation, selling and transporting sand and gravel from premises where the taxpayer has the rights for extraction and from operations owned by other entities. The taxpayer also hauls salt received on consignment from another corporation or purchased by the taxpayer. The taxpayer claimed an exemption for public transportation for the trucks hauling activities -which constituted over 50% of the trucks activity- which the audit denied and is the subject of this protest.

I. State Gross Retail Tax – Imposition

DISCUSSION

The exemption at issue is governed by IC § 6-2.5-5-27; which states:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

The application of IC § 6-2.5-5-27 was addressed in *Panhandle Eastern Pipeline Co. v. Indiana Department of State Revenue*, 741 N.E.2d 816 (Ind. Tax Court 2001). Although this case is dissimilar insofar as it dealt with gas pipeline systems and not trucks, the public transportation exemption was the issue litigated. The Tax Court stated the following:

If a taxpayer acquires tangible personal property for predominate use in providing public transportation for third parties, then it is entitled to the exemption. If a taxpayer is not predominately engaged in transporting the property of another, it is not entitled to the exemption. *Panhandle Eastern Pipeline Co. v. Indiana Department of State Revenue*, 741 N.E.2d 816 @ 819 (Ind. Tax Court 2001)

The Tax Court has set a two-pronged test:

- (1) The taxpayer's property must be *predominately used* for providing public transportation; and,
- (2) The taxpayer must be *predominately engaged* in public transportation of the property of another. (*Emphasis added*)

Under this analysis the audit report does support taxpayer on the first prong of the test, finding the trucks in question to be predominately engaged in public transportation. However, as reported on taxpayer's returns for the years in question, there were total sales of \$3,468,293.80 by taxpayer for 1994. The total revenue related to hauling of property owned by others for that year is \$1,307,377, approximately 38% of taxpayer's business. In 1995 taxpayer had total sales of \$3,092,225.95 with \$1,161,391 of revenue related to the hauling of property owned by others, approximately 38% of taxpayer's business. In 1996 taxpayer had total sales of \$3,093,648.31 with \$1,160,736 of revenue related to the hauling of property owned by others, approximately 38% of taxpayer's business. The second prong of the test, which requires the taxpayer to be predominantly engaged in public transportation, is not satisfied for 1994 to 1996.

Consequently, taxpayer use of the trucks does not qualify for the public transportation exemption for the audit years of 1994 to 1996.

FINDINGS

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04970583
04980355.LOF

LETTER OF FINDINGS NUMBER: 97-0583 and 98-0355

Sales/Use Tax – Miscellaneous Items

For Tax Periods: 1991 through 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax – Utilities

Authority: IC 6-2.5-6-1

Taxpayer protests proposed Audit assessments on certain utility purchases.

II. Sales/Use Tax – In-Store Equipment

Authority: IC 6-2.5-2-1; IC 6-2.5-3-2; IC 6-2.5-5-3(b); 45 IAC 2.2-5-10(k)

Taxpayer protests proposed Audit assessments of use tax on taxpayer's purchases of equipment used in its grocery stores.

III. Sales/Use Tax – Labels and Packaging Materials

Authority: IC 6-2.5-5-9; 45 IAC 2.2-5-15

Taxpayer protests proposed Audit assessments on labels and packaging materials.

IV. Sales/Use Tax – Other Equipment

Authority: 45 IAC 2.2-5-8(d) and (e)

Taxpayer protests proposed Audit assessments of use tax on taxpayer's purchase of a pan washing machine and a raw milk silo (including accessories).

STATEMENT OF FACTS

Taxpayer is a major retail grocery store chain with over 1,100 (at the time of audit) retail stores. Taxpayer also operates over 25 manufacturing and food processing facilities throughout the United States. The manufacturing and processing operations represent separate divisions. Taxpayer's retail stores are grouped into marketing divisions; each division operates approximately 120 retail stores.

The sales/use tax audits (2) cover tax years 1991 through 1996. Included in the taxpayer's audit group are three (3) retail store divisions, two (2) dairies, one (1) bakery, one (1) distribution center, and one (1) specialty foods division.

Audit's review of taxpayer's transactions resulted in proposed assessments of Indiana sales and use tax. Taxpayer now protests these assessments.

I. Sales/Use Tax – Utilities

DISCUSSION

Taxpayer protests Audit's assessment of use tax on "exempt" utility purchases. Taxpayer explains:

A tax adjustment of \$4,640.16 was taken [by Audit] on [taxpayer's] 1992 return for sales tax paid on [the] non predominate use percentage of electricity used directly in processing at retail stores during 1991. The issue was not whether the amount was due to the taxpayer or a question of the exempt nature of the use. The item was assessed tax because of the procedure followed by [taxpayer] in getting the tax credit. The taxpayer was advised by its consultant... to take the credit on [Line K of] its [sales tax] return. [The consultant] claims the state had given [the consultant] authorization to do this.

Taxpayer has forwarded to the Department a copy of a letter (on Department letterhead; date omitted, subject line omitted, and inside address omitted) purportedly addressed to taxpayer. The relevant part of this brief letter instructs:

If there are any billing invoices that were not included with this claim [a previously filed Claim for Refund], you may take credit for them on Line K of your Indiana Sales and Use Tax Return.

Taxpayer did, in fact, take credit on Line K for "sales tax paid on [the] non predominate use percentage of electricity used directly in processing at retail stores during 1991." In denying these credits, Audit explained:

Department procedures regarding proper filing of the Indiana Sales and Use Tax Return (Form ST-103) dictate that the adjustment line on the return may be used for adjustments to the current year only. Departmental procedure requires that for amounts overpaid in prior years a claim for refund (Form GA-110L) [must] be filed with the Department prior to Statute expiration. Since the taxpayer failed to properly and timely file a claim for refund, these items are now out of statute for refund [; consequently,] the adjustment improperly claimed on the return filed is denied.

As an initial matter, absent proper attribution—i.e., dates, parties (to whom the correspondence is directed), and subject matter—the Department will not address the substance of the purported "permission letter."

In 1992, taxpayer, on Line K of its Indiana Sales and Use Tax Return (Form ST-103), entered as an adjustment a \$4,640.16 credit for sales tax erroneously paid on 1991 utility purchases. Line K on the current Indiana Sales and Use Tax Return (Form ST-103A, revised 7-93) is entitled "ADJUSTMENTS." The instructions associated with Line K state: "This line is to be used whenever an underpayment or overpayment of sales tax has been made. In case of an overpayment, the credit on this line cannot be greater than the amount due for the period. Carry any overpayment to line K of your next return or file a claim for refund on Form GA-110L."

Indiana Registered Retail Merchants are required to file Indiana Sales and Use Tax Returns with the Indiana Department of Revenue. As IC 6-2.5-6-1 instructs:

Each person liable for collecting the state gross retail or use tax shall file a return [e.g., ST-103 or ST-103A] for each calendar month and pay the state gross retail and use taxes that the person collect during that month.

Indiana Sales and Use Tax Returns are filed by those permitted to *collect* Indiana sales tax (a trust tax) on behalf of the State of Indiana. With few exceptions, the amounts remitted have been paid by the remitter's (in this case, taxpayer's) customers. Adjustments associated with sales tax remitted (i.e., Line K "Adjustments") will necessarily be limited to modifications associated with the *collection of sales tax paid by others*. Such returns are not intended to record adjustments of *sales tax paid by the remitter*. Consequently, taxpayer should not have used its Indiana Sales and Use Tax Return to recoup sales tax erroneously paid on prior year utility purchases.

FINDING

Taxpayer's protest is denied.

II. Sales/Use Tax – In-Store Equipment

DISCUSSION

Taxpayer, primarily a retail merchant engaged in selling groceries, argues that the following equipment should qualify for the "processing" sales and use tax exemptions. Taxpayer opines:

The issue of contention is the assessment of tax on various equipment used in the store's deli, cheese, meat and produce departments to process food items.

* * * * *

These items [listed below] qualify for the processing exemption as defined in Indiana Department of Revenue sales and use tax regulations 45 IAC 2.2-5-10(c)(2)(d) and 45 IAC 2.2-5-10(k). In addition, these items are exempt pursuant to the court decision in Indianapolis Fruit Co. vs. Department of State Revenue.

In Indiana, an excise tax (sales tax) is imposed on retail transactions. IC 6-2.5-2-1. A complementary excise tax (use tax) is imposed on tangible personal property that is stored, used, or consumed in this state. IC 6-2.5-3-2. Several exemptions are available. IC 6-2.5-5-1 *et seq.* Taxpayer, in this instance, invokes one of the industrial exemptions.

Referred to as the equipment exemption, IC 6-2.5-5-3(b) reads:

Transactions involving manufacturing machinery, tools and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for *direct* use in the *direct* production, manufacture, fabrication, assembly, extraction, processing, refining, or finishing of other tangible personal property. (Emphasis added.)

Specifically, taxpayer cites 45 IAC 2.2-5-10 which exempts "machinery, tools, and equipment [that is] directly used by the purchaser in processing...." Taxpayer argues that such processing occurs in the meat, cheese, deli, floral, produce, and bakery departments of its grocery stores.

"Without production there can be no exemption." Indianapolis Fruit Co. vs. Department of State Revenue, 691 N.E.2d 1379, 1384 (Ind. Tax Ct. 1998). That is, absent a finding that taxpayer is producing (or processing) tangible personal property at its in-store meat, cheese, deli, floral, produce, and bakery departments, the equipment used will not qualify for any of the industrial exemptions. With regard to processing, the Department looks to regulation 45 IAC 2.2-5-10(k) for guidance. The regulation states in relevant part:

Processing or refining is defined as the performance by a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. ***The change in form, composition, or character must be a substantial change*** (emphasis added).

Consistent with the aforementioned descriptions, the Department finds that taxpayer performs a modicum of processing activities within its in-store bakery and meat departments. Conversely, work performed within taxpayer's cheese, deli, and produce departments cannot be characterized as the processing of tangible personal property. Rather, such activities represent ancillary services associated with those, like taxpayer, who are engaged in the retail sale of groceries.

Therefore, the autolabeler scales purchased for exclusive use in the meat department will qualify for exempt treatment. However, the labeling scales and parts used in the cheese, deli, and produce departments will not be exempt. Given the Department's finding that processing does not occur within taxpayer's produce department, the pineapple peeler and produce mist system also fail to qualify for exempt treatment.

Taxpayer also maintains a floral department within its grocery stores. Taxpayer, in arguing for exempt treatment for its floral workstations explains: "[the] [f]loral workstations are used...to process flowers and other materials into various floral arrangements and gift items that are sold in the stores." Pursuant to 45 IAC 2.2-5-10(k), the Department finds that taxpayer's floral activity does not represent an exempt process. The assembly of flowers into various arrangements does not substantially change the form, composition, or character of the items being assembled. Consequently, taxpayer's floral workstations enjoy no exemption.

And finally, taxpayer has purchased coffee grinders used by taxpayer's customers to create blends of coffee—coffee subsequently sold by taxpayer. Taxpayer contends the coffee grinders qualify for a processing exemption because the "[c]offee grinders are used to grind coffee beans into a marketable form of ground coffee." Even assuming the validity of taxpayer's use argument, the coffee grinders do not qualify for an exemption because the coffee grinders are not used by the purchaser (i.e., taxpayer) in an exempt manner. Rather, it is taxpayer's customers who use the coffee grinders.

FINDING

Taxpayer's protest is partially sustained and partially denied pursuant to the aforementioned language.

III. Sales/Use Tax – Labels and Packaging Materials

DISCUSSION

Taxpayer contends Audit's assessments of use tax of certain labels and packaging/wrapping material were in error. Taxpayer advances the following rationale:

Packaging material used in [taxpayer's] manufacturing facility (bakery) and in-store processing departments is exempt under

Nonrule Policy Documents

IC 6-2.5-5-9. Product description and pricing labels are placed on the manufactured items by the bakery as part of the entire packaging process. In addition, product description and pricing labels are placed on in-store manufactured items as part of the packaging process. In addition, product description and pricing labels are placed on in-store manufactured items as part of the packaging process. These items are packaging materials as defined in 45 IAC 2.2-5-16. In addition, these labels are incorporated into the product and qualify for the resale exemption as defined in 45 IAC 2.2-5-15.

Wrapping (packaging) materials are exempt from sales tax “if the person acquiring the material or containers acquires them for use as nonreturnable packages for selling the contents that he adds.” IC 6-2.5-5-9. The packaging and wrapping materials used in taxpayer’s in-store departments—i.e., meat, cheese, deli, produce, floral, and bakery—to package products for subsequent resale qualify for this exemption. Similar types of packaging and wrapping materials used at taxpayer’s off-site (non-retail) bakery facility also qualify for this exemption. But note, packaging and wrapping materials used to facilitate the shipment of product from taxpayer’s off-site bakery to taxpayer’s retail stores enjoy no such exemption.

Similarly, the description and pricing labels incorporated into the taxpayer’s products at the taxpayer’s off-site facility – and intended for use by the ultimate consumer – are entitled to the exemption afforded under IC 6-2.5-5-6 because the labels are “incorporat[ed] as a material part” of the products produced at the off-site facility.

However, the description and pricing labels applied at the taxpayer’s retail facilities – even if intended for use by the ultimate consumer – are not entitled to the exemption. A necessary predicate to the taxpayer’s enjoyment of the exemption is that the taxpayer be engaged in “assembl[ing], refin[ing], or process[ing]” at the time the labels are incorporated into the product. Accordingly, when the taxpayer – operating out of one its retail facilities – is merely acting as the purveyor of finished goods when labels are affixed to those goods, the taxpayer is not entitled to the exemption.

FINDING

Taxpayer’s protest is partially sustained and partially denied pursuant to the aforementioned language.

IV. Sales/Use Tax – Other Equipment

DISCUSSION

Audit proposed assessments of use tax on taxpayer’s purchase of a pan washing machine and a raw milk silo (accessories included).

The pan washing machine is used in taxpayer’s bakery operations. As taxpayer explains:

The bakery [taxpayer’s] produces various types of products such as bread, rolls, donuts and cakes. As part of the integrated production process, each cake pan is thoroughly cleaned. The taxpayer contends that the cleaning process is exempt pursuant to 45 IAC 2.2-5-8 as an essential and integral part of the integrated production process. If the pans were not thoroughly cleaned and sanitized, the finished product would be tainted and not marketable.

Assuming *arguendo* that taxpayer’s baking pans are used in an activity that represents an essential and integral part of an integrated production process, the *cleaning* of such pans is not such an activity. Cleaning production equipment is generally, as it is in this instance, a post-production activity. Equipment purchased for use in post-production activities are not exempt. 45 IAC 2.2-5-8(d).

The raw milk silo is used by taxpayer in its dairy operations. (Taxpayer’s dairy produces various dairy products such as fluid milk, ice cream, cottage cheese, and yogurt.) According to taxpayer:

The raw milk silo is exempt pursuant to 45 IAC 2.2-5-8. The raw milk silo maintains the proper temperature of the material and is designed to continuously agitate the raw milk so the cream does not separate. This is the beginning stage of production.

The consistency of the raw milk is essential to the homogenization stage of the integrated dairy process.

The raw milk silo is used to store the raw milk (i.e., a raw material) prior to its introduction into taxpayer’s integrated production process. During storage, the raw milk silo operates to maintain the desired qualities of the raw milk. That storage is performed in a manner to ensure the integrity of a raw material does not serve to transform a pre-production storage activity into one of production. 45 IAC 2.2-5-8(e). Since the raw milk silo and accessories are used in pre-production activities, these items do not qualify for any of the industrial exemptions.

FINDING

Taxpayer’s protest is denied.

DEPARTMENT OF STATE REVENUE

04980428.LOF

LETTER OF FINDINGS NUMBER: 98-0428

State Gross Retail Tax

For Years 1993, 1994, and 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana

Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. State Gross Retail Tax – Purchase of Reprographic Equipment

Authority: IC § 6-2.1-2-4; IC § 6-2.5-5-3

Taxpayer protests assessment of use tax against the purchase of reprographic equipment.

II. State Gross Retail Tax – Leasing of Photocopying Equipment

Authority: 45 IAC 2.2-4-27; 45 IAC 2.2-5-15; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1

Taxpayer protests assessment of use tax against the purchase of photocopying equipment.

III. State Gross Retail Tax – Procedural

Taxpayer requests the Department to review audit workpaper calculations.

IV. State Gross Retail Tax – Negligence Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the assessment of negligence penalty.

STATEMENT OF FACTS

Taxpayer uses a variety of equipment in three separate operations. The equipment for these operations is categorized as FM (facilities management) reprographic equipment, commercial center equipment (both photocopiers and reprographic equipment), or convenience copiers. Reprographic equipment differs from photocopy equipment by both the quality and sophistication of its output and use. The photocopiers are used by all personnel on an as needed basis, the reprographic equipment is only operated by personnel with special training in its operation. The photocopiers produce reproductions on single sheets, while the reprographic equipment recreates the document, including bindings and computer assisted design modifications, as required. The convenience photocopiers are positioned pursuant to lease agreements where taxpayer operates a reprographic center within a client's building. The FM reprographic equipment provides specialized print services at the taxpayer staffed and operated reprographic centers. The commercial center reprographic equipment is located in taxpayer operated locations, staffed by taxpayer, and used for commercial work on either an overflow basis from the facilities management centers or from businesses with no other taxpayer contacts.

I. State Gross Retail Tax – Taxpayer Protests Assessment of Use Tax on its Purchase of Reprographic Equipment

DISCUSSION

IC § 6-2.5-5-3 provides an exemption for purchases of machinery and equipment that are used in direct production of tangible personal property. IC § 6-2.5-5-3 provides, in relevant part:

(a) For purposes of this section:

....

(2) Commercial printing as described in IC § 6-2.1-2-4 shall be treated as the *production and manufacture* of tangible personal property. *(Emphasis added)*

IC § 6-2.1-2-4(7) describes commercial printing thus:

(7) the business of commercial printing that results in printed materials, excluding the business of photocopying.

Here taxpayer will be using the equipment and machinery in connection both with commercial reprographic centers and at Facilities Management centers. While the only exclusion to the exemption in the gross income statute is for photocopying activities, the technologies used in this production process by taxpayer may include photocopying or other technologies including printing or photographic technologies. The common thread is that all of the applications in question are for taxpayer's production of documents- which use is the production of tangible personal property- for the taxpayer's customers. Inasmuch as taxpayer's activities are directed to the creation of documents, which are tangible property- IC § 6-2.5-5-3(b) states:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Therefore, the exemption applies to the equipment acquired by taxpayer for taxpayer's direct use in the direct production of tangible personal property.

FINDINGS

Taxpayer's protest is sustained as to the purchase of reprographic equipment to be used solely by taxpayer's staff in the direct production of tangible personal property.

II. State Gross Retail Tax – Leasing of Photocopying Equipment

DISCUSSION

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC § 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC § 6-2.5-3-2, "an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction."

Nonrule Policy Documents

The Department assessed use tax based on the premise that lessee's use of photocopiers was not a purchase of commercial printing and the lease for the photocopiers was a service contract rather than a lease of tangible personal property.

Taxpayer argues the tax is not applicable pursuant to 45 IAC 2.2-5-15, which states:

The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose for reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

The convenience photocopiers are separately listed on the facilities management contract. The photocopiers are billed to lessee as a component of the facilities management bill and are used by lessee's staff, with the contract requiring the copiers to be placed on the customer's premises for the customer's employees' use with taxpayer staff maintaining the copiers. The requisite amount of control by the customer is present to establish a rental of the tangible property as anticipated by 45 IAC 2.2-5-15; consequently, the state gross retail tax does not apply.

FINDINGS

Taxpayer's protest is sustained.

III. State Gross Retail Tax – Procedural

DISCUSSION

Taxpayer identifies two entries from the audit workpapers, both dated 4/7/93 and listed as references 289193 and 289538. Taxpayer notes the entries appear twice in the audit workpaper and requests these entries be removed.

FINDINGS

Taxpayer protest sustained pending audit verification.

IV. State Gross Retail Tax – Negligence Penalty

45 IAC 15-11-2(c) requires the department to waive the penalty if the taxpayer demonstrates the error was due to reasonable cause, which is defined as exercising "ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section." Taxpayer based its position on a reasonable interpretation of a departmental letter of advice, which is one of the factors explicitly noted in the code as demonstrating reasonable cause.

FINDINGS

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04980710.LOF

LETTER OF FINDINGS NUMBER: 98-0710

State Gross Retail Tax – Lease of Tangible Personal Property For Tax Years 1988 through 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

State Gross Retail Tax – Lease of Tangible Personal Property

Authority: IC 6-2.5-1-2; IC 6-2.5-2-1; IC 6-2.5-4-10; IC 6-8.1-5-2; IC 6-2.5-8-8; 45 IAC 2.2-4-27; 45 IAC 2.2-8-12

Taxpayer protests assessment of sales tax on receipts it received from its sister corporation that the Audit Division characterized as receipts from the leasing of equipment.

STATEMENT OF FACTS

Taxpayer is an S corporation which was created for the sole purpose of holding front-end loaders, fuel tanks, storage trailers, trucks, radios, office and other equipment for its sister corporation. Both taxpayer and its sister corporation are commonly owned. It is unclear whether the equipment was purchased originally by taxpayer's sister corporation or by taxpayer. However, it has been established that neither entity paid sales tax on the equipment at the time of the original purchase of the equipment. After performing the audit, the auditor determined that taxpayer was a lessor of equipment to its sister corporation, and was required to collect sales tax on the receipts taxpayer received from the "leasing" of equipment to its sister corporation. The auditor assessed sales tax liability for the years 1988 through 1997 based on her finding that taxpayer failed to file sales tax returns for the tax years in question. Taxpayer protests the assessment of sales tax.

State Gross Retail Tax – Lease of Tangible Personal Property

DISCUSSION

Taxpayer argues that sales tax should not have been assessed on what the auditor characterized as leasing receipts because taxpayer is not acting as a lessor of equipment to its sister corporation. According to taxpayer, the substance of the transaction is

that taxpayer exists for the sole purpose of holding the equipment and making loan and equipment payments for its sister corporation. Taxpayer maintains that the loans used to purchase the equipment were executed jointly by taxpayer and the sister corporation, and that taxpayer's sister corporation purchased the equipment for use in its business. Based upon taxpayer's assertions, the question before us is whether a leasing arrangement exists between taxpayer and its sister corporation.

"An excise tax, known as the state gross income tax, is imposed on retail transactions made in Indiana." IC 6-2.5-2-1(a). A "retail transaction" is defined in IC 6-2.5-1-2 as "a transaction of a retail merchant that constitutes selling at retail." "A person... is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person." IC 6-2.5-4-10(a). In general, the gross receipts from renting or leasing tangible personal property are taxable. 45 IAC 2.2-4-27. This regulation only exempts from tax those transactions which would have been exempt in an equivalent sales transaction. *Id.*

Although taxpayer and its sister corporation are one hundred percent (100%) owned by the same entity, we find that taxpayer is a separate legal entity formed for the sole purpose of leasing equipment to its sister corporation. The law imposes sales tax upon an entity when it rents or leases tangible personal property to another. 45 IAC 2.2-4-27. Upon completing the audit, the auditor imposed sales tax on all of the equipment leased by taxpayer to its sister corporation except for the equipment that the auditor determined was used directly in the sister corporation's manufacturing process. There is no doubt that sales tax should be imposed on the receipts from the lease transactions between taxpayer and its sister corporation. The auditor did not err in imposing the assessment.

Because we find that taxpayer and its sister corporation enjoyed a leasing arrangement, we now turn to taxpayer's alternate argument. Taxpayer argues that it is relieved of its burden to collect and remit sales tax on the rental of the equipment to its sister corporation because the sister corporation provided a valid sales tax exemption certificate covering the transactions in question. Furthermore, according to taxpayer, because the sister corporation filed sales tax returns for the tax years 1988 through 1997, any sales tax due would be subject to the three-year statute of limitations and not open to an extended examination period applicable where a taxpayer fails to file tax returns.

The issuance and effect of exemption certificates are covered under IC 6-2.5-8-8, which provides the following:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

IC 6-2.5-8-8(a). "An exemption certificate issued by a purchaser shall not be valid unless it is executed in the prescribed and approved form and unless all information requested on such form is completed." 45 IAC 2.2-8-12(f).

The time limitation on issuance of a proposed assessment is governed by IC 6-8.1-5-2 which provides in pertinent part:

Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or any of the following:

- (1) the due date of the return; or
- (2) in the case of a return filed for the state gross retail or use tax... the end of the calendar year which contains the taxable period for which the return is filed.

...

(e) If a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no time limit within which the department must issue its proposed assessment.

IC 6-8.1-5-2.

After taxpayer's protest hearing, taxpayer remitted to the hearing officer a copy of the exemption certificate given by the sister corporation to taxpayer. The exemption certificate is dated November 11, 1999, and states that it exempts from sales tax the "rental of equipment used in the mining operation, 1988 through 1998." The exemption certificate presented here is dated after the close of the tax period subject to audit. In fact, the exemption certificate is dated after the completion of the audit, after the date of hearing, and most importantly, after almost all of the periods at issue had been closed to assessment for the sister corporation. The issuance of an exemption certificate after the fact does not in and of itself negate its effect. However, when it is issued up to twelve (12) years after the transaction, its efficacy should be in doubt. In this case, the auditor only taxed that portion of the taxpayer's receipts as would have been taxable to the sister corporation. Therefore, the taxpayer has received the benefit of not being taxed on its entire gross retail income. That is as much benefit as should be allowed in this case pursuant to 45 IAC 2.2-8-12, which allows the taxpayer to prove what level of exemption would have been allowed to its customer if there is a question as to the proper execution of an exemption certificate. The evidence on file also reveals that taxpayer was not registered with the Department to collect Indiana sales tax for its rental of equipment.

Furthermore, a review of the audit documentation shows that during the audit period, on their respective tax returns, taxpayer's sister corporation claimed a rental expense deduction, and taxpayer claimed a depreciation allowance for the equipment. Taxpayer and its sister corporation were established with and continued to maintain separate legal identities. Having taken on the advantages of separate corporate structures, taxpayer may not then avoid the consequences of its business relationships and transactions.

FINDING

Taxpayer's protest is denied. The auditor did not err in finding that taxpayer and its sister corporation enjoyed a leasing arrangement and assessing sales tax in the absence of a valid exemption certificate.

DEPARTMENT OF STATE REVENUE

01990019.LOF

LETTER OF FINDINGS NUMBER: 99-0019**Individual Income Tax****Calendar Years 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, and 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)**I. Individual Income Tax – Change of Basis – Income from S-Corporation****Authority:** IC 6-3-11; IRS Code Sec 1367

Taxpayer protests the disallowance of losses due to basis limitation in a Subchapter-S Corporation.

STATEMENT OF FACTS

Taxpayer is an attorney who was a late filer from 1989 through 1994. Taxpayer claimed that his CPA advised him not to file returns until he could file and pay them. Taxpayer, at time of audit had filed all delinquent returns with the IRS and the IDOR. The audit investigation found that the taxpayer filed all returns on November 22, 1995 and has not paid the tax due on any of them.

The file was generated as a result of taxpayer being a 33.3% shareholder in a subchapter S corporation and no returns reporting income or distributions had been filed. Taxpayer underwent some examination by the IRS that resulted in a hearing in Federal court. The exact charges or outcome of the Federal hearing are unknown to the hearing officer and were unknown to the auditor.

Taxpayer filed all returns for federal purposes as married filing separately. Indiana returns have been filed on the same filing status. Returns for 1995, 1996, and 1997 have been filed timely. A copy of the 1997 returns was included with the audit file along with a copy of extension. Taxpayer filed the 1997 on August 17, 1998. The return was adjusted by audit investigation.

Investigation revealed two returns were filed for 1994. Both returns were processed and billed. Taxpayer claims that the return dated 8/15/95 was filed in error. A return dated 11/14/95 is correct per the taxpayer. Investigation adjusted the 11/14/95 return to show proposed corrected income for Indiana tax purposes.

All adjustments made to the Indiana Individual Adjusted Gross Income Tax returns (Form IT-40) are made pursuant to IC 6-3-1-3.5 which includes all modifications to income for taxes deducted on the federal return and required to be added back for Indiana adjusted gross income tax purposes. The amounts were found from taxpayer's Schedule C and the Sub "S" Corporation's income tax returns.

The Federal adjusted gross income, as defined by IRC Section 62, is the starting base for Indiana adjusted gross income. Modifications are then made to arrive at Indiana adjusted gross income. IC 6-3-1-11 incorporates the Internal Revenue Code as a basis for Indiana adjusted gross income.

The investigation disallowed a long-term capital loss on stock since taxpayer had no basis in stock. Taxpayer had no investment in the corporation. Upon formation, taxpayer's name was used to acquire a floor plan agreement. Taxpayer handled the legal work of forming the corporation and legal work for the corporation involving sales of real estate with sectional and/or modular homes. It was the auditor's understanding that the floor plan agreement was secured by the inventory of the corporation. The Corporation at one time in 1990 was in default on the floor plan agreement. The exact date and length of default or facts are unknown to the hearing officer or the auditor.

The Corporation secured a loan to bring the floor plan out of default. Taxpayer claims to have been obligated by this loan. Auditor repeatedly requested proof of loan obligation from the taxpayer and his accountant. No proof was ever provided. The other loans to the corporation are from other shareholders or are obligations directly of the corporation. IRC Section 1367 dealing with the basis would include only shareholder direct loans to the corporation and any "at risk" obligations. Shareholder under investigation has provided no proof of any direct obligations of the corporation to shareholder or debt of corporation for which shareholder is personally liable. Investigation had therefore made adjustments to the shareholder's basis that have disallowed some losses claimed and adjusted other amounts of losses claimed by taxpayer.

Per IRC Sec. 1366(d)(1)(B), the losses and deductions of a shareholder of an S-corporation cannot exceed the sum of the adjusted basis of the shareholder's stock and the shareholder's adjusted basis of any indebtedness of the S-corporation to the shareholder.

DISCUSSION

Taxpayer has not provided documentation or proof that he was entitled to a basis deduction as a shareholder in an S-corporation.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

04990020.LOF

LETTER OF FINDINGS NUMBER: 99-0020

Use Tax

Calendar Years 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, and 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Use Tax – Taxable Purchases

Authority: 45 IAC 2.2-3-20

Taxpayer protests the assessment of use tax on items that have not had sales tax assessed and paid.

STATEMENT OF FACTS

The audit investigation limited itself to the filing of ST-115 for the purchase of publications and subscriptions. Taxpayer consumed the items in his legal practice at an office located in Indiana. Taxpayer did not report use tax to Indiana on his IT-40 Individual Income Tax Returns. Taxpayer is not required to be registered for Sales Tax.

In letters dated November 8, 1999 and December 13, 1999, the department asked the taxpayer to provide a written brief regarding his objections to the audit to which the taxpayer responded that he had been trying to get a payment plan since 1992. No further response was forthcoming. On March 21, 2000, the Department scheduled a hearing for April 26, 2000 that the taxpayer cancelled. On April 27, 2000, the Department wrote the taxpayer to allow him the option of choosing the date and time of hearing. The taxpayer called and stated he needed to go into the hospital. No further contact was made from the taxpayer or the Department.

In reviewing the audit file, it is clear that the only issue is for publications and subscriptions that had no sales tax paid. Taxpayer did not self-assess use tax for those publications.

I. Use Tax – Taxable Purchases

DISCUSSION

At audit taxpayer was assessed use tax for publications and subscriptions that did not include sales tax or were not self-assessed use tax.

Taxpayer has not provided the department with proof that the audit is in error.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

04990200.LOF

LETTER OF FINDINGS NUMBER: 99-0200

Use Tax

For Tax Years 1995 through 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue

ISSUES

I. Use Tax — Aircraft

Authority: IC 6-2.5-1-6; IC 6-2.5-3-2; IC 6-2.5-5-8; IC 6-8.1-5-4; 45 IAC 2.2-3-6

Taxpayer protests imposition of use tax on three aircraft.

II. Tax Administration — Negligence Penalty and Interest

Authority: 45 IAC 15-11-2; IC 6-8.1-5-4

Taxpayer protests imposition of a ten percent (10%) negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer operates an aircraft dealership. As the result of an audit for the tax years in question, the Department of Revenue (“Department”) issued proposed use tax assessments. Taxpayer protests that the aircraft were not used in Indiana and are therefore not subject to use tax.

I. Use Tax — Aircraft

Taxpayer protests the imposition of use tax on three aircraft. The Department issued the proposed assessments pursuant to IC 6-8.1-5-1(a), which states in relevant part:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available.

Also of relevance is IC 6-2.5-3-2(b), which states:

The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

- (1) is acquired in a transaction that is an isolated or occasional sale; and
- (2) is required to be titled, licensed, or registered by this state for use in Indiana

At the time of the audit, the Department was unable to verify the manner of use of the aircraft, and so used the best information available to determine proposed use tax assessments. Taxpayer protests that the aircraft do not meet the requirements of IC 6-2.5-3-2(b). 45 IAC 2.2-3-6 provides additional guidance concerning use tax on aircraft. That regulation states in relevant parts:

(b) For the purpose of the state gross retail and use tax:

- (1) The sale of aircraft by any person licensed as an aircraft dealer in Indiana has been, and will continue to be, a retail sale. Transactions representing isolated or occasional sales of aircraft required to be licensed by the state for use in Indiana shall constitute retail transactions under the provisions of this section. Every sale by a resident or nonresident person who is not a retail merchant as defined in the Indiana gross retail tax act [IC 6-2.5] of an aircraft required to be licensed by the state for use in Indiana shall be deemed a retail transaction, and the use of such aircraft shall be subject to the use tax which shall be paid by the purchaser to the aeronautics division of the department of transportation at the time of the licensing of the aircraft by the purchaser.

.....
(c)(1) Persons licensed as aircraft dealers in Indiana will collect sales tax on their sales of aircraft and will record the selling price of the aircraft and the amount of sales tax collected on sales tax form ST-108AC. Form ST-108AC will be used by the purchaser as proof of payment of sales tax when registering the aircraft in Indiana. If the aircraft is purchased from any person other than an aircraft dealer licensed in Indiana, the purchaser must pay all sales or use tax due to the aeronautics division of the department of transportation at the time the aircraft is first registered in Indiana by the purchaser.

.....
(d)(1) If the aircraft has been registered previously in Indiana, the seller must assign certificate of ownership to the purchaser showing the selling price, trade-in, description, and price. If the aircraft has not been previously registered in Indiana, the seller must furnish a bill of sale, signed by the seller, showing the make, model, year, selling price, and trade-in on the aircraft. At the time of registration, the purchaser must furnish the aeronautics division of the department of transportation with either the properly assigned certificate of ownership or bill of sale.

.....
(e) Only the trade-in value of an aircraft for another aircraft, or the trade-in value of a watercraft for another watercraft, may be deducted from the selling price for sales tax purposes.

(f) Aircraft which are purchased to be taken immediately to another state for registration in that state, and not for registration or use in Indiana, are not subject to the Indiana sales tax. The purchaser must furnish the seller with exemption certificate ST-136AC, in triplicate. The seller is required to keep one copy for his files. Two copies of the exemption certificate must be certified by the dealer and forwarded to the sales tax division of the Indiana department of revenue.

Taxpayer states that the three aircraft were not used in Indiana. Taxpayer has provided sufficient documentation to establish that one aircraft, Plane #1, was traded in a like-kind exchange. IC 6-2.5-1-6 provides:

- (a) “Like kind exchange” means the reciprocal exchange of personal property between two (2) persons, when:

- (1) the property exchanged is of the same kind or character, regardless of grade or quality; and
 - (2) the persons exchanging the property both own the property prior to the exchange.
- (b) A “like kind exchange” may be a part of a transaction involving additional consideration other than the exchanged property.
- (c) Notwithstanding subsection (a), a “like kind exchange” does not occur when:
- (1) the transaction involves more than two (2) persons; or
 - (2) one (1) party to the transaction, through agreement or negotiating with the second party, acquires personal property for the primary purpose of exchanging that property for like kind property held by the second party.

In the course of this protest, taxpayer provided documentation showing that Plane #1 was traded for another of the same make, for an equal price. As explained in 45 IAC 2.2-3-6(e), the trade in value of an aircraft may be deducted from the selling price of another aircraft. In this case, the aircraft were of equal value, therefore the sales tax due on Plane #1 was zero and the use tax due is zero.

Taxpayer has provided an ST-108AC form establishing that another aircraft, Plane #2, was sold to a customer for resale. IC 6-2.5-5-8 provides in relevant part:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.

Since taxpayer purchased the aircraft for resale, under IC 6-2.5-5-8 it is not subject to use tax.

In its protest, taxpayer explained that the third aircraft, Plane #3, was purchased in Tennessee and shipped to Illinois for repairs and refurbishment, where it remained throughout the audit period. IC 6-2.5-3-2(a) provides:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

While taxpayer has provided sufficient documentation to establish that the aircraft was purchased in Tennessee, it has not provided documentation establishing that the aircraft remained outside of Indiana. Taxpayer protests that it could not provide the documentation requested by the auditor due to Federal Aviation Administration regulations that required logbooks to stay with the aircraft in Illinois. While the F.A.A. regulations cited by taxpayer may or may not require the logbook to remain with the aircraft at all times, and notwithstanding the fact that the Department would have accepted copies of the logbook entries, there are other ways to document the location of an aircraft. Taxpayer has provided none of these. IC 6-8.1-5-4 places the burden of proving proposed assessments incorrect on the taxpayer. Taxpayer has not provided sufficient documentation to meet that burden.

In conclusion, taxpayer has met its burden of proving the proposed assessments incorrect with regard to Plane #1 and Plane #2. Taxpayer has not met its burden with regard to Plane #3. Therefore, the proposed use tax assessment will not apply to Plane #1 and Plane #2, but will apply to Plane #3.

FINDING

Taxpayer’s protest is sustained in regard to Planes #1 and #2 and denied with regard to the Plane #3.

II. Tax Administration – Negligence Penalty

Taxpayer protests the imposition of a ten percent (10%) negligence penalty. Taxpayer requests that all penalties be waived as it has acted in good faith at all times, and any remaining assessments are not the result of any fraud, willful disregard of Indiana’s tax laws, or negligence on the part of taxpayer. Negligence is defined by 45 IAC 15-11-2(b), which states:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) states in part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-2.1] if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Also of relevance is IC 6-8.1-5-4, which states:

(a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person’s liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:

- (1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has

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filed a suspected fraudulent return, or an unsigned or substantially blank return; or
(2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular liability was due, unless after an audit, the department consents to earlier destruction.

In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.

(c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.

(d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

While taxpayer was able to produce documentation to show that two of the aircraft in question were not subject to use tax, taxpayer has not provided such documentation for the third aircraft. All of this documentation should have been available for the Department's review at the time of the audit. Not having the records available at the time of the audit is a violation of IC 6-8.1-5-4, and is treated as negligence under 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04990239.LOF

LETTER OF FINDINGS NUMBER: 99-0239

Sales Tax

Calendar Years 1995, 1996, and 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a sales tax assessment resulting from a Department audit conducted for the calendar years 1995, 1996, & 1997.

The taxpayer produces personal and business checks in a variety of designs, styles and formats. The checks are marketed through more than 4,200 banks, credit unions, and other financial institutions. The company is privately owned by individuals from England. The taxpayer has a manufacturing facility in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as the error was immaterial.

The Department disagrees. The total use tax liability for the audit period was \$389,000. Of this amount, the taxpayer only paid use tax on 40% of the use tax liability. The Department considers this to be a material error. Furthermore, the audit issues were repeat issues from the prior audit.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer did not act with reasonable care in that the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0247

Income Tax

For Tax Years 1994 through 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Adjusted Gross Income Tax – Business Income v. Non-Business Income

Authority: *The May Department Store Co. v. Indiana Dept. of State Revenue*, 749 N.E.2d 651 (Ind. Tax Ct. 2001); IC 6-3-1-20; IC 6-3-1-21; 45 IAC 3.1-1-29; 45 IAC 3.1-1-30

Taxpayer protests the auditor's reclassification of business income as non-business income.

II. Adjusted Gross Income Tax – Income of Corporate Partners: Unitary Operations

Authority: *ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 102 S.Ct. 3103 (1982); *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 112 S.Ct. 2251 (1992); *Container Corp. v. Franchise Tax Board*, 463 U.S. 159, 103 S.Ct. 2933 (1983), *Hunt Corp. v. Indiana Dept. of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999); 45 IAC 3.1-1-153; 45 IAC 3.1-1-153(b)

Taxpayer protest the auditor's determination that taxpayer is not operating in a unitary relationship with its partnership.

III. Tax Administration – Abatement of Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2; 45 IAC 15-11-2(c)

Taxpayer protests imposition of a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation which operates various businesses. Taxpayer's agricultural division rents farm land, engages in grain and hog farming, owns citrus groves, and owns an interest in a citrus processing entity. Taxpayer's motel division owns a motel in Indiana and an interest in a real estate development in Florida. Taxpayer's prairie division also engages in the rental of farm land. Taxpayer's financial division manages financing arrangements, debt management, and asset management through stock and debentures. Taxpayer administers all of its business endeavors from its Indiana location.

The Department of Revenue conducted an audit for the years in question, and issued various tax assessments against taxpayer. Additional facts will be supplied as necessary for discussion.

I. Adjusted Gross Income Tax – Business Income v. Non-Business Income

DISCUSSION

One of taxpayer's significant sources of income is its proceeds from the sale of a certain stock. Taxpayer classified the proceeds from the sale of the stock as business income, which subjected the gains to apportionment and taxation by Indiana. See IC 6-3-1-20. The auditor reclassified the sale of the stock as non-business because the auditor found that the income was derived from property formerly used to produce non-business income. The auditor's reclassification made the gains allocable to and taxable by Indiana. See IC 6-3-1-21.

"Business income" and "non-business income" are defined by the Indiana Code as follows:

The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

IC 6-3-1-20. "Non-business income", in turn, "means all income other than business income." IC 6-3-1-21. For the purpose of calculating an Indiana corporation's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three-factor formula, while non-business income is allocated to Indiana or another state. See *The May Department Store Co. v. Indiana Dept. of State Revenue*, 749 N.E.2d 651, 656 (Ind. Tax Ct. 2001).

In the recent decision of *May Department Store Co.*, the Indiana Tax Court determined that in passing IC 6-3-1-20, the General Assembly provided two tests for determining whether income is business or non-business in nature: a transactional test and a functional test. *Id.* at 662-663. Under the transactional test, gains are classified as business income when they are derived from a transaction in which the taxpayer regularly engages, *i.e.*, the particular transaction giving rise to the income is measured against the frequency and regularity of similar transactions and past practices of the business. *May Department Store*, 749 N.E.2d at 658-59. Under the functional test, the gain arising from the sale of an asset will be classified as business income if the acquisition, management, and disposition of the property generating income constitutes an integral part of the taxpayer's regular trade or business operations. IC 6-3-1-20. Following the court's instruction, we now examine whether the gains generated by taxpayer's sale of the stock constitute business income under either of the two tests.

The court instructs us to look to 45 IAC 3.1-1-29 and 45 IAC 3.1-1-30 for guidance in determining whether income is business or non-business under the transactional test. 45 IAC 3.1-1-29 states in pertinent part that, "Income of any type or class and from any

source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is 'business income' or 'non-business income' is the identification of the transactions and activity which are the elements of a particular trade or business." 45 IAC 3.1-1-30 provides that, "[f]or purposes of determining whether income is derived from an activity which is in the regular course of the taxpayer's trade or business, the expression 'trade or business' is not limited to the taxpayer's corporate charter purpose of its principal business activity." "A taxpayer may be in more than one trade or business, and derive business therefrom depending upon but not limited to some or all of the following:

- (1) The nature of the taxpayer's trade or business.
- (2) The substantiality of the income derived from activities and transactions and the percentage that income is of the taxpayer's total income for a given tax period.
- (3) The frequency, number, or continuity of the activities and transactions involved.
- (4) The length of time the property producing income was owned by the taxpayer.
- (5) The taxpayer's purpose in acquiring and holding the property producing income."

45 IAC 3.1-1-30. From the above language, it is apparent that the criteria to be used in determining a taxpayer's trade or business is not limited by what the taxpayer purports its business to be, but rather on what the particular facts and circumstances show.

Taxpayer asserts that the sale of the stock has always generated business income for taxpayer. According to taxpayer, taxpayer regularly sells off a portion of the stock to generate working capital for its citrus operations, and has done so for a number of years. In support of its assertion, taxpayer presented the following supporting evidence at hearing: (1) taxpayer's acquisition and disposition of the stock has been a constant part of taxpayer's business since 1988 in that the gains from the stock are used as working capital in taxpayer's citrus operations; (2) the sale of the stock provides taxpayer with a large amount of working capital annually that is invested in taxpayer's citrus operations; (3) taxpayer acquires and disposes of an average of 40,000 shares of stock each year, and has done so each year since 1988; (4) the shares of stock are held for relatively short periods of time; and (5) taxpayer's purpose in acquiring, holding, and disposing of the shares of stock is to generate cash that is reinvested in taxpayer's citrus operations.

The evidence of record substantiates that taxpayer's capital gains from the sale of the stock constitute business income. Taxpayer's sale of stock was not a one-time event. Rather, the sale of the stock has been an ongoing occurrence since 1988. The gains from the sale of the stock are used directly as working capital in taxpayer's citrus operations. The sale of the stock is initiated in taxpayer's Indiana offices. The decisions as to how much stock to sell and when to sell it are decisions made at taxpayer's Indiana offices that directly impact taxpayer's business operations. It is irrelevant that the income resulting from the gain from the sale of the stock did not derive from one of taxpayer's principal businesses, *i.e.*, farming and citrus processing. The sale of the stock directly impacted taxpayer's business operations and was clearly frequent and continuous. Moreover, the proceeds therefrom were used directly as working capital in taxpayer's primary business.

FINDING

Taxpayer's protest is sustained.

II. Adjusted Gross Income Tax – Income of Corporate Partners: Unitary Operations

DISCUSSION

Taxpayer and a group of Florida citrus growers are partners in a partnership (the "Partnership"). The Partnership is in the business of growing, harvesting, and processing citrus into juice, as well as marketing and selling the citrus juice. The auditor disallowed the classification of taxpayer's share of Partnership losses as a business loss, and instead classified the losses as a non-business loss. Taxpayer claims that the losses are a business loss, and that it is operating in a unitary relationship with the Partnership. By establishing that the loss is a business loss and that taxpayer is in a unitary relationship with the Partnership, taxpayer is hoping to evince that the loss is subject to apportionment rather than allocation.

In order to determine how the income (or loss) from a corporate partnership is to be attributed, it must first be determined whether that income constitutes business or non-business income from the point of view of the taxpayer. *See* IC 6-3-2-2. The first step in this analysis is ascertaining whether the taxpayer and the partnership are engaged in a unitary business or not. *Hunt Corp. v. Indiana Dept. of State Revenue*, 709 N.E.2d 766, 776 (Ind. Tax Ct. 1999). If the income from the Partnership constitutes business income (*i.e.*, if taxpayer and the Partnership are engaged in a unitary business), under IC 6-3-2-2, then that income would be subject to apportionment based on an application of the Partnership's property, payroll, and sales factors. *Id.*

The Indiana regulations more specifically address how to treat a corporate partner with respect to partnership income. *See* 45 IAC 3.1-1-153. This regulation is also determinative of how to determine whether or not a unitary relationship exists. 45 IAC 3.1-1-153(b) reads in pertinent part that if a "corporate partner's activities and the partnership's activities constitute a unitary business under established standards, disregarding ownership requirements, the business income of the unitary business attributable to Indiana shall be determined by a three (3) factor formula..." This section indicates that to establish the existence of a unitary operation, the taxpayer must demonstrate that the relationship between itself and the partnership meet the established characteristics of a unitary

relationship.

The unitary principle is addressed repeatedly by the Supreme Court; and, while no single definition exists, one characteristic appears to be essential – day-to-day operational control. *See, e.g., ASARCO, Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 102 S.Ct. 3103 (1982); *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 112 S.Ct. 2251 (1992); *Container Corp. v. Franchise Tax Board*, 463 U.S. 159, 103 S.Ct. 2933 (1983). Here, to establish that a unitary relationship does in fact exist, taxpayer must demonstrate at the very least that taxpayer has operational control of the Partnership or that management of the Partnership is centralized with the management of the corporation.

In the instant case, the auditor found that the Partnership was not unitary with taxpayer and the losses were not business losses because, *inter alia*, taxpayer owned less than a twenty-five percent (25%) ownership interest in the Partnership. It is true that taxpayer has a twenty percent (20%) ownership interest in the Partnership. However, in determining whether income (or losses) is business or non-business, the Department does not consider the percentage of ownership. See 45 IAC 3.1-1-153(b). The Department looks to whether the income is acquired in the regular course of the taxpayer's trade or business operations. IC 6-3-1-20.

Taxpayer is a corporation which engages in various operations as part of its regular business activities, including active participation in a partnership that is in the business of growing, harvesting, and processing citrus into juice, as well as marketing and selling the citrus juice. During the hearing, taxpayer presented evidence that taxpayer's owners and shareholders are actively involved in the operational, management, financial, and marketing aspects of the Partnership on a continuous basis. No operational decisions are made for the Partnership without the review and consent of representatives of taxpayer. Taxpayer's chairman, who also serves as chairman of the board of the Partnership, spends an average of sixty (60) hours per month with Partnership managers, officers, owners, and customers. Taxpayer's chairman has the express authority to review, approve, or reject all Partnership budgets and financial decisions prior to implementation.

The evidence submitted by taxpayer establishes that (1) the operations of the Partnership are an integral part of taxpayer's regular business operations; and (2) taxpayer exerts considerable control over the Partnership. We find, therefore, that the losses from the Partnership constitute business losses, and that a unitary relationship exists between taxpayer and the Partnership.

FINDING

Taxpayer's protest is sustained.

III. Tax Administration – Abatement of Penalty

DISCUSSION

Taxpayer protests the imposition of a ten percent (10%) negligence penalty.

IC 6-8.1-10-2.1(d) states that if a person subject to the negligence penalty imposed under said section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. 45 IAC 15-11-2 defines negligence as the failure to use reasonable care, caution or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or Department regulations.

In order to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. 45 IAC 15-11-2. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed..." 45 IAC 15-11-2(c). In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits. *Id.*

In this case, taxpayer has demonstrated that it exercised ordinary business care and prudence in carrying out its duty to pay income tax. Therefore, taxpayer has affirmatively established reasonable cause, and the negligence penalty shall be waived.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04990329.LOF

LETTER OF FINDINGS NUMBER: 99-0329

Use Tax

For Tax Years 1995 through 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Use Tax — Cost of Goods Sold

Authority: IC 6-8.1-5-1

Taxpayer protests imposition of use tax on twenty percent (20%) of the Cost of Goods Sold.

II. Tax Administration — Negligence Penalty

Authority: IC 6-8.1-5-4; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is an independent dealer of motor vehicles. The Indiana Department of Revenue conducted an audit for the tax years 1995 through 1997. As a result of that audit, the Department determined that taxpayer was using items in its inventory for business or personal purposes and assessed use tax on 20% of the Cost of Goods Sold (COGS). Taxpayer protests the imposition of use tax on the 20% of COGS and a ten percent (10%) negligence penalty. Further facts will be provided as required.

I. Use Tax — Cost of Goods Sold

DISCUSSION

Taxpayer protests the imposition of use tax on twenty percent (20%) of the Cost of Goods Sold (COGS) at taxpayer's business. IC 6-8.1-5-1(b) provides in relevant part:

The notice of proposed assessment is prima facie evidence that the department's claim for unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The Department imposed use tax at the twenty percent rate after determining that, due to high inventory turnover and insufficient record keeping, it would be impossible to determine use tax assessments on an item-by-item basis.

The Department issued proposed use tax assessments based on the best information available. IC 6-8.1-5-1(a) provides in relevant part:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department.

At the administrative hearing, taxpayer referred to the list of examples of taxable items in the audit report. Taxpayer provided documentation to support its claim that several of the examples were not taxable, either because sales tax had already been paid or the item was on consignment.

Taxpayer seeks to reduce the assessments based on the taxable status of individual items that may have been expensed through COGS, offering documentation and citing several statutes in support of its position. Taxpayer misunderstands the assessment method. The assessments were not based on an item-by-item basis. The Department assessed use tax on twenty percent (20%) of the COGS.

The Department used the best information available, the COGS reported by taxpayer on its federal tax returns, as provided in IC 6-8.1-5-1(a). Taxpayer's records and the documentation provided in the protest are insufficient to establish the taxable status of every item expensed in COGS. This lack of documentation renders it impossible for the Department to determine if the individual items referred to by taxpayer are part of the twenty percent (20%) of COGS the Department did assess use tax on, or the eighty percent (80%) the Department did not assess use tax on.

Similarly, taxpayer's argument that some items were being held on consignment, and so not taxpayer's use tax responsibility, misunderstands the assessment method. If an item were sold or held on consignment there would be no cost to taxpayer, and so it would not go into taxpayer's cost of goods sold. Therefore, if the items referred to by taxpayer were being held on consignment, there was no cost reflected in the COGS and no use tax was assessed on them.

The list of examples included with the audit report was intended only to provide examples, not an exhaustive list of items upon which the Department considered use tax due. Whether or not a particular item on the list was subject to use tax is irrelevant. The Department did not assess use tax on individual items. Taxpayer's argument that certain items were not subject to use tax does not apply to the Department's assessment method. The Department assessed use tax on twenty percent (20%) of taxpayer's COGS as taxpayer reported on its federal tax return, due to insufficient record keeping and as provided in IC 6-8.1-5-1(a). Items held on consignment would not have been included in the COGS. Taxpayer has provided insufficient documentation to establish that the assessment of use tax on twenty percent of taxpayer's COGS is incorrect and so has not met its burden under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

II. Tax Administration — Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of a ten percent (10%) negligence penalty. Taxpayer requests that all penalties be waived as it has acted in good faith at all times, and any remaining assessments are not the result of any fraud, willful disregard of Indiana's tax laws, or negligence on the part of taxpayer. Negligence is defined by 45 IAC 15-11-2(b), which states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness,

disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) states in part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-2.1] if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Also of relevance is IC 6-8.1-5-4, which states:

(a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:

(1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or

(2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular liability was due, unless after an audit, the department consents to earlier destruction.

In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.

(c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.

(d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

In this instance, taxpayer has not established that the assessments are incorrect. Not paying use tax that was due under 45 IAC 15-11-2(b) and not having the records available at the time of the audit in violation of IC 6-8.1-5-4 is treated as negligence under 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

01990518.LOF

LETTER OF FINDINGS NUMBER: 99-0518

Individual Income Tax

For the Tax Periods: 1995, 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual Income Tax – IRA Rollover Distributions

Authority: IC 6-3-2-3.5; I.R.C. §408

The Taxpayer protests the Department's assessment on IRA distributions.

STATEMENT OF FACTS

Taxpayer was audited and assessed individual income tax on an IRA distribution. More facts supplied as necessary.

I. Individual Income Tax – IRA Rollover Distributions

DISCUSSION

Taxpayer was assessed income tax for an IRA distribution. The assessment was based on Taxpayer's federal form 5498 (Individual Retirement Arrangement Information) which showed a difference between the fair market value of the account and amount of rolled over contributions.

The computation of Indiana Adjusted Gross Income for individuals begins with the definition provided in Section 62 of the Internal Revenue Code. IC 6-3-1-3.5. Furthermore, pursuant to Section 408 of the Internal Revenue Code, distributions from

Nonrule Policy Documents

individual retirement accounts are included in gross income. I.R.C. 408(d) states:

(1) IN GENERAL.- Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

...

(3) Rollover Contribution.-An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) IN GENERAL. -Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if-

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution....

The auditor assessed Taxpayer on the amount of the distribution that was not rolled over within the 60 day period. That amount is considered to be a taxable distribution.

FINDING

The Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420000255.LOF

LETTER OF FINDINGS NUMBER: 00-0255

Sales and Use Tax

For the Period: 1997-1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax – Shipping and Handling Charges

Authority: 45 IAC 2.2-4-2; 45 IAC 2.2-4-3

The taxpayer protests the taxability of shipping and handling charges.

II. Sales and Use Tax – Computer Pricing Tape

Authority: IC 6-2.5-2-1

The taxpayer protests the assessment of use tax on computer pricing tape.

III. Sales and Use Tax – Collection Allowance

Authority: IC 6-2.5-6-10; 45 IAC 2.2-8-5

The taxpayer protests that the collection allowance is applicable to self-assessed use tax.

STATEMENT OF FACTS

Taxpayer operates a retail store that sells office supplies, equipment, and furniture. The taxpayer also sells/leases photocopier machines. More facts will be provided below as needed.

I. Sales and Use Tax – Shipping and Handling Charges

DISCUSSION

Taxpayer protests the taxability of shipping and handling charges. At issue is 45 IAC 2.2-4-3, which states in pertinent part:

(a) *Separately stated* delivery charges are considered part of selling at retail and subject to sales and use tax if the delivery is made by or on behalf of the seller of the property not owned by the buyer.

(b) The following guidelines have been developed:

(1) Delivery charge *separately stated* with F.O.B. destination—taxable.

(2) Delivery charge *separately stated* with F.O.B. origin—non taxable.

(3) Delivery charge *separately stated* where no F.O.B. has been established—non taxable.

(4) Delivery charges included in the purchase price are taxable. (Emphasis added)

As can be surmised from the language of the regulation, to even meet the threshold for possible non-taxability the delivery charges have to be *separately stated*. The taxpayer's delivery charges that are at issue were not separately stated. The Department brought this to the taxpayer's attention:

The freight charges are a combined "shipping and handling" and are not segregated as freight only. For freight charges to be

non-taxable, they must be separately stated, in accordance with Indiana Administrative Code 45 IAC 2.2-4-3. (Letter to Taxpayer, dated 3/5/01)

To further buttress the Department's position, Sales Tax Information Bulletin #1 states the following:

APPLICATION OF SALES TAX TO DELIVERY AND OTHER CHARGES

Indiana Code 6-2.5-4-1 (e) provides that the gross income received from "selling at retail" is taxable to the extent that the income represents any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer, and which are separately stated on the transferor's records. In applying the above authorities to the express wording of Indiana Code 6-2.5-4-1 (e), the following guidelines have been developed:

1. Delivery charges included in the purchase price - Taxable
2. Delivery charges *separately* stated with F.O.B. destination - Taxable
3. Delivery charges *separately* stated with F.O.B. origin - Non Taxable

These rules are only applicable in determining whether or not the delivery charge of an otherwise taxable sale is also subject to sales or use tax.

Taxable delivery charges include not only delivery charges made by the retail merchant, but also parcel post charges, Railway Express charges, or other common carrier *freight charges* for which the retailer bills the purchaser. (Emphasis added)

The taxpayer argued at hearing that "shipping and handling" constitutes a series of events—delivery, packaging, and labor—and thus should not be taxed. But as can be seen from 45 IAC 2.2-4-3 and Sales Tax Information Bulletin #1, shipping and handling charges are clearly taxable if they do not comport with aforementioned regulation and bulletin.

FINDING

Taxpayer's protest is denied.

II. Sales and Use Tax – Computer Pricing Tape

DISCUSSION

The taxpayer has a contract with Company A. Under the contract Company A sells goods to the taxpayer. In conjunction with the contract, the taxpayer also purchases goods from a subsidiary of Company A—Company B. Company B sells an updated price listing on computer tape. Taxpayer purchases the updated price list on a quarterly basis. The issue is whether or not this constitutes a sale of property or a service.

Taxpayer argues that the computer pricing tape is a service based on the fact that the taxpayer is required to update quarterly (as part of the maintenance agreement), and the update occurs by (paraphrasing taxpayer) 'inserting the updated tape in the machines.' Per the taxpayer the tape then updates the pertinent data—pricing, descriptions, etc., of items.

The issue of whether the tape itself (the size of a VCR tape, according to the auditor), or the service of updating, is being purchased, is similar to the issue of computer software. Sales Tax Information Bulletin #8 states,

Pre-written programs, not specifically designed for one purchaser, developed by the seller for sale or lease on the general market in the form of tangible personal property and sold or leased in the form of tangible personal property are subject to tax irrespective of the fact that the program may require some modification for a purchaser's particular computer. Pre-written or canned computer programs are taxable because the intellectual property contained in the canned program is no different than the intellectual property in a videotape or a textbook

The computer pricing tape is akin to canned software and is thus taxable. When Company B is changing its pricing and catalog, it provides computer pricing tape to merchants so that merchants can update that information. If there is any tailoring or customization to the computer tape, it is for Company B's benefit, not the taxpayer's.

FINDING

Taxpayer's protest is denied.

III. Sales and Use Tax – Collection Allowance

DISCUSSION

The Indiana Code provides a sales and use tax collection allowance "to compensate retail merchants for collecting and timely remitting the state gross retail tax and the state use tax." Taxpayer states,

I discovered that collection allowance for sales and use tax should be on both sales and use tax. We have never taken the allowance on use tax portion on the tax bill.

As noted, in order to offset some of the administrative costs associated with collecting and remitting to the Department, IC 6-2.5-6-10 provides the following:

- (b) The allowance equals one percent (1%) of the retail merchant's state gross retail and use tax liability accrued during a reporting period.

The collection allowance is for retail merchants that either (1) collect and remit *sales* tax to the Department (that is, a retail merchant collects sales tax from its customers as an agent for the Department and remits the tax to the Department); or (2) an out-of-

state merchant collects *use* tax on a purchase made by an Indiana purchaser (*See* 45 IAC 2.2-8-5).

The taxpayer is not an out-of-state merchant, thus it collects *sales* tax from its customers. Taxpayer does not collect *use* tax as outlined in 45 IAC 2.2-8-5. The use tax presently at issue is not use tax collected by the taxpayer from taxpayer's customers, it is *self-assessed* use tax (i.e., tax owed by the *taxpayer* itself). Given that the collection allowance is for the collection, and not self-assessment of use tax, the taxpayer is denied.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010023
0420010024.LOF

LETTER OF FINDINGS NUMBERS: 01-0023; 01-0024

State Gross Retail Tax and Gross Income Tax

For the Tax Years 1995 to 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Applicability of the Gross Income Tax Low Rate

Authority: IC 6-2.1-2-1; IC 6-2.1-2-1(c)(1)(D); IC 6-2.1-2-1(c)(1)(D)(ii); IC 6-2.1-2-2(a)(1); IC 6-2.1-2-2(b); IC 6-2.1-2-3; IC 6-2.1-2-3(b); IC 6-2.1-2-4; IC 6-2.1-2-5; IC 6-2.1-2-5(9); *Jefferson Smurfit Corp. v. Indiana Dept. of State Revenue*, 681 N.E.2d 806 (Ind. Tax Ct. 1997)

Taxpayer argues that income derived from the services it provides to retail merchants should be taxed at the gross income tax "low rate."

II. Calculation of Taxpayer's Use Tax Liability

Authority: IC 6-8.1-5-1(b)

Taxpayer argues that the method employed by audit in calculating the taxpayer's use tax liability was inaccurate and a proposed, alternative method calculating that use tax assessment should have been employed.

III. Abatement of Ten Percent Negligence Penalty

Authority: IC 6-8.1-10-2.1(a); IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c)

Taxpayer argues that the Department should exercise its discretion to abate the ten percent negligence penalty. Taxpayer asserts that it was not negligent or careless in determining its tax liabilities.

STATEMENT OF FACTS

Taxpayer is in the business of providing a service to certain retail merchants. When customers return goods to those merchants, the returned goods are transferred to taxpayer which sorts, consolidates, and packages the goods for final return to the original manufacturer. The retail merchants receive a credit for the returned merchandise. Not all of the goods which taxpayer receives can be returned to the original manufacturer. Depending on the condition of the goods, some of the goods sold as salvage on a secondary market and some of the goods are scrapped. However, taxpayer estimates that between 50 and 70 percent of the goods it receives are returned to the original manufacturer.

The audit determined that for purposes of calculating the taxpayer's gross income tax liability, taxpayer's income was subject to the "high rate" of 1.2 percent. Taxpayer argues that its income should be subject to the low rate of .3 percent. Taxpayer makes this assertion on the ground that it is in the business of providing industrial servicing.

The audit calculated those of taxpayer's purchases which were subject to gross retail (use) tax assessment. The audit arrived at the use tax assessment by calculating the use tax for one month of each year and then extrapolating the percentage to each of the applicable tax years. Taxpayer agrees with the determination that it owes use tax, but challenges the audit's method of calculating that use tax liability.

DISCUSSION

I. Applicability of the Gross Income Tax Low Rate

IC 6-2.1-2-2(a)(1) imposes a gross income tax on "entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana..." The gross income tax is imposed at two rates, a "high rate" of 1.2 percent and a "low rate" of .3 percent. IC 6-2.1-2-3 "The rate of tax is determined by the type of transaction from the taxable gross income is received." IC 6-2.1-2-2(b). The receipts from wholesale sales and from selling at retail are taxed at the low rate. IC 6-2.1-2-4. Receipts from service activities and other

business activities are taxed at the high rate. IC 6-2.1-2-5.

Taxpayer argues that its income fits within the IC 6-2.1-2-4 definition of “wholesale sales” based upon a reference back to IC 6-2.1-2-1(c)(1)(D). That provision defines “wholesale sales” as including, “[r]eceipts from industrial processing or servicing, including: (i) tire retreading; and (ii) the enameling and plating of tangible personal property which is owned and is to be sold by the person for whom the servicing or processing is done, either as a complete article or incorporated as a material, or as an integral or component part of tangible personal property produced for sale by such person in the business of manufacturing, assembling, constructing, refining, or processing.”

Taxpayer’s argument may be fairly summarized as follows: Under IC 6-2.1-2-1(c)(1)(D), taxpayer is in the business of “servicing.” “Servicing” is defined as “wholesale sales.” Receipts from “wholesale sales” are taxed at the low rate under IC 6-2.1-2-4.

Taxpayer supports its assertion by reference to a previous, superseded version of IC 6-2.1-2-1 which defined “wholesale sales” as including “receipts from the business of industrial processing, enameling, plating, or *servicing of any tangible personal property*....” IC § 64-2603, chap. 140, § 1941 Ind. Acts. 82.

In further support of its position, taxpayer cites to *Jefferson Smurfit Corp. v. Indiana Dept. of State Revenue*, 681 N.E.2d 806 (Ind. Tax Ct. 1997). According to taxpayer, *Jefferson Smurfit* stands for the proposition that, as used within IC 6-2.1-2-1(c)(1)(D), “servicing” is not limited to the enumerated categories of enameling and plating but is intended to encompass a separate, broader, category encompassing the “servicing” of tangible personal property.

The Department must disagree with the taxpayer’s conclusions. Taxpayer’s activities are more properly characterized as the general provision of services as set out in IC 6-2.1-2-5(9) which makes the high rate of gross income tax applicable to the “provision of services of any character....” Notwithstanding the elimination of the resale requirement in *Jefferson Smurfit*, implicit in the statutory definition of “industrial processing or servicing” under IC 6-2.1-2-1(c)(1)(D) is the requirement that taxpayer’s customer’s must be engaged in the business of “manufacturing, assembling, constructing, refining, or processing.” IC 6-2.1-2-1(c)(1)(D)(ii). Taxpayer’s customers – retail merchants to whom taxpayer provides its sorting, packaging, and return services – do not engage in any of these activities.

What taxpayer’s customers are purchasing is simply a “service” unrelated to industrial processing of any kind. Taxpayer’s customers could very well sort, package, and return goods themselves. However, taxpayer’s customers are purchasing the convenience, economies of scale, and the expertise which the taxpayer is qualified to provide. By consolidating the returned merchandise from a large number of retail outlets (taxpayer’s customers) at taxpayer’s two Indiana locations, taxpayer provides an efficient and expeditious means of processing the merchandise and relieving the individual retail merchant of that responsibility. Taxpayer does not purchase merchandise. Taxpayer does not sell the merchandise. Taxpayer does not provide industrial services of any kind. Accordingly, taxpayer’s activities are properly characterized as the straightforward provision of “services” as defined under IC 6-2.1-2-5(9) the receipts from which are subject to the high gross income tax rate under IC 6-2.1-2-3(b).

FINDING

Taxpayer’s protest is respectfully denied.

II. Calculation of Taxpayer’s Use Tax Liability

Taxpayer agrees that certain of its purchases were subject to use tax. Taxpayer disagrees with the means by which the audit determined that use tax liability.

The audit calculated taxpayer’s use tax liability for two years. Audit did not consider every purchase made during those two years. Rather, the audit chose one month during each of the two years and determined those purchases which were subject to use tax. For the year 1997, audit chose April as the base month and determined that approximately 60 percent of the purchases made by taxpayer’s division one were subject to use tax. Audit extrapolated that 60 percent rate to division one’s purchases for the remaining eleven months. Similarly, for taxpayer’s division two, audit determined that approximately 14 percent of division two’s 1997 purchases were subject to use tax and extrapolated that percentage to the remaining eleven months. For 1998, audit chose November as the base month, determined that approximately 78 percent of division one’s purchases were subject to use tax and approximately 17 percent of division two’s purchases were subject to use tax. Audit used those two percentage figures as a means of calculating taxpayer’s use tax liability for 1998.

Taxpayer argues that the particular methodology by which audit determined its use tax liability is flawed resulting in an excessive use tax assessment. Taxpayer argues that the use tax liability for its two divisions should not have been determined separately but that audit should have calculated a single combined percentage for both divisions for both years. Taxpayer provides its own calculations purporting to demonstrate that such a methodology would have produced a unitary percentage of approximately 55 percent and that the application of this percentage would have resulted in a substantial decrease in taxpayer’s use tax liability. Taxpayer argues that the use of a single combined percentage would have “smoothed” out any discrepancies or distortions caused by the choice of a single month which, in itself, may not have fairly represented taxpayer’s purchases over the entire one-year period. Alternatively, taxpayer suggests that more than one month for each year should have been sampled to determine a more equitable and accurate use tax assessment.

IC 6-8.1-5-1(b) provides in relevant part that “[t]he notice of proposed assessment is prima facie evidence that the department’s

claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” Without arriving at any determination concerning the relative accuracy of either audit’s original use tax assessment or the taxpayer’s proposed alternative methodology, taxpayer has set out a reasonable argument calling into question audit’s calculation of its use tax liability. Accordingly, the audit division is requested to perform a supplemental audit reviewing taxpayer’s use tax assessment.

FINDING

Subject to the determinations of a supplemental audit, taxpayer’s protest is sustained.

III. Abatement of Ten Percent Negligence Penalty

Taxpayer has requested that the ten percent negligence penalty, imposed under the authority of IC 6-8.1-10-2.1(a), be abated for all the taxpayer’s tax liabilities assessed during the years encompassed within the audit report. Taxpayer maintains that any mistakes it made were made in good faith and in the exercise of reasonable care.

IC 6-8.1-10-2.1(d) states that if a person, subject to the negligence penalty, imposed under IC 6-8.1-10-2(a), can show that the failure to file a return, pay the full amount of tax shown on the person’s return, timely remit tax held in trust, or pay the deficiency determined by the Department, was due to reasonable cause and not due to willful neglect, the Department shall waive the penalty. 45 IAC 15-11-2(b) defines “negligence” as the failure to use reasonable care, caution or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer’s carelessness, thoughtlessness, disregard, or inattention to duties placed upon the taxpayer by the Indiana Code or Department regulations. Id.

In order to waive the negligence penalty, the taxpayer must demonstrate that its failure to pay the full amount of tax was due to reasonable cause. 45 IAC 15-11-2(c). Taxpayer may establish reasonable cause by “demonstrat[ing] that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...” Id. In determining whether reasonable cause exists, the Department may consider the nature of the tax involved, previous judicial precedents, previous Department instructions, and previous audits. Id.

Taxpayer has offered no substantive explanation for its failure to self-assess use taxes. Taxpayer has provided no statutory or factual basis upon which the Department can justifiably be expected to find a reasonable cause for taxpayer’s failure to pay the assessed use tax deficiencies. The taxpayer various assertions and explanations – even taken together – do not rise to the level of “reasonable cause” sufficient to permit the Department to waive the negligence penalty assessed against the accumulated use taxes.

In contrast, taxpayer has provided a specific, statutorily based explanation for its belief that it was subject to the state’s gross income tax under the “low rate.” However erroneous that belief may have been, taxpayer’s explanation is sufficient to rise to the level of “reasonable cause” necessary to abate the ten percent negligence penalty assessed against the taxpayer’s gross income tax liability.

FINDING

Taxpayer’s protest is sustained in part and respectfully denied in part.

DEPARTMENT OF STATE REVENUE

0120010086.LOF

LETTER OF FINDINGS NUMBER: 01-0086

Individual Income Tax Calendar Years 1997 and 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUE(S)

I. Individual Income Tax – Understatement of Gross Business Receipts

Authority: 45 IAC 3.1-1-2

Taxpayer protests the audit assessment.

STATEMENT OF FACTS

Taxpayer failed to show for a hearing scheduled for Wednesday, September 26, 2001. The determination is made based upon information contained in the audit file and taxpayer’s protest letters dated November 15, 2000 and May 22, 2001. The Department returned the file to the auditor on June 22, 2001 to obtain additional information. No additional information was provided to the auditor and the file was returned to the Legal Division.

Taxpayer is a co-owner of a retail operation that repairs office and copy equipment as well as the sale of related supplies. Records examined include state and federal income tax returns for 1997 and 1998, Schedule C’s, bank statements and cancelled

checks (where available), and the general ledger for 1998. No ledgers were made available for 1997. Although the average monthly receipts totaled in excess of fifteen thousand dollars (\$15,000), the auditor chose to utilize a lesser amount of five thousand dollars (\$5,000) for several missing deposit slips.

According to Audit, the taxpayer understated its business receipts in calendar year 1997. Taxpayer states it may have records to verify that the amounts included by audit also include monies loaned them. To date, neither proof nor additional information has been provided the auditor or the hearing officer.

On June 22, 2001 the file was returned to the auditor because the taxpayer stated that it had additional information to negate a portion of the assessment. On August 15, 2001 the auditor returned the file to the Legal Division without resolution.

I. Individual Income Tax – Understatement of Gross Business Receipts

DISCUSSION

Taxpayer's letters dated November 15, 2000 and May 22, 2001 states it does not owe what the department determined and it will have information with the detailed correct information. Taxpayer, however, did not provide documentation or reasons for its belief that the assessment is in error.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010114.LOF

LETTER OF FINDINGS NUMBER: 01-0114

**Responsible Officer – Bingo Penalty and Withholding Tax
For Tax Years 1999 through 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Withholding Tax – Responsible Officer Liability

Authority: IC 6-3-4-8; IC 6-8.1-5-1(b)

Taxpayer protests the assessment of responsible officer liability for withholding taxes.

STATEMENT OF FACTS

Taxpayer was the president of a not-for-profit organization. After an investigation, the Department of Revenue (the "Department") found that the not-for-profit organization had not withheld Indiana adjusted gross income tax and county adjusted gross income tax from wages paid to an employee who worked for the not-for-profit organization. Taxpayer was personally assessed for the taxes because she was listed as the president of the not-for-profit organization. Taxpayer protests this finding, and the subsequent assessment of withholding tax liability. Additional facts will be provided below.

Withholding Tax – Responsible Officer Liability

DISCUSSION

IC 6-3-4-8 provides in pertinent part:

(a) Except as provided in subsection (d), every employer making payments of wages and subject to tax under IC 6-3, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect and pay over income tax on wages paid by such employer to such employee, shall at the time of the payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department.... Such employer making payments of any wages:

- (1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from his wages and paid over in compliance or intended compliance with this section; and
- (2) shall make return of and payment to the department monthly of the amount of tax which, under IC 6-3 and IC 6-3.5, he is required to withhold.

An individual is personally liable for unpaid withholding taxes if they are an officer, employee, or member of the employer who has a duty to remit the taxes to the Department. *See* IC 6-3-4-8(g). Subsection (d), referred to above, exempts employers for fraudulent acts by their employees; however, such circumstances were not alleged in the instant case. Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. *See* IC 6-8.1-5-1(b).

The assessment against taxpayer was based upon the best information available, and was derived from previous withholding

payments made by the not-for-profit organization. Taxpayer protests her responsible officer assessment, and states that the employee for which withholding tax was withheld resigned in December of 1999. However, taxpayer has failed to provide any documentation supporting her allegation, despite numerous requests by this hearing officer for said documentation. Furthermore, taxpayer has failed to provide evidence to establish that she was not the responsible officer during the assessment periods.

FINDING

The taxpayer's protest is denied. Taxpayer (1) failed to provide evidence that the employee for which withholding tax was previously withheld was no longer an employee during the assessment periods; and (2) failed to provide evidence that she was not the responsible officer during the assessment periods.

DEPARTMENT OF STATE REVENUE

0120010115.LOF

**LETTER OF FINDINGS NUMBER: 01-0115
Individual Income Tax – Indiana Source Income
For Tax Years 1997-2000**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual Income Tax – Indiana Source Income

Authority: IC § 6-3-1-23; 45 IAC 3.1-1-7(3); IC § 6-3-2-1(a); 45 IAC 3.1-1-23; IC § 6-3-2-2; 45 IAC 3.1-1-25; IC § 6-8.1-5-1(b); 45 IAC 3.1-1-100

Taxpayer protests the withholding of individual income tax on payments from an employment contract after retirement, on the basis that he was a resident of Florida during the tax years at issue. Because of the withholding tax liability, taxpayer's 2000 refund was reduced.

STATEMENT OF FACTS

Taxpayer protests the reduction of a refund for tax year 2000 and the assessment of individual income tax for tax years 1997-2000. Taxpayer argues that as a full-time resident of Florida, income derived from an employment contract for services performed in Indiana, where payments continued after his retirement, was not subject to Indiana's income tax statutes.

Taxpayer worked for an Indiana insurance company. A Wisconsin insurance company purchased it, and, pursuant to an employment contract, employed taxpayer as a vice-president of data processing. The term of the contract was 5 years, from September of 1995 until the end of August 2000. Taxpayer was to be paid a yearly sum certain, in equal biweekly installments, over the life of the contract. The termination section of the contract provides in pertinent part:

9.3 **Compensation Upon Termination.** If the Executive's employment is terminated by the Employer for any reason, or if the Executive voluntarily terminates employment with the Employer subsequent to the completion of at least two (2) years of employment pursuant to this Contract, the Employer shall continue to pay the Executive the salary being paid to the Executive as of the date of termination of employment for the remaining portion of the term of this Contract.... The amount of the salary payable to the Executive subsequent to termination of employment shall be reduced by any income or earnings of the Executive from employment in the insurance industry or from employment which violates the terms of section 11 of this Agreement.

Section 11 is a typical covenant not to compete pronouncement. The financial arrangement outlined in the above section is not a typical retirement package. Retirement benefits are paid pursuant to whatever retirement plan an employer maintains; amounts are not reduced by income received from employment in the same field, nor by income received by allegedly violating a covenant not to compete. The income taxpayer received from the terms of his employment contract with the Wisconsin insurance company is more properly characterized as compensation for services performed, with an option to terminate after 2 years if taxpayer wished to continue receiving contract payments.

Taxpayer retired in 1997 after working for 2 years under the terms of the contract. Pursuant to the contract terms, taxpayer continued receiving his biweekly installments. Taxpayer filled out and filed his own tax returns for the tax years at issue, and protested assessments for 1997, 1998, and 1999, arguing that his status as a Florida resident relieved him of his duty to pay Indiana income tax. A refund issued to taxpayer in 2000 was reduced by taxpayer's individual income tax liabilities.

DISCUSSION

I. Individual Income Tax – Indiana Source Income

Under IC § 6-8.1-5-1(b), a "notice of proposed assessment is *prima facie* evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed

assessment is made.” The real issue in this taxpayer protest concerns the character of the biweekly installments taxpayer received after exercising the contract option to continue receiving those payments in exchange for 2 years of employment with the Wisconsin insurance company.

First of all, IC § 6-3-1-23 defines “compensation” as “wages, salaries, commissions and any other form of remuneration paid to employees for personal services.” Secondly, IC § 6-3-2-1(a) imposes the adjusted gross income tax “upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every non-residential person.”

Taxpayer performed personal services under the employment contract for 2 years. After that, taxpayer exercised an option in the contract allowing him to terminate the personal services part of the contract and to continue receiving compensation as if he were still employed. The employment contract treated taxpayer as an employee rendering services for the life of the contract; taxpayer, in exercising the option to terminate his employment services, had to work for 2 years to secure payment for the final 3 years of the contract. As such, the income taxpayer received during those 3 years is 2 years of salary paid out over a 5 year period, a species of deferred compensation.

45 IAC 3-1-1-100 covers aspects of withholding pertinent to characterizing the income taxpayer received pursuant to his employment contract:

Withholding is not required on pension and annuity payments that meet certain qualifications of the Internal Revenue Service, unless the recipient requests that federal income tax be withheld. If such a request is made, the payor must also withhold and remit Indiana adjusted gross income tax.

Pensions and annuities that do not meet the Internal Revenue qualifications are considered to be deferred compensation and, therefore, require withholding in the same manner as for wages and salaries.

Under a regulation concerning allocation of income among states, taxpayer’s income is subject to Indiana’s tax statutes: “[d]eferred compensation, other than that from a qualified retirement plan as described above [meeting the qualifications of the Internal Revenue Code], is directly attributable to services performed, and is taxed by the state where the services were performed.” (45 IAC 3.1-1-7(3)). Further, 45 IAC 3.1-1-23(2) provides in pertinent part:

Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country **except that income received from Indiana sources will continue to be taxable. (emphasis added.)**

With respect to the tax liability of a nonresident, 45 IAC 3.1-1-25 provides that “[a]ll persons who are not residents of Indiana are required to report that portion of their entire income directly or constructively from or attributable to business, activities or any other source within Indiana...” The income taxpayer received from the final 3 years of the employment contract derived from services performed in Indiana. Therefore, taxpayer’s income is taxable and a refund reduced to cover an outstanding tax liability is legal.

FINDING

Taxpayer’s protest is denied.

DEPARTMENT OF STATE REVENUE

0320010198.LOF

LETTER OF FINDINGS NUMBER: 01-0198

Withholding Tax

Calendar Years 1998 and 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer rents videotapes to individuals for home viewing. During 1999, the taxpayer ceased operations. Taxpayer failed to provide source documents or records during the audit. The auditor completed the audit by utilizing the apportionment factor for

Nonrule Policy Documents

Indiana wages paid. The result was multiplied by the state and county tax rates to determine the total tax liability and has been considered best information available.

Taxpayer failed to remit all of its withholding taxes.

I. Tax Administration – Penalty**DISCUSSION**

The taxpayer protests the assessment of a ten percent (10%) negligence penalty. In the protest letter, the taxpayer merely asks for a reduction in penalty. Taxpayer was advised in two letters to provide reasons why the penalties should be waived.

A review of the audit indicates the taxpayer did not remit nor report all of its withholding tax. Taxpayer did not provide reasonable cause to allow a waiver of the penalty.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420010199.LOF

LETTER OF FINDINGS NUMBER: 01-0199**Sales Tax****Calendar Years 1998 and 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)**I. Tax Administration – Penalty**

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer rents videotapes to individuals for home viewing. During 1999, the taxpayer ceased operations. Taxpayer failed to provide source documents or records during the audit. The auditor completed the audit by calculating sales tax based upon apportionment figures on the taxpayer's corporate income tax returns, which have been considered best information available.

Taxpayer failed to remit all of its sales tax.

I. Tax Administration – Penalty**DISCUSSION**

The taxpayer protests the assessment of a ten percent (10%) negligence penalty for its failure to remit sales taxes. In the protest letter, the taxpayer merely asks for a reduction in penalty and a payment plan in which to remit the tax over a period of time.

A review of the audit indicates the taxpayer did not remit nor report all of its sales tax due. Taxpayer did not provide reasonable cause to allow a waiver of the penalty.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420010200P.LOF

LETTER OF FINDINGS NUMBER: 01-0200P**Sales and Use Tax****For the Calendar Year 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Tax Administration – Penalty**

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The taxpayer is an Indiana limited liability company. On May 25, 2001, the taxpayer purchased an aircraft in Oklahoma. On June 4, 2001, the aircraft was flown to Indiana. During the interim period, the aircraft was used outside of Indiana. On July 2, 2001, the taxpayer registered the aircraft with the department by filing an Application for Aircraft Registration or Exemption. At the time of filing, the taxpayer remitted the appropriate aircraft license excise tax and use tax.

DISCUSSION

The taxpayer was assessed negligence penalties for its failure to timely register the aircraft and remit the aircraft license excise tax and use tax.

In a letter dated July 24, 2001, the taxpayer protested the penalty on the use tax assessed based upon the summarized arguments presented below:¹

- Based upon its prior experience, the taxpayer was under the misimpression that it had 31 days after bringing the aircraft into Indiana in which to register the aircraft.
- An aircraft owner cannot be subject to Indiana use tax until the aircraft is “used” in Indiana.
- Regarding aircraft, the imposition of a 10% penalty on the unpaid Indiana use tax could not have been intended by the Indiana General Assembly.
- The taxpayer had reasonable cause for failing to register the aircraft in a timely manner.

IC 6-6-6.5-19(d) states:

(d) If an owner does not register the owner’s aircraft and pay the gross retail or use tax when required by this chapter, the owner shall be subject to a penalty and interest on the unpaid gross retail or use tax as established in IC 6-8-1-10-1.

IC 6-6-6.5-2 requires a resident of Indiana to register an aircraft with the department not later than 31 days after the purchase date. The statute is clear regarding the responsibilities of the taxpayer, and the taxpayer failed to fulfill them in a timely manner.

FINDING

The taxpayer’s protest is denied.

¹ With its letter dated July 24, 2001, the taxpayer remitted the penalty on the aircraft excise tax and interest on the use tax.

DEPARTMENT OF STATE REVENUE

0420010246P.LOF

LETTER OF FINDINGS NUMBER: 01-0246P

Sales and Use Tax

Calendar Years 1998 and 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a retailer of logging equipment and maintains a service and parts department. Taxpayer was previously audited on August 1, 1997. The major issues of the current audit were issues in a prior audit. Taxpayer self assessed less use tax in the current audit than the prior audit. Taxpayer made taxable purchases such as manuals, catalogs, rental equipment, janitorial supplies, tools, maintenance supplies, and other miscellaneous items for its own use. Taxpayer also failed to remit a portion of its collected sales taxes, which was a prior audit issue.

I. Tax Administration – Penalty

DISCUSSION

At issue is whether the taxpayer was negligent in reporting its sales and use taxes. Taxpayer failed to remit sales tax collected and to self assess use tax on clearly taxable issues. These issues were prior audit issues where the taxpayer made no corrections. The prior audit assessed \$388, \$1000, and \$739 in 1994, 1995, and 1996 respectively while the current audit assessed \$10,207 and \$3,809 in 1998 and 1999. Taxpayer’s request is merely a request based upon her own feeling that the penalty should be waived. No arguments have been provided except that she does not deserve a penalty.

Nonrule Policy Documents

A review of the current audit revealed the taxpayer made no attempt to self assess use tax on clearly taxable items and failed to remit 99% in use tax due. The penalty is appropriate, as the taxpayer made no effort to correctly self assess use tax. In addition, taxpayer had errors in the reporting of its sales tax.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420010249P.LOF

LETTER OF FINDINGS NUMBER: 01-0249P**Use Tax****Calendar Years 1998, 1999, and 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)**I. Tax Administration – Penalty**

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is an industrial processor located in Indiana. At audit, it was determined that the taxpayer failed to self assess and pay use tax on clearly taxable items. Taxpayer had no use tax accrual system in place for 1998 and 1999.

Taxpayer failed to remit use tax on clearly taxable items such as subscriptions, utilities, office supplies, janitorial supplies, tools, and other miscellaneous items.

I. Tax Administration – Penalty**DISCUSSION**

Taxpayer's audit report revealed that it failed to remit use tax on clearly taxable items and the taxpayer had no use tax accrual system in place.

Taxpayer states it files its tax returns and payments in a timely manner and feels IC 6-8.1-6-1 would not be applicable. It has implemented a program to pick up items of the nature included in the audit report. A penalty waiver is requested.

Taxpayer made no attempt to self assess use tax on clearly taxable purchases and had no use tax accrual system in place. Taxpayer did not provide reasonable cause to allow a waiver of the penalty.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420010281.LOF

LETTER OF FINDINGS NUMBER: 01-0281**Sales Tax****For the Month of May 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)**I. Tax Administration – Penalty – Insufficient Funds**

Authority: IC 6-8.1-10-5

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer's representative, in a letter dated October 17, 2001, protests the penalty assessed because it believes the penalty to be unfair.

Taxpayer made a sales tax payment for the month of May 2001 that was returned by the bank for insufficient funds. The department imposed a ten-percent penalty as allowed under IC 6-8.2-10-5(a), which allows the taxpayer to make payment within ten days of the notice mailed. The taxpayer failed to make the payment within the ten (10) day period and the penalty was increased to one hundred percent (100%) multiplied by the unpaid tax, as allowed under (b) of the tax code listed above.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer failed to make the tax payment plus ten-percent penalty within the time allowed under IC 6-8.1-10-5. The taxpayer failed to make the payment by the required due date and the penalty was increased to one hundred percent (100%) as allowed under (b) of IC 6-8.1-10-5.

Taxpayer requests a waiver of penalties because it believes the penalty to be unfair.

The taxpayer failed to remit the tax due and has not provided reasonable cause for failure to do so.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010286P.LOF

LETTER OF FINDINGS NUMBER: 01-0286P

**Gross and Adjusted Gross Income Tax
Fiscal Years Ended 6/30/98 and 6/30/99**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is incorporated in Indiana and assembles plumbing fixtures. Upon audit it was discovered that the taxpayer failed to add back property taxes in 1999. The failure amounted to six percent in tax.

Taxpayer protests the penalty and states that it has a history of filing timely and making accurate and timely tax payments.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty for failure to add back property tax in 1999.

____ Taxpayer, in a letter dated May 17, 2001, protested the penalty assessed because it has a history of paying its tax liabilities timely, has made an honest attempt to correctly report its tax liabilities, and did not attempt to circumvent the law.

Taxpayer should have verified the tax return before filing. Taxpayer has not provided reasonable cause to allow the department to waive the negligence penalty.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420010300P.LOF

LETTER OF FINDINGS NUMBER: 01-0300P

**Sales Tax
Calendar Years 1995, 1996, 1997, 1998, 1999, and 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)**I. Tax Administration – Penalty****Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer franchises stores throughout the country. It franchises the store, sells it to a third party from whom it receives an initial fee and reimbursement for the store start up expenses. Taxpayer then sells its products to the franchisees at wholesale and receives franchise fees based upon sales from each location.

The audit assessment stemmed from the taxpayer failing to bill franchisees for tangible personal property and realty materials transferred to them when a store was prepared and sold to them. Taxpayer provided resale certificates to vendors but did not invoice for sales taxes when resold.

I. Tax Administration – Penalty**DISCUSSION**

At issue is whether the taxpayer was negligent in reporting its sales and use taxes. Taxpayer protests the penalty based upon reasonable cause. Taxpayer states it discovered its error in not charging sales tax on graphics and had accounting change its procedures immediately. Taxpayer further states it is doing the best it can based upon information supplied regarding the taxability of real and tangible personal property. It is working on ways to improve in this area. Taxpayer requests a penalty waiver.

Taxpayer's errors amounted from four percent (4%) in the year 2000 to sixty-four (64%) in 1995 that relates directly to the amount of new franchises opened. The issue regarding the collection of sales tax on realty materials and tangible personal property are clear in the Indiana Code and Regulations. Taxpayer should have made itself aware of the tax laws.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420010301P.LOF

LETTER OF FINDINGS NUMBER: 01-0301P**Sales and Use Tax****Calendar Years 1998 and 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)**I. Tax Administration – Penalty****Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a manufacturer that was previously audited. Taxpayer made taxable purchases such as non production tools, cleaning supplies, pallets to hold samples for research testing, auto repair parts, fill sand, publications, fixed assets, and other miscellaneous items for its own use. Tax paid by the taxpayer in error was credited in the audit report.

I. Tax Administration – Penalty**DISCUSSION**

At issue is whether the taxpayer was negligent in reporting its sales and use taxes. Taxpayer protests the penalty based upon reasonable cause, primarily, that the assessment was due to unintentional errors and not due to willful neglect as required in IC 6-8.1-10-2.1. The error in sales amounted to .09% of its sales and, in the sampling made of its purchases subject to tax, 18.24% were found to not have Indiana sales tax collected on them. Taxpayer further states it recently installed a new accounting system that should aid in alleviating some of the unpaid use tax.

Further arguments include that it had not previously undergone an Indiana Sales and Use tax audit and had overlooked the taxability of some items purchased. The remainder of the use tax due relates to asset purchases. It had a large unpaid liability in the 1998 audit period on these assets but in 1999, the taxpayer started an internal audit procedure to assure that sales tax is charged or use tax accrued. In making these corrections the unpaid tax on assets decreased from \$9,372 in 1998 to \$346 in 1999.

A review of the current audit revealed the taxpayer made no attempt to self assess use tax on clearly taxable items and failed to remit 61% and 14% in 1998 and 1999 respectively in use tax. The penalty is appropriate as the taxpayer made little effort to correctly self assess use tax. In addition, taxpayer had errors in the reporting of its sales tax.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010306P.LOF

LETTER OF FINDINGS NUMBER: 01-0306P

**Gross and Adjusted Gross Income Tax
Calendar Years 1997 and 1998**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is incorporated in Delaware and has two Indiana business locations. Upon audit it was discovered that the taxpayer failed to addback Property Taxes, an issue in the prior audit. The taxpayer also failed to report Indiana sales subject to gross income tax. Adjustments were made to the apportionment schedule for the property factor, the payroll factor, and the sales factor that increased the percentage for both years of the audit.

Taxpayer protests the penalty and states it had established reasonable cause for the positions taken on the original returns for the throwback rule; i.e. there are several states in which the taxpayer could document that it had payroll or another form of nexus creating activity in the states in question.

Taxpayer did not provide documentation to the auditor nor the department showing it created nexus in other states. In addition, taxpayer's audit showed other issues upon which the department relied to assess a negligence penalty.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer, in a letter dated October 25, 2001 protested penalties assessed because there was no negligence or intentional disregard of Indiana tax regulations. Taxpayer further states it has established reasonable cause for the positions taken on the original returns and merely states it had nexus in several other states. No proof has been provided the auditor or the department.

Taxpayer made several errors, primarily; it failed to addback property taxes, an issue in the prior audit completed on March 7, 1996. Taxpayer also failed to report gross income for sales made in Indiana and made errors in the apportionment factors.

Taxpayer has not provided reasonable cause. The Department finds that a negligence penalty is proper.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420010316P.LOF

LETTER OF FINDINGS NUMBER: 01-0316P

**Sales and Use Tax
Calendar Years 1998, 1999, and 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer owns vending machines, video game machines, juke boxes, dart games, and pool tables. The taxpayer also owns coin changers and ticket masters that dispense charity gaming pull-tabs. In some cases the taxpayer sells the coin changers and ticket masters to exempt not-for-profit organizations and in other cases it charges a monthly fee for the machine use. The taxpayer makes retail sales to individuals and bars. The taxpayer had no exemption certificates for these sales.

Taxpayer made taxable purchases for its own use such as pool tables, video games, music CD's, and other miscellaneous items.

I. Tax Administration – Penalty

DISCUSSION

At issue is whether the taxpayer was negligent in reporting its sales and use taxes. Taxpayer protests the penalty based upon reasonable cause, primarily, that the assessment was due to a mistake in figuring the tax due. Taxpayer states that its taxes were timely filed every month.

A review of the current audit revealed the taxpayer made no attempt to self assess use tax on clearly taxable items and had no use tax accrual system in place. The penalty is appropriate as the taxpayer made no effort to self assess use tax. In addition, taxpayer had errors in the reporting of its sales tax.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2002-01 IT

January 17, 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

Corporate Income Tax – Eligibility of an S corporation's C corporation subsidiary to qualify as an Indiana special corporation

The taxpayer requests the department to rule on the ability of a C corporation subsidiary to qualify as special corporation for Indiana income tax purposes.

Authority: IRC 1361; IRC 1504; IC 6-3-2-2.8

STATEMENT OF FACTS

____ The taxpayer states that it is a C corporation, which has filed in Indiana as a qualified special corporation for several years. During 2001, a change in its corporate structure occurred due to certain financing requirements. The taxpayer is now owned by a holding company, "X". The holding company is an S corporation. The holding company is owned by the individuals, which previously owned the taxpayer.

Pursuant to IC 6-2.1-3-24.5, certain corporations can be excluded from the Indiana gross receipts tax. Such corporations are called "Special Corporations." To qualify as a special corporation, the taxpayer must be eligible to elect federal S corporate status, but has not elected to do so. Additionally, the taxpayer must not derive more than 25% of its gross income from passive investments and the taxpayer must be able to prove it qualifies.

The taxpayer believes that it qualifies as a Special Corporation under IC 6-2.1-3-24.5 and that it can answer all of the questions on the IT-20SC in such a way as to prove it so qualifies.

It believes so based on its interpretation of IRC 1361(b)(3): federal law which now permits a wholly owned subsidiary to be treated as an S corporation. The taxpayer argues that since it is a wholly owned subsidiary of an S corporation holding company it could elect to be treated as an S corporation. Per IC 6-2.1-3-24.5, if an entity can elect to be treated as an S corporation under any of the provisions of IRC 1361(b) it can be an Indiana Special Corporation and the answer to item "Y" of the IT-20SC questionnaire would be yes.

DISCUSSION

____ IRC 1361 allows an S corporation to own a qualified subsidiary. A qualified subsidiary is an otherwise eligible corporation, 100 percent of the shares of which are held by its parent S corporation. An election has to be made by the parent for the qualified corporation to become a qualified subchapter S subsidiary (QSSS.)

Pursuant to IC 6-3-2-2.8, the department accepts this election and permits the parent and subsidiary to be recognized as one taxpayer. This treatment of an S corporation and a QSSS is not related to the determination of whether a C corporation subsidiary of an S corporation (or a C corporation eligible to be treated as an S corporation) is eligible to be a special corporation.

This tax treatment of the parent and the QSSS is permitted only upon election and all entities satisfying the requirements. So it is clear then that the tax treatment, and qualifications for same, of a subsidiary owned by an S corporation are not the same. The C corporation subsidiary has to be eligible for S corporation status outside the framework of a QSSS. In the instant case, the C corporation is owned by an S corporation which disqualifies the C corporation from S corporation status as a corporation is not an eligible shareholder of an S corporation pursuant to IRC 1361(b)(1)(B).

RULING

In this case the C corporation can not be a QSSS because it does not meet the definition of an S corporation pursuant to IRC 1361(b)(1)(B). Here the shareholder of the C corporation is not an individual or other eligible shareholder, but rather an S corporation. Therefore the C corporation can not qualify as an S corporation, consequently the C corporation can not be considered a special corporation for Indiana income tax purposes.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.
